



31 JUL 2017

**9(2)(a) - Privacy of another**

Dear **9(2)(a)**

On 20 June 2017, you emailed the Ministry requesting, under the Official Information Act 1982, the following information:

- *A copy of an external review commissioned by the Ministry of Social Development examining the Ministry's management of the Pacific Media Network Contracts for delivery of components of the Pasefika Proud Campaign.*

Please find attached a copy of the document titled 'Review of Pacific Media Network Contracts', dated 4 May 2017. You will note that the names of some individuals are withheld under section 9(2)(a) of the Act in order to protect the privacy of natural persons. The need to protect the privacy of these individuals outweighs any public interest in this information.

As you are aware, during the period of 1 July 2012 to 30 June 2016, Pacific Media Network (PMN) was contracted to deliver the Pasifika Proud campaign through three separate contracts. The independent review of the Ministry of Social Development's contracts with the PMN did not identify any concerns or performance issues related to contracts one or three. The review did raise concerns about contract two. Both the Ministry and the Ministry for Vulnerable Children, Oranga Tamariki are working to ensure that the lessons learned from the review are considered and the policies, systems and processes for contracting are up to date and fit for purpose.

A copy of the report has been provided to the Office of the Auditor-General (OAG). Having viewed the report, OAG has advised that they do not intend to conduct further work on the Ministry's management of these contracts. They will, however, be monitoring both the Ministry and the Ministry for Vulnerable Children, Oranga Tamariki's progress in addressing the issues identified in the external review as part of their on-going audit work.

The principles and purposes of the Official Information Act 1982 under which you made your request are:

- to create greater openness and transparency about the plans, work and activities of the Government,
- to increase the ability of the public to participate in the making and administration of our laws and policies and
- to lead to greater accountability in the conduct of public affairs.

This Ministry fully supports those principles and purposes. The Ministry therefore intends to make the information contained in this letter and any attached documents available to the wider public shortly. The Ministry will do this by publishing this letter and attachments on the Ministry of Social Development's website. Your personal details will be deleted and the Ministry will not publish any information that would identify you as the person who requested the information.

If you wish to discuss this response regarding the independent review of the Ministry of Social Development's contracts with the Pacific Media Network relating to the Pasifika Proud campaign with us, please feel free to contact [OIA\\_Requests@msd.govt.nz](mailto:OIA_Requests@msd.govt.nz).

If you are not satisfied with this response, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or 0800 802 602.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'N. Kilmister', with a stylized, cursive script.

Nadine Kilmister  
**Director, Office of the Chief Executive**



# Review of Pacific Media Network Contracts

**Ministry of Social Development**

4 May 2017

[kpmg.com/nz](http://kpmg.com/nz)

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## Inherent Limitations

This report has been prepared in accordance with our Consultancy Services Order (CSO) dated 24 March 2017. Unless stated otherwise in the CSO, this report is not to be shared with third parties. However, we are aware that you may wish to disclose to the relevant Ministers offices elements of any report we provide to you under the terms of this engagement. In this event, we will not require the Ministers' offices to sign any separate waivers.

The services provided under our CSO ('Services') have not been undertaken in accordance with any auditing, review or assurance standards. The term "Audit/Review" used in this report does not relate to an Audit/Review as defined under professional assurance standards.

The information presented in this report is based on that made available to us in the course of our work provided by the Ministry of Social Development (the Ministry). We have indicated within this report the sources of the information provided. Unless otherwise stated in this report, we have relied upon the truth, accuracy and completeness of any information provided or made available to us in connection with the Services without independently verifying it.

No warranty of completeness, accuracy or reliability is given in relation to the statements and representations made by, and the information and documentation provided by, Ministry management and personnel consulted as part of the process.

## Third Party Reliance

This report is solely for the purpose set out in the objectives of this report and for the Ministry's information, and is not to be used for any other purpose or copied, distributed or quoted whether in whole or in part to any other party without KPMG's prior written consent.

Other than our responsibility to the Ministry, neither KPMG nor any member or employee of KPMG assumes any responsibility, or liability of any kind, to any third party in connection with the provision of this report. Accordingly, any third party choosing to rely on this report does so at their own risk.

Additionally, we reserve the right but not the obligation to update our report or to revise the information contained therein because of events and transactions occurring subsequent to the date of this report.



# 1 Executive Summary

## 1.1 Background

During the period of 1 July 2012 to 30 June 2016, the Ministry of Social Development (the Ministry) contracted Pacific Media Network (PMN) to deliver the Pasefika Proud campaign.

The services were provided through three separate contracts ("the contracts"):

- Contract One - 1 July 2012 to 30 June 2013
- Contract Two - 1 July 2012 to 30 June 2015
- Contract Three - 21 December 2015 to 30 September 2016

In March 2017 the Ministry released documents under the Official Information Act relating to the three contracts with PMN. Following the release of these documents, criticisms were made in the media regarding the Ministry's management of these contracts. The criticisms included the payment of external consultants when this was not provided for in the contract and the use of funds to sponsor "Miss Samoa" competitions.

The Pacific Unit within the Ministry's Community Investment team was responsible for the administration and management of these contracts. During this period, the Pacific Unit contained 9(2)(a) who acted as the relationship manager with PMN. 9(2)(a) was supported by 9(2)(a) who acted as the Relationship Manager. The Pacific Unit had five different managers across the course of these contracts. The Pacific Unit reported to the General Manager Operations who in turn reported to the Deputy Chief Executive (DCE).

### Pacific Advisory Group

In addition the Ministry received advice from the Pacific Advisory Group (PAG). The PAG was established by Family and Community Services in 2005 in response to the establishment of the Taskforce Against Violence Within Families (the Taskforce). The purpose of the PAG, according to their Terms of Reference was "to provide Pacific leadership and influence on Government's strategic policies, services and planning priorities that address family violence in Pacific families and communities and other social issues."

The PAG comprised Pacific community leaders with specialist knowledge in areas that included family violence, education, social services, research and community development. PAG members were appointed by the Ministry and the appointment process was supported by the Ministry of Pacific Island Affairs.

The PAG met at least quarterly. The PAG was attended by 9(2)(a) and on occasion 9(2)(a) and 9(2)(a) and 9(2)(a) often presenters at the PAG. PAG minutes were distributed to 9(2)(a) and 9(2)(a).

## 1.2 Objectives

The objectives of this review were to assess whether:

- the process by which the contracts were entered into complies with the Ministry's practices and policies
- the management of the contracts complies with the Ministry's practices and policies
- the management and oversight of the contract, including risk management, within the Ministry was undertaken in accordance with good public sector contracting practices.

## 1.3 Work Performed

In performing this review we:

- reviewed relevant documentation, including the contracts, procurement documents, internal communications and correspondence between the Ministry and PMN
- interviewed Ministry staff involved in the procurement and management of the contracts (refer to Appendix 1 for a list of staff interviewed).

## 1.4 Summary of Facts

### 1.4.1 Contracts One and Three

#### Procurement

- The fee for these contracts (\$95,000) was less than \$100,000 and therefore there was no mandatory requirement to go through a tender process.
- These contracts were awarded directly to PMN based on their capability to deliver the services required (eg delivery of radio content) and prior experience in delivering these services to the Ministry.
- Contracts were approved within relevant delegated authorities.
- Outside of the contract itself, there is no other documentation supporting the procurement.

#### Contract Management

- We did not identify any concerns or performance issues related to the delivery of these contracts.

### 1.4.2 Contract Two

#### Procurement

- Following a contestable funding round which was partially cancelled in January 2013, the Ministry, having received advice from the PAG, decided to engage a single provider to deliver the Pasenka Proud campaign.
- The Ministry raised concerns in February 2013 about the capability and capacity of a Pacific provider to deliver the services provided. These concerns were raised in an internal memo to 9(2)(a) and within the February PAG minutes. No change was made to the procurement process to mitigate this risk.
- Due to the limited pool of Pacific providers a closed tender process was used. Appropriate approvals to conduct a closed tender were obtained in line with Ministry policies.
- The Requests for Proposals (RFP) was issued to four potential providers on 15 May 2013. The RFP closed on 31 May 2013. Proposals were received from three providers.
- An evaluation plan was developed with support from a procurement specialist which aligned with the RFP requirements.
- An evaluation panel consisting of 9(2)(a) (who was new to this role), 9(2)(a) and 9(2)(a) evaluated the three proposals. An RFP Evaluation Report dated 5 June 2013 was prepared which clearly identified PMN as the preferred supplier.
- The contract was signed on 27 June 2013 with a payment of \$308,234 (excluding GST) made on this date. The start date of the contract was backdated to 1 July 2012. No services were provided by PMN under this contract prior to 27 June 2013.
- 9(2)(a) approved the contract in line with delegated authorities.

#### Contract Management

- The contract itself did not clearly describe the services required, in contrast to the RFP which was more detailed. The contract does not make any reference to the RFP or PMN's proposal. There is no requirement within Ministry policies to reference the RFP or proposal within the contract.
- The contract did not adequately describe the roles and responsibilities between the Ministry and PMN. For example, the Ministry expected PMN to be a "fund-holder" only for events and sponsorships, with the Ministry having decision making responsibility. However, this is not reflected in the contract.
- A relationship management plan was implemented and, early in the contract term, monitoring by the Ministry identified issues with PMNs performance and the quality of the services they were delivering.

- Performance issues were escalated by the Ministry to PMN management. There is no evidence of these issues being escalated within the Ministry until midway through the second year of the contract. Prior to this any performance issues were managed by the contract manager and relationship manager.
- The contract required PMN to provide "annual audited financial statements showing funding received from the Ministry as a separate line, and how that funding has been expended on the provision of the services". There is no evidence of this being provided by PMN or requested by the Ministry. PMN did provide unaudited breakdowns of their spending against key activities.

## 1.5 Key Observations

The following represent our observations identified through interviews with key personnel involved (refer to Appendix 1 for a list of personnel interviewed).

### 1.5.1 Contracts One and Three

- We did not identify any areas of concern relating to contracts one and three.

### 1.5.2 Contract Two

Refer to Appendix 2 for a timeline of procurement activities relating to Contract Two.

- The cancellation of the contestable funding round in January 2013 gave the Pacific Unit limited time to find an alternative use of the remaining funding (approximately \$380,600) for the 2012/13 financial year. The Pacific Unit considered it important to ensure that this funding was allocated to the 2012/13 financial year as it would not be available for future years if not disbursed in 2012/13.
- The backdating of the contract start date to 1 July 2012 appears to have been done so that \$308,234 of unspent funding for the 2012/13 financial year could be included within the contract, despite no services being delivered by PMN in relation to this contract during the 2012/13 financial year. This had the effect of carrying forward unspent funding into the 2013/14 financial year and does not comply with the Ministry's policies and Cabinet requirements which do not allow for under-expenditure to be carried forward.
- The contract contains inconsistencies which could lead a reader to believe that services may have been delivered during the 2012/13 financial year, when in fact they had not. For example, the payment schedule (Schedule One) could imply that the payment of \$308,234 was for services provided between 1 July 2012 and 30 June 2013. However, Appendix One (Provider Return Report) implies that services will be delivered from 1 July 2013 onwards.
- **9(2)(a)** signed the contract in line with his financial delegations. **9(2)(a)** during our interview with him, stated that he was not aware that no services had been delivered in relation to this contract during the 2012/13 financial year. The contract itself does not make it clear that no services were delivered during 2012/13. We have been unable to locate the contract coversheet which may have provided more information regarding this.
- **9(2)(a)** during our interview, demonstrated that he was aware of the rules covering the transfer of funding between financial years.
- Key services to be delivered under this contract were outside of PMNs core business and were significantly different from services they had previously provided the Ministry (eg radio content). Reference checks (apart from financial due diligence checks) were not performed as the Ministry was aware that PMN did not have experience in delivering some components of this contract. This was not reflected within the RFP Evaluation Report.
- The relationship management plan did not identify any specific actions to be undertaken to mitigate the risks presented by PMNs lack of experience.
- The relationship manager (**9(2)(a)**) did not have experience in managing a contract of this size and complexity. The Pacific Unit also had limited capacity to support PMN in the delivery of these services, particularly in light of PMNs underperformance which required them to provide more intensive support and guidance.

## 2 Observations

Below is a summary of our observations.

### 2.1 Contracts One and Three

- Contracts One and Three were for the delivery of radio content supporting the Pasefika Proud Campaign.
- The value of these contracts were for \$95,000 each and therefore was under the threshold for a mandatory tender process.
- Outside of the contract itself we have not sighted any supporting procurement documentation.
- We did not identify any concerns or performance issues related to the delivery of these contracts.

### 2.2 Contract Two

#### 2.2.1 Events leading up to procurement

- The Pasefika Proud campaign had a budget of \$500,000 per year.
- In September 2012 a contestable funding round was advertised for the 2012/13 financial year funding and was open to all providers including non-Pacific providers. Applications from Maori and mainstream providers needed to demonstrate service delivery to Pacific communities.
- The evaluation Panel met in October 2012 and recommended eleven applications for funding, consisting of two Pacific providers and nine mainstream/Maori providers.
- In January 2013 funding for the nine mainstream/Maori providers was declined because "the funds had been reserved for Pacific applicants". This is consistent with the Cabinet paper (SOC 11 (17)) which state that the Pasefika Campaign should be "designed and led by Pacific people".
- As a result of the partially-cancelled funding round, there was approximately \$380,600 of funding for the 2012/13 financial year that had not been allocated.
- In February 2013 the PAG suggested that that a Pacific organisation specialising in communications be brought in to develop a communication and social marketing strategy to promote the key messaging of Pasefika Proud and to provide a single and coordinated approach to delivering the Campaign."
- The PAG also advised that (amongst a range of criteria) the provider "be Pacific organisations who target Pacific peoples and are staffed by Pacific, led and managed by Pacific and governed by a Pacific Board (for Pacific by Pacific)".
- The Pacific Unit (a unit within the Ministry's Community Investment team) had not previously ran a campaign of this type or managed the delivery of a contract of this type.

#### 2.2.2 Concerns about the capability and capacity of Pacific providers to deliver the services required

- Prior to the procurement process the Ministry raised concerns internally and at a PAG meeting about whether a single Pacific provider would have the capability and capacity to deliver the services required under this contract.
- An internal memo dated 12 February 2013 from 9(2)(a) to 9(2)(a) noted:  
*"There are currently no Pacific providers in the family violence field or who appear on the 2012 Pacific family violence provider stock take who we believe are in a position at this moment in time to be able to provide the services we are seeking."*
- PAG meeting minutes dated 15 February 2013 noted that "there is concern that [using one provider to deliver these services] may set someone up to fail". It is unclear within the minutes whether this concern was raised by the Ministry or by the PAG. This meeting was attended by 9(2)(a), 9(2)(a) and 9(2)(a)

are listed in the minutes as "arriving this afternoon". It is not clear whether **9(2)(a)** was present when this concern was raised.

- Despite these concerns the procurement process proceeded in a standard manner. The procurement process and subsequent relationship management plans were not adapted to mitigate this risk.

### 2.2.3 Closed tender process

- Due to the specific requirements of the provider, particularly that the provider be Pacific led and managed, this significantly limited the pool of potential providers. Therefore a closed tender process was undertaken.
- Approvals were obtained from the Procurement Solutions Team on 3 May 2013 in line with Ministry requirements to use a closed tender process.
- Four providers were selected to participate in the tender, with three tenders received. The Request for Proposal (RFP) document adequately described the services required, the requirements of the applicant and how the applicants will be assessed.
- The RFP closed on 31 May 2013 with the evaluation process completed on approximately 5 June 2013.
- An evaluation plan was developed, with input from a procurement specialist, which aligned with the requirements of the RFP.
- The evaluation panel consisted of **9(2)(a)** (who was new to this role), **9(2)(a)** and **9(2)(a)**. The evaluation criteria appears to have been fairly applied, with PMN being identified as the preferred supplier.
- The contract was signed on 27 June 2013 by **9(2)(a)** in line with his financial delegations.

### 2.2.4 Suitability of PMN to deliver services

- The services required to be delivered under this contract are significantly different to the types of services PMN has previously delivered to the Ministry.
- Despite this, and the concerns previously identified about Pacific providers, there were no concerns identified in the evaluation document regarding PMN's capability or capacity to deliver the services required. In fact, the commentary within the evaluation document is very positive regarding their "history in promoting Pacific campaigns and events around New Zealand, stable relationships in the social and local government sector and provided a good range of activities to promote Pasefika Proud."
- Reference checks (apart from financial due diligence checks) were not performed as the Ministry was aware that PMN did not have experience in delivering some components of this contract.

### 2.2.5 Contract term and first payment

- The contract was signed on 27 June 2013, three days prior to the end of the 2012/13 financial year. However, the term of the contract is dated as 1 July 2012 to 30 June 2015.
- A payment of \$308,234 was made to PMN on 27 June 2013.
- No services were provided by PMN in relation to this contract prior to 27 June 2013.
- The contract appears to have been back-dated to ensure that the \$308,234 could be included within the 2012/13 financial year and not returned to the Crown.
- This ultimately has the effect of carrying this funding forward into the following financial year.
- Cabinet Office Circular CO (09) 6, which was an appendix to the Ministry's Financial Delegations policy in place at the time states that:

*"There is a general expectation that transfers are to be used only where an external factor causes the deferral of a specific and discrete project that cannot be met from the baselines of the financial year to which the transfer is being proposed. The process does not allow for under-expenditure to be carried forward."*



- In early 2014 PMN entered into correspondence with the Ministry asking that the start date of the contract be updated to 27 June 2013 so that it reflected the actual date the contract was entered into and reflect the actual amount of time that PMN had to deliver the services.
- The Ministry sought advice from Legal Services who recommended a variation to the contract dates (as well as other variations to address deficiencies in the contract).
- A variation to the contract was drafted and signed by PMN. This variation was never signed off by the Ministry and therefore never came into effect.

## 2.3 Clarity of the contract

- The 'Detailed Service Description' within the contract does not clearly define the outcomes that it is trying to achieve and the outputs that are expected of PMN.
- This in contrast to the RFP which was more detailed. The contract does not make any reference to the RFP or PMN's proposal. There is no requirement within Ministry policies to reference the RFP or proposal within the contract.
- The contract did not adequately describe the roles and responsibilities between the Ministry and PMN. For example, the Ministry expected PMN to be a "fund-holder" only for events and sponsorships, with the Ministry having decision making responsibility. However, this is not reflected in the contract.

## 2.4 Contract management and monitoring

- A relationship management plan was developed in June 2013 and appears to have been executed throughout the course of the contract. The relationship management plan did not contain any specific actions to mitigate risks associates with PMNs lack of experience in delivering some of the services required.
- We sighted regular and detailed communications between **9(2)(a)** **9(2)(a)** (the contract manager) and PMN discussing the progress of contract deliverables and attempting to manage identified performance and contractual issues (eg the use of a sub-contractor without the Ministry's approval and the sponsorship of Miss Samoa).
- The Ministry raised concerns about under delivery of services as early as September 2013, two months into the contract. Communications between the Ministry and PMN highlight concerns about PMN's capability to deliver the services required, particularly in the community engagement areas.
- Communications between the Ministry and PMN show that the Ministry was actively trying to support and advise PMN to enable them to deliver the services.
- Performance issues were escalated to PMN management.
- There is no evidence of these performance issues being escalated within the Ministry until midway through the second year of the contract. Instead, performance issues were managed by the relationship manager and contract manager. There are no Ministry policies or guidance that indicate when issues should be escalated internally.
- PMN were required to produce quarterly reports outlining the activities taken during the quarter and progress in achieving deliverables. We sighted one instance where payments were withheld to PMN when these reports were delivered late or did not provide sufficient detail. Reporting included a breakdown of spending incurred by activity.
- PMN provided detailed financial reporting showing actual spend against budget. Correspondence between the Ministry and PMN show that this was being actively monitored by the Ministry who often queried areas where there were significant over or under spending.
- The contract required PMN to provide "annual audited financial statements showing funding received from the Ministry as a separate line, and how that funding has been expended on the provision of the services". We have no evidence of this being provided by PMN or requested by the Ministry.

## Appendix A Staff Interviewed

The following Ministry staff were interviewed during the course of this review:

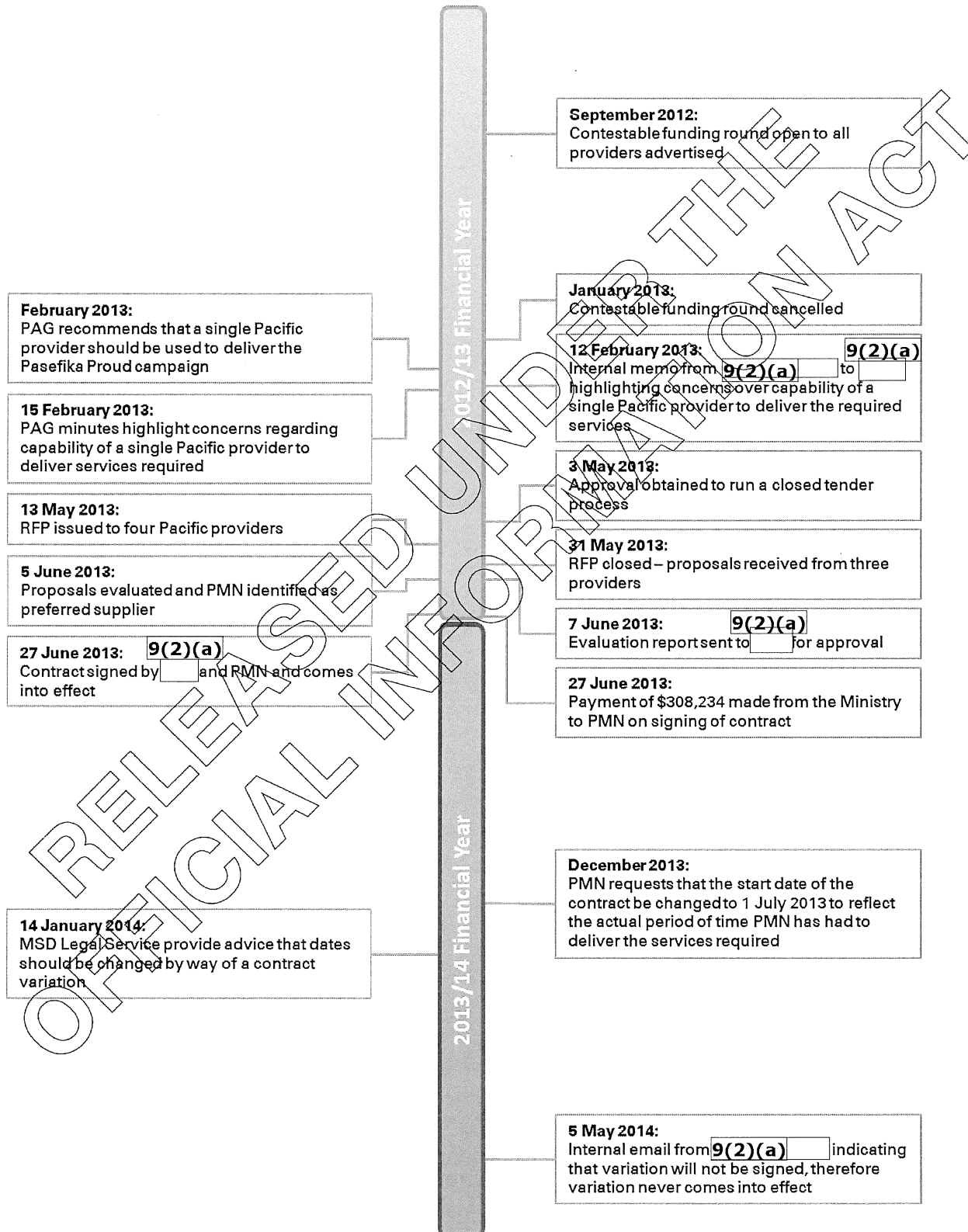
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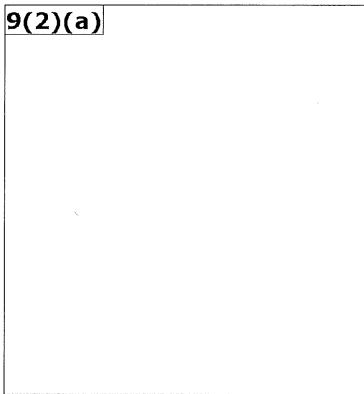
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## Appendix B Timeline of Contract Two Procurement

Below is a high level timeline of the procurement activities related to Contract Two.



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