

PROCUREMENT GUIDELINES

PROCUREMENT STRUCTURE IN PUBLIC BODIES



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Preface

These Guidelines are meant to assist public bodies in the setting up of a procurement structure within the organization to deal with matters relating to procurement. It has been prepared based on good practices and setups in countries implementing procurement legislations similar to that of Mauritius.

The structure also allows public bodies to seamlessly operate the work flows designed in the e-Procurement System to electronically carry out public procurement proceedings.

Those wishing to submit comments or suggestions on the Guidelines are encouraged to do so via our mail address below:

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1. INTRODUCTION

The key objectives of the public procurement system are to achieve efficiency and effectiveness in the procurement process to deliver value for money following ethical principles. The achievement of these objectives are based on the procurement structure put in place by the public body to enable a transparent decision making process. Such a structure, while retaining its salient principles can be adapted to meet the nature and value of the procurement expenditure and the varying size of an organisation.

The procurement structure proposed hereunder aims at attaining those objectives.

2. COMPOSITION OF PROCURING ENTITIES AND DEFINITIONS

(a) Procuring Entities

Procuring Entities refer to public bodies falling under the purview of the Public Procurement Act (PPA), which has an organisational set up to conduct procurement. Procurement decisions are taken at the following levels:

- The Accounting Officer ;
- A Procurement Committee;
- A Procurement Unit, and
- The End Users

(b) Definitions

- (i) **Accounting Officer:** refers to the General Manager, Permanent Secretary and Chief Executive or other such senior officer holding the executive functions in a public body.
- (ii) **Procurement Committee:** refers to an instance set up by the Accounting Officer to ensure that the general procurement functions are carried out in accordance to the PPA and to have inter-relationship with other instances participating in procurement decisions.
- (iii) **Procurement Unit:** refers to an instance which may be a section, department, division or subdivisions that is executing in-house procurement proceedings having inter-relationship with other instances to keep track and maintain full record of all procurement transactions within the organisation.
- (iv) **End User:** refers to an instance which may be an individual, department or divisions that requires the goods, services or works in order for it to undertake its operational functions.

3. FUNCTIONS OF PROCURING ENTITIES

A procuring entity is responsible and accountable for all procurement activities within its mandate and in accordance with the PPA, its regulations and established procedures.

4. ESTABLISHMENT OF COMMITTEE OF NEEDS

- (1) Subject to sub-section (3) hereunder, a Procuring Entity should, as and when necessary, establish a Committee of Needs responsible for –
 - (a) analysing, consolidating, standardising and approving the requirements of the Procuring Entity, while ensuring availability of funds, and
 - (b) preparing the Annual Procurement Plan of the Procuring Entity.
- (2) A Committee of Needs may be ad-hoc and comprises of a Head and such number of staff as may be necessary, appointed by the Accounting Officer.
- (3) Where it is not practical, especially due to the size of the Procuring Entity to appoint such a Committee, the Accounting Officer may designate a senior officer to discharge the functions attributed to the Committee of Needs.
- (4) The Chairperson of the Committee of Needs or the designated senior officer has to seek approval of the Accounting Officer for the related expenditures.

5. PROCUREMENT DUTIES OF AN ACCOUNTING OFFICER

- (1) The Accounting Officer is responsible and accountable for ensuring that all the procurement proceedings of the procuring entity is conducted in accordance with the PPA.
- (2) The roles and responsibilities of the Accounting Officer are to: –
 - (a) arrange for the setting up of Procurement Committee, Procurement Sub-Committees, Bid Evaluation Committees, Negotiating Teams, Committee of Needs, and also for the appointment of the members thereof;
 - (b) appoint a senior officer to be the Chairperson of the Procurement Committee or arrange for the Board of Directors to make such appointment, where applicable;
 - (c) ensure the availability of funds prior to the commencement of any procurement activity or designate officer(s) to whom this function may be entrusted;
 - (d) approve bidding documents, contracts where applicable, communicate award decisions and authorise contract agreements;
 - (e) certify and keep on record, before awarding a contract, that all procurement rules have been complied with in accordance with the PPA;
 - (f) provide such information, data and reports required by the Central Procurement Board (CPB) and the Procurement Policy Office (PPO) in the execution of their respective functions as provided for in the Act;
 - (g) attend to complaints of bidders and suppliers, and
 - (h) where warranted, make proposal for debarment of suppliers to PPO.

Advice and Assistance in procurement decisions

- (3) The Accounting Officer may seek clarification from the Procurement Committee, Evaluation Committee, Procurement Unit, and Committee of Needs. He may request any Chairperson of Committees and member or staff involved in procurement to furnish any information, record or documents relating to any procurement proceedings.
- (4) The Accounting Officer may have recourse to any professional or technical assistance from any appropriate body or person if his procuring entity does not have the required expertise.
- (5) In respect of a large or complex contract, the Accounting Officer may appoint a Project Manager and set up a Project Management Committee to manage the project from inception till completion.

Approval of Accounting Officer

- (6) No public officer shall-
 - (a) advertise, invite, solicit or call for bids or proposals in respect of a contract unless authorised by the Accounting Officer of the procuring entity, and
 - (b) award any contract unless the necessary approvals have been granted, except for low value procurement for which authority has been formally delegated.

6. ESTABLISHMENT OF PROCUREMENT COMMITTEES

- (1) Every procuring entity has to establish a Procurement Committee.
- (2) Where a procuring entity is too small to constitute a Procurement Committee, it may be assisted by its parent Ministry or it may seek the advice of the PPO for an alternative arrangement for the purposes of (1) above.

7. POWERS AND FUNCTIONS OF PROCUREMENT COMMITTEES

- (1) A Procurement Committee has to ensure that all procurement proceedings are conducted in accordance with the provisions of the PPA, its regulations and other established procedures.
- (2) A Procurement Committee has to strive to achieve best value for money, taking into account:
 - (a) the evaluation criteria and methodology disclosed in the bidding documents;

- (b) the qualification criteria and methodology disclosed in the bidding documents;
- (c) equality of opportunity to all bidders;
- (d) fairness of treatment to all parties;
- (e) the need to obtain the best value for money in terms of prices, quality and delivery, having regard to set specifications, and
- (f) transparency of process and decision.

Approval of procurement proceedings

- (3) A Procurement Committee is responsible for:
 - (i) approval of procurement approach in accordance with the procedures specified under the PPA, regulations and directives issued under the Act and good procurement practices;
 - (ii) recommending procurement decisions for approval, and
 - (iii) overseeing procurement proceedings conducted by the procuring entity.
- (4) In its deliberations, a Procurement Committee may, if so required, depending on the value of the procurement and its complexity, co-opt the respective End Users at its meeting or have recourse to any person or entity for professional/technical advice.

8. COMPOSITION OF PROCUREMENT COMMITTEE

Composition and profile

- (1) A Procurement Committee should consist of –
 - (a) a Senior Officer as chairperson and not less than two other members, appointed by the Accounting Officer or the Board where applicable;
 - (b) the Head of the Procurement Unit as ex-officio member of the Procurement Committee;
 - (c) the Head or representative of the Finance Section;
 - (d) any other officer(s) designated by the Accounting Officer, and
 - (e) a Secretary.
- (2) The members of a Procurement Committee, specified under subsection (1) should be officers of the procuring entity, as far as possible. For small organisations it may also include officers of other related public bodies, if need be.

- (3) The members of the Procurement Committee are to be appointed with regard to their –
 - (a) technical and professional competence;
 - (b) procurement skills and knowledge which may assist the Procurement Committee in the discharge of its functions, and
 - (c) proven integrity and sound decision-making capabilities.
- (4) In appointing the members of the Procurement Committee, the Accounting Officer aims at establishing a mix of skills and experience with members having:
 - (a) appropriate level of seniority and experience in decision-making;
 - (b) knowledge and experience in public procurement and other relevant professional disciplines, and
 - (c) familiarity with the procuring entity's operational activities.

9. TENURE OF OFFICE OF THE PROCUREMENT COMMITTEE

- (1) Subject to sub-section 9 (3), a member of a Procurement Committee with the exception of the ex-officio members, may hold office for a period of three years and be re-appointed for an additional like period.
- (2) The Accounting Officer has to inform the PPO, not later than 14 days from the date of appointment of the members of its Procurement Committee and of any change thereafter in its membership..

Review of Composition

- (3) The Accounting Officer may terminate the appointment of a member of the Procurement Committee if the member is–
 - (a) involved or participates in corrupt or coercive practices;
 - (b) incompetent;
 - (c) absent without the prior approval of the Chairperson or Procurement Committee from three consecutive meetings of the Procurement Committee, of which the member has had notice, or
 - (d) convicted of an offence of professional misconduct;
- (4) The Accounting Officer may remove or substitute any member of the Procurement Committee prior to the expiry of the member's term of office where:
 - (a) it is necessary to maintain a balance of skills and experience on the Procurement Committee in accordance with section 8;
 - (b) the structure or status of the Procuring Entity has changed;

- (c) the post of an incumbent member has changed, or the member has resigned, or
- (d) the member dies.

10. PROCEEDINGS OF PROCUREMENT COMMITTEES

Conflict of Interest and confidentiality

- (1) Public officials and other persons participating in the deliberations of the Procurement Committee are duty bound to comply with the provisions of the Prevention of Corruption Act (POCA) and the PPA and the relevant extracts are referred to hereunder:

Extract from POCA

- (2) 1. (a) a public body in which a public official is a member, director or employee proposes to deal with a company, partnership or other undertaking in which that public official or a relative or associate of his has a direct or indirect interest, and

(b) that public official and/or his relative or associate hold more than 10 per cent of the total issued share capital or of the total equity participation in such company, partnership or other undertaking, that public official shall forthwith disclose, in writing, to that public body the nature of such interest.
- 2. Where a public official or a relative or associate of his has a personal interest in a decision which a public body is to take, that public official shall not vote or take part in any proceedings of that public body relating to such decision.

Extract from Public Procurement Act (Section 51 (1)(c) and (2))

- (3) 51 (1) (c) A public official involved in planning or conducting public procurement proceedings or contract administration shall avoid conflicts of interest, and the appearance of conflicts of interest, in carrying out his duties and conducting himself.

51 (2) No public official, or his close relative, shall participate as a bidder in procurement proceedings of that public body and no award of a procurement contract shall be made directly to such official or to anybody in which he or his close relative, is employed in a management capacity or has a substantial financial interest.

In the subsection, "close relative" includes spouse, child, grandchild or parent.

- (4) Any person in a situation of conflict of interest shall disclose his interest that shall be recorded in the minutes of the meeting at which it is made.
- (5) No procurement official shall communicate to any unauthorised person any matter relating to the performance of his functions.

Duties of Procurement Committee

- (6) For the purpose of administering its functions, the Procurement Committee has to put in place at least the following arrangements:
 - (a) meet as often as is necessary to attend to procurement matters, and have the proceedings of the meetings prepared by the Secretary of the Procurement Committee;
 - (b) review and make recommendations to the Accounting Officer on measures, as appropriate, for receiving bids at the seat of the procuring entity by hand, mail, and electronic means when authorised so as to ensure no mishap or delays in the receipt of bids prior to the opening date and time set for their submissions;
 - (c) appoint a Bid Opening Committee of at least three members for the opening of bids received at level of the procuring entity and co-opt other Officers to assist in the opening of the bids depending on the complexity of the subject matter of the bids;
 - (d) arrange for the Bid Opening Committee to conduct its proceedings strictly as per the provisions of the PPA and procedures defined in the bidding documents, and
 - (e) ensure that the communications in respect of issue of Invitations for Bids, exchange of correspondences with potential bidders including clarifications, addendum to bidding document are effected in an efficient and timely manner and are properly recorded.
- (7) The functions of Procurement Committee are to:
 - (a) approve the choice of procurement approach, bidding documents, contract forms and conditions;
 - (b) manage clarifications to bidders at bidding stage and solicitation of clarifications from bidders at evaluation stage;
 - (c) deliberate on the findings of Evaluation Committees and advise on shortlisting of consultants, prequalification of bidders and award of contracts or otherwise, and
 - (d) review and make recommendation on applications for variations or any such event which would result in an increase of the contract price, major changes in the original scope/requirements (even if they do not result in an increase of the contract amount), addenda or amendments to ongoing contracts in accordance with good procurement practices and in compliance with the PPA.

- (8) All matters discussed at each meeting of the Procurement Meeting have to be duly recorded and minutes of meetings circulated among the members prior to the next meeting. The Secretary has to maintain proper record in this respect.

Clarification process from BEC and End Users

- (9) In the course of examination of bids, the Procurement Committee may invite the Chairperson of the Evaluation Committee to provide clarifications on the contents of the Report, and may request the Evaluation Committee to review its recommendations on specific ground backed by references from the Bidding Documents, Guidelines issued by the PPO and in accordance with the provisions of the Act.
- (10) In the event that the Procurement Committee is in disagreement with the recommendation of an Evaluation Committee, it has to express its opinion on the report giving the grounds of its disagreement to the Accounting Officer.
- (11) Where the Procurement Committee is in presence of an Evaluation Report with dissenting views that has an important bearing on the conclusion arrived at by the Bid Evaluation Committee (BEC), the Procurement Committee must examine the ground for the dissenting views.
- (12) The Procurement Committee may, in the case mentioned in subparagraph (11) above, request the author of the dissenting report and/or BEC for a review on specific ground. If the dissenting views persist, it may recommend award of contract or cancellation of the bidding process or as a last resort the setting up of another evaluation committee to look into the evaluation exercise afresh.

11. PROCUREMENT SUB-COMMITTEES

The Accounting Officer may authorise a sub-division or unit of the Procuring Entity to set up a Procurement Sub-Committee to carry out procurement of a certain value at that level, where such delegation would enable procurement to be effectively managed.

12. ESTABLISHMENT OF A PROCUREMENT UNIT

Composition of a Procurement Unit

- (1) There should be a Procurement Unit in every Procuring Entity responsible for managing all procurement activities of the Procuring Entity and obtaining all required approvals from the appropriate authority, in accordance with the Act. In small organisations or where the volume of procurement undertaken does not justify the setting up of a Procurement Unit, the public body concerned may have recourse to the assistance of the Procurement Unit of its parent ministry or any other department within the said ministry or otherwise consult the PPO for guidance.
- (2) The Procurement Unit may consist of procurement and other technical specialists, as appropriate, together with the necessary supporting and administrative staff.
- (3) The Procurement Unit is to be headed by a person with experience in procurement having sufficient academic qualifications, technical competence and skills.

Duties of Procurement Unit

- (4) The functions of a Procurement Unit are to –
 - (a) manage all procurement activities within its jurisdiction;
 - (b) support the functioning of the Procurement Committee;
 - (c) implement the decisions of the Procurement Committee and Accounting Officer;
 - (d) advise the Procurement Committee;
 - (e) assist management in the preparation of annual procurement plan and individual procurement plans;
 - (f) advise on procurement procedures;
 - (g) obtain specifications from End Users and verify statements of requirements;
 - (h) prepare bidding documents and invite bids;
 - (i) prepare, issue/publish procurement notices;
 - (j) prepare contract documents;
 - (k) issue approved contract documents;
 - (l) maintain and archive records of the procurement proceedings;
 - (m) maintain a list or register of all contracts awarded;
 - (n) prepare monthly reports for the Procurement Committee;
 - (o) prepare and submit quarterly reports on implementation of the annual procurement plan to management, and
 - (p) co-ordinate the procurement activities; and prepare ad hoc reports as may be required.

13. ESTABLISHMENT OF PROCUREMENT SUB-UNITS

The Accounting Officer may authorise a sub-division or unit of the Procuring Entity to set up a Procurement Sub-unit to carry out procurement of a certain value at that level, where such delegation would enable procurement to be effectively managed.

14. ROLE OF END USER

An End User is responsible for formulating its requirements, i.e. for goods, services or works and the budget from which the requirement will be purchased.

The End User should:

- (a) provide information on procurement forecast to the Procurement Unit for the purposes of procurement planning;
- (b) provide procurement requirements;
- (c) provide technical inputs;
- (d) participate in bid evaluation whenever required;
- (e) assist in the procurement proceedings;
- (f) manage contracts or assist the designated contract manager as required;
- (g) maintain and archive records of contracts management for projects, and
- (h) prepare any report required for submission to the Procurement Unit, the Procurement Committee or the Accounting Officer.

15. ESTABLISHMENT OF AD HOC BID/PREQUALIFICATION EVALUATION COMMITTEES

Composition of the Bid Evaluation Committee

- (1) The Accounting Officer may establish an ad hoc Bid or Prequalification Evaluation Committee in accordance with the provisions of PPA.
- (2) An Evaluation Committee may be set up by the Accounting Officer in consultation with the Chairperson of the Procurement Committee and comprise of not less than three members, which may include a member who is not an officer of the Procuring Entity where such expertise is not available in-house, and one Secretary.
- (3) The Evaluation Committee may include one or more members of the End Users, as appropriate, and any person involved in the preparation of the bidding document if considered advantageous due to the type and complexity of the procurement.
- (4) The role of the Secretary is to liaise with the members of Evaluation Committee meeting as directed by the Chairperson of the Evaluation Committee, maintain attendance and take minutes of all deliberations during evaluation, ensure that

bids are kept in a secured place, and organize the necessary logistics such as meeting place and other office requisites.

Qualification and Profile of Bid Evaluation Committee (BEC) Members

- (5) The members of an Evaluation Committee should possess skills, knowledge and experience relevant to the procurement subject matter, which may include –
- (a) technical skills;
 - (b) procurement and contracting skills;
 - (c) financial management or analytical skills, and
 - (d) legal expertise.
- (6) The number of members and level of expertise of an ad hoc Evaluation Committee shall depend on the value and complexity of a subject matter of procurement.

Avoidance of position of conflict of interest

- (7) To ensure an independent evaluation process and for avoidance of conflict of interest, members of the Procurement Committees, Board of Directors, the Accounting Officer, and the End Users who have contributed in the preparation of the bidding document should not form part of the Evaluation Committee.
- (8) A person who has contributed in the preparation of the Bidding document may exceptionally participate in an evaluation where such expertise is limited and available in house.

16. FUNCTIONS AND PROCEEDINGS OF AN AD HOC EVALUATION COMMITTEE

- (1) The functions of an ad hoc Evaluation Committee are to:
- (a) examine applications for prequalification and assess the experience and qualifications of applicants as per the criteria mentioned in the prequalification documents so as to prequalify bidders technically and financially capable to execute works or projects;
 - (b) examine and evaluate bids as per the criteria defined in the bidding documents to determine the lowest evaluated substantially responsive bidder;
 - (c) complete the evaluation within the pre-established timeline to allow for the Procuring Entity to complete the onward procedures as per planned schedules and to optimize on resource persons involved in the procurement proceedings, and
 - (d) advise the Chairperson of the Procurement Committee, well in advance, on the need to request for extension of bid validity period where the evaluation process could be exceptionally delayed.

Declaration of Conflict of Interest

- (2) At the first meeting of the Evaluation Committee, the Chairperson has to ensure that all members would be available for the whole duration of the bid evaluation as per the work plan specified.
- (3) Prior to taking cognizance of the bids received and the name of bidders the Chairperson, Members and Secretary to the Evaluation Committee have to sign a first declaration of no conflict of interest as per the format contained in the model Bid Evaluation Report.
- (4) At any time prior to or during the evaluation process, if anyone forming part of the Evaluation Committee discovers that he or she has come into a situation of conflict of interest, he or she should make a declaration in writing to that effect at the very moment and allow for the evaluation committee to take a decision on his or her continuation in the evaluation process. Such declaration of conflict of interest is recorded in the minutes of the meeting.

Declaration of Confidentiality

- (5) Except as provided for in the Act and the Regulations, any information relating to the examination, evaluation and comparison of bids shall not be disclosed to any bidders or to any other person not involved officially in the examination, evaluation or comparison of bids or in the decision on which bids should be accepted. A declaration of Confidentiality shall be made at the very first meeting of the Evaluation Committee.
- (6) In accepting to form part of the Evaluation Committee, the Chairperson, Members, Secretary as well as other parties such as Consultants and other resource persons solicited to advise the Evaluation Committee in specific fields are likely to become aware of proprietary and confidential information of bidders and their business. They shall be bound by the confidentiality clause and shall not communicate any information contained in such document or pass on such documents to any person other than the Procurement Committee.

Technical Assistance to Evaluation Committee

- (7) The Evaluation Committee may request through the Procurement Committee for technical assistance related to any specific part of the evaluation process as early as possible after the preliminary examination of the bids, if so required.
- (8) When a Consultant is employed for the purpose of assisting the Procuring Entity in the procurement process, the Consultant may assist the BEC, if so required. The Consultant is expected to assist the evaluation process under the same obligation as applicable to a Public Official.
- (9) Any report submitted by the Consultant must be fully understood by members of the Evaluation Committee and clarification may be sought from the Consultant, if

need be. For this purpose, it is earnestly recommended for the Consultant to be always available for the works of the Evaluation Committee. Any views/recommendation/working of the Consultant, or Technical Sub-Committee should be considered as the expertise assistance to complete the evaluation. The responsibility of Evaluation Committee to assess bids and make recommendation cannot be delegated.

- (10) In the case of divergence between the evaluation committee and the Consultant or Technical Sub-Committee on any important matters in arriving at the evaluation results, the Bid Evaluation Report must clearly state those differences.

Request for Clarification

- (11) Contacts between the Procuring Entity's officials, including the Evaluation Committee, and bidders should be limited to official communications only. All such communication must be in writing. Procuring Entity's officials should not entertain calls or informal communication, meetings, or other contact with any bidder. The Evaluation Committee has to handle all Requests for Clarifications through an official channel within the organization. There should be no direct dealing between the Evaluation Committee and the Bidders.

Evaluation Report

- (12) After completing the evaluation, the Evaluation Committee should submit its Evaluation Report to the Procurement Committee in the format proposed by the PPO with an Executive Summary, where applicable, as well as a copy of the minutes of the meetings. The Evaluation Report should describe the steps of the evaluation process highlighting the salient issues and the manner in which it has reached its conclusions in ranking the substantially responsive bids and in rejecting non responsive bids.
- (13) The decision of the Evaluation Committee is taken through consensus. Where a member is not agreeable with the decision of other members, he should prepare and submit a dissenting report to the Chairperson of the Evaluation Committee. The latter should submit both the BEC Report and the Dissenting Report to the Procurement Committee.
- (14) The Evaluation Committee should also comment on the effectiveness of the bidding process and highlight any weaknesses that may be cured to improve future procurement.

Support for Challenge and Review

- (15) The Evaluation Committee has to remain available for clarification, review of the evaluation on specified ground as may be requested by the Procurement Committee, and to assist the Procuring Entity in attending to Challenge and Review, if required.

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