

Ministry of Finance

Investments Division

State Boards Corporate Governance Seminar 2017

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**Topic: Procurement Practices and the Public Procurement and Disposal of
Public Property Act**

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What is Procurement?

I was asked to discuss the topic of procurement at this forum today. Generally when someone hears procurement, their mind tends to run on tendering thinking this is the only aspect of it.

However, procurement generally consists of three segments and the tendering segment is the least important if you wish to carry out the procurement process successfully.

The three segments of procurement are:

- (i) the definition of what is required
- (ii) The tendering process and
- (ii) The implementation phase.

Defining Specifications

The definition phase of the process is the crucial phase of any procurement process. If this is not done properly no matter how well the other aspects are carried out, the procurement process will be a failure.

The requisition for any goods or service originates in the user department. They are the ones who have to utilise the goods or service so they will know what is required.

The user department must provide detailed specification geared to the specific functions that are needed. It is no good saying that a ware house is needed. What is the purpose of the warehouse? Is it for dry goods? Are perishable items to be stored? Therefore the need for refrigeration. Will an open space ware house be suitable for the items to be stored? All these questions and more need to be answered before the specifications and designs can be completed.

When done properly, the definition of the requirements and detailing of the specifications almost dictates the way forward to the tendering process and the implementation phase.

Tendering

The second segment of procurement is the tendering phase. This phase can be divided into two aspects. The first is the seeking of suitable qualified bids for the goods or service. The second aspect is the evaluation of the bids received.

When properly done, defining the specifications would lead to the method of soliciting the bids and also establishing the criteria for the evaluation of the bids.

The methods that are used for soliciting bids are:

- i. Open tendering
- ii. Selective tendering
- iii. Sole Selective tendering

Open tendering is the most transparent of all the methods of soliciting bids. This method involves placing an advertisement and requesting all interested persons to submit a bid. As this method is open to everyone, there can be no question of favouritism.

The second method of selective tendering is when the company has a pre-qualified list of contractors and they select a specific group of contractors to submit bids. This method is not as transparent as open tendering as there can be accusations of favouritism. This method however is quicker than open tendering.

The pre-qualification list is established by the Company seeking contracts to register as available to carry out projects. These contractors are then evaluated. The contractors are then sorted into categories for which they are most suited. When the company requires a contractor they invite suitably qualified contractors to bid.

The third method is sole selective tendering. This method should only be used in rare and exceptional circumstances. This is the least transparent form of tendering. The most appropriate use of this method is when equipment was previously purchased and the manufacturer or agent is the sole person authorized to service or repair the said equipment.

Evaluation

As stated previously if done correctly, the definition of what is required tend to feed naturally into the evaluation stage of the tendering process. It provides the criteria needed to conduct the evaluation and even guides the weighting of each criteria for evaluation.

The evaluation process is to obtain the best evaluated bid submitted. Not and I repeat not the lowest bid. If the requirement is homogeneous then the lowest bid will suffice. But in products where technical competence is required, you need to obtain the best mix to technical competency and price. If you are very lucky, this may be the lowest bidder but this is not always the case. You have to achieve the fine balance where you obtain the best competent bidder with a price that is not extravagant. This is a balance that is usually very difficult to achieve.

Implementation

The downfall of most projects in the Public Sector, after the company completed the tendering process, is that they are convinced that the best contractor was selected and therefore the project would be smooth sailing from there on. This misconception led to the failure of many public projects with numerous cost over runs and time delays. No matter how good the contractor selected is, the company

must take ownership of the project and manage it to ensure a successful completion. You have to remember that the contractor is in business for his interests. The decisions made during the execution of a project will always be to his benefit and not that of the client.

That is why this implementation phase of any procurement is the second most critical and must be properly supervised by the company. The company has to establish its project management team, who will oversee the implementation with the company's best interest in mind. They have to ensure that time schedules are met, specifications are adhered to and that any variations are for the enhancement of the project and not because it is more expedient for the contractor.

On the topic of variations, these must be properly evaluated before they are approved. They should follow the same **infurious** process of the original tender and must obtain approval of the Board before being implemented.

Emergency Procedures

With any process there must be contingencies for emergency purchases. A definition of what constitutes an emergency must be detailed in the procurement procedures of the Company. It must also detail who is allowed to be contacted in the case of emergencies and what limits are applicable. The emergency procedures must also define the time limit for receiving retroactive approval after the emergency.

The project management team should be on site 24/7, because on some projects when it is covered by concrete you will not be able to determine if specifications were adhered to. The project team has to ensure that inspections are constantly done and samples taken and tested to confirm that specifications were met and the contractor did not take any short cuts.

In the procurement process the two components that have no room for failure are the definition and implementation phases. If the project is badly defined no matter how good the Contractor is or how well it is implemented the project will be a failure.

Similarly, if you do not pay attention to the implementation, the project will experience cost over runs and delays. However, if a project is well defined and properly implemented even though there are short comings with the selected contractor, these would be effectively managed and the project would be successful.

New Trends

One of the new trends in procurement is e-procurement. This involves using technology to modernize the procurement process. One aspect of the e-procurement is the e-auction. This is where the bidding is done online and in real time. This is one of the most transparent forms of tendering.

Procurement Legislation

The Public Procurement and Disposal of Public Property Act, 2015, hereinafter referred to as “the Act”, was assented to on January 14, 2015, amended by the Public Procurement and Disposal of Public Property (Amendment) Act, 2016 which was assented to on June 17, 2016 and will repeal and replace the Central Tenders Board Act, chap. 72:91 upon full proclamation.

Partial Proclamation of the Act

The Act was partially proclaimed by the President (Legal Notice 150 dated July 30th 2015) to allow for the establishment of the Office of the Procurement Regulator (OPR), the appointment of the members of the Office, the performance of certain functions of the OPR, the hiring of the staff and drafting regulations under the Act.

Partial proclamation of the act was necessary to initiate the new public procurement scheme by bringing the Procurement Regulator and the Office into existence, since waiting to proclaim the entire Act would have meant that all operations, functions, posts and protocol would have had to commence simultaneously. Partial proclamation allowed for gradual establishment of the necessary functions, posts, processes and transitions resulting in a seamless adjustment to the new legislation and amplified efficacy in operations.

The full implementation of the Act will mean the immediate disbandment of the Central Tenders Board, certain steps must be completed before the Act can be fully proclaimed.

These steps are:

- (i) The establishment of the office of Procurement Regulation
 - (a) Salaries and allowances for the Regulator and the Members of the Board must be established

- (ii) Establishment of Procurement Units within the Public Service
- (iii) Establishment of the Public Procurement Review Board
- (iv) Development of Procurement Regulations
- (v) Transitioned Arrangements

It is expected that these measures would be completed in the shortest possible time frame.

CSME

There are moves currently in process to have a standardize procurement legislation for the Caribbean Single Market and Economy. This is a fairly new initiative and efforts are being made to educate the individual countries and obtain the “buy-in”. It is unlikely that this initiative will be completed before the proclamation of the new legislation.