



PROCUREMENT POLICY OFFICE
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E-NEWSLETTER

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CPPP Exams results

The results of the Certification Programme in Public Procurement (CPPP) examinations for the August 2010 intake are accessible online on the website of the Procurement Policy Office at:
<http://ppo.gov.mu>



SPP Policy Statement and Action Plan

In the context of the implementation of the Sustainable Public Procurement (SPP) project, the services of a local consultant have been sought to finalise the SPP Policy Statement and Action Plan. The Consultant is expected to complete the assignment by the end of April 2011.

The Consultant will have to:-

- Work with the Procurement Policy Office and an international SPP expert to identify opportunities for the contribution of public procurement to the achievement of national Sustainable Development(SD) targets.
- Refer to major SD reports, to the Maurice Ile Durable (MID) vision and to the opportunities identified during the SPP Policy and Action Plan workshop held on 23-24 November 2010.
- Identify and analyse potential barriers for SPP implementation and recommend measures to overcome these barriers.
- Submit to the SPP Task Force a table of content for the SPP Action Plan.
- Work with the PPO and the international SPP expert to draft a National Strategy and Action Plan to achieve the targets and ensure that public procurement fully contributes to SD in Mauritius in line with the MID vision.
- Make appropriate recommendations and define the actions which must be taken with milestones for getting started and clear target dates for the future.
- Make recommendations on appropriate monitoring and reporting mechanisms for SPP.

The Procurement Policy Office invites readers to submit comments or suggestions on the Procurement System for further improvements.

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Inside This Issue

SPP Policy Statement

Public Procurement

Reforms

Capacity Building

Questions & Answers

Knowledge Zone

IRP Decisions



Public Procurement Reforms in Mauritius

Mauritius can boast itself of rapid progress in implementing public procurement reforms. After only three years the system has been transformed and now largely meets OECD norms. Further reforms are in the pipeline to further modernise the system and make it fully compliant with international norms and standards.

Following a request from the Government for Mauritius to join the *Piloting Use of Country Systems*, the World Bank undertook to carry out an assessment of our procurement system. The World Bank Team visited Mauritius in December last to validate its earlier findings and discuss proposals for changes to be brought to the Legal Framework. Their final report is expected by the end of February.

In the budget speech, the Vice-Prime Minister and Minister of Finance and Economic Development, Mr Pravind Jugnauth, expressed Government's strong commitment to implement the recommendations of the World Bank in order to reduce time for project implementation.

It will be recalled that last year Government also appointed a Reforms Review Committee to, among others, examine the recommendations of the COMESA and World Bank as well as issues identified during implementation with a view to propose amendments required to the Public Procurement Act. The Committee has completed its works and its report is expected soon.

A representative of the UNCITRAL, Mrs Caroline Nicholas, also came to Mauritius on the invitation of the Procurement Policy Office (PPO) and reflected on our public procurement system. She too has made valuable suggestions.

The amendments needed will be brought very fast as the COMESA has already made available the services of a Legal Drafter following assistance sought by Mauritius under the Enhancing Procurement Reforms and Capacity Project (EPRCP).

In parallel to the review of the legal framework, the PPO has also taken some initiatives, which include the introduction of e-procurement and capacity building programmes. The e-procurement project which started very well has suffered considerable delay on account of some problems at the level of our partners in the State Government of Andhra Pradesh (GOAP). According to the initial plan, by now the pilot runs should have been completed and the use of the system extended to all the public bodies. The plan has been reviewed now in the light of positive signals received from the Andhra Pradesh side.

Last year, with the collaboration of the University of Technology, Mauritius, the PPO started running the Certification Programme in Public Procurement through an e-learning platform in parallel with the ongoing classroom programme. Two batches of officers have completed the course by studying through their own flexible time schedule. It was a conclusive experience, although it should be acknowledged that there were some constraints which those officers faced as well as some weaknesses



which were identified. The PPO is addressing these issues and the next programme is due to start shortly. It is worth noting that institutions like the COMESA and the Commonwealth were apprised of the experience and some Member States have expressed interest to come to Mauritius on study tour.

Reforms at the regional level are also progressing well. It will be recalled that the COMESA issued the Regional Public Procurement Regulations, which all Member States are required to comply with. However, due to certain pertinent issues identified in the Regulations, their implementation has been delayed. Last year at the meeting of the Technical Committee of Experts, Mauritius made valuable suggestions to address those issues, which were agreed by the Committee and referred to the COMESA Council of Ministers for endorsement. A Review Committee, which includes Mauritius, has thus been set up to propose amendments to be brought to the Regulations to enable quick implementation.

Finally, it is worth noting that Mauritius has also actively participated in the Commonwealth Public Procurement Network (CPPN) during the last three years. This allowed Mauritius the opportunity to showcase experience gained in implementing procurement reforms and also to learn from the experience of other countries. Mauritius has thus been selected to host the next CPPN Conference in September this year.

The aims of the annual conference of the CCPN held last year in Namibia were to:

- Strengthen relations between procurement regulatory agencies and central boards to intensify learning within the Commonwealth

- Assist delegates to have a firm grasp of the value added functions of emerging best practices and shared innovations
- Mainstream risk management, effective records management, among others, in public procurement
- Assist delegates to appreciate diversity and commonality of reforms and system spectrum and to develop the capacity of making reform choices suitable to their own environment
- Assist delegates to appreciate the level of individual country reform in procurement, identify weaknesses and develop SMART country action plans
- Assist with the establishment of a professional pan-Commonwealth body in public procurement

The conference was very successful and laid the foundation of the professional pan-Commonwealth body in public procurement, with the election of an interim committee to work out the modalities. Mauritius was thus selected to be part of the Committee which will hold a meeting in Kenya in May this year.

It can be seen that although much has been accomplished, a lot still needs to be done. What is interesting is that things are moving fast.



Training Programme in Public Procurement

The Procurement Policy Office, at the request of the Police Department, conducted on 28 January and 11 February 2011 a training programme for officers of, among others, the National Coast Guard, the Police Helicopter Squadron, the Special Mobile Force, the Police Vehicle Technical Unit and Procurement and Supply officers of the Police Department all involved in bid evaluation.

The Training was held at the Special Supporting Unit (SSU) Lecture Room, Line Barracks. Sixty-seven participants were present.

As a result of the profile of the participants, the field of training was focused on bid evaluation methodology. Nevertheless a brief presentation was made on the PPA 2006 and Regulations 2008.

Some of the several issues raised during the interactive session were:

- Whether a public body can accept the financial statement of the mother company when the bidder is operating as a subsidiary one.
- Whether there are specific regulations for bids that are abnormally priced below cost estimates.
- The provisions in the Act with regards to procurements for national security.



Supply of special types of equipment and accessories

A Public body invited bids from three overseas suppliers for the supply of special types of equipment and accessories on 7 June 2010. The closing date for submission of bids was 28 July 2010 at 13.30. These equipment are not readily available on the local market.

By the closing date and time, no bids were received. But however, one of the bidders sent his bid by email, prior to the closing date. He also informed the Public Body that the original copy of his bid was sent by courier. The Public body never received the bid by courier.

Questions

Since these equipment are urgently needed for the start of certain courses, can the Public body accept the bid received by email, and proceed with the evaluation procedures?

In case the Public Body cannot accept the bid, can the Public body proceed with purchasing the said equipment directly from the supplier who sent the bid by email (given that it is a responsive bid and it costs around Rs 2 Million)?

Answer

It is to be noted that the Public body cannot proceed further in this bidding process as no bids were received by the closing date and time.

The Public Body can have recourse to direct procurement, subject to satisfying section 25 (b) of the Act, which states that this method of procurement is permitted where only one supplier has the exclusive right to manufacture the goods or provide the services, or the chief executive of the public body may invoke situation of extreme urgency as per Section 21.





Core Principles on an efficient public procurement framework - EBRD

The “Core Principles” of the European Bank for Reconstruction and Development (EBRD) refer to the core principles on an efficient public procurement framework.

A review of the Core Principles was conducted by the EBRD in September 2009. The review looked at international public procurement standards and current best practices relating to the procurement cycle, and all international public procurement instruments presently under revision. It has also drawn on the practical experience of the EBRD as a direct investor and financier. It reflects the standards generally regarded as international best practice in the public procurement process.

The review is based on the assumption that the primary role of a public procurement law is to accommodate the business process of negotiating a contract in a public governance context. Consequently, the Core Principles focus, in particular, on the issues of objectivity, consistency and enforceability of public procurement regulation.

Modelling the content of a national public procurement framework will depend on the contractual traditions of individual transition countries. At the same time, public procurement legislation needs to comply with international standards to ensure that key internationally recognised public governance values are respected. The Core Principles therefore may serve as an aide-mémoire and a checklist for the drafting process.

The PPO provides in the next two pages an insight of the EBRD core principles on an efficient public procurement framework.





The Core Principles - Highlights

1. The Public Procurement (PP) legislative framework should foster accountability of public sector spending

The framework should promote accountability across all stages of the procurement process, balancing public and business dimensions of the process. In the procurement process, accountability begins with a requirement for a clear chain of responsibility between management, budget, technical, legal and procurement officials.

It is essential that the framework requires a sound contract profile and procurement plan to be established before the tendering process is launched, to avoid economically unjustified and unnecessary purchases.

The framework should also require technical specifications of tenders to be based on relevant quality characteristics and/or performance requirements.

The scope for rejecting all valid tenders should be clearly and narrowly defined. A public procurement remedies system should strike a balance between protection of public finance and the right of the tenderer to seek effective remedy or compensation. There should be an independent review body with the authority to impose sanctions upon parties who do not comply with the public procurement values.

2. The PP legislative framework should ensure the integrity of the procurement process

The PP framework should promote integrity between the procurement function,

transparency in delivering government policy and value for money.

The law should ensure that the behaviour of management and procurement officials is consistent with the public purpose of their organisation. It should contain measures to limit the scope for undue influence and to avoid conflict of interests at all stages of the procurement process.

The law should limit the opportunities for negotiations or amendments to final tenders and proposals after submission.

3. The PP legislative framework should provide an adequate level of transparency

For public procurement to be acceptable to all stakeholders it should be seen to be public, transparent and objective. Any suggestion of an un-disclosed resolution must be avoided. The law should promote the extensive use of e-procurement as one of the methods to prevent collusion with tenderers.

A contracting entity should whenever possible publish tender documents free of charge on the contracting entity's website, instead of supplying same by request only and for a fee.

As a rule, tenders should be opened in public opening session promptly after the deadline for the submission of tenders.

A contract award notice should be published for all contracts finalised by the contracting entity.





4. The PP legislative framework should enable competition

To begin with, the PP framework should promote fair competition and prevent discrimination in public procurement. Tenders and tenderers of equivalent status should be given equal treatment, without regard to nationality, residency or political affiliation. The law should not allow domestic preferences.

The law should comprise minimum tender deadlines to ensure a level playing field and should demand consistency in its application throughout the procedure.

Secondly, the law should encourage competitive contract through the tendering process. Sound PP law should permit both tendering and competitive negotiations, wherever appropriate, to ensure fit-for-purpose outcome.

To ensure genuine competition takes place it is essential for the law to require tendering processes to stipulate reasonable technical specifications, requirements and suitable award criteria, adequate to the scope and value of the contract prior to embarking on the tendering process.

5. The PP legislative framework should promote economy in the procurement process

The law should enable public procurement to be accomplished professionally in a reasonable time. Formal requirements essential for transparency reasons should be kept simple and the costs low.

The law should grant the tenderers an ability to submit an inquiry or tender in a confidential but simple and time and cost-effective manner.

The PP law should encourage aggregation of lots, and whenever possible, the use of a life cycle costing for the purchase of goods and works.

6. The PP legislative framework should promote efficiency of the public contract

The PP framework should ensure value for money is achieved, and promote methods of tender evaluation considering both the quality and cost of purchase.

Contract terms and conditions should be fair and balanced and reflect the best available business practice. The law should clearly identify when a contracting entity may obtain a tender deposit or contract security, and specify relevant limits.

The law should mandate proper contract management.

7. The PP legislative framework should be enforceable

Public procurement law should be easy to enforce. Regulatory mechanisms should be able to assess the compliance of the contracting entities and employ corrective measures when necessary.

The dedicated national PP regulatory agencies should be professional, independent and provide audit and monitoring of the PP sector to raise the profile of procurement and drive up PP sector capability.

Source: <http://www.ebrd.com/search/query.html?q=Core+Principles+on+an+Efficient+Public+Procurement&submit=>



Decision No. 21 of 2010

Iframac Ltd

v/s

Ministry of Health & Quality of Life

The background of the procurement exercise

The Ministry of Health & Quality of Life using the Open Advertising Bidding Method invited bids for the procurement of vehicles for the transport division. Two bids were received; from Iframac Ltd (for 3 items) and ABC Motors Co. Ltd (4 items). The Ministry notified both bidders that upon recommendations of the Bid Evaluation Committee had decided to award the contract for the three items to ABC Motors Ltd for a contract price of Rs19,541,500 (inclusive of VAT) with delivery to be effected as per offer of bidder i.e. Ex-stock subject to unsold.

The grounds for the review

Iframac Ltd felt aggrieved with the decision of the Public Body and submitted a challenge. Still dissatisfied with the reply from the Public Body, the bidder made an application for review to the Independent Review Panel. Consequently, procurement proceedings for the three items were suspended. As per the aggrieved bidder, the Ministry was wrong and was in breach of Section 40(1) of the Public Procurement Act, because his price was cheaper by Rs6, 601,050 compared to that of ABC Motors Co. Ltd.

Moreover, as per the bidder, the Ministry of Health & Quality of life was wrong in saying that Iframac Limited had not proposed High Roof Vans as stated in the bidding document. Furthermore, the Ministry failed to adhere to requirements of Section 37(1) of the Public Procurement Act by not seeking for clarification from it during the examination of bids.

Submissions and Findings

As per the Bid Evaluation Report, the bid from Iframac Ltd was considered to be technically non-responsive as the models quoted were not of the "High Roof Type".

In the ITB of the bidding document, bidders were required to submit, along with the bid, original catalogues and leaflets highlighting the proposed Make/Model. Iframac Ltd had





indicated in its bid document that the quoted “Foton Window Van” and the “Foton 15 Seater” were **high roof** Model BJ6536B1DDA-3R. However it did not submit any catalogue but did submit two leaflets. One leaflet showed a picture of the Minibus and the second leaflet was a technical data sheet. The vehicle model is given as BJ6536B1DDA-3R and the cabin type is described as **middle-roof**. Thus, the bidder has failed to submit original catalogues and leaflets highlighting the Make/Model proposed along with its bid.

Later on the aggrieved bidder submitted a coloured leaflet of a vehicle and its specifications. The vehicle brand is referred to as being a Foton of Model BJ6536B1DDA-3R. The cabin type was described as “high roof” in the document. However, the document was unsigned and undated and appeared not to be original. The Panel considered that this document was unacceptable.

As per the IRP, there is an obvious inconsistency because on one part, the bidder had mentioned in the specification and compliance sheets and quotation forms that both the “Foton Window Van” and the “Foton 15 Seater” were high roof Model BJ6536B1DDA-3R and on the other part, in one specification leaflet the cabin is described as middle roof. Therefore according to the IRP, the evaluation committee should have considered such inconsistency to be a non-material omission as contemplated by the provisions of Directive No. 3 of the Procurement Policy Office and that it should have asked the aggrieved bidder to fully comply with ITB 11.1(h) and to submit appropriate original catalogues and leaflets of the Make/Model being proposed. These documents which cannot be tampered with are considered to be factual information which ought to have been available at the time of the submission of the bids.

Thus the IRP Panel found that there was merit in the application and recommended a review of the decision of the Public Body in order to allow the Evaluation Committee to take into account the appropriate documentation requested from the aggrieved bidder.

Lessons learned

Therefore, the Iramac case provides useful information to evaluators and members of Departmental Tender Committees. Evaluators should always evaluate bids diligently and with due care taking into consideration all instructions, directives & circulars issued. Moreover, the Departmental Tender Committee at the time of reviewing the Bid Evaluation Report should ensure that no bid is unfairly rejected due to non-material deviation, reservation, or omission.