



PROCUREMENT POLICY OFFICE
8th Floor, Emmanuel Anquetil Building, Port Louis, MAURITIUS

E-NEWSLETTER

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To Our Readers

The monthly e-Newsletter is an instrument that promotes communication between the Procurement Policy Office and its stakeholders. It also aims at enhancing capacity of procurement officials and suppliers.

The e-Newsletter is also a platform for sharing views, making recommendations for further improving the procurement system for the benefit of one and all.

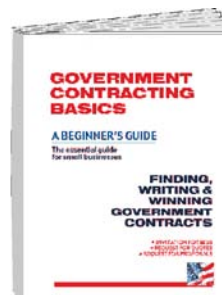
We invite readers to submit articles on topics related to procurement which will be published in the forthcoming issues. You are also invited to seek clarifications pertaining to the application of the procurement law. Both the questions and answers will be published.

We earnestly believe that your contribution will further enhance the contents of the e-Newsletter.

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Workshop on the Impact of Bid Rigging on Public Procurement

The Competition Commission of Mauritius in collaboration with the Procurement Policy Office is organising a workshop on the impact of Bid Rigging on Public Procurement in the month of July 2010. International experts in the field will address the audience. Some 100 persons from both the private and public sectors will be invited to attend the workshop.



Inside This Issue

- Workshop on bid rigging
- Sustainable public procurement
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Market Readiness Analysis for Implementation of SPP

Mauritius has been chosen as one of the pilot countries by the United Nations Environment Programme (UNEP) for the implementation of the Sustainable Public Procurement (SPP). As part of the implementation plan, pilot countries have to carry out a study on the market readiness. This study was assigned to a Consultant, Dr. Vasantt Jogoo.

The aim was to assess the existing productive capacities for sustainable products and services in Mauritius, and the potential responsiveness of the market and national business sector to potential Sustainable Public Procurement (SPP) tenders.

Executive summary

The study adopted a prioritisation process based on the methodology of the Marrakech Task Force on SPP (MTF of SPP). A preliminary prioritisation gives a list of 26 spend areas that command more than 0.5 % of the market share. A second prioritisation was made to assess the degree of risk, the scope and influence associated with the procurement of goods, works, and services and the process narrowed the list to 21 relevant spend areas

A further prioritisation was made and 12 priority spend areas were identified to have the greatest possible impact on sustainable development objectives. The proposed spend areas are:

1. Buildings: construction;
2. Waste collection & disposal;
3. Roads: construction;
4. Wastewater management;
5. Food and catering
6. Water supply: works & maintenance;

7. Energy: plants & equipment;
8. It systems: computers & office machinery;
9. It: computerisation & systems maintenance;
10. Paper and printing

The report also identified a range of sustainable goods and services and product labels on the market; a few companies, which in order to meet stringent environmental standards, have ventured into the importation, production and sale of sustainable products; other companies are complaining about the additional cost involved rendering them less competitive, or are unwilling to invest simply because of the lack of demand for such products; and the availability of tools, instruments and conformity assessment infrastructure such as MSB to certify and verify sustainability of products.

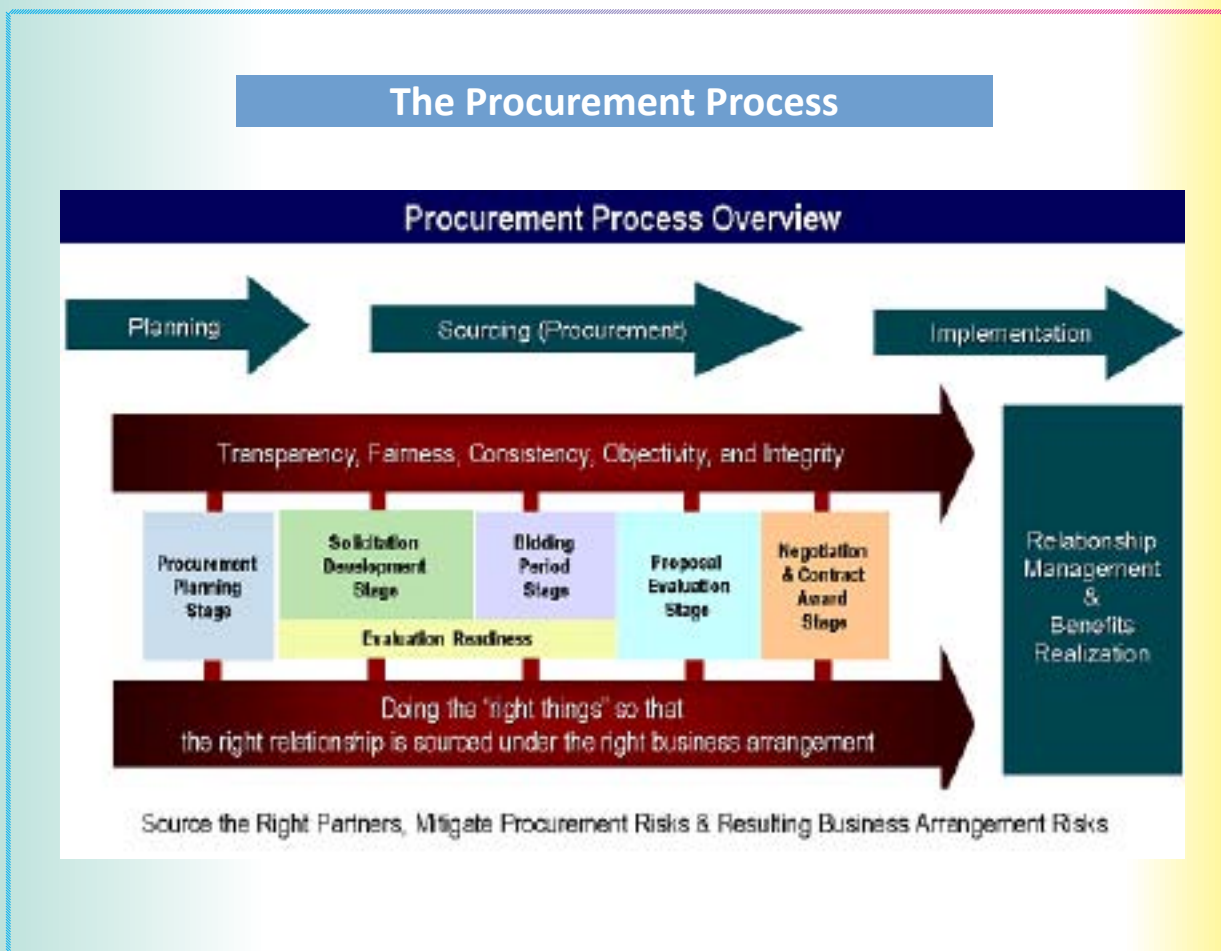




◀ The study identified the commitment of the government to promote sustainable production and consumption by referring to government national programmes, policies and instruments such as “Maurice Ile Durable” and the promotion of Small Independent Power Producers.

The study found that implementation of SPP project is possible in view of the positive responsiveness of the market and of the commitment of the government in making the island a sustainable one.

It is recommended to roll out sustainable procurement in phases by giving priority to 10 spend areas in the initial phase; to develop and adopt a specific policy to legitimate SPP; to set up a task force to oversee the formulation of the SPP Policy and Action Plan; to promote new product evaluation methods; to reinforce and adequately staff the Procurement Policy Office; to provide capacity building assistance; and to finalize the setting up of the Cleaner Production Centre.





Decisions of the Independent Review Panel (IRP)

Decision No. 03/10
New Security Guard Ltd
v/s
State Property Development Co. Ltd

The background of the procurement exercise

The State Property Development Co. Ltd invited bids for the provision of security services at Port Louis Waterfront, through the restricted bidding process, from 10 security companies.

The bid opening took place at the office of the State Property Development Co. Ltd in Port Louis. Out of the ten companies, three submitted their bids by the closing date of 17 November 2009. Two of the firms were considered to be responsive and were retained for further evaluation by the Bid Evaluation Committee appointed by the State Property Development Co. Ltd. As per the bidding document, technical proposals would be assessed on a maximum score of 80 marks and only those scoring a minimum of 65 marks would be eligible for further evaluation.

Upon the recommendation of its Bid Evaluation Committee, the State Property Development Co. Ltd approved the award of the contract to G4S Security Services (Mtius) Ltd at Rs.8,467,200 exclusive of VAT and bidders were informed accordingly. New Security Guard Ltd, a dissatisfied bidder, challenged the decision of State Property Development Co. Ltd and made an application for review to the Independent Review Panel .

The grounds for the review

As per New Security Guard Ltd, the selected bidder G4S Security (Mtius) Ltd has existed only since 5 June 2007 in the name Reliance Security Services Ltd and later on was changed to G4S Security Services (Mtius) Ltd. Rogers and Company Limited was the only shareholder of the company prior to the issue of (50%) shares to G4S International Holdings Ltd on 7 August 2007. Therefore it is wrong to say that G4S Security Services (Mtius) Ltd forms part of the global entity of G4S International Holdings Ltd.

As it existed only since 2007, G4S Security (Mtius) Ltd could not have shown the monetary value of services performed for the last three years and has filed financial statements only for the last two years. Moreover, the Company has provided security services only on private sites for companies internal to its Group, and not to public bodies. Therefore, the selected bidder was





- ◀ not in compliance with Clauses 5.2(B), 5.2(g) and 5.2(d) respectively of the bid document. The State Property Development Co. Ltd was wrong by not considering them as material deviation

Submissions and Findings

The Bid Evaluation Committee had made the following observations regarding G4 Security Services (Mtius) Ltd:

- Total monetary value of services performed submitted for each of the last two years instead of three
- Experience in services of a similar nature and size for each of the last two years instead of five years

Yet the bid of G4 Security Services (Mtius) Ltd was considered responsive and was retained for detailed evaluation.

Moreover as per the IRP, there was no evidence to substantiate the reasons given in the evaluation report to the effect that information has been “submitted for 2 years only since it is an international company which has been incorporated in 2007”. The Panel holds the view that the bid of G4S Security Services (Mtius) Ltd must be considered on its own merit as a separate and specific legal entity.

Besides, as 50% of shares of G4S Security Services (Mauritius) belongs to Rogers & Co. Ltd and the remaining 50% of shares to G4S International Holdings (UK), the decision to retain the bid of G4S Security Services (Mauritius) Ltd, because it forms part of the global entity G4S, an international company, is misconceived and cannot stand.

As per the IRP, the company G4S Security Services (Mtius) Ltd does not qualify for the award of the contract and based on all the above and in accordance with Section 45 (10) (b) of the PPA 2006, the Panel recommended the annulment of the award in favour of G4S Security Services (Mtius) Ltd.

Lessons learned

Evaluation should be carried out with care and due diligence whereby utmost consideration should be given to qualifying criteria mentioned in the bidding document.



Request for Advice

A Public Body invited bids for procurement of goods through the Open Advertised Bidding Method, and the Bidding Document requested bidders to submit with their bids a Power of Attorney or any other document that demonstrates the authority of the signatory to sign the bid, in fact a mandatory document. However, when the bids were opened and during verification of documents, it was found that one of the bidders did not submit the required document.

Question

Do you consider non-submission of a Power of Attorney as a major omission?

Answer

It should be noted that a Power of Attorney or any other document that demonstrates the authority of the signatory to sign the bid is in fact a mandatory document. It should be submitted with the bid in order to consider the bid to be valid and duly signed. This becomes a major omission that renders the bid non-responsive.





Bid-rigging: A Threat To The Competitive Process

*By John Davies, Executive Director, and Sudesh Puran, Economics Executive
Competition Commission of Mauritius*

Taxpayers as consumers have the right to expect the benefits of free and open competition, that is obtaining goods and services that are of value for money (VFM). Public bodies, as well as private organizations, often rely on a competitive bidding process to achieve that end. The competitive process only works, however, when competitors (bidders) set prices honestly and independently.

When bidders collude, prices are inflated and the taxpayers are cheated. Bid rigging is a form of collusion that is illegal and subject to sanctions under both the Public Procurement Act 2006 (PPA) and the Competition Act 2007 (the Competition Act). The latter came into effect as from 25 November 2009.

Procurement officers are on the front line in acting to stop bid rigging and should bring any concerns they have to the attention of the Competition Commission. The Competition Commission in collaboration with the PPO is working to provide training and guidance so that procurement officers know some of the danger signs to look out for.

What is bid-rigging?

Bid rigging occurs when several bidders for a contract – who are supposed to be competing against each other – agree instead to co-

operate, to increase the price that the winner is paid. This agreement can take many forms. Sometimes the bidders all agree to increase their prices together. Often, they agree which firm will win the contract, and the others will put in deliberately high bids, or deliberately fail to meet some of the criteria for the tender, or simply refuse to bid at all. There are several ways the ‘winner’ can compensate the ‘losers’ – by direct payments, by sharing the work with them as sub-contractors or simply by taking turns in repeated procurement exercises.

Whatever the form, the result is that the benefits of competitive tendering are lost, because no true competition has taken place. The taxpayer loses out, as goods and services bought are over-priced or of poor quality, or both.

Is it a form of corruption?

No, not usually. Corruption is when bidders improperly influence the public buyer. Bid-rigging is improper communication between the bidders, in a sense colluding against the buyer.

What do our laws provide for?

Section (52) (3) of the PPA prohibits bidders to engage in collusion, before or after a bid





« submission designed to allocate procurement contracts among bidders, establish bid prices at artificial non-competitive levels or otherwise deprive a public body of the benefit of free and open competition. Section 53 (1) (b) of the PPA allows the PPO to suspend or debar potential bidders or suppliers on, inter alia, ground of collusion - price fixing.

The Competition Act establishes the Competition Commission of Mauritius (the CCM), as a new independent body to investigate and if necessary penalise breaches of the Competition Act. Section 42 of the Competition Act defines bid rigging as, among other things, agreement among bidders not to submit a bid or agreement on the terms of any bid. Following an investigation, the CCM can impose a fine of up to 10% of turnover on a firm found to have intentionally or negligently engaged in bid-rigging. When investigating, the CCM has strong powers to compel the production of information, including the power to raid business premises, with a warrant from a magistrate.

What should procurement officers do?

Any public officer involved in procurement should be on the lookout for signs of possible bid-rigging, and bring any concerns to the attention of the CCM. Bids could be suspicious if they seem to show signs of communication between bidders, for example, identical wording, even identical handwriting, or bids delivered to the receiving office by the same person. This in itself is enough to bring in the CCM. Alternatively, the bids may look very

different but the outcome of the contract award might indicate there was rigging. For example, one bidder's prices might be much higher than they have previously put in, or winners seem to award sub-contracts to the losers, or there seems to be 'taking turns' among bidders for repeated contracts. Finally, procurement officers might just hear – perhaps from an unhappy participant in the tender – that one or other of the bidders tried to rig the bids.

Wherever suspicions may arise, the role of procurement officers is just to report them, in confidence. The CCM will take it from there. We can investigate to see whether there is a problem. We do not mind having to investigate false alarms, on the way to bringing bid riggers to justice – so if in doubt, get in touch with us¹.

What else can I read?

The CCM web site at www.ccm.mu has some information about the law. Guidelines on 'collusive agreements' are particularly relevant, as bid-rigging is a form of collusive agreement. The OECD has some excellent material on bid-rigging, in English and French, at www.oecd.org/competition/bidrigging.

We are presently working with the PPO to produce some guidelines and training for procurement officers here in Mauritius on spotting this deceitful practice.

¹ Preferably by email: sudesh.puran@ccm.mu



Why Value For Money Matters

Given the limited resources available to government, ensuring value for money (VFM) in procurement is key to ensuring the optimum utilisation of scarce budgetary resources. VFM is the primary driver for procurement. It usually means buying the product or service with the lowest whole-life costs that is 'fit for purpose' and meets specifications.

Where an item is chosen that does not have the lowest whole-life costs, then the additional 'value added' benefit must be clear and justifiable. Assessment of supplier bids should be conducted only in relation to a published set of evaluation criteria, which must be relevant to the subject of the contract, and any 'added value' that justifies a higher price must flow from these defined criteria.

VFM also incorporates affordability; clearly, goods or services that are unaffordable cannot be bought. This should be addressed as soon as possible within the process, ideally at the business case stage before procurement commences. In order to address this issue, a change in procurement approach, specification or business strategy may be required. VFM is often primarily established through the competitive process. A strong competition from a vibrant market will generally deliver a VFM outcome. But where competition is limited, or even absent, other routes may have to be used to establish value. These can include benchmarking, the construction of theoretical cost models or 'shadow' bids by the authority. For major contracts, this can require considerable financial expertise and external support may be justified.

VFM should always be assessed over the whole life of the project to take into account sustainability issues. This should include disposal (either sale proceeds or decommissioning costs) and take into account all costs and benefits to society as a whole, not simply those directly relevant to the purchaser – e.g. environmental impact. At award stage of a procurement however, authorities may only assess on criteria relevant to the subject of the contract. This approach ensures that all factors are understood before a purchase or investment decision is made.

Extracted from OGC – An Introduction to Public Procurement

PPO Newsletter

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