



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

E-NEWSLETTER

JANUARY 2010 ISSUE NO 3

Recruitment under the National Empowerment Foundation

The Ministry of Finance and Economic Empowerment under the National Empowerment Foundation is recruiting two degree holders under Placement at the Procurement Policy Office for a period of one year as from 04 January 2010.

The Director and staff of the Procurement Policy Office wish you a Happy New Year 2010



Code of Conduct for Procurement Officials launched

A Code of Conduct for procurement officials was launched on 08 December 2009 at the Rajiv Gandhi Science Centre. The document will serve as a valuable guide to all officials engaged in procurement activities, besides being a reference tool for all stakeholders to ensure adherence to the principles contained therein.

Major reforms of the public procurement system in Mauritius have taken place with the promulgation of the Public Procurement Act in 2008, with the aim of ensuring competition, transparency, accountability, fairness and equity in public procurement.

'Adherence to these principles can contribute a long way in the fight against corrupt practices, which are known to be very common in procurement the world over, especially in view of the huge amounts involved', the Director of the Public Procurement Office (PPO), Mr Prem-coomar Beeharry, said in his message.

'The Code of Conduct is a significant effort to enhance good governance and integrity in public procurement and is conducive to an efficient and effective management of public resources and therefore of tax payer's money. It complements the provision of the law, and aims at inculcating in our procurement officials such behaviour and practices that will reinforce the integrity of our public procurement system', Mr Beeharry stressed.

It is recalled that the Code of Conduct has been developed by ICAC in collaboration with the PPO in order to promote integrity in procurement proceedings. The procurement spend in the public sector in Mauritius exceeds 15 % of GDP.

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

E-mail: mof-pposecretariat@mail.gov.mu

Inside This Issue

Code of Conduct

Tunis Declaration

Case Study

Procurement Opportunities

Missions

Analysis of Decision



The Code of Conduct

The ten codes

1. **Rule of Law**

Comply with both the letter and spirit of applicable laws, regulations and contractual obligations.

2. **Accountability**

Be accountable for all works and actions and ensure that value for money is obtained.

3. **Transparency**

Carry out all procurement activities in an open manner where decisions are properly documented and justified.

4. **Equity & Fairness**

Provide fair and equitable treatment for all suppliers.

5. **Conflict of Interest**

Avoid and prevent situations that could give rise to a conflict of interest, or the appearance of a conflict of interest and declare any personal interest that might affect, or be seen by others to affect impartiality in any decision making.

6. **Undue influence**

Never misuse your authority or position for personal gain/interest.

7. **Soliciting and accepting gifts and other benefits**

Refrain from any practice which might reasonably be deemed improper such as accepting/soliciting inducements or gifts.

8. **Protect confidentiality and Proprietary information**

Protect confidential and proprietary information of employers as well as suppliers.

9. **Professionalism**

Strive for the highest standards of professionalism in all procurement activities.

10. **Relationship with suppliers**

Promote positive supplier relationship while remaining within the framework of the law.



The 'Tunis Declaration' reproduced hereunder was adopted by the delegates at the 'High Level Forum on Public Procurement Reforms in Africa' held in Tunis on 16–17 November 2009. The Forum was organized by the African Development Bank in partnership with the Common Market of Eastern and Southern Africa (COMESA), the 'Union Economique et Monétaire Ouest Africain (UEMOA), the African Capacity Building Foundation (ACBF) and the Organization for Economic Co-operation and Development (OECD).

TUNIS DECLARATION

ON PUBLIC PROCUREMENT REFORM IN AFRICA

SUPPORT FOR ECONOMIC DEVELOPMENT AND POVERTY REDUCTION

WITHIN THE CONTEXT OF ECONOMIC CRISIS

17 November 2009

We, the Representatives of African countries, bilateral and multilateral development institutions, and other participants in the High-Level Forum on Public Procurement Reform in Africa which was organized by the African Development Bank,

Recall the objectives achieved during the Abidjan Conference on Public Procurement in 1998,

Recall the United Nations Millennium Development Goals aimed at halving poverty between 1990 and 2015.

Recall the preparation of Poverty Reduction Strategy Papers in September 1999, which led to the implementation of National Poverty Reduction Strategies in many countries,

Recall the Johannesburg Declaration of December 2004 in which donors, partner and countries agreed to implement programmes to enhance the quality and performance of procurement systems so as to make them efficient, transparent and accountable,

Recall the Paris Declaration of March 2005 on aid effectiveness, the Accra Agenda of September 2008, and commitments to strengthen and use national systems, for public procurement,

Recall the provisions of the Arusha Declaration of May 2008 aimed at improving and using evaluation methodologies for public procurement systems,

and develop common practices, strategies and tools to combat fraud and corruption so as to promote good governance and enhance public finance management,

Recall the decisions adopted at the Dakar Round Table organized on the sidelines of the Annual Meetings of the African Development Bank Group in May 2009 on the development of public resources through transparent and efficient public procurement systems,

We, the Representatives of States, are convinced that the efficiency of public procurement is a key factor in socio-economic development, and undertake to:

1. **Pursue and improve the reform** of existing public procurement systems so as to make them more efficient, transparent and integrated, as well as strengthen good governance and public finance performance, and thereby achieve a better quality of services for the population and reduce poverty;
2. **Consolidate** the integrity of systems and capacities of stakeholders, particularly through improvement and effective implementation of initiatives





to combat fraud and corruption, since public procurement is a high risk area;

3. **Strengthen** national systems to make it user friendly for both donors and countries, and thereby increase the impact of official development assistance at the national level;
4. **Strengthen** our links with the other States, as well as with regional organizations, so as to prepare common policies and strategies in public procurement. To that end, contribute to regional initiatives that aim at private sector development.

We, the Representatives of regional institutions, recognize the key role of regional institutions in building and sharing knowledge, developing common strategies, and integrating systems and national practices, and undertake to:

1. **Contribute** to better harmonization of public procurement standards and procedures so as to promote the integration and development of regional common markets;
2. **Establish** multilateral monitoring and oversight mechanisms to ensure convergence and effective harmonization of public procurement systems;
3. **Promote** the establishment and development of a network of African public procurement experts. Generally, promote capacity development for all actors in this area, including the private sector.

We, the Representatives of the private sector and Civil Society, recognize the efforts required to ensure effective responses to the objectives of public procurement in terms of quality and price, do undertake to:

For the private sector

1. **Mobilize local enterprises and help them** to build their capacities so that they can

participate more effectively in public procurement at the national, regional and international levels;

2. **Ensure compliance** with integrity, standards and take measures to enhance oversight by the Civil Society.

For the Civil Society

1. Contribute to the enhancement and effectiveness of public expenditure by maintaining surveillance on efforts to combat fraud and corruption, and by building capacities for same.

We, the African Development Bank and Development Partners, conscious of the fact that the current world economic crisis has impacted African countries and increased the pressure on countries to ensure the better management of their financial resources; particularly in public procurement, so as to boost growth and reduce poverty, do:

1. **At regional level,** undertake to maintain our support to regional communities in order to assist them in modernizing and harmonizing public procurement systems;
2. **At country level,** undertake to provide assistance to projects aimed at making public procurement systems and institutions in charge of public procurement efficient, transparent and accountable;
3. **At sectoral level,** undertake to support the establishment of innovative initiatives, and in particular the creation of a network of African public procurement experts. To that end, we are giving the mandate to a Committee of African Experts to develop this initiative in close collaboration with other stakeholders: ACBF, WAEMU and COMESA.



A conditional Letter of Award

A Public Body invited bids for the procurement of six new pick-ups on the basis of the Restricted Bidding method from all known local suppliers, for a delivery period of four weeks as from the placement of order. Four bidders responded and the bids were evaluated by a Bid Evaluation Committee (BEC) at the level of the Public Body.

In the course of the evaluation, the BEC found that no bidders had met the delivery period as required. Bidder D submitted the lowest bid and was generally responsive except that it proposed seven weeks as delivery period and that the four wheels in the vehicles were not made of aluminium as specified in the bidding document. The Bidder stated in its submission that its supplier does not provide the said pickups with aluminium wheels and that the public body could choose to have them replaced at its own cost from local suppliers. Bidder D further added that aluminium wheels would not be appropriate for the site conditions where the said pick-ups are to be used.

The Public Body decided to award the contract to Bidder D and issued a Letter of Award mentioning therein that the contract was awarded on condition that the vehicles are delivered in four weeks as mentioned in the Bidding Document. The Public Body also forwarded a copy of the contract as contained in the standard bidding document warning the bidder that if it did not submit the performance security in due time the award would be annulled and the next best bid would be considered for award of contract.

The Bidder reacted to the contents of the Letter of Award requesting the Public Body to amend its Letter of Award for a delivery period of seven weeks as mentioned in its bid. It also requested the Public body to amend the Contract Forms so that its submitted bid has priority of consideration as compared to the Special Conditions of Contract and the General Conditions of Contract.

The Public Body replied that the delivery schedule has to be as mentioned in the Special Conditions of Contract and that the order of priority, as indicated in the format of Contract Form in the Bidding document, could not be changed.

On receipt of the reply from the Public Body, the Bidder decided to file an Appeal for Review stating that the Award of Contract was not in order and claimed that the Public Body has done so intentionally so that it cannot accept the contract.

Salient Features

- (a) Has the Public Body acted correctly by insisting that the delivery should be in four weeks as indicated in the Special Conditions of the Contract and by making no mention in respect of the wheels?*
- (b) What could be the reasons that have motivated the Bidder to ask for a review in the priority of order of the bidding documents as listed in the Contract form?*
- (c) What alternative evaluation criteria could the Public Body use for the delivery period without compromising the chances of obtaining competitive bids?*



No.	Public Body	Procurement Ref. No.	Brief description of Project/Procurement	Closing Date for Submission of Bids
1	Ministry of Finance and Economic Empowerment	-	Request for proposals from Service Providers under the Capacity Building Programme	8/1/2010
2	Ministry of Education, Culture and Human Resources	MOECHR/WORKS/OAB 107/2009	Construction of Port Louis SSS (Girls) at Colline Monneron (Phase IV)	19/01/09
3	Ministry of Health and Quality of Life	-	Supply, Installation and Commissioning of Medical Equipment for Cardiac Unit – J. Nehru Hospital	27/01/10
4	Ministry of Health and Quality of Life	MHPQ/PHARM/09/Q63 OAB	Supply of Pharmaceutical Products	13/01/10
5	Commission for Water Resources – Rodrigues Regional Assembly	-	Security Service at Pumping Station and Service Reservoirs in Rodrigues	15/01/10
6	Central Water Authority	C 2009/49	Construction of Retaining Wall and Block Wall Fencing at Diego Garcia Reservoir Site	20/01/10
7	NHDC Ltd	OAB No. NHDC/SRC-0702 (R)	On-Site Infrastructure Works for Site and Services Project – Batch 2	15/01/10
8	Tourism Authority	Quo. No. 25 of 2009/2010	Procurement of Services for Printed Booklet Listing & Website Listing	18/01/10
9	Road Development Authority	CPB/4/2010	Invitation for Prequalification of Contractors for the construction of the Terre Rouge – Verdun – Trianon Link Road Lot 2 – Verdun – Trianon	27/01/10
10	Central Electricity Board	OAB/PROD/3044	Provision of Transport Services to shift personnel of Fort George Power Station	20/01/10
11	Ministry of Education, Culture and Human Resources		Construction of additional blocks at Rivière des Anguilles SSS	19/01/10
12	Ministry of Education, Culture and Human Resources		Construction of classrooms at the pre-primary block of Duperré Government School at Mahebourg	12/1/2010
13	Ministry of Social Security, National Solidarity and Senior Citizens Welfare and Reform Institutions		Installation of new ventilation system	13/01/10



Mission to Tunisia

The United Nations Environment Programme (UNEP) in partnership with the International Green Purchasing Network and the 'Institut de l'Énergie et de l'Environnement de la Francophonie' organized from 8 to 11 December 2009 in Tunisia a training programme on Sustainable Public Procurement (SPP) for the francophone countries in the African region.

As one of the pilot countries selected by the UNEP for the implementation of the SPP project as well as being part of the francophone world, Mauritius participated in the training programme in Tunisia.

The objectives of the training programme were to:

- Provide training to a pool of experts that will be in charge of providing assistance to governments willing to develop and implement a Sustainable Public Procurement policy;
- Raise the awareness of policy makers regarding the importance of a quick shift to Sustainable Public Procurement; and
- Explore and discuss the modalities of implementation of Sustainable Public Procurement in francophone countries.

Representatives of the following countries were present: Tunisia, Mauritius, Senegal, Ivory Coast, Morocco, and Lebanon, as well as a representative

of Union Economique et Monétaire Ouest-Africain (UEMOA).

The four- day training programme comprised:

- An approach to the Marrakech process
- The role and contribution of UNEP on SPP before and after 2010 – 2011.
- The role and contribution of the Francophone on Sustainable Consumption and Production (SCP) and in particular SPP.
- Concepts and Principles of SPP and Life Cycle Costing (LCC)
- Review of the status assessment questionnaire
- Introducing the methodology of setting up a priority list, and
- The role of the stakeholders
- Tutorials, group works, and the presentation of case studies on the evolution of the public procurement system in the Francophone among others.

For additional information:

- t.kiri@iepf.org
- farid.yaker@unep.org
- <http://www.iepf.org>
- <http://www.unep.fr/scp/procurement>



Sustainable public procurement -Capacity building



Decision of the Independent Review Panel

Decision No. 5 issued by the Independent Review Panel on 17 March 2009 in respect to the application for review filed by Librairie Le Cygne Ltée against the Ministry of Education, Culture and Human Resources is an eye opener in many respects. Serious flaws were detected in the manner in which this procurement exercise was handled. Thus, two main weaknesses disclosed were:

- *Wrong specifications*

Instead of developing performance specifications, the public body relied on specifications copied from existing equipment, which obviously rendered the other bid not fully compliant, though providing expected performance at less cost.

- *Instead of opting for a fresh bidding exercise, the public body approved the non-compliant bid.*

In order to avoid recurrence of similar situations, procurement officials and departmental tender committees should become more aware of their role and responsibilities. Without a clear understanding of the standard bidding documents, legal requirements to be observed and the various principles applied during a procurement process, procurement cannot be carried out in the professional manner expected.

We have extracted relevant parts from the decision issued, which give factual record of how the exercise was carried out and illustrate deviations by the Bid Evaluation Committee and the public body. We wish to emphasize that our aim is not to blame those who committed the mistakes, which were obviously out of ignorance, but rather to share experience with a view to increase the level of compliance.

The background of the procurement exercise

“The Ministry of Education, Culture and Human Resources invited bids for the procurement of 65 Data Logging Sets for Secondary Schools on 03 September 2008 through open advertised bidding. The deadline for the submission of bids was Tuesday 14 October 2008 and two bids were received by the closing date and were opened on the same day at 14.00 hrs. As the two bids were below the prescribed amount of Rs15M they were forwarded to the Public Body by the Central Procurement Board for evaluation purposes.”

Details of Bids received

“Editions de L’Océan Indien Ltée submitted two bids:

- Alt. A: Data Harvest – UK
MRS 9,745,385 – Net value (inclusive of VAT and other charges)
- Alt. B: NVIS Technologies – India
MRS 17,037,085 – Net value (inclusive of VAT and other charges)

Librairie Le Cygne Ltée submitted one bid:

- Addest Technovation – Singapore

MRS 12,640,225 (inclusive of VAT)

The Bid Evaluation Committee examined the bid of Le Cygne Ltée on 23 October 2008 and the bid, Alt. A from Editions de L’Océan Indien Ltée on 29 October 2008. The Bid Evaluation Committee did not examine the bid, Alt. B from Editions de L’Océan Indien Ltée. The Bid Evaluation Committee concluded “that both tenderers were compliant with the specifications”. The Committee recommended “that the two bidders be invited to make demonstrations of the data logging equipment they are proposing and that despite the element that both suppliers were compliant with the specifications”. The aim of the demonstrations was to “ensure that the equipment was really conclusive to the teaching and learning classroom environment”.

The companies were invited to give a demonstration of their equipment with reference to the following list of experiments:

Biology

- 1) Is oxygen given off during photosynthesis?

- 2) Comparing heart rate at rest and after activity by monitoring the electrocardiogram

Physics

- 1) V-I characteristics of a resistor and light bulb
- 2) Determining the pitch/frequency of a sound wave

Chemistry

- 1) Effect of concentration on the speed of reaction
- 2) Titration of a strong acid with a strong base using pH sensor

The Bid Evaluation Committee recommended that the award be made to Editions de L’Océan Indien Ltée for the supply of the 65 Data Logging Sets of make Data Harvest for a tender value of MRS9,745,385 based upon “the evaluation of the tender documents and the observations made during the demonstration session”.

On 12 December 2008, the Departmental Committee approved the purchase of 67 Data Logging Sets for the sum of Rs10,045,243 from Editions de L’Océan Indien Ltée.



Librairie Le Cygne Ltée challenged the decision of the Public Body on 06 January 2009. The Public Body did not respond to the challenge but on 09 January 2009 invited the aggrieved bidder to put up an application for review with the Independent Review Panel if it so wished. The aggrieved bidder submitted an application for review to the Panel on 13 January 2009.”

Grounds for Review

The Applicant’s grounds of review were as follows:

“We have submitted our bid with a special mention of a 100% compliance level with the tender specifications.

Details on the products of our competitor are published on the manufacturer’s web site and are as such in the domain of public knowledge. According to these documents, a number of items proposed by EOI do not comply with the technical specifications contained in the tender document. Analysis of the information show that compliance level with regards to the tender document for our competitors with regards to hardware is around 30%.

Additionally some items are not catered for by the competing brand.”

Submissions and Findings

“The main ground for review by Librairie Le Cygne Ltée is that the products proposed by the selected bidder with regards to hardware do not comply with the tender specifications. This clearly contradicts the contents of the report of the Bid Evaluation Committee which states unequivocally that both tenderers were compliant with the specifications.”

“The Panel at the first meeting held on 03 February 2009 requested the Public Body to carry out a detailed comparison of the sensors proposed for Biology, Chemistry and Physics respectively by both bidders to the specifications defined at annex C, F and H of the bidding documents. The requested information was submitted to the Panel on 09 February 2009”.

“4. The Panel considers that based on

information provided by the Public Body the bid submitted by Editions de L’Océan Indien Ltée is not responsive as they do not meet the precise specifications mentioned in the tender documents. This contradicts sharply with the conclusion of the Bid Evaluation Committee that the tenderer was compliant with the specifications.

5. However, in its submission to the Panel the Public Body modifies the statement and asserts that the bids submitted are compliant for use in secondary school laboratory or that differences are not vital. This rationale, if adopted, defeats the purpose of competitive bidding against a set of defined specifications. It was the responsibility of the Public Body to properly define a set of appropriate specifications prior to the launching of the invitation to tender. The tender specifications cannot and should not be modified at the evaluation stage.

6. The Public Body reconfirmed the stand of the Bid Evaluation Committee on 11 February 2009 to the effect that it considered that the bid from Editions de L’Océan Indien Ltée was substantially responsive. The Panel considers that a careful reading of Clause 29.2(a) of the bidding documents in conjunction with the comparison table prepared by the Public Body will clearly indicate that the bid of Editions de L’Océan Indien Ltée cannot be considered to be substantially responsive.

7. Clause 37.1 of the bidding document referred to in the same letter of 11 February 2009 from the Public Body is not relevant as it refers to the qualifications of the bidder and not the responsiveness of the goods proposed with respect to the specifications.

8. The provision of the note on page 90 of the bidding documents does not allow the Public Body to award the contract to a non-responsive bidder. In fact to qualify for the award the bidder must be substantially responsive for all items quoted.

9. The Panel draws the attention of the competent authority to the issues raised by the aggrieved bidder on page 7 of his

challenge dated 06 January 2009 under the Section “Demonstration”.

10. The Public Body compared the price quoted by Editions de L’Océan Indien Ltée at Rs9,745,385 to that quoted by Librairie Le Cygne Ltée at Rs12,640,225 to conclude that the bid of Editions de L’Océan Indien Ltée was very competitive and justifies the award of the contract to that company. The Panel notes that the Report dated 28 January 2009 from the Bid Evaluation Committee on the challenge by Librairie Le Cygne Ltée is rather contradictory. In paragraph (i) it is stated that both tenders were compliant in terms of technical requirements and in paragraph (ii) it is stated where differences in specifications were noted these were not critical or vital differences. Paragraph (iii) is at best very ambiguous to interpret “Given the compliance of both bids, the major difference in cost of equipment does not justify the purchase of the higher despite the presence of any eventual non vital differences in specifications”.

11. The Panel considers that the bid from Editions de L’Océan Indien Ltée was not substantially responsive and the price difference does not justify the selection of a non-responsive bid to the detriment of a fully responsive one. The Public Procurement Act 2006 has provision that allows a Public Body to deal with a situation where it considers that the lowest evaluated bid is substantially above the applicable updated cost estimate.

12. Based on all the above, the Panel considers that there is merit in the application. As a legally binding contract has been awarded which in the opinion of the Panel should have been awarded to the Applicant, the Panel can only recommend payment of reasonable costs incurred by the aggrieved bidder in participating in the bidding process. Taking into consideration all the costs incurred by the aggrieved bidder to participate in this bidding exercise, including the challenge and appeal, the Panel accordingly recommends the payment of Rs90,000 to the Applicant.”