



**PROPOSED NEW
PROCUREMENT LAW &
REGULATIONS**

**PRESENTATION TO CHAMBER OF
COMMERCE**

**Procurement Law Working Group
SEPTEMBER 2015**

BUY

Introduction

- The purpose of the presentation today is to explain the **new procurement regime** being proposed.
- **Every Ministry/Portfolio/Department & SAGC is affected** by the new regime.
- **Every supplier of goods and services** will be affected
- Focus will be the **various roles** in the new regime
- The **new features** of the regime.
- We will **not go through every slide** they are included for information

Introduction

- Procurement of goods, works and services is a **major component** of the Governments expenditure it is the second-largest category of **expenditure** after human resources.
 - **\$204.7 million – Supplies and Consumables - 27% of total expenditure**
 - **\$377 million –Personnel Costs -49% of total expenditure**
- How many **Procurement experts** do we have compared to **HR experts**?
- **Strategic procurement** supports **stronger supplier and contractor management capabilities** by limiting unilateral tendering and **piecemeal approach** to management of contracts, it also **eliminates the dangers of lack of due diligence and potential malfeasance.**
- **Develop relationship with local suppliers**
- Law and regulations not enough, there is a need to **increase procurement capability** in every ministry/portfolio/SAGC
- **Training** will be a key element to the success of this initiative.

Peter Gough

3

Background

- There is no specific law that covers procurement
- The present procurement process operated by the Cayman Islands Government is set out in:
 - Part IX of the Financial Regulations (2010 Revision) under the Public Management and Finance Law
 - Policy and procedure manuals issued by the Central Tenders Committee.
- These regulations and policies apply to all public authorities.

Peter Gough

4

Background (Cont'd)

- There were two reports issued by the Office of the **Auditor General** in July and August 2011 that were **critical of the management of procurement**.
- In addition the new Constitution established the "Commission for Standards in Public Life" and under the terms of the 2009 Constitution Order, the Commission is mandated under section 117(9)(d) **"to review and establish procedures for the awarding of all public contracts"**.
- Four years have elapsed since the AG reports

Peter Gough

5

Auditor General Observations

Main Points:

- Procurement does not provide for Value for Money
- Lack of transparency
- No procurement expertise
- Political interference
- Risk of Fraud and corruption
- Board involvement in procurement
- Lack of corporate procurement information
- No fundamental principles for procurement
- **No policy for local business development**
- No business cases for procurement
- No code of conduct for persons involved in procurement
- Only one procurement method (open tendering)
- etc.

Peter Gough

6

Objectives of the new Law and Regulations

To address the Auditor General's concerns by:-

- Improving Governance
- Increasing Transparency
- Improving Reporting
- Limiting political involvement to the policy level
- Improving Value for money
- Providing different procurement methods
- Improving procurement management information
- **Developing a Procurement Code of Conduct for government and suppliers**
- **Developing a Local Business Development Strategy**

Peter Gough

7

Definition of Procurement

- Procurement process is not just about buying goods and services
- The process spans the whole life cycle from **initial concept** and definition of **business need** to the effective **management of markets**, through to the **end of the useful life of an asset or end of services contract**".

Peter Gough

8

Background (Cont'd)

- A Working Group was set up by the Deputy Governor under Chairmanship of Mrs. Karin Thompson (CSPL).
- Representatives:
 - Water Authority, Ministry of Finance,
 - Ministry Planning, Cabinet Office
 - AG Chambers, CTC, PWD, CSPL, ODG
- Draft Report produced
- Jersey Procurement experts engaged to review report which they supported.
- A group was set up, (Procurement Law Committee) and the first meeting was held on the **4th September 2014.**

Peter Gough

9

The Procurement Law Working Group

Members:

Mr. Peter Gough - Deputy Governors Office
(Chairman)

Mr. Nick Freeland - Central Tenders Committee

Mr. Alan Jones - Chief Officer

Mr. Max Jones - PWD

Mr. Alastair Swarbrick – Auditor General (Advisor)

Mr. Craig Milley- Director, Central Procurement

Delores Gordon, - Director, Internal Audit

Maureen Benjamin- Legal Drafting

Peter Gough

10

Principles of Procurement

The twelve principles governing public procurement that underpin the law & regulations :-

- **Accountability**
- **Competitive Supply**
- **Consistency**
- **Effectiveness**
- **Value for Money**
- **Fair-dealing**
- **Integration**
- **Integrity**
- **Informed decision-making**
- **Legality**
- **Responsiveness**
- **Transparency**

Craig Milley

11

Application of New Law

All procurement by all entities, except:

- Procurement between entities;
- Procurement by entities during emergency situations;
- Contracting for employment;
- Contracting with public sector employees to carry out services under a cooperative or mutualisation arrangement.
- Acquisition or disposition of land
- Purchasing original works of art or artefacts;
- Medallions and insignias for the National Honours and Awards;
- Remittances relating to insurance premiums, pensions and benefits;
- Education, accreditation or conferences
- Postage and subscriptions for newspapers, magazines and periodicals
- Purchases from regulated utilities including electricity, water and sewage
- Purchase agreements with groups supplying outputs to government

Craig Milley

12

Role of the Cabinet

The role of Cabinet is to **formulate and implement procurement policy that promotes the government's economic and social objectives**, encourages trade and investment in the economy and expands employment opportunities in the Cayman Islands.

Craig Milley

13

Role of the Ministry of Finance

The **Financial Secretary/Chief Officer** in the Ministry of Finance is responsible for **implementing and monitoring compliance with this law** and will be responsible for:-

- **Management** of the Central Procurement Office
- Providing appropriate resources for and oversight of the Central Procurement Office;
- Providing **appropriate resources** and oversight of a Public Procurement Committee;
- Ensure that **centralized procurement**, where appropriate, **delivers value for money**.
- **Establishing** the Public Sector Investment Committee

Craig Milley

14

Role of the Central Procurement Office

- **Developing** public procurement regulations, policy and procedures, providing policy implementation guidance, training and advice to all entities and persons participating in public procurement.
- **Implementing and maintaining** the regulations, policies and procedures for procurement to be used by all entities including requirements for business case preparation, review;
- **Ensuring** all procurement laws, regulations, policies and procedures are promulgated and easily accessible to public servants, suppliers and the general public;
- **Developing and maintaining** standard contract forms, bidding documents, business case templates and any other public procurement related documents;
- **Monitoring** the operation of the public procurement process and compliance with this law, and all regulations, policies and procedures,

Craig Milley

15

Role of the Chief Officer/CEO

The Chief Officer /CEO will be responsible for:

- **Identifying the need for inputs**
- **Ensuring the creation of and authorising a documented business case** prior to soliciting bids;
- **Ensuring available and approved funding source** prior to soliciting bids;
- **Authorising Ministry/Portfolio expenditures and the awarding of contracts;**
- **Ensuring employees involved in procurement have appropriate related education and training;**
- **Implementing and ensuring compliance** with this law, and all associated regulations, policies and procedures;
- **Ensuring all procurement related documents are retained and secured at all times;**
- **Ensuring the results of all procurement projects are publicly reported.**
- **Ensuring unsuccessful bidders are notified in writing and providing an opportunity for a full debriefing by evaluators**

Peter Gough

16

Procurement Committees

Two Types

- Public Procurement Committee
- Entity Procurement Committee
 - Ministry/Portfolio (Civil Service)
 - SAGC (Public Service)

Craig Milley

17

Public Procurement Committee

Appointment of Committee (Period of appointment determined by HE/DG)

- Minimum of eight persons appointed plus a recording secretary.
- The Governor acting on advice Premier to appoint the Chair and three members of the Public Procurement Committee who shall not be public servants one of which shall be an attorney at law.
- The Governor acting on advice of the Leader of the Opposition to appoint one member of the Public Procurement Committee who shall not be a public servant.
- The Deputy Governor will appoint three members of the civil service to the Public Procurement Committee
- A committee member **must** make a declaration to the Governor and Deputy Governor of his or her interests.
- The appointment of committee members shall be published in the Government Gazette
- Prior to appointing any person the Governor and Deputy Governor shall satisfy itself that:
 - the person has the skills, knowledge, (procurement, legal & financial) and integrity to carry out the duties required in a highly competent and politically neutral manner; and
 - the person will have no financial or other interest likely to affect prejudicially the exercise of his functions as a committee member, a full disclosure of their interests to establish that no conflict of interest exists is required.

A member of the Legislative Assembly or Judiciary is not eligible for appointment as a committee member.

Peter Gough

18

Role of the Public Procurement Committee

The Public Procurement Committee is to provide **external oversight of the public procurement process** in accordance with thresholds established in regulations. The Public Procurement Committee shall be responsible for:

- **Reviewing the business case** provided by the **Public Sector Investment Committee** for goods, services or works being procured.
- To **review the competition documents** prior to issuance to ensure they comply with the business case;
- To **receive and receipt all bid submissions** expected to exceed the specified thresholds;
- To **ensure fairness, impartiality and confidentiality** in the treatment of bid submissions in its possession;

Peter Gough

19

Role of the Public Procurement Committee

- To **review the recommendations** of the entity Procurement/Evaluation committees and **verify the evaluation process was conducted in accordance with the terms and requirements of the original competition document;**
- To **provide a level of assurance** to the Chief Officers or Chief Executive Officers that the procurement process has complied with the law, regulations and procurement policy;
- To **approve applications for single source procurement**
- To **assess the recommendation** for award of contract and formally communicate this assessment to the Chairman of the Entity Procurement Committee.

Peter Gough

20

Entity Procurement Committees

- The Chief Officer or his designate **shall appoint a chairman and a minimum of two persons** to be members of the Ministry/Portfolio/SAGC Procurement Committee
- Appointing any person to the committee the Chief Officer shall be satisfied that :
 - the person has the **skills, knowledge and integrity and is politically neutral;**
 - **no financial or other interest** likely to affect prejudicially the exercise of his functions as a committee member, a full **disclosure** will be required of their interests to establish that no conflict of interest exists.
- **The Chief Officer, a member of the Legislative Assembly or Judiciary shall not be eligible for appointment.**
- In order to avoid bias and mitigate the perception of undue influence the Chief Officer shall ensure that members of the committee **do not have a direct superior-subordinate working relationship.**
- Each entity **shall report the results of each procurement project** above specified thresholds on a public website
- Each Entity Procurement Committee shall provide an **annual report of their activities** to the Director of Central Procurement

Peter Gough

21

Role of the Entity Procurement Committees

The Entity Procurement Committee shall be responsible for:

- **Supporting the Chief Officer** in delivering the outputs of government through the acquisition the of goods, services and works
- **Reviewing the business case** for goods, services or works being procured
- **Reviewing competition documents** prior to issuance to ensure they comply with the business case;
- **Receiving and receipting** all bids;
- **Providing assurance** to the Chief Officers that the procurement process has complied with the law, regulations and procurement policy;

Peter Gough

22

Role of the Entity Procurement Committees

The Entity Procurement Committee shall be responsible for:

- **Conducting the evaluation process** in accordance with the terms and requirements of the competition document and **recommend the successful bid.**
- **Making a recommendation** for award of contract to the Chief Officer.
- **Forwarding the report** to the Director of Central Procurement for information and statistical purposes.
- **Reporting the results** of all procurement projects in the format and timeframe specified
- **To review the draft contract** prior to contract signing to ensure that the tender price and scope are consistent with the original competition document

Peter Gough

23

Procurement Code of Conduct

- The Director, Central Procurement Office will issue a code of conduct for procuring entities that:
 - Addresses **conflict of interest**;
 - **Defines** what constitutes a conflict
 - **Governs the conduct of persons employed** or otherwise concerned with public procurement, procurement method selection and procedures, and personnel training requirements;
 - **Governs the conduct of suppliers** seeking to do business with an entity;
 - **Specifies record-keeping**, confidentiality and disclosure requirements;
- The Director, Central Procurement Office will **publish the code of conduct** in the Government Gazette
- A **breach of the code of conduct** by any public servant will constitute **grounds for disciplinary action** in accordance with the Public Service Management Law, (2013 revision) and its attendant regulations.
- A **breach of the code of conduct by a supplier** will constitute grounds for sanctions to be applied which may **preclude them from future government bidding opportunities** either on a temporary or permanent basis.

Craig Milley

24

Project Appraisal and Business Case Requirement

- An entity may initiate a procurement process **only after** the project which it relates to has been suitably appraised and the results documented in an **approved business case** which shall at a minimum:
 - Demonstrate the **economic need** for the project;
 - Include a fully argued, **costed risk and impact assessment** taking into consideration the broader socio-economic impact.
 - Provide a **breakdown** of all anticipated procurement projects within a larger project;
 - Recommend the **procurement method** to be utilized;
 - Specify the **benefits** the project is designed to deliver;
 - **Consider options** to be incorporated into the procurement process to promote positive economic development of the Cayman Islands
 - Ensure that an **informed decision** can be made on whether or not to proceed to the procurement stage.

Craig Milley

25

Direct Award Process

- A Direct Award process, is where the contract is awarded without using a competitive process to a pre-identified supplier, it **must be documented and justified** based on the specific circumstances and subject to the thresholds that will be outlined in regulation.
- **Approval** for commencing the Direct Award process must be obtained **by the Public Procurement or Entity Procurement Committee depending on the threshold limit.**
- All contracts arising out of a Direct Award process **must be publicly reported** in a format specified in regulations and included by the entity in an annual report of their activities to the Central Procurement Office.

Craig Milley

26

Direct Award Process

Entities are required to undertake a competitive process **except** when it can be demonstrated that the procurement meets the following conditions:

- **Cost:** goods , services or works are **valued less than \$10,000** in line with entity policy
- **One-of-a-Kind:** goods or service has no competitive product and is available from one source;
- **Compatibility and Continuity:** goods or service must match existing brand of equipment for compatibility and is available from only one supplier;
- **Replacement part/item:** replacement part/item for a specific brand of existing equipment that is available from only one supplier;

Craig Milley

27

Direct Award Process

Entities are required to undertake a **competitive process except** when it can be demonstrated that the procurement meets the following conditions:

- **Unique design;** goods or service must meet physical design or quality requirements and is available from only one supplier;
- **Public interest;** Where goods or services are confidential or privileged nature and could compromise defense, security, public safety or cause economic disruption or otherwise be contrary to the public interest;
- **Construction materials;** Where construction materials are to be purchased and it can be demonstrated that transportation costs or technical considerations impose geographic limits on the available supply base, specifically in the case of sand, stone, gravel, asphalt, compound and pre mixed concrete for use in the construction or repair of roads;

Craig Milley

28

Direct Award Process

Entities are required to undertake a competitive process **except** when it can be demonstrated that the procurement meets the following conditions:

- In the **absence of any bids** in response to a competitive process.
- Where it can be demonstrated that **only one supplier is able** to meet the requirements;
- The goods or services that are being procured from **philanthropic institutions or prison labour**;
- The goods or services are being procured from an entity that operates an **entertainment, sporting or convention** event in order to respect a commercial agreement
- Contracting a **licensed lawyer** in an **emergency or exceptional situation** for the purposes of rendering legal advice
- The services or financial products related to **investing money or securities**.
- For **prototypes** relating to research, experiment, study or original development (but not including subsequent purchases)
- For the **purchase of goods** in **exceptionally advantageous** circumstances obtained through **bankruptcy or receivership**

Craig Milley

29

Direct Award Process

All requests for Direct Award must be documented and include the **applicable justification** for awarding of a contract outside of a competitive process.

- Direct Award requests must be **endorsed by the Chief Officer** prior to submission to the Entity Procurement Committee or Public Procurement Committee for approval.
- Direct Award requests with a procurement value of **less than \$40,000 but over \$10,000** require the **approval of the Entity Procurement Committee**
- Direct Award requests with a procurement value over **\$20,000** and require the **approval of the Public Procurement Committee**
- Public notification of Direct Award contracts or purchases **greater than \$10,000** must be posted on the government website **within one month** of the contract award or purchase date and disclose the following:
 - Name of entity
 - Name and address of supplier
 - Date of Contract or purchase approval
 - Description of the goods, services or works being procured
 - Total value of the contract or purchase
 - Justification for award

Craig Milley

30

Cayman Islands Economic Development Preference

- In assessing **value for money**, entities must consider the **broader socio-economic impact and benefits** that a procurement project will create particularly as it relates suppliers operating in the Cayman Islands.
- Subject to an overriding requirement to adhere to the Principles of Procurement an entity **must give preference to suppliers** registered as a Resident Company with the Cayman Islands
- Undertake **pre-procurement impact assessments** on local suppliers;
- **Solicit bids** from Cayman registered companies, where **adequate local capability** exists;
- Consider **disaggregation of major procurement projects**, to the extent practicable to achieve value for money, subject to **inclusion in the business case** and subsequent approval by the Public Sector Investment Committee (PSIC);
- **Adopt a local benefits test** for all procurements within specified thresholds;
- Undertake a **local industry participation plan** prior to procurement of major projects.

Craig Milley

31

Cayman Islands Economic Development Preference

An entity shall **give consideration in planning phase to the economic and community impact and the social benefits** arising from public procurement by:

- **Informing the local supplier community** of upcoming procurement projects.
- Ensuring that procurement is **structured to provide a maximum opportunity** for suppliers operating in the Cayman Islands;
- **Avoiding the use of restrictive specifications** and unnecessary requirements which may preclude capable suppliers;
- Using **plain language and simplifying procurement documentation**; and
- Using **commercially reasonable terms** and conditions.
- Invite interested suppliers to **pre-procurement briefings** as a group to provide an opportunity to better understand the upcoming requirement,

Craig Milley

32

Cayman Islands Economic Development Preference

- An entity **shall undertake a formal local industry consultation** as part of the project planning and appraisal phase for all procurement projects with a value of **\$250,000 or greater**.
- An entity shall **include in all competitive bid documents a request for suppliers to submit a Local Industry Impact Statement** as part of their bid this will **provide an opportunity** for suppliers to outline how their supply of good, services, or works will provide a **positive impact on the local industry and economy**
- An entity shall include the review of all submitted Local Industry Impact Statements **in the procurement evaluation process** through the inclusion of a **specific evaluation criterion**

Craig Milley

33

Cayman Islands Economic Development Preference

- An entity shall undertake a **formal impact assessment** as part of the project planning and appraisal phase for all procurement projects with a value of **\$10,000,000 or greater**
- For procurements valued at **less than \$250,000** each entity is required to consider the objectives of the Cayman Islands Development Preference in the course of their procurement planning and when developing specifications and evaluation criteria.
- Upon the entry into the procurement contract an entity **shall publish the successful bidder's Industry Impact Statement**

Craig Milley

34

Cayman Islands Economic Development Preference

An entity may consider **disaggregating a major project** into smaller lots or constituent pieces under the following conditions:

- Where the pre-procurement local impact assessment and/or industry consultation has documented a **lack of capacity or resources in the local marketplace to bid on the aggregated project;**
- To achieve a **reduction in risk of a single supplier failure** or poor performance on a major project;
- To **increase competition** and avoid an expected single source bid;
- To **maximize the benefit to the greatest number of small and medium local suppliers** without compromising **value for money;**
- The recommendation to disaggregate certain portions and procure separately is **clearly detailed in the business case;**
- The **costs associated with disaggregation do not outweigh the benefits received and value for money is still achieved.**

Craig Milley

35

Public Notice of Opportunity

- Entities shall **provide public notice of opportunity** to potential bidders of all procurement projects with a value of **\$50,000 or greater** by posting via a web site to be designated by the Central Procurement Office.
- Entities may publish a notice of opportunity in a **daily newspaper** accessible to all Caymanian suppliers or to all suppliers on a pre-established and open source list.
- A notice of opportunity for all procurements must be placed a minimum period of **15 working days** before the closing date of the competition.
- A notice of opportunity requires disclosure of the following minimum information:
 - brief description of contemplated procurement
 - location to obtain further information
 - conditions for obtaining such information
 - location and method for receiving bids and bid submission deadline
 - date of proposal to be submitted

Craig Milley

36

Competitive Procurement Methods

All methods of procurement will be covered by policies and procedures established by the Central Procurement Office

- Open tendering;
- Restricted tendering;
- Request for quotations;
- Request for proposals without negotiation;
- Two-stage tendering;
- Requests for proposals with dialogue;
- Request for proposals with consecutive negotiations;
- Competitive negotiations;
- Electronic reverse auction.

Craig Milley

37

Procurement methods permissible

Subject to a **duly authorized business case**, the following

- For procurement projects with a **value of less than \$250,000**
 - Open tendering;
 - Restricted tendering,;
 - Request for quotations;
 - Request for proposals without negotiation;

Craig Milley

38

Procurement methods permissible

For procurement projects with a value of **\$250,000 or greater**

- Open tendering;
- Restricted tendering;
- Request for quotations;
- Request for proposals without negotiation;
- Two-stage tendering;
- Requests for proposals with dialogue;
- Request for proposals with consecutive negotiations;
- Competitive negotiations; and
- Electronic reverse auction.

Craig Milley

39

Pre-qualification

An entity may engage in **pre-qualification proceedings**, with a view to identifying suppliers that are qualified prior to procurement.

A pre-qualification process is permissible under the following conditions:

- The estimated procurement value of the eventual contract is **greater than \$250,000**; and
- The request is **included in the approved business case**; and
- The **notice of opportunity and request for supplier qualifications is advertised**
- The assessment criteria are disclosed in the notice of opportunity and request for qualifications; and
- **Assessment criteria** may only include professional, technical and environmental qualifications, professional and technical competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience and personnel to perform the eventual contract;

Craig Milley

40

Pre-qualification

An entity may use prequalification in one of **two ways** in accordance with the policy and procedure established by the Central Procurement Office:

- As a **stand-alone process for a specific project** resulting in a list of prequalified suppliers eligible for a secondary competitive process; or
- As an **ongoing process to establish and maintain a framework agreement** for repetitive or indefinite future requirements on an “as needed when needed” basis.

Craig Milley

41

Pre-qualification

- The company **must have legal capacity** to enter into the eventual contract;
- That they **are not insolvent**, in receivership, bankrupt or being wound up, their affairs are not being administered by a court or a judicial officer,
- Their business activities have **not been suspended** and they are not the subject of legal proceedings for any of the foregoing;
- That they have **fulfilled their obligations to pay pensions and medical benefits** in accordance with the laws of the Cayman Islands;
- That they have **not been convicted of any criminal offence** related to their professional conduct or the making of false statements or misrepresentations as to their qualifications to enter into a procurement contract within a period of five years preceding the commencement of the pre-qualification process

Craig Milley

42

Specifications

- The entity will draft **clear, detailed specifications and business requirements** for each Procurement Project. Specifications may include any or all of the following:
 - Physical characteristics;
 - Functional, performance or expected results
 - Quality Intended such as consumer grade, industrial grade, medical or laboratory grade, or suitability for use under extreme conditions.
- When developing specifications, the entity shall take the following into consideration:
 - Specifications **cannot unduly restricts suppliers** from bidding but should encourage open, fair and transparent competition.
 - All specifications **must be generic and non-branded**.
 - An entity must ensure that **all information that goes to a Bidder's** decision to submit a Bid or calculate proposed pricing is included in the Competition Document.

Craig Milley

43

Cancellation of Procurement Proceedings

- An entity may **cancel the procurement** at any time **prior to the acceptance of the successful bid** and, after the successful bid is accepted. An entity shall not open any tenders or proposals after taking a decision to cancel the procurement.
- The decision of the procuring entity to cancel the procurement and the **reasons for the decision** shall be included in the record of the procurement proceedings and promptly **communicated to any supplier that presented a bid**.
- The entity shall promptly **publish a notice of the cancellation** of the procurement, and return any tenders or proposals that **remain unopened** at the time of the decision to the suppliers that presented them.
- Unless the cancellation of the procurement is a consequence of irresponsible conduct on the part of an entity, **it shall incur no liability**.

Craig Milley

44

Competitive Process Management

- An entity shall appoint an individual to be the **single, designated contact person** for suppliers for the duration of the procurement project.
- A supplier may request a **clarification of the competition documents from the entity**. The entity shall respond to any request by a supplier for clarification of the competition documents that is received by the entity within a reasonable time prior to the deadline for presenting bids.
- At any time prior to the deadline for presenting bids, the entity may for any reason, whether on its own initiative or as a result of a request for clarification by a supplier, **modify the competition documents by issuing an addendum**.

Craig Milley

45

Procurement Documentation

- An entity will **maintain proper documentation** for all stages of the procurement project and store all bids and contracts in its possession in a secure location.
- An entity will retain and **safely store** the following **minimum documentation** for each procurement project file:
 - Internal drafts of all competition documents, including internal correspondence concerning same;
 - Original copy of all issued competition documents;
 - The business case, together with evidence of all necessary approvals;
 - All communications with bidders or potential bidders
 - All addenda issued and contemplated;
 - Original bids received from bidders;
 - All records of evaluation process, including individual evaluator notes and scores;
 - Copy of communications with and official minutes from Entity or Public Procurement Committee deliberations; and
 - Records of bidder debriefing carried out
 - All communications with regard to bid disputes or complaints.

Craig Milley

46

Exclusion from the Procurement Process

A **Chief Officer** of an entity shall **exclude a person or supplier** from a procurement process under the following conditions:

- Information submitted concerning the experience and/or qualifications of the supplier was **false or a misrepresentation**;
- If the person or supplier offers, gives or agrees to give, directly or indirectly a **gratuity** in any form, an offer of employment or any other thing of service or value, to any public officer so as to influence the procurement process;
- If the person or supplier has an **unfair competitive advantage** which cannot be mitigated or an undisclosed conflict of interest that would be likely to impair the integrity of the procurement process; or
- If the person or supplier **engages in lobbying** or communicating with anyone other than the designated contact person .

Craig Milley

47

Disqualification

An entity may **disqualify a person or supplier** from a procurement process under the following conditions:

- If it finds at any time that the information submitted concerning the qualifications of the supplier was **materially inaccurate or materially incomplete** and the supplier fails to remedy deficiencies promptly upon request by the entity;
- If the entity has determined that the price, in combination with other constituent elements of the bid, is **abnormally low and raises concerns** as to the ability of the to perform the procurement contract, provided that the entity has taken the following actions:
- **Any decision of the entity to exclude** a person or supplier shall be **communicated promptly in writing** to the party being excluded and a **record of the reasons** therefore included in the procurement project file.

Craig Milley

48

Acceptance of Bids

An entity may **accept a bid, award a contract or make a purchase** under the following authority:

- For procurement projects with a value of **less than \$50,000** the **approval of the Head of Department** responsible and their **Chief Officer** is required
- For procurement projects with a value of **\$50,000 or greater but less than \$250,000** the **Chief Officer** may approve on the **advice of the Entity Procurement Committee**;
- For procurement projects with a value of **\$250,000 or greater** the **Chief Officer** may approve on the **advice of the Public Procurement Committee**.

Craig Milley

49

Acceptance of Bids

- Promptly after the successful bid, the entity shall **dispatch the notice of acceptance** of the successful bid to the supplier that presented that bid
- The entity shall **promptly notify each supplier** that presented bids of its decision to accept the successful bid. The notice shall contain, at a minimum, the following information:
 - The name and address of the supplier presenting the successful bid;
 - The contract price;
 - Instructions for obtaining a debriefing from the entity.
- Where the competition documents stipulate that the procurement contract is subject to approval by another authority, the procurement contract **shall not enter into force before the approval is given**

Craig Milley

50

Debriefing Bidders

An entity shall make available a debriefing opportunity for all bidders under the following conditions:

- The debriefing shall be conducted in accordance with the **policy and protocols** established by the **Central Procurement Office**;
- The debriefing should occur in a **reasonable period of time**;
- The debriefing may be conducted in-person or via phone or video conference however **public officers are not permitted to travel off-island for the purposes of a debriefing**;
- The debriefing is **limited to the content and resulting evaluation** of the requesting Bidder's bid and **shall not disclose any information relating to another Bidder**
- The debriefing is **not a forum for the challenge** of the outcome of the procurement process but serves to **provide feedback** on their bid with the goal of preparing for the next procurement.

Craig Milley

51

Publication of Contract Award

- When the procurement contract is completed the entity shall **publish within one month a public notice of the award** of the procurement contract
- Public notification of award of contracts or purchases shall **disclose** the following:
 - Name of entity
 - Procurement or Tender File number
 - Brief description of the goods, services or works being procured
 - Method of Procurement
 - Number of bids received
 - Name and address of successful supplier
 - Date of Contract or purchase approval
 - Total value of the contract or purchase
 - Industry Impact Statement(where applicable)
- Publication is **not applicable** to awards where the total procurement value is **less than \$5,000**. The entity shall publish a **cumulative notice** of such awards from time to time but at least once a year on the entity website.

Craig Milley

52

Next Steps

- Stakeholder Consultation
- Legal Drafting
- Cabinet Approval
- Parliamentary Approval
- Project Implementation
 - Communications Strategy for stakeholders
 - Appoint Public & Entity Procurement Committees
 - Develop policies, procedures and procurement standard documentation
 - Training workshops for SAGC
 - Training Workshops for civil Servants
 - Training Workshops for suppliers

