OPR

THE OFFICE OF PROCUREMENT REGULATION

ACCOUNTABILITY | INTEGRITY | TRANSPARENCY | VALUE FOR MONEY

SENSITISATION SESSION FOR MINISTRY OF HEALTH

PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC PROPERTY LEGISLATION COMPLIANCE

AGENDA

I. Presentation Objectives
II. Insight into Public Procurement
III. Objectives/Principles & Benefits of Public Procurement
IV. Synopsis of the Public Procurement Legislation
V. Effects of the Public Procurement Legislation
VI. Importance of Procurement Planning & Procurement Cycle
VII. Justification in Procurement
VIII. Importance of Developing Specifications
IX. Purpose of Contract Management
X. Typical Implementation Plan
XI. Roles & Responsibilities
XII. References
XIII. Activity

OBJECTIVES

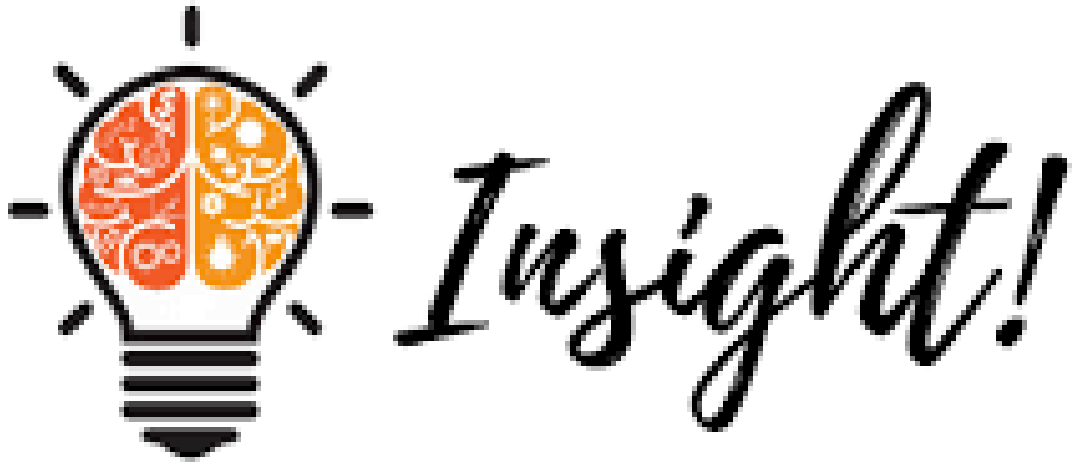
To sensitise Ministry of Health's Permanent Secretaries & Heads of Departments about the Act, 2015 (as amended)

To inform of the benefits of compliance with the requirements of the Act, Regulations, Handbooks & Guidelines & penalties attached to non-compliance

To advocate the roles and responsibilities of key players within the MOH in the execution of procurement activities

To enforce the importance of proper procurement planning; justification in procurement; developing specifications; & managing of contracts

INSIGHT INTO PUBLIC PROCUREMENT



ELEMENTS OF PROCUREMENT?

- Process of identifying what is needed;
- Determining who or what is the best supplier/contractor;
- Ensuring that what is needed is delivered to the right place, at the right time, in the right condition, for the right price; and
- Ensuring that all processes leading to this end state have been performed in a fair, open and efficient manner in keeping with the objects of the Act.

PUBLIC PROCUREMENT

- According to the Act, Public Procurement is the acquisition of goods, works or services involving the use of public money.
- As defined in the Act there are 12 classes of public bodies ranging from **Ministries** to the Tobago House of Assembly, Municipal Corporations, **Regional Health Authorities**, Statutory Bodies, State Enterprises, Service Commissions, Parliament, the Judiciary and the Office of the President.
- According to the World Trade Organisation, Government Procurement activities accounts for approximately 15% of the country's Gross Domestic Product (GDP).

OBJECTIVES/ PRINCIPLES & BENEFITS OF PUBLIC PROCUREMENT

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There is an inter-locking and commonality relationship between these concepts, the major ones being:

- Provision of value for money;
- Greater access to all eligible bidders;
- Collaboration & Integration;
- Transparency;
- Competition;
- Reduced scope for corruption;
- Accountability;
- Non-discriminatory specifications; and
- Fair bidding procedures and evaluations in accordance with pre-disclosed criteria.

SYNOPSIS OF THE PUBLIC PROCUREMENT LEGISLATION

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❖ REGULATORY FRAMEWORK

Brings all bodies spending Public Money under a single regulatory framework that covers all stages of the procurement process.

- Responsibility for oversight and control rests with the **OPR** which is headed by the **Procurement Regulator** and managed by a Board both appointed by the President – **Sections 10 & 14**
- The **OPR** shall issue guidelines, model Handbooks and standard bidding documents for use in public procurement and shall review special guidelines & handbooks for use by public bodies **– Section 13**
- The **OPR** shall establish a comprehensive database of information on public procurement and tenders received, award and values of contracts **– Section 13**
- The **OPR** shall set training standards, competence levels and certification requirements to promote best practice in procurement **– Section 13**
- The **OPR** shall prepare and maintain a Database of pre-qualified suppliers/contractors **– Section 13**
- The **OPR** shall establish the Procurement Depository to which suppliers/contractors can submit information with respect to qualifications and experience – **Section 26**

SYNOPSIS OF THE PUBLIC PROCUREMENT LEGISLATION

❖ COMPLIANCE AND ENFORCEMENT

- Any procuring of goods, works and services or retention or disposal of public property that is not done in accordance with the Act shall be void and illegal – **Section 6.**
- The **OPR** may conduct audits and periodic inspection of public bodies and issue directions to them – **Sections 13 & 14**
- The **OPR** has the power to investigate any alleged breaches of the **Act** and if of the view that an offence has been committed shall make a report to the **Director of Public Prosecutions Sections 41 – 48**
- The **OPR** must submit an Annual Report to the Parliament including the total number and value of contracts awarded by public bodies, the number of unfulfilled procurement contracts and those bodies that have failed to comply with the Act. – **Section 24.**

OFFENCES AND PENALTIES

Section	Offence	Specified Penalty
14 (2)	**Failure to comply** with a direction by the OPR issued under the Act to ensure compliance with the Act (public body or person)	$100,000
17 (2)	Failure of a member of the Board (OPR) or a Committee constituted by the Board (knowingly or willfully) **to disclose an interest**	$500,000 & 1 Year Imprisonment
31	Splitting of Procurement	$500,000 & 1 Year Imprisonment
39	Failure of procuring entity to comply with requirements with respect to confidentiality of information	$500,000 & 1 Year Imprisonment
40	Victimisation	$500,000 & 1 Year Imprisonment
41	Failure of a person to report instances of collusion	$500,000 & 1 Year Imprisonment
41 (4)	False report to the Office	$500,000 & 1 Year Imprisonment
46	Concealing or destroying information required for an investigation	$5Million and 10 Years Imprisonment
52	Failure to comply with requirements with respect to confidentiality in challenge proceedings	$500,000 & 1 Year Imprisonment

OFFENCES AND PENALTIES (CONT'D)

Section	Offence	Specified Penalty
59 (10)	Conduct influencing public officer (bribery, conflicts of interest, corrupt, fraudulent, collusive, coercive or obstructive practices)	$1Million & 5 Years Imprisonment
60 (1)	Bid-rigging, influencing procurement proceedings	$5Million and 10 Years Imprisonment
60 (2)	Altering a procurement document to influence the outcome of the procurement proceedings	$2Million and 7 Years Imprisonment
63 (2)	Contravention of a regulation made by the Minister on the recommendation of the OPR (challenge proceedings, ineligibility list)	Up to $1Million & 5 Years Imprisonment

EFFECTS OF THE PUBLIC PROCUREMENT LEGISLATION

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Act No. 1 of 2015, the Public Procurement and Disposal of Public Property Act 2015

- Provides for public procurement, the establishment of the Office of Procurement Regulation and the repeal of the Central Tenders Board Act.

Act No.5 of 2016

- Review Board to review decisions made by the Office of Procurement Regulation.

Section 64 of the Act

- Provides for the repealing of the CTB Act and the transference of the existing procurement proceedings to the purview of the OPR.
- Each public body will be obligated to establish its own Procurement Department with the Accounting Officer (Permanent Secretary) accountable for contracts regardless of size.

REQUIREMENTS OF THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC PROPERTY ACT, 2015, AS AMENDED ("THE ACT")

SECTIONS 13 (C), (D), (E); 30; 54

The Office of Procurement Regulation

Issues

- General Guidelines
- Model Guidelines for Special Guidelines

Prepares, updates and issues

- Model Handbooks incorporating:

i. Standardised bidding documents
ii. Procedural forms (incl. contracts)
iii. Relevant documents

Approves

- Special Guidelines and Handbooks

Ministry of Health

Prepares

- Exceptions / Amendments to the General Guidelines (Special Guidelines)
- Handbooks

Submits

- Special Guidelines & Handbooks to the OPR for approval

SUMMARY OF EFFECTS OF THE PUBLIC PROCUREMENT LEGISLATION

The new legislation shall reinforce the need to observe best practice in procurement, retention & disposal of public property while including monitoring and reporting responsibilities to all Accounting Officers

The procedures outlined in the Act, Regulations, Handbooks & Guidelines approved for the MOH will guide all practitioners in their procurement exercises

Public Bodies must have a Procurement Officer who shall be responsible for Public Procurement & Disposal of Public Property, the OPR shall be informed of same

IMPORTANCE OF PROCUREMENT PLANNING & PROCUREMENT CYCLE

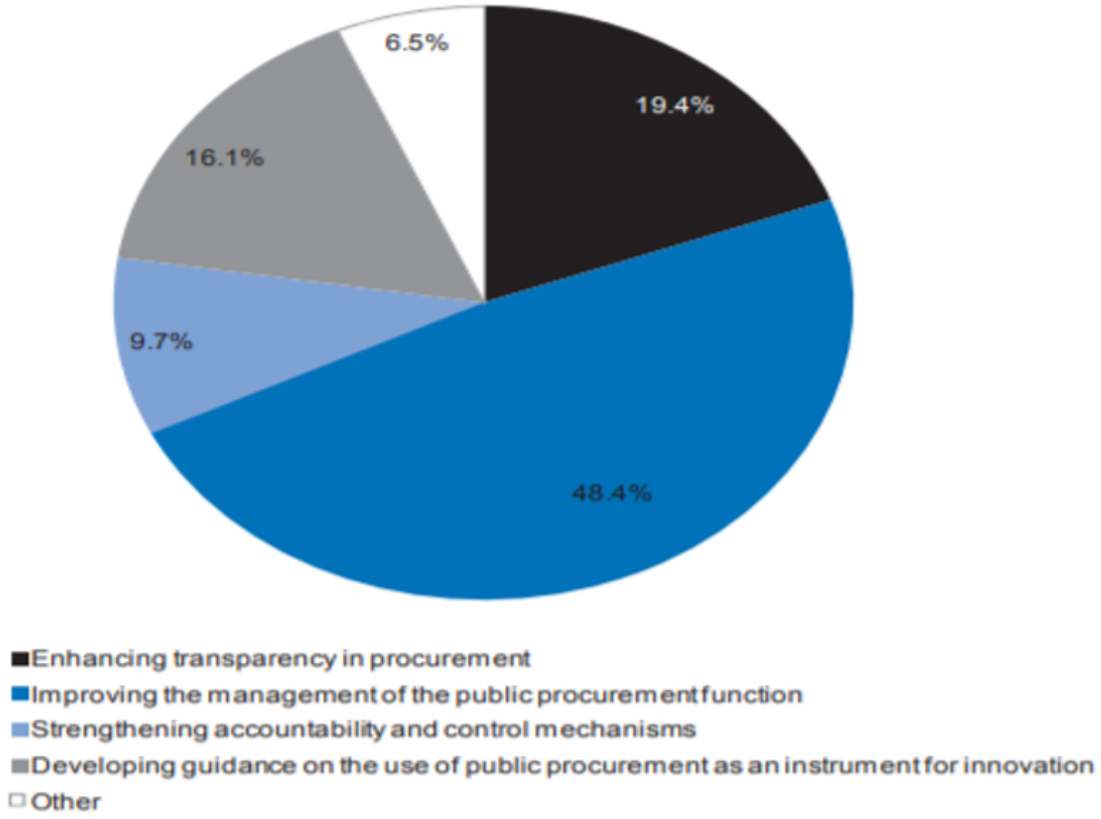
PROCUREMENT PLANNING

This involves the following activities: -

- Annual Planning for Procurement Activities;
- Budget Allocation;
- Market Research and Analysis;
- Procurement Portfolio Analysis;
- Development of Risk Mitigation Strategies,
- Procurement and Contract Management Strategies; and
- Detailed Planning of Individual Procurements

IMPACT OF MANAGEMENT CAPABILITY ON PUBLIC PROCUREMENT

Based on an assessment of OECD countries presented in the report entitled “OECD Principles for Integrity in Public Procurement” 48.4% of responding countries have identified improved management and capability of the procurement function as a key area for improvement.



Adopted: OECD (2013), Implementing the OECD Principles for Integrity in Public Procurement: Progress since 2008, OECD Public Governance Reviews, OECD Publishing

PROCUREMENT PLANNING AT TWO LEVELS

Strategic Level

- Output
  - Annual Procurement Plan
  - Annual Schedule of Planned Procurement Activities

Operational Level

- Procurement Strategy Development Form
- Procurement Details
- Evaluation Criteria
- Evaluation Methodology
- Contract Management Strategies

ANNUAL PROCUREMENT PLAN

- The Annual Procurement Plan (the Plan) is prepared by the 'named' Procurement Officer, approved by the Accounting Officer, and subsequently transmitted to the Office for its review and noting, within six (6) weeks of the approval of the National Budget - Section 27

- An Annual Procurement Plan is NOT a schedule of anticipated procurement actions to be undertaken during a period. However, such a schedule (The Annual Schedule of Procurement Activities) flows from the Annual Procurement Plan and will be attached as an Appendix to the Plan.

- The Annual Procurement Plan presents a strategy through which a public body can manage its procurement-related risks and opportunities in support of the delivery of its organisation mandate and strategy.

- Framing the Annual Procurement Plan involves identifying the linkages between procurement and the public entity's programmatic goals and objectives. It is based on review of the entity's mandate and strategy and an analysis of its procurement portfolio, function and capacity.

ANNUAL SCHEDULE OF PLANNED PROCUREMENT ACTIVITIES

No.	Project Number	Project Name	Brief Description	Proposed date for Issue of Bidding Documents	Expected Delivery / Completion Date	Estimated Project Duration (for works and services)	Procurement Method	Standstill period (if applicable) – No. of days	Contract Type
1.	IFB# 003/2018/19	Supply and Delivery of Vehicles	Supply and Delivery of fourteen (14) high-top panel vans, six (6) wreckers and eight (8) 4x4 pick-up vans	Nov-19	Sep-20		National Competitive Bidding	10	3-year full service lease

PLANNING FOR PROCUREMENT – WHO SHOULD BE INVOLVED

- Accounting Officer – Accountable
- '**named**' Procurement Officer – Responsible & Accountable
- Requisitioning Manager - Accountable & Responsible
- Functional Manager(s) (Legal, Finance) – Consulted
- Technical Expert(s) – Consulted & Accountable

When to Initiate Procurement Planning?

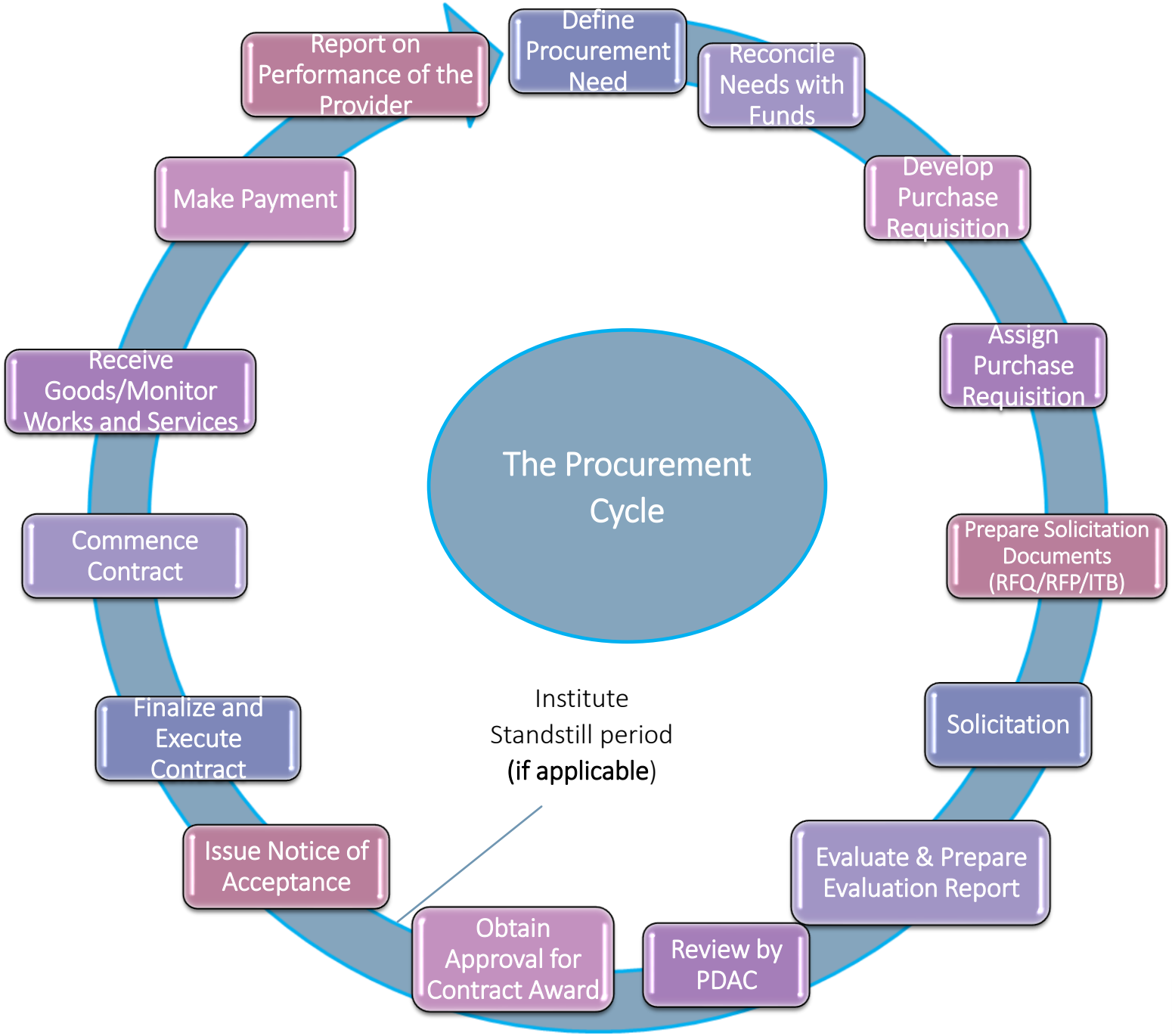
Procurement Planning is initiated at Stage 1: Procurement Planning and Strategy Development of the four (**4**) stages of Public Procurement Process as defined in the Act, Section 4 under ***procurement proceedings***. The process to be executed includes: -

- ❑ Identify Annual Procurement Needs;
- ❑ Analyse Portfolio of Items;
- ❑ Develop Procurement and Contract Management Strategies; and
- ❑ Develop Annual Procurement Plan

THE PROCUREMENT CYCLE

Procurement of goods, works & services

Note: Procurement Planning and Strategy Development is a fundamental and mandatory step in the Public Procurement Cycle



PROCUREMENT PLANNING BENEFITS

Procurement planning: -

- Ensures budget allocation for each procurement activity
- Establishes realistic budgets, pricing arrangements and economic ordering quantities
- Develops a full and comprehensive picture (procurement profile) of the procurement needs of a Public Body
- Saves time and money
- Serves as a channel to achieving a Public Body's objectives
- Ensures compliance with regulatory policies
- Provides a framework to guide procurement professionals in the achievement of their tasks and duties
- Permits the creation of a strategy for procuring each requirement that will be included in the annual procurement plan (APP)
- Develop procurement and contract management strategies

JUSTIFICATION IN PROCUREMENT

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Justification is essential in every step of the procurement cycle. From the initiation stage straight to contract management to close-out. The following are main activities that require justification:-

- Purchase Requisition Justification
- Justification for Procurement Method
- Justification for Supplier/Contractor Selection
- Justification for Contract Variation

PURCHASE REQUISITION JUSTIFICATION

- A purchase requisition (PR) or project initiation is needed by the Procurement Department to initiate the procurement process. It is "***seen as a mere document but it plays an essential role in the procurement process.***
- The purchase requisition is prepared by the Requisitioning Department along with supporting documents and submitted to the Procurement Department.
- Supporting Documents including necessary management approvals (***confirmation of availability of funds, prospective suppliers/contractors, specifications, terms of reference or scope of services*** {if applicable})

SOLE OR SINGLE SOURCE JUSTIFICATION

The new regime requires open and free competition for all procurement transactions. In cases where the purchase is limited to a single or sole supplier/contractor, Public Bodies' Procurement Department MUST have an appropriate justification on file.

- Sole or Single Source Documentation Requirements

You MUST provide the necessary data to support recommendation for other than full and open competition and the justification MUST demonstrate that ONLY one supplier/contractor can provide the goods, works or services.

Examples of Sole or Single Source Justifications

Characteristic	Explanation
Compatibility	Need for compatibility with an existing item with enough detail to demonstrate that compatibility is indeed necessary
Existing Contract	Supplier/Contractor holds a service contract and therefore must supply the parts as a part of this contract. Mention warranty invalidation, if appropriate
Unique	The feature or features which would make an item unique: - A detailed explanation of how and why these unique features affect the function of the item - An explanation of why these unique functions and/or features are necessary to the use intended by the unit - Why an item could not be used without these functions and/or features
Timeframe	Time is of the essence and only one known source can meet the needs within the required timeframe; administrative delays do not justify urgency for a sole or single source justification

Adopted: http://www.buffalo.edu/administrative-services/managing-procurement/special-purchasing-considerations/sole-source-specification.html

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SOLE OR SINGLE SOURCE JUSTIFICATION (CONT'D)

➢ Preparing the Sole or Single Source Justification

The justification should:

- ❑ Be prepared by a subject matter expert;
- ❑ Include the signature and title of the preparer. The author should be prepared to substantiate any facts if an audit occurs; and
- ❑ Be submitted as a signed document attached to the purchasing requisition

➢ Reasonableness of Price

A few ways that this can be documented are:

- ❑ The supplier/contractor's published price list & documented discount;
- ❑ Invoices or cost sheets from prior contracts;
- ❑ Comparisons to other suppliers/contractors' prices for similar goods, works and services;
- ❑ Price or Cost analysis; and
- ❑ Historical price or cost comparison

Source: http://www.buffalo.edu/administrative-services/managing-procurement/special-purchasing-considerations/sole-source-specification.html

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SOLE OR SINGLE SOURCE JUSTIFICATION (CONT'D)

- Tips for a Successful Justification

- The two most often cited reasons for a sole or single source justification are uniqueness and timeframe. These are often confused and inappropriately interchanged. If a supplier/contractor is unique then their uniqueness is adequately substantiated….;
- Statements that a supplier/contractor has the best capability or offers the lowest price are not bases for a sole or single source justification. Such determinations can only be made through full and open competitive processes;
- Rationale that the recommended source is the most highly qualified to perform but does not establish why other sources cannot perform is not acceptable;
- Incumbency does not justify a sole or single source purchase; and
- Administrative delay or lack of adequate advanced planning resulting in urgency does not justify a sole or single source purchase.

Source: http://www.buffalo.edu/administrative-services/managing-procurement/special-purchasing-considerations/sole-source-specification.html

JUSTIFICATION FOR SUPPLIER/CONTRACTOR SELECTION

"*Selection of the best and/or the most suitable suppliers/contractors is based on assessing supplier/contractor capabilities*" (Shih et al, 2004).

Evaluation Committees MUST justify their selection of a Supplier/Contractor by documenting the following at a minimum where applicable:

- the basis for recommending the supplier/contractor against the pre-defined criteria;
- cost comparison & or cost/price breakdown;
- assurances of reasonable price; and
- state what uniquely qualifies the selected supplier/contractor to perform the work

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JUSTIFICATION FOR CONTRACT VARIATION

What is a variation?

"*A variation is a change to a contract. A variation to a contract could include, but not be limited to, a change to the service level or type, product, delivery, timeframe, personnel, contractor or price. As a contract constitutes a legal agreement between the parties, there are both legal and cost considerations to be considered prior to executing any change*" (https://www.finance.wa.gov.au/cms/uploadedFiles/Government_Procurement/I_Manage_a_Contract/Contract_Variations.pdf).

Key Considerations

- Is it permitted under the contract?
- What are the conditions for variations specified in the contract?
- Does the variation constitute a significant change in the contract scope & price?

Why Justify a Contract Variation?

- Specify the nature of variation for e.g. cost, timeframe, personnel et cetera;
- Detailed reason as to why the variation is required; and
- Illustrate that the price is reasonable & ensure there is no additional benefit from commencing a new procurement process

IMPORTANCE OF DEVELOPING SPECIFICATIONS

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Specifications may be developed as one or a combination of the following types:

- **Functional** - Concentrates on the function or purpose of the product.
- **Performance** - Describes what is to be achieved rather than providing a fixed description of how it should be done.
- **Technical** - Defines exact design and details of a good. Technical specifications may also take a long time to create due to their detailed and complex nature.

(UN Procurement Practitioner's Handbook, 2017)

Note: Standards are a common way of establishing the quality requirements of a product. Refer to international standards, for example ISO standards, if possible when developing technical specifications.

KEY POINTS TO NOTE WHEN DEVELOPING SPECIFICATIONS

1

Language should be clear and simple

2

Do not over specify or under specify your requirements

3

Avoid using brand names or brand specific references

WHO SHOULD BE INVOLVED

- The Requisitioning Department is responsible for developing the specifications
- Procurement Department ensures that the specifications are not restrictive or biased and provides advice on the best method to obtain the goods, works or services

PURPOSE OF CONTRACT MANAGEMENT

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Contract Management ensures that all parties to a contract fully meet their respective obligations through monitoring and documenting performance

It protects the parties and ensures that the required performance standards are met. It is a mechanism to identify problems and establish solutions in a collaborative manner

Contract monitoring allows for control over variations and dispute resolution

KEY POINTS TO NOTE IN CONTRACT MANAGEMENT

Develop a Contract Management Plan to be agreed upon by both parties

Delegate a Contract Manager preferably a subject matter expert

KPIs are important to measure performance, they should be fit for purpose and easy to support by evidence and reported on a periodic basis.

Supplier/Contractor performance appraisal is to be done throughout the contract management process

Maintain a contract management file with all relevant documents

IMPLEMENTATION PLAN

TYPICAL IMPLEMENTATION PLAN

PROPOSED ROLES AND RESPONSIBILITIES

ROLES AND RESPONSIBILITIES OF ACCOUNTING OFFICER/CEO OR EQUIVALENT

The Financial Regulations of the Exchequer and Audit Act set out the accountabilities of Accounting Officers as follows:

Section (4). An accounting officer shall be responsible for ensuring— (a) that the financial business of the State for which he is responsible is properly conducted; and (b) that public funds entrusted to his care are properly safe-guarded and are applied only to the purposes intended by Parliament.

Section (5). All accounting officers are personally and pecuniarily responsible for— (a) the due performance of the financial duties of their departments; (b) the proper collection and custody of all public moneys receivable by them; and (c) for any accounts rendered by them or under their authority.

PROCUREMENT AND DISPOSAL ADVISORY COMMITTEE (PDAC)

The PDAC is appointed by the Accounting Officer & reviews the procurement records, the report & recommendations for contract award & determines whether the following three criteria have been met:

a) the approved processes as set out in the Handbooks and Guidelines were followed;

b) the approved procurement, retention & disposal strategy outlined in the Annual Procurement Plan was followed; and

c) value for money was achieved; and advises the Accounting Officer accordingly

Recommended composition of the PDAC comprises of the Corporate Secretary/Head of Legal, Head of Finance & Subject Matter Expert

Note: The PDAC may consult with the '**named**' procurement officer and/or the evaluation committee during its review of the proceedings.

DIRECTOR, FINANCE AND ACCOUNTS

Under the Ministry of Health:

- List of procured items categorised under the main three **groups** - goods/services/works.
- Determine expenditure (by groups & categories) for the past three (3) years – estimated versus actual spend (where available)
- Determine anticipated spend for the upcoming Fiscal Year – 2020/2021.

HUMAN RESOURCE DEPARTMENT

1

Develop a Code of Conduct (Ethical Procedures) – in conjunction with the relevant Departments

2

Finalise job descriptions for roles under the Procurement Department with CPO or PMCD

3

Generate a list of staff likely to be involved in procurement function & hire externally to supplement where required

4

Develop a training plan for the Procurement Department

- Procurement Training and certification
- Training in ethics (all staff)

INFORMATION COMMUNICATIONS AND TECHNOLOGY (ICT)

1

Facilitate the implementation of a secure Records Management System for procurement

2

Develop a robust security system for access and storage of Procurement Documents

LEGAL

Be actively	involved in the review of the solicitation documents (including draft contract), the evaluation process, negotiation and finalisation of contracts to ensure necessary legal information is included.
Participate in	negotiations with Suppliers/Contractors
Review and finalise	the Code of Conduct
Sensitise	all staff on the Act in collaboration with the 'named' Procurement Officer

ALL INTERNAL UNITS/DIVISIONS/DEPARTMENTS/RHAS

Each unit/division/ department/regional health authority to prepare a list of all goods/services/works to be procured with corresponding cost estimates for the upcoming financial year.

Departments of MOH/RHAs must forward all procurement requests to Procurement Department.

Cross-functional teams to develop & agree on procurement & disposal strategy

REFERENCES

1. Exchequer & Audit Act No. 20 of 1959 (as amended)
2. Ministry of Health's Presentation: Managing Procurement Under the Public Procurement and Disposal of Public Property Act
3. OECD (2013), Implementing the OECD Principles for Integrity in Public Procurement: Progress since 2008, OECD Public Governance Reviews, OECD Publishing
4. Public Procurement & Disposal of Public Property Act No. 1 of 2015
5. Public Procurement & Disposal of Public Property Act No. 5 of 2016
6. UN Procurement Practitioner's Handbook, 2017
7. Website: https://blog.procurify.com/2018/01/30/purchase-requisition-important-business/
8. Website: http://www.buffalo.edu/administrative-services/managing-procurement/special-purchasing-considerations/sole-source-specification.html
9. Website: https://www.finance.wa.gov.au/cms/uploadedFiles/Government_Procurement/I_Manage_a_Contract/Contract_Variations.pdf
10. Website: https://www.kbmanage.com/concept/supplier-selection
11. Website: https://www.wto.org/english/tratop_e/gproc_e/gproc_e.htm

ACTIVITY

Thank You