

**Management
of Government
Procurement**

5 July 2011



*Our independent work
promotes good governance,
transparency and
accountability in the use of
public funds*

TABLE OF CONTENTS

| | |
|---|-----------|
| Executive Summary | 1 |
| Background | 3 |
| Why did we do this audit? | 3 |
| What is procurement and why is it important for the Government of the Cayman Islands? | 3 |
| Government’s procurement process for supplies, services and assets greater than \$250,000 | 4 |
| About the Audit | 7 |
| Objective | 7 |
| Scope | 7 |
| Criteria | 7 |
| Audit approach and methodology | 8 |
| Timing and audit resources used | 8 |
| Leadership and Management | 9 |
| No one is responsible for the procurement function and its activities | 9 |
| Information on procurement is lacking | 10 |
| Lack of procurement expertise | 11 |
| Lack of policies and procedures | 12 |
| No one is monitoring compliance with the regulations | 15 |
| Entities do not have effective procurement functions | 16 |
| Value-for-Money | 17 |
| Government is not managing procurement with due regard for value-for-money | 17 |
| Government is likely paying millions of dollars more for supplies and services than needed | 18 |
| Implementation of the Current Framework | 20 |
| Departmental Tenders Committees (DTC) operations need significant improvement | 20 |
| Central Tenders Committee (CTC) operations need significant improvement | 22 |
| Fundamental review of procurement framework needed | 28 |
| Political Interference | 29 |
| Political interference is creating risk, uncertainty and morale problems in government operations | 29 |
| Boards of statutory authorities involved in day to day management | 30 |
| Conclusion | 31 |
| Appendix 1 – Procurement Framework in the <i>Financial Regulations (2010 revision)</i> | 32 |
| Appendix 2 - Interviewees | 33 |
| Appendix 3 - Recommendations and Management’s response | 34 |

EXECUTIVE SUMMARY

1. In the past year, there have been significant concerns raised, both in the public domain and within the public sector, about the practices used by government to procure and acquire supplies, assets and services, in other words “government procurement”.
2. The Government buys approximately \$250 million worth of supplies, services and assets every year. This is approximately one-half of government spending. Therefore, it is critical that it be managed effectively with due regard for value-for-money. Especially In today’s environment of restraint and having to manage scarce resources, it becomes paramount that senior managers take responsibility to ensure there is good value achieved for every dollar spent.
3. Our audit found that the Government has not been effectively managing procurement and that there has been a fundamental breakdown in controls to ensure fairness, efficiency and transparency in procurement, as well as compliance with the laws and regulations. The issues our audit identified also clearly indicate that there has been little regard to the consideration of value for money.
4. I am extremely concerned by the absence of senior management leadership across the public services to ensure that there is effective and efficient procurement of supplies, services and assets. We could not find anyone in the Government who has taken responsibility for this function; either centrally or at the entity level.
5. This lack of leadership is clearly demonstrated in the absence of the development of procurement expertise and guidelines, implemented by way of policies, procedures and practices, to ensure an effective procurement function. This in turn has led to every manager in the Government doing what they believe is appropriate to implement the obligations set out in the *Public Management & Finance Law* (“the PMFL”) and Financial Regulations.
6. Without the expertise and guidelines necessary to effectively carry out the procurement functions of the Government, it came as no surprise to my audit team when they found numerous situations where the practices being followed and the behaviors of officials were far from ideal, and have led to a significant waste of money.
7. Good governance of public sector operations demands that there is a clear line of responsibility between the politicians who make the policy decisions and the bureaucrats or administration that should be responsible and accountable for developing the management systems and practices to deliver on those policy decisions and provide assurance that laws and regulations are being followed.

8. Therefore, of great concern to me is the frequency and impact of political interference in the day to day operations of this critical government process. Political interference has created significant risks for fraud and corruption that are virtually impossible to mitigate because of the lack of checks and balances introduced by the practice. Even if the Government implemented the best practices available to manage the procurement function, political interference would still create risks for fraud and corruption that are virtually impossible to mitigate.
9. In the statutory authorities and government companies, we found that boards of directors are also interfering with the procurement activities of their entities. In some cases, we found board members directly involved in the tendering and contracting processes. This interference has had the same impact on those organizations as we found in the core government.
10. The audit has made numerous recommendations for how the Government's current procurement framework needs to be fully implemented to operate effectively. In addition, we have made a recommendation for the Government to review its current framework, including how it is organized to ensure fairness, transparency and due regard for value-for-money. This would include, for example, assessing the need for departmental tenders committees and the Central Tenders Committee.
11. While I cannot be prescriptive in my recommendations for how control should be restored over the procurement function, I am prepared to offer my advice and the limited resources of my Office to government officials who will be charged with this responsibility.
12. With its recent challenges to reduce its spending and balance its budget, I urge senior government officials to act expeditiously by developing an action plan that will fully implement the Report's recommendations and be accountable for achieving results.

BACKGROUND

WHY DID WE DO THIS AUDIT?

13. We carried out this audit for four reasons:

- procurement is a critical and significant activity of the Cayman Islands Government (“the Government”);
- over the last six months, there have been a number of instances brought to the attention of the Office of the Auditor General (“the OAG”) of alleged unfair and inappropriate procurement practices;
- in the fall of 2010, the Governor asked the OAG to conduct a general review of the government’s procurement practices including the tendering of the CCTV contract and the \$155 million loan; and
- the Premier raised concerns to the OAG regarding the procurement practices used by ministries and portfolios.

WHAT IS PROCUREMENT AND WHY IS IT IMPORTANT FOR THE GOVERNMENT OF THE CAYMAN ISLANDS?

14. Procurement is a business term that describes all the business processes associated with purchasing supplies, services and assets for use by the Government. Procurement is a major part of running a business or entity and includes:

- establishing why an entity needs to acquire a supply, a service, or an asset;
- the process to acquire the supplies, services or assets, including a public tendering process if required; and
- entering into a contractual arrangement with a supplier.

15. For the purpose of this audit, we looked at the entire process from the establishment of a business need (or why the purchase is needed and how the organization is ensuring due regard for value-for-money) through to the finalization of a contractual arrangement. In looking at the cases, we also reviewed some post contractual issues. Our audit focused mainly on procurement greater than \$250,000.

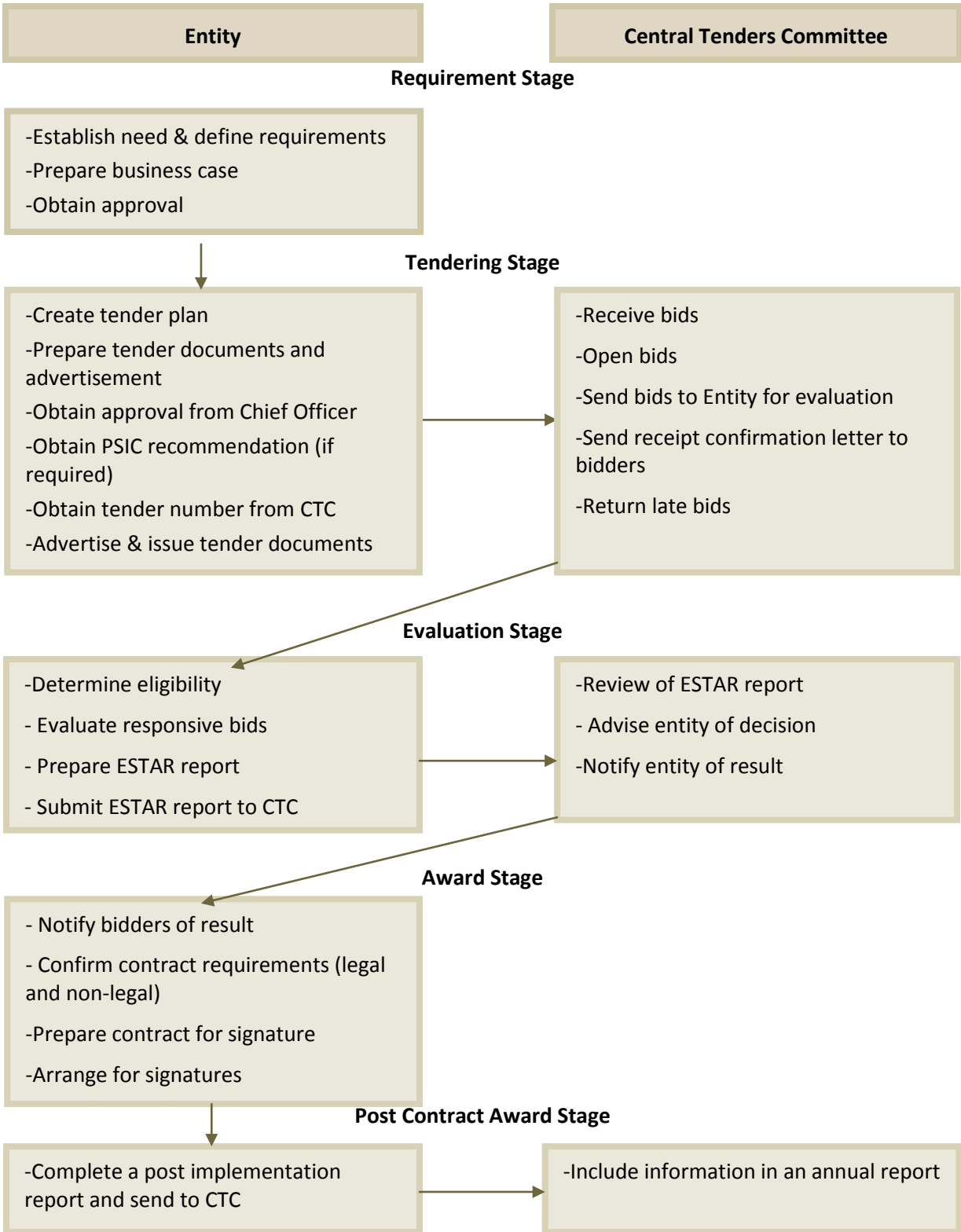
16. Procurement is a key administrative function in a typical public sector organization that is as important in how it is managed as, for example, the finance, personnel and information technology functions. Procurement is normally carried out by officers who are highly trained individuals that have qualifications and specialized experience in the field of procurement.

17. Procurement of supplies, services and assets is a significant activity in the Government that is done in every organization. While we could not get numbers from the Government, we believe there are several hundred Government officials involved in the activity; either on a full-time or part-time basis. The Government reported that it spent \$228 million in 2008/09 by the entire Public Sector on supplies and consumables and an additional \$25 million on operating lease rentals.
18. When a public sector procurement function is implemented and conducted effectively, it is a key contributor for Government to ensure its broader policy goals (for example to improve health and education, increase opportunities for local suppliers and create jobs, as well as support for a better environment) are achieved.

GOVERNMENT'S PROCUREMENT PROCESS FOR SUPPLIES, SERVICES AND ASSETS GREATER THAN \$250,000

19. The Government's procurement framework is governed under Part IX - Procurement and Part XII - Capital Projects, Financial Regulations (2010 Revision) of the *Public Management and Finance Law (2010 Revision)*. These regulations set out broad requirements to be adhered to by individuals responsible for procuring supplies and services for a prescribed entity, statutory authority and government company. The Financial Regulations were amended in 2007 so that the procurement regulations extended to all government entities including statutory authorities and government companies.
20. Departmental Tenders Committees (DTC) are established in accordance with Section 41 (1) of the Financial Regulations and are required to evaluate tenders submitted for contracts. According to the Central Tenders Committee (CTC) guidelines, these Committees evaluate all tenders and seek approval from the CTC only on those amounting to \$250K or more. The chief officer of the purchasing entity is responsible for establishing the Committee.
21. The practice for appointing a DTC varies across the Government and are sometimes referred to as Departmental Evaluation Committees or Departmental Technical Committees.
22. The CTC was established with certain responsibilities that require it to approve certain steps of the tendering process that ensure entities comply with the Financial Regulations. The CTC produced a tendering guidelines document to assist entities in ensuring compliance with these requirements. The document, entitled Open Tender Process sets out the tendering processes to be followed when the resulting contract value is expected to equal or exceed \$250K.
23. The current process for government entities involved in procurements valued at \$250K is summarized in the following flowchart:

Exhibit 1: Cayman Islands Government - Procurement Process >\$250,000



24. **Requirements Stage:** The procuring entity is responsible for establishing the need for the supplies or services and clearly defining the requirement; creating a comprehensive business case which considers the different alternatives for the procurement of the supplies or services to ensure best value for money over its complete operating life; and, obtaining approval of authorized officials including the financial authorization for fund availability.
25. **Tendering Stage:** The appropriate entity project manager is responsible for creating a tender plan with a realistic timetable taking into consideration a number of factors which have an effect on the time required to complete the process. These factors include the time needed to prepare, obtain approval and issue the tender document; the length of time required for advertising; tender preparation and, the bid receipt and opening process.
26. **Evaluation Stage:** The bid evaluation process is performed in accordance with CTC guidelines. The Departmental Tenders Committee (sometimes referred to as the Department Evaluation Committee) determine eligibility of bids, evaluate responsive bids, prepare a tender evaluation report (ESTAR) and submit it to the CTC. The CTC reviews the tender evaluation report advising the entity of its decision. The entity notifies the bidders of the results.
27. **Contract Award Stage:** Once the tender process is complete, the procuring entity is responsible for preparing and issuing a contract to the successful bidder. The entity is also responsible for providing a copy of the final signed contract to the CTC and, if applicable, noting any differences in the contract costs versus the bid costs.
28. **Post Contract Award Stage:** The entity is required to complete a post implementation report to determine if value-for-money has been achieved and to ensure information and learning are shared within the Public Sector. The CTC is responsible for distributing any information and learning throughout the Public Sector.

ABOUT THE AUDIT

OBJECTIVE

29. To determine whether the Cayman Islands Government procurement framework for acquiring supplies, services and assets greater than \$250,000 ensures best value-for-money while conforming with good public sector procurement practice.

SCOPE

30. The focus of this audit is on the Government's policies and practices for procurement greater than \$250,000 in both core government and in statutory authorities and government companies. However, many of the findings also apply to procurement activities for supplies, services and assets of less than \$250,000.

CRITERIA

31. The audit used eight criteria against which we evaluated our findings. Senior management, including the Deputy Governor, agreed with our criteria at the outset of our audit.
 - a. Procurement is made in accordance with the *Financial Regulations (2010 Revision)* (details in Appendix 1).
 - b. The Government has an appropriate management framework and is effectively organized to carry out the procurement function.
 - c. The Government has developed and communicated clear policies and directions for its officials to procure supplies, assets and services (including those over \$250,000).
 - d. The Government has developed clear principles for what it expects from government officials for the procurement of supplies, assets and services.
 - e. There is appropriate expertise in the Government to procure supplies, assets and services.
 - f. The Government has developed and implemented ethical standards and a code of conduct for the procurement of supplies, assets and services.
 - g. The Government has developed and implemented clear guidelines for officials in the procurement function that ensure due regard for value-for-money.
 - h. Entities have specific policies and practices in place that ensure that the procurement process is impartial, transparent and encourages competitive offers.

AUDIT APPROACH AND METHODOLOGY

32. We conducted our audit in accordance with methodology used by supreme audit institutions for the conduct of performance audits. This included three audit phases: planning, execution and reporting, and included the following:
- interviews of senior government officials (details in Appendix 2);
 - interviews of individuals in two portfolios and ministries - Internal and External Affairs and District Administration, Works, Lands & Agriculture (DAWL&A) and two statutory authorities - National Roads Authority and Ports Authority (details in Appendix 2);
 - documentation of the current procedures and practices for procurement;
 - sample of three recent procurement processes were reviewed (CCTV, Jazz Fest 2009, government loan) - *separate report to be issued*;
 - review of documentation including legislation, regulation and guidance;
 - review of Phases 1 and 2 of the Public Service Review;
 - review of the Miller Report;
 - review of the draft report prepared by Keith Luck on behalf of the FCO;
 - identification of procurement principles and best practices used in other countries; and
 - use of a subject matter expert in the conduct of audit work performed.
33. We will report on the results of our audit of the three recent procurement processes noted above in a separate audit report.
34. The Report was sent to the Deputy Governor for comments on 1 June 2011. We received comments back on 21 June 2011; however, at the time of issuing the report, we have not received responses to the recommendations.

TIMING AND AUDIT RESOURCES USED

35. The following individuals formed the audit team and conducted this audit:
- Martin Ruben, CGA - performance audit manager, Office of the Auditor General
 - Alan Quinn, consultant, procurement specialist
 - Bernard Keating, PhD, MA (economics) , consultant, international financial markets economist
36. The audit was conducted from December 2010 to May 2011 and covered transactions from May 2009 through April 2011.

LEADERSHIP AND MANAGEMENT

NO ONE IS RESPONSIBLE FOR THE PROCUREMENT FUNCTION AND ITS ACTIVITIES

37. Public Sector procurement is integral to government operations and is a major contributor to the achievement of government objectives. Procurement activities can often account for more than half of total government expenditures in any given year and consequently, can have a significant impact on the economic well-being of many small and large private sector companies. Individuals involved in the day-to-day conduct of procurement operations have an important and highly professional role to perform. The variety of commodities, complexity of requirements and high value expenditure levels of procurements activities in the Public Sector are not found in other organizations. The adequacy of the processes involved in spending public funds and achieving value-for-money, while maintaining exemplary ethical standards, integrity and public confidence, are of paramount importance.
38. Procurement is not a clearly identifiable function in the Government. We were not able to find any individual at the centre of government or in the entities we visited during our audit that was responsible for managing the procurement function. Some senior managers claimed responsibility for managing certain aspects of the procurement process, but no one we interviewed felt it was their responsibility to establish and implement procurement policies and procedures for use throughout the Government or even in their entity and various departments.
39. We expected to find a management framework in place and an appropriate organizational structure to effectively carry out the procurement activities. This requires senior government officials to recognize their responsibilities to ensure that appropriate management practices have been established and operating effectively to ensure propriety and probity in the conduct of the Government's procurement activities. Although senior officials are clearly aware of significant issues around procurement in the Government, no one has assumed responsibility for this important function or taken any action to establish appropriate management practices and manage the associated risks. Without the necessary leadership at a senior level it is not surprising that there is no critical management framework for procurement in place.
40. It is incumbent upon senior public sector management to ensure proper systems, policies and procedures are in place for employees to be able to perform their duties efficiently and effectively. Senior management is also responsible for establishing and implementing measures to monitor the performance of employees involved in procurement to ensure their work is conducted with due regard for value-for-money and that all transactions are performed in accordance with the laws and regulations pertaining to their responsibilities.
41. As there is no individual or group responsible for government procurement, no assurance is being provided to the Legislative Assembly that the laws and regulations pertaining to procurement are being followed. In the absence of such an individual or group, Legislators must rely on all entities to not only individually develop, implement and operate good procurement principles and practices in their respective organizations, but also rely on the individuals involved in the performance of the procurement functions to abide by these practices.

Recommendation #1: The Government should appoint someone as a Chief Procurement Officer who would be accountable for the overall development, management and reporting on the Government's procurement activities. The reporting relationships for this individual would depend on the organization chosen by the Government to implement this crucial function.

Recommendation #2: The Government should develop policies, procedures and practices for procurement of supplies, services and assets that would ensure clear direction to officials.

INFORMATION ON PROCUREMENT IS LACKING

42. The importance of internal management information is an accepted principle within business in both the private and public sectors. Regardless of the size of the procurement function an entity should know, for example, the following information:
 - what kinds of supplies and services it procures;
 - how much it spends by category type;
 - its main suppliers, and the volume and value of the procurements for each one; and
 - the location of its suppliers.
43. Additionally, it is critical that consistent definitions across entities are agreed upon and that centrally defined reporting requirements are established to allow for meaningful analysis of the data.
44. Procurement reporting has many useful purposes, several of which include:
 - informing management of current results and performance versus targets or plans;
 - providing information for better decision making; and
 - providing information to support improved performance.
45. While some organizations can, in extreme cases, drown themselves in data, in most instances the absence of consistent and reliable information will inhibit understanding, proper attention and essential action.
46. We found that the Government does not have good information about its procurement activities. For example, we found that there is no information about how much business is done with one vendor across the Government. We would expect the Government to have good procurement information as part of a management framework for this function.
47. Without any leadership as noted above, we found that entities are individually responsible for gathering the data and developing the systems and practices for their procurement activities. We could not find this being done in the entities we reviewed. Senior managers in entities cannot effectively demonstrate accountability for propriety and probity required under the PMFL for this critical function without the necessary information for their use in day to day management and decision making.
48. Government entities are effectively working in silos with little or no information sharing between organizations which can potentially lead to a lack of information on supplier capability and availability.

49. Centralized and up-to-date source lists of individuals and firms, local and overseas, that do business with the Government do not exist and need to be developed and maintained to ensure consistency, economy, effectiveness and fairness in procuring best value.
50. A good information system is necessary to ensure that only qualified individuals or firms are given consideration and that there is a fair opportunity for those qualified to obtain a share of the available work. Good information systems would also eliminate duplication of efforts by entities that procure the same type of commodities.
51. By not having good information on the procurement activities the Government risks not only continuing to make poor value-for-money decisions with regard to purchasing supplies, services and assets, but risks other potential situations such as dealing with a non-performing vendor in one entity and then using that same vendor in another entity.
52. For example, a construction company that was unsuccessful on one of the Government's largest recent building projects when it had been found to be unqualified ended up as the contractor for another significant project without management knowing what had previously happened. Unfortunately, the contractor ended up being terminated before the project was complete which resulted in several million dollars in extra costs.
53. Without the necessary information for conducting procurement activities in the Government, there will be a significant risk that senior managers will continue to mismanage their operations and lack the accountability necessary to demonstrate the effective use of public resources.

Recommendation #3: The Government should determine the kind of information it needs to effectively manage the Government's procurement function and implement the appropriate systems for its capture, management, and reporting.

Lack of procurement expertise

54. We found that procurement throughout the Government is generally being carried out by officials with little or no expertise to conduct the work required of them, or with little available advice on how to perform their day to day procurement management activities. Notwithstanding the expertise currently available in entities where there is significant procurement activity, such as Public Works, our interviews with several entities indicated that most individuals involved in purchasing supplies and services for their organizations do not possess the level of expertise one should expect to find in public sector procurement groups. As a result, it is not possible for these organizations to realize the benefits of procurement efficiency and effectiveness that would be associated with having highly skilled and knowledgeable procurement staff.
55. We were informed that approximately three years ago, there was a conference held by the Government to discuss good procurement practices and that it was attended by a number of senior government officials. Out of that conference, we were told that the Government implemented a formal training program at UCCI for the development of procurement officers in the Government. However we were informed that the program has had little take up and is not coordinated with any plan to develop additional procurement capability in the Government.

Recommendation #4: The Government should develop and implement a plan to develop the expertise necessary for an effective procurement function both centrally and in the entities.

LACK OF POLICIES AND PROCEDURES

56. We expected to find that government officials conducting procurement had sufficient and appropriate guidance to perform the function effectively. We found that there is an absence of guidance and those government officials doing procurement are not being directed to implement the management practices to ensure propriety and probity as well as fairness and transparency in the conduct of the Government's procurement activities.
57. The Cayman Islands Government does not have fundamental principles for its management of procurement that would form the basis for the development of a management framework. These would, for example, include:
- value-for-money;
 - open and effective competition;
 - probity and ethical behaviour;
 - environmental sustainability;
 - local business development (Section 36 of the Financial Regulations);
 - management of risk; and
 - ethical suppliers.
58. Principles become the basis for the development of directives and guidance for how public servants should act and conduct their business. Without this kind of guidance, more direction cannot be developed.
59. We found no evidence of policies that covered all aspects of the procurement process. Other than a broad set of rules established in the Financial Regulations regarding preference to local suppliers and tendering for requirements over \$50,000 and CTC guidelines for tenders over \$250,000, the Government's laws, regulations and policies are insufficiently detailed to provide the necessary guidance for how procurement should be conducted. We found two publications developed by the CTC with regard to the prequalification process and for the open tendering process. There is no other guidance available regarding the broad range of procurement options available to a public sector organization such as restricted tenders, negotiated tender or central call-off contracts. Of note is the forward section of the CTC open tendering guidelines that makes reference to the type of guidance necessary for a fully functional procurement function, however, there has been no follow-up on this plan. It included the creation of process and documentation relating to:
- determining the business case for procurement
 - identifying and evaluating different procurement options
 - contracts, terms and conditions
 - tender document packages
 - general tendering guidelines
 - specific tender guidelines for construction, supplies, services and consultancy
 - methods of tendering
 - Freedom of Information requirements
 - post tender review and reporting

60. The CTC open tendering guide goes on to say the following: *“the above list is only a selection of the requirements identified at this stage, and each process will require supporting training and communication in both the public and private sector. Although there is a significant task ahead, which should not be underestimated, I am confident that we will move forward in achieving our desired goal of efficient, effective and transparent public sector procurement.”* The Government has not followed up on this commitment made in June 2008.
61. We found draft guidance in one government department, but it fell far short of what we would expect procurement officials would use to effectively carry out their responsibilities.
62. The development and use of standard procurement documents also plays a significant role in providing transparency and efficiency in the procurement process. Standard procurement forms ensure that the language used is simple and consistent; they eliminate redundancies and contradictions; and they present a common look and feel for suppliers doing business with Government. While they may not be appropriate for complex, one-time or innovative requirements which may need considerable research and drafting of specific terms and conditions, clauses or schedules, they are an important in ensuring efficient and effective procurement.
63. We found that there is a lack of standard procurement documentation, such as standard form contracts for the various types of contracts entered into by the Government. To ensure the Government was entering into legal agreements with suppliers effectively, we expected to find good guidance including examples and possible standards for what officials should use for contracting. We found that there is little or no guidance or standard form of contracts available in the Government. We noted, however, that the Public Works Department has made an effort to develop some guidance.
64. Standard form contracts are useful for the consistency, predictability and efficiency of contract development as well as other aspects of contracting such as finalizing the contract and its later management. There are benefits for staff that become familiar with their content and the way they operate and/or undertake training in regard to the use of the standard form. It is good practice to have standard form contracts when entities have common, ongoing contracting requirements.
65. There are no procedures in place to ensure that contracts are legal. We have found that in the absence of contract policies and procedures and without the benefit of using standard contract forms, there is no assurance that contracts contain the necessary clauses and conditions one would expect to find in legally binding contracts. This is particularly important in high value, high risk contracts to ensure the Government’s interests are protected and that there is compliance with Cayman Island laws and policies. Legal advice should be sought early in the planning stage of the procurement process, particularly for the high risk, complex, or strategic procurements. Specific documentation may need to be developed, including a draft contract if necessary, to accompany procurement documents. Legal advisors should be involved in developing standard contract templates and also be consulted, when necessary, on development of business cases for particular procurements.
66. In the absence of such a procedure, the Government can be exposed to undue risks. We note that a similar finding was made three years ago by our Office with regard to the audit of the Matrix scrap metal contract. However, although the Government represented to the Legislative Assembly in March 2010 that it was implemented, we were informed by senior management that it has not been done.

67. There are no procedures in place to ensure government suppliers comply with laws such as pension and health care for employees. As mentioned above regarding the need for a review by legal counsel, there is an absence of a formal policy and procedure on the creation and use of standard contract documents and/or mandatory terms and conditions that must be incorporated in all government contracts. Contracting authorities cannot rely on suppliers to comply with and observe all applicable laws and published regulations. While we are aware of situations where appropriate legal clauses have been included in contracts, this is the exception rather than the rule. As described above, entities should establish appropriate policies to ensure suppliers are in compliance with Cayman Islands laws before doing business with them.
68. There are no procedures in place to ensure due diligence is undertaken of potential suppliers, either at the tendering or contracting stages. Suppliers must be held accountable for representations submitted in their offers and proposals in response to requests for tenders or quotes. Appropriate wording should be used in contracts to ensure that these assertions are formally acknowledged by the supplier and represent accurate and truthful statements. Project authorities, or their authorized representatives, in entities must be thorough in ensuring that deliverables of supplies or services are in strict accordance with contract terms and conditions. Contractors should be officially notified without delay in situations where there are concerns that contract expectations have not been met. Procedures regarding the use of the appropriate standard contract documentation would help ensure that contractors are held accountable for their actions.
69. We found no policies or guidance on advance payments to suppliers. Two of the three contracts we reviewed in detail include provisions for advance payments. While these types of payments may be warranted at times, contractors are normally expected to finance their work from their reserves or through commercial financing based on anticipated payments from the contracting authority for full or partial completion of the work. Contracting authorities should consider the financing and interest costs to the Government, as well as the method of recovery, when negotiating advance payments and should evaluate these costs when comparing other alternatives. Comprehensive policies and guidelines should be established with respect to the circumstances under which advance payments can be made and the terms and conditions to be incorporated into contracts to ensure adequate security for the payment.
70. There is no formally documented appeal process for bidders to the tendering process and suppliers providing supplies and services to the Government. Arrangements should be in place that describe to whom and where a complaint should be addressed as well as the entity's procedures for responding to the complaints. In cases where the supplier is not satisfied with an entity's official response, it may be appropriate for an independent review to be conducted. All entities should have a process in place to deal with these situations to avoid the perception of unethical and non-transparent behaviour in the procurement process by suppliers and the general public.

Recommendation#5: A policy should be developed and guidance should be communicated setting out the circumstances when an entity should seek legal advice or assistance in preparing contracts.

Recommendation #6: The Government should develop and effectively communicate policies, procedures and general guidance to all officials in the Government responsible for conducting procurement. Without this type of guidance, procurement activities will continue to be at risk of mismanagement by government officials.

Recommendation #7: The Government should consider procurement options other than the current open tendering process and provide guidance for when it could be used and how it could be managed.

Recommendation #8: The Government should give priority to the development and mandatory use of standard documents in order to increase the efficiency and effectiveness of procurement.

Recommendation #9: The Government should develop and implement an appeals process.

NO ONE IS MONITORING COMPLIANCE WITH THE REGULATIONS

71. We expected to find that someone was monitoring procurement activities in the Government and ensuring its effectiveness and compliance with the regulations. At the very least, in the short term given the importance of the function and the current risks associated of carrying out the function without a management framework in place, we would have expected the Government to have implemented an internal audit plan for the review of the function.
72. While internal audit has done some limited work on procurement activities in the past, they have no intention at this time to audit these activities in the near future.
73. Reporting to senior management on the effectiveness of its operations is a key component of the accountability framework to ensure the economy, efficiency and effectiveness of government programs or, in other words, due regard for value-for-money.
74. Government managers effectively have had to interpret the laws and regulations and determine for themselves how to conduct the procurement function. With the current framework, entities are required to self-police themselves with respect to ensuring compliance with the laws and regulations as there is no government-wide regularized internal audit program for procurement activities.
75. We found that practice varies widely throughout the ministries and portfolios and in the activities carried out by those individuals in the numerous entities who are performing the purchasing function.

Recommendation #10: Because of the significant risks and lack of controls identified with the management of the procurement function in the Government, we strongly urge that a compliance audit regime be implemented to conduct a rigorous review of government procurement.

ENTITIES DO NOT HAVE EFFECTIVE PROCUREMENT FUNCTIONS

76. In the four government entities we reviewed, we could not find management frameworks in place for the procurement of supplies, assets and services. As with other significant administrative responsibilities such as finance and personnel, we expected to find someone responsible in each entity for the procurement function. We also expected to find policies, guidance and procedures for how the function would be carried out by officials. We also expected to find some form of accountability reporting on the function. We found a general absence of these elements in the four entities.
77. In the interviews we conducted with officials in the four entities, we found in all cases that no one was charged with responsibility for providing assurance to their respective governing bodies that there were appropriate systems, procedures and practices in place to ensure the entity was meeting legislative requirements for procuring supplies, assets and services for the Cayman Islands Government. In all the entities we reviewed we found, for example, evidence of poor internal controls for the procurement function to operate effectively. In the statutory authorities, for example, the officials ordering the supplies and services were the same individuals who were receiving them. We found that government officials are not generally concerned, or in some cases even aware, that good internal controls are necessary for an effective procurement function.
78. In some entities we reviewed, the procurement function is being carried out by officials who are also responsible for program delivery. These individuals generally do not have any form of procurement training. While we expected to find some overlap in responsibilities in smaller organizations, we also expected to find that the associated risks were properly managed. For example, where an operational manager is also conducting procurement, there should be clear guidelines and rules for them to follow to ensure that the process is carried out fairly and transparently with due regard for value-for-money.
79. While it is clear that entities should be doing more to manage their procurement activities, we believe that central leadership for the Government of the Cayman Islands would assist greatly in determining the expectations for this important function to be implemented.

Recommendation #11: All government entities should review their operations and implement an appropriate management framework for the procurement function.

VALUE-FOR-MONEY

GOVERNMENT IS NOT MANAGING PROCUREMENT WITH DUE REGARD FOR VALUE-FOR-MONEY

80. While procurement should be done fairly and with full transparency ensuring public trust is maintained, it is also critical that the Government manages procurement activities with due regard for value-for-money. Management should have in place procedures that would demonstrate how they are achieving good value-for-money. The two key practices we expected to find were:
- business cases that clearly outlined the management’s considerations concerning the business objectives to be achieved, the various options for delivery and the costs and benefits associated with each option. For the procurement of significant assets, we would have expected, for example, the consideration of full costs over the life cycle of the asset as well as the use of methodologies such as net present value calculations to demonstrate how value was to be achieved; and
 - post implementation reviews or accountability reports after the completion of a project, acquisition of an asset or the performance of a service to demonstrate that value was achieved and to provide learning for future activities.
81. We found that these practices are not being followed by government officials. For example, in the case studies we reviewed the entities are not preparing the business cases required nor are they preparing any form of post implementation reports.
82. The Government also did not fully implement a procurement management framework as outlined in the Financial Regulations. In accordance with Part XII – Capital Project Appraisal of the *Financial Regulations (2010 Revision)*, chief officers of entities are required to ensure all capital projects valued at \$300,000 and above are submitted, using prescribed formats, to the Public Sector Investment Committee (PSIC).
83. The role of PSIC is to review the documentation and submit recommendations on the viability of capital projects to the Governor in Cabinet, through the Financial Secretary. This Committee has not been established. Consequently, a key element of the procurement framework is absent, specifically the process of rigorously evaluating proposals for capital investment projects at the earliest stage of the process and ensuring the sustainability of the Government’s long term capital plans. Without the rigour required in this kind of process, it would be very difficult, if not impossible for officials to demonstrate due regard for value-for-money.

Recommendation #12: The Government should develop a procurement management framework that will ensure large capital projects provide value-for-money, demonstrate alignment with the Government’s objectives, and ensure sustainability for long term capital plans.

Recommendation #13: CTC should ensure that entities have prepared full business cases for all procurements greater than \$250,000 and demonstrate how the entity is managing with due regard for value-for-money.

Recommendation #14: Entities should prepare post implementation or accountability reports to demonstrate how value-for-money was achieved while capturing recommendations for practice improvement.

GOVERNMENT IS LIKELY PAYING MILLIONS OF DOLLARS MORE FOR SUPPLIES AND SERVICES THAN NEEDED

84. Procurement for some significant expenditure in Government such as information technology (IT) hardware and software is not coordinated and managed effectively. IT is one of the most important tools used by almost every public servant across the Government to carry out their duties. The acquisition of information technology capability is often one of the highest valued and most complex of procurement activities. During our audit, we found that government entities are individually purchasing both hardware and software to satisfy their requirements despite the computer services group urging a more centralized approach. In other governments, it is well documented that significant savings can be achieved by centralizing the procurement activities for IT.
85. Due to its importance to its operations and the expenditures involved, we plan to conduct an audit of the value that Information Technology provides to the Government in the future.
86. We also found little or no co-ordination of the acquisition of telecommunication services. We interviewed ministry and portfolio officials and found out that in some cases, those services are bought separately by the departments within the entity itself. For example, we found one portfolio that decided on its own to co-ordinate its procurement activities for telecommunication and we were informed that there were over \$500,000 in savings in the last few years.
87. We assume the same is true for other high value commodities, but because there is little or no data available on procurement activity in the Government to determine the extent of the volumes and values of significant procurements, we could not perform a reasonable analysis. However, based on the interviews we conducted and other financial audit work we conduct across the Government, we believe that the Government could save several million dollars by establishing and following guidelines for the centrally coordinated acquisition of many of its supplies and services.
88. Considerable savings in both the human resources used and costs of purchases can be achieved by consolidating certain purchasing requirements on a government-wide basis due to economies of scale, increased purchasing power and taking advantage of expertise to manage this activity. An information gathering project should be undertaken of all high value and/or volume procurements with a view to coordinating and consolidating, where feasible, these requirements and issuing centralized contracts.

89. It is also worth noting that Government has already identified considerable cost saving opportunities similar to the ones we found during its own recent reviews of various programs in the public sector. However, when asked if there was a comprehensive implementation plan in place to implement many of the key recommendations made in these reviews, we were told that none has been prepared.

Recommendation #15: The Government should co-ordinate the procurement of its supplies, assets and services across all entities that will likely save several million dollars and demonstrate due regard for value-for-money.

IMPLEMENTATION OF THE CURRENT FRAMEWORK

DEPARTMENTAL TENDERS COMMITTEES (DTC) OPERATIONS NEED SIGNIFICANT IMPROVEMENT

90. Section 41 (1) of the Financial Regulations requires that tenders submitted for any contract with a value of less than \$250,000 shall be evaluated by a departmental tenders committee (DTC) established by the chief officer of the purchasing entity. The Central Tenders Committee (CTC) Open Tender Process guidelines outline the requirements for government entities to use a DTC during an open tender process for procurement over \$250,000 to evaluate the bids received and prepare what is called an evaluation summary and tender award recommendation (ESTAR) report for review by the CTC.
91. In the CTC guidelines, it says:
- “The integrity of the public sector relies on all bids being evaluated fairly and impartially against the eligibility and evaluation criteria stated in the advertisement and tender documents. The entity DTC is responsible and held accountable for ensuring that the process of bid evaluation is carried out in an ethical, fair, consistent and transparent manner and that the tender award recommendation provides value-for-money over the full procurement life-cycle whilst adhering to Cayman Islands and Government legal requirements.”*
92. While we believe that the intent of the CTC in establishing these objectives is admirable, there is nothing in the process described in the guidance, or in any other guidance provided by the Government, to ensure that the DTC can achieve its intended objectives. In fact, if the objective were to be met, the DTC would be a permanent fixture in every entity; which they are not. Currently, we were informed that DTCs are only formed and operating for the evaluation of the tendering process and not generally responsible for other aspects of the procurement lifecycle as was intended by the CTC guidelines.
93. For example, there are no requirements for the members appointed to a DTC to follow any specific code of conduct nor is a code documented anywhere. There are no provisions for how the committee should be appointed, its operating terms of reference or how it should demonstrate due diligence in its operations. As mentioned earlier in the report, this is consistent with our finding that there are insufficient policies and guidance with regard to the procurement function operating effectively in the Government.

94. Governments have a responsibility to maintain the confidence of the supplier community and the public in the procurement system by conducting procurement in an accountable, ethical and transparent manner. A code of conduct consolidates the Government's existing legal, regulatory and policy requirements into a concise and transparent statement of the expectations the Government has of its employees and its suppliers. It ensures that all parties involved in the procurement process are working from the same statement of expectations and commitments that clearly outline what is acceptable conduct when contracting with the Government. Suppliers are not required to have their own codes of conduct to do business with the Government but it should be a condition of all contracts that suppliers have read and agreed to be bound by the terms of the Government's procurement code of conduct.
95. In the absence of a code of conduct, the expected confidentiality of the DTC proceedings would be subject to the members own interpretation of ethical conduct. A formal code of conduct will assist in alleviating this concern.

Recommendation #16: The Government should develop a code of conduct relating to the procurement function that covers all aspects of its management including the expectations for the members of a Departmental Tenders Committee.

96. We also found an absence of conflict of interest rules with regard to the operations of a DTC. During our audit, we were informed of situations where DTC members were deemed to be in a conflict of interest yet did not withdraw from the process.
97. Public servants and individuals acting on behalf of Government must arrange their private affairs in a manner that will prevent conflicts of interest between their private interests and their public duties. Guidelines are required to assist participants in determining if they may be in a conflict of interest situation.
98. The Government should also have in place a framework for employees to register any potential or real conflicts of interest on a regular basis. This is in itself the subject for a separate performance audit, however, due to its clear impact on the ability for the procurement process to be fair, open and transparent; we believe that it is critical that the Government address this shortcoming as a priority.

Recommendation #17: The Government should develop conflict of interest guidelines and include specific guidance relating to the procurement function including those expected for members to operate effectively on a Departmental Tenders Committee. This would extend the requirement for registers of interests to be completed for all managers in the Government.

99. Chief Officers of prescribed entities are responsible for establishing DTCs, but there are no policies or guidance with respect to the qualifications required by individuals who may be considered for membership. Basic levels of experience, education and/or relevant credentials need to be defined and incorporated into guidance that should be made available to appointment authorities in all entities.
100. In the four entities we reviewed, we found only one instance where a department in that entity developed guidelines to define roles, objectives and terms of reference for their DTC's operations.

101. During our audit, we found instances where the members of the DTC were appointed by certain politicians. In one case, we found that a ministry was directed to only let the political appointees vote on the committee and determine the evaluation scores for the bid evaluation process that ultimately determined which bidder was recommended to receive a contract. This type of activity undermines the ethics and integrity principles in the procurement process that the Government should be striving to achieve. Ultimately, we believe this type of behaviour undermines the confidence of suppliers and the general public. Clearly written policies should prevent this type of activity and communicate effectively the guidance for membership of a DTC.

Recommendation #18: The Government should develop guidelines for how DTCs should be formed, including the considerations of membership and how they should operate; including their suggested terms of reference.

CENTRAL TENDERS COMMITTEE (CTC) OPERATIONS NEED SIGNIFICANT IMPROVEMENT

102. The *Financial Regulations* provide minimal direction and guidance for the operations of the CTC, including its membership, terms of reference and operations. In section 41(2) (a) and (b), the Central Tenders Committee is supposed to be comprised of the Chief Officer of the Ministry of Finance (or their nominee) and any other persons appointed from time to time by the Financial Secretary. There is no mention of how many and, for example, what kind of experience and skills the members of the Committee should have. According to the Regulations in Section 41 (2), the CTC should evaluate tenders submitted for any contract with a value greater than \$250K. In addition, the CTC has responsibilities to approve the commencement of the pre-qualifying process under Section 39 (1) and develop guidelines for a practice manual.

103. According to its manual describing the open tender process, the CTC is responsible for opening the bids and reviewing and approving the DTC's recommendation of award (ESTAR report). The CTC is also responsible for verifying the signed contract to the terms approved during the tender process and take any necessary further action if required. Finally, the CTC together with the entity purchasing authority should prepare an accountability report once the contract has been completed.

CTC LACKS A CLEAR ROLE AND TERMS OF REFERENCE FOR ITS OPERATIONS

104. Given the framework outlined in the laws and regulations for procurement of supplies, services and assets over \$250,000 for the Cayman Islands Government, we expected to find a clear definition of the role of the CTC for its operations. We were informed that none exist.

105. As documented in an earlier section of this report, it is clear that the responsibility for ensuring that the procurement for supplies, services and assets to be conducted in accordance with the laws and regulations is the responsibility of the entity doing the procurement. The CTC is designed to provide an oversight role and assurance to the suppliers that the process has the integrity necessary so that it can be trusted to be fair and transparent. For example, the CTC ensures that the bids receipt process is managed effectively and that the evaluations of tenders are complete and accurate.

106. To perform their responsibilities, there should be clear guidelines for how the committee should operate and what it expects from the entities that conduct procurement in the Government. For example, there should be clear guidelines provided for how bids should be evaluated and what is expected to be included in an evaluation report that would recommend a successful bidder from a tender process.
107. We reviewed the minutes of the Committee for the last three years and found that the Committee often got into detailed discussions about the information in the tender documents and in the evaluation reports that we believe were unnecessary resulting from a lack of understanding of the role the Committee should be performing. We believe that CTC’s oversight role, to ensure that the procurement process has been followed by the entities, has been compromised by not having the necessary guidance for their operations. We found significant time and effort spent by the CTC where the members were second guessing the information provided by the entities, thus duplicating responsibilities that we believe should be made clearer.
108. We believe there are opportunities to streamline the process and make it more effective. For example, the review of the information produced by entity DTCs would be better performed by a procurement specialist whose role it would be to provide assurance to the CTC that the documentation provided meets its expectations.

Recommendation #19: Policies, guidelines, procedures and terms of reference should be developed for the operations of the Central Tenders Committee.

APPOINTMENT PROCESS IS LACKING

109. There are currently five members serving on the CTC. In recent years, there have been up to eight members on the Committee, including the Chair. While there are no criteria for how many members should be on the Committee or the basis for their appointment, the Financial Secretary has been appointing members until recently when he decided to not appoint three new members to replace three who had resigned. One of the members who resigned was also the Secretary. At this time, Mr. Dunn is currently both Chairman and Secretary of the Committee.

| Members of the Central Tenders Committee |
|---|
| Mr. Ronnie Dunn (Chairman and Secretary) |
| Mr. Lee Ramoon (Deputy Chairman) |
| Ms. Wanda Ebanks |
| Mr. John Thompson |
| Mr. Gerry Wood |

110. The Committee has established that four members constitute a quorum. While it is difficult to ascertain if the CTC has the capacity to function effectively with five members (including the Chairman), it is assumed that the Chairman would frequently be required to cast a deciding vote. This is far from an ideal condition under which such an important Committee is expected to operate.

111. There are no criteria for the qualifications and experience necessary for members to serve on the Committee. Clear criteria would ensure, for example, that there is appropriate financial, legal and procurement expertise on the Committee for it to perform effectively.
112. Recently three members of the Committee submitted their resignations. It is unusual for such a large turnover of an operational committee at one time, and this can cause significant difficulty in the effective operation of such a committee. For example, the orientation and training of its new members would normally entail a significant investment by the Government.
113. The Government is experiencing challenges to appoint the missing members of the Committee because there are no clear criteria for membership. We would have expected that the Financial Secretary, who according to Section 40(2)(c) of the Financial Regulations is responsible for appointing members, would have clear criteria for the qualifications and experience for committee membership. This is not the case.
114. The CTC is an operational committee in the Government. For such a committee, to operate effectively and to have the desired level of trust from suppliers and of the public in general, we believe it needs to be free from any form of political influence. We found that despite the requirement under the *Financial Regulations* for the Financial Secretary to appoint members of the CTC, politicians have been recommending who should be appointed to the CTC.

Recommendation #20: As part of the wider review of the procurement management framework, there should be safeguards put in place to ensure that CTC members are appointed without political influence, possibly by the Governor with advice from the Commission on Standards in Public Life.

Recommendation #21: The Government should develop and implement criteria for appointing members to the CTC that would ensure the Committee has the appropriate skills and experience to perform the required duties.

TRANSPARENCY IS LACKING

115. Transparency is one of the key attributes for an effective and equitable procurement function in the public sector. We found a general lack of transparency in the current Government's procurement practices.
116. Other developed countries, such as Great Britain, Canada and the United States make public the relevant details of significant contracts entered into by their public sectors. This ensures the transparency of how public funds are being spent and to help deliver better value-for-money in public spending. More importantly, greater transparency of the procurement activities ensures the public can hold public bodies and politicians to account.
117. Information concerning who the successful bidder is on open tender contracts greater than \$250,000 and the pertinent details of the contract are not currently readily available to the public. In addition, there is no information available for contracts under \$250,000.

118. Without any transparency of the results of the procurement process, we strongly believe that there cannot be a fair and equitable procurement process in this country. Due to its relatively small size and the significant potential for conflicts of interest and irregularity to enter into any procurement performed, timely public reporting of all contracts should be considered an essential element of the management framework.

Recommendation #22: The Government should implement timely reporting of the winning bidders and the key terms and conditions of contracts over \$250,000 and consider the threshold for making public all contracts over that amount.

ABSENCE OF A CODE OF CONDUCT/ETHICAL BEHAVIOUR

119. As mentioned earlier in this report, Government has a responsibility to maintain the confidence of the supplier community and the public in the procurement system by conducting procurement in an accountable, ethical and transparent manner. A code of conduct ensures that all parties involved in the procurement process are working from the same statement of expectations and commitments that clearly outline what is acceptable conduct when contracting with the Government. In the absence of a code, for example, the expected confidentiality of the CTC proceedings will be subject to the members own interpretation of ethical conduct.

120. A formal code of conduct that is clearly communicated and agreed to by the members of the committee is an essential element of ensuring the expected behaviour and the ability for CTC to have the credibility and trust it requires fulfilling its mandate.

Recommendation #23: The Government should develop conflict of interest guidelines and include specific guidance relating to the procurement function including those expected for members to operate effectively on the Central Tenders Committee.

ABSENCE OF RIGOROUS CONFLICT OF INTEREST GUIDELINES

121. In the foreword section of the CTC open tender process guide, the Financial Secretary emphasized the need for:

“...consistent application of these guidelines (Open Tender Process) is essential to increase value for money and trust in public sector procurement as a result of improved process efficiency, transparency and uniformity of documents and decision making.”

122. We believe the first step to achieve this objective would have been to implement rigorous conflict of interest guidelines for members of the CTC. The CTC is the oversight body for the procurement process and, in order for the procurement process to have the kind of trust required by Legislators and the public, its members should be held to the highest standards possible for their behaviour. Guidelines need to be established to ensure CTC members declare potential or apparent conflicts of interest with his or her official duties due to ownership of assets, liabilities, family relationships or other such circumstances.

123. Currently, Committee members are only asked to declare conflicts of interest on a case by case basis. However, as noted, there is no guidance provided as to what constitutes a conflict. Members should fully disclose their involvement in any external activities that may influence their judgment while participating in CTC evaluations. The Chairman will determine if there is an interest in a specific procurement and whether or not the member should withdraw. A specific policy/guideline should be developed to assist members in determining when a conflict of interest may exist.
124. When individuals are privileged to information that could benefit others as part of a government process, we would expect that its members are required to sign confidentiality agreements to ensure the integrity and trust in the process. During our audit, we found evidence that there was information made available to parties outside the Committee before a decision was finalized and communicated to a ministry.
125. Confidentiality is a key ingredient to ensure fairness in any tendering process. The information contained in supplier bids submitted for a government tender is, by default, confidential in nature. Until the winning bidder is publicly announced, suppliers fully expect that their offers will be kept in a secure physical and intellectual environment. Even following announcement, the unsuccessful bidders have the right to expect protection of their information. Public faith in the system will fail unless this practice is rigorously adhered to. Therefore, members of the Committee should be required to sign appropriate confidentiality agreements.

Recommendation #24: Central Tenders Committee members should be required to sign confidentiality agreements that include significant consequences in the event they are breached.

CTC DOES NOT HAVE THE NECESSARY OR APPROPRIATE RESOURCES

126. As noted above, Mr. Ronnie Dunn is currently being required to act both as the Chairman and as the Secretary to the Committee. When acting in both roles, it is likely that one or both roles will not be performed appropriately. Mr. Dunn has other significant activities to perform as a public servant with regard to his role as Director of the Budget Management Unit in the Ministry of Finance.
127. We reviewed the recent minutes of the Committee. Because of their importance to the integrity of the procurement process, we expected to find a very thorough and precise record of the proceedings. We found that the minutes were thorough; however, they have not been signed and declared official in some form.
128. We are also concerned that there is no one on the CTC who is a procurement specialist or that the Committee does not have access to the resources necessary to provide advice on its operations.

129. The CTC is made up of individuals from outside of Government. The *Financial Regulations* do not prescribe the membership of the CTC. Being an operational committee that is accountable for its results, there should be consideration for it to operate with a mixture of public and private sector members. There are several benefits for using public servants as members including:

- accountability through performance management;
- investing in training and development;
- an understanding of public sector operations; and
- non-partisanship resulting from their employment.

130. We could not find justification for the use of only outside members on the CTC.

Recommendation #25: The resources needed to effectively support and operate the Central Tenders Committee should be in place to ensure it can fulfill its mandate.

Recommendation #26: The CTC should be reconstituted to include both public servants and members from the private sector.

CTC NOT FULFILLING ITS OWN RESPONSIBILITIES

131. As stated previously, the operations of the CTC are guided by the PMFL, Financial Regulations and two documents created by the CTC for the procedures to be followed for the open tender and pre-qualification processes.

132. We expected that the CTC would follow its own open tender manual. We found three key areas where the CTC is not following its own guidance that we believe reduces the effectiveness of the Committee's operations:

- As an oversight body, we expected that the CTC would ensure that the procuring entities were following the procedures it has outlined. For example, we expected that the CTC would ensure that the procuring entity developed a business case that meets the standards expected of the open tender process for it to commence a tender process. This is not being done.
- The CTC is required to prepare a post implementation report for every contract to "determine if value-for-money has been achieved and to ensure information and learning is shared within the Public Service". We were informed that the CTC does not have the resources to carry out this responsibility.
- The CTC is required to review the contracts signed by the procuring entities to ensure that the contract aligns with the provisions of the tendering process. In other words, it ensures that the entity has not circumvented the open tender rules by including terms and conditions in the contract beyond what was tendered or that elements tendered for are not included. This procedure is not being performed.

133. The "Open Tender Process" document has not been updated for changes since it was issued in June 2008. Since that time, there have been some operational changes such as the requirement for the entity to announce the successful bid rather than the CTC. This change was made by Cabinet. In previous audits, we recommended that the Manual should be reviewed and revised.

Recommendation #27: The open tender process manual should be reviewed and updated regularly and changes made communicated to government entities and the business community.

Recommendation #28: The CTC should follow its own manual and review contracts for their compliance with the tendering process and produce post-implementation reports.

FUNDAMENTAL REVIEW OF PROCUREMENT FRAMEWORK NEEDED

134. In conducting our audit, we reviewed the current procurement framework outlined in the PMFL and Financial Regulations to determine the extent to which it has been implemented and respected. Our recommendations throughout this report are based on the Government fully implementing the framework that has been outlined. We found that the key missing piece in the current framework is a central procurement leadership role that ensures the consistent and accountable implementation of the policies, procedures and practices for an effective and efficient procurement function in the Government that ensures due regard for value-for-money.
135. However, there are several elements in the current framework that are unique in their operations to this Government and should be reviewed for how they may operate differently and possibly, more effectively. For example, questions may be asked whether there needs to be Departmental Tenders Committees appointed by each Chief Officer or whether there should be a pool of expertise established throughout the Government or, alternatively, whether a DTC is necessary at all.
136. The current procurement framework is about seven years old and there has been considerable growth in the public sector since its implementation. As well, the Government has had seven years of experience with the current framework and public officials have likely identified opportunities for improvement in that timeframe to make it more efficient and effective.

Recommendation #29: The Government should conduct a full review of the PMFL and *Financial Regulations* to determine if the current procurement framework is still an effective approach to conduct procurement. This could include, for example, the assessment of the current role of Departmental Tenders Committees and the Central Tenders Committee.

POLITICAL INTERFERENCE

POLITICAL INTERFERENCE IS CREATING RISK, UNCERTAINTY AND MORALE PROBLEMS IN GOVERNMENT OPERATIONS

137. During our audit, we found several instances where politicians have been involved in the day-to-day operations of the procurement function. There are significant risks and negative consequences when this happens.

EQUITY AND TRANSPARENCY OF THE PROCUREMENT FUNCTION IS LOST

138. Without a clear definition of responsibility and accountability for the actions taken by politicians in an administrative process, there are significant risks to the equity, transparency and effective operation of the procurement function. Good governance in the public sector procurement requires that there is a clear division of responsibilities between elected members and administrative officials.

VULNERABILITY TO CORRUPTION AND ABUSE

139. We found evidence that some politicians are not complying with the procurement rules that have been established by the administration and, in some cases, contravening the laws and regulations. In other countries, the practice of politicians being involved in the administration of government's transactions has resulted in cases of corruption and abuse. There are limited checks and balances for government transactions that are conducted "outside" the administrative processes in place, increasing the risk of corrupt transactions occurring. Without some form of oversight of the individuals conducting the transactions, there is no assurance that the risk of fraud and corruption is being effectively managed.

PUBLIC SECTOR MORALE IS AFFECTED

140. When politicians override the actions and decisions of administrative staff, their morale can be negatively affected. The employee's sense of value to the organization is diminished and the sense of ownership and responsibility for ensuring that they are doing their best work for their employer is lost.

141. During our interviews, we were told of a number of recent situations when political interference had created uncertainty and angst among government employees. For example, in one case, politicians met with middle management officials to question their decision with regard to procurement. In another case, we found that politicians directed the appointment of individuals, who were not government officials to a Departmental Tendering Committee. The government employees participating on the committee were informed that they could not participate in the evaluation of the bids. In another case, Cabinet reviewed the results of a tendering process and held up the announcement of the winning bidder. In the meantime, politicians questioned entity

officials repeatedly regarding the decision rather than simply asking the Chief Officer to provide assurance, in his opinion, whether he could assert to the rigour and fairness of the process.

142. We found a senior public servant who submitted his resignation to the Government as a last resort to demonstrate his unease with the level of political override that was occurring and the impacts it was having on his ability to do his job effectively, and members of committees stepping down and not wanting to participate in the current procurement process because of the impacts of political interference..
143. During our interviews, we found evidence that public servants no longer want to participate in the procurement function, or do so with great trepidation because of the risk of political interference and the possibility for abuse of the process that might be associated with such activities.

BOARDS OF STATUTORY AUTHORITIES INVOLVED IN DAY TO DAY MANAGEMENT

144. In the two statutory authorities we included in our audit, we found board members involved in the day to day management of procurement transactions including, for example, the assessment of options for capital developments and negotiation of significant contracts with outside suppliers.
145. The boards of statutory authorities should provide a stewardship and oversight role and any activities related to the direct management of the entity would be very inappropriate and undermine the accountability framework that the entity has with the Government. While we noted that the Government has not formally established and communicated what are appropriate roles and responsibilities, activities could include:
- reviewing and approving organizational structure and controls;
 - ensuring that management is qualified and competent;
 - reviewing and approving business objectives, strategies and plans;
 - reviewing and approving policies for major activities;
 - providing for an independent assessment of, and reporting on the effectiveness of, organizational and procedural controls;
 - monitoring performance against business objectives, strategies and plans;
 - reviewing and approving sound corporate governance policies, and
 - obtaining reasonable assurance on a regular basis that the institution is in control.
146. Similar to political override, there are limited checks and balances for the transactions that are conducted “outside” the administrative processes in place. As a result, there are increased risks of fraud and corruption associated with these types of transactions.

Recommendation #30: The Government should communicate through legislation, policy, or some other means, the respective roles and responsibilities of politicians and administration for procurement activities that include sanctions in the event that the roles are transgressed.

CONCLUSION

147. All public sector entities are obliged to establish effective arrangements for their governance – that is, for directing, managing and overseeing their operations and accounting for the use of the resources entrusted to them. Public sector managers should be responsible for ensuring that employees of an organization act ethically and in the best interests of the elected Government of the day. This includes the obligation to act faithfully and honestly in the course of their employment. Senior managers including the Deputy Governor, the Financial Secretary, the Chief Officers of ministries and portfolios and Managing Directors of statutory authorities and government companies are responsible for ensuring that these obligations are fulfilled.
148. This audit and other recent audit work we have performed about management of the financial function shows that the governance arrangements for the effective management of the Government’s procurement activities are very poor. We found that senior government officials generally have not discharged their duties to ensure that appropriate management practices have been established and operating effectively to ensure propriety and probity as well as fairness and transparency in the conduct of the Government’s procurement activities. This is potentially leading to a significant waste of public resources.
149. Furthermore, we found that politicians are getting involved in the day-to-day management of the procurement function thereby rendering any delegation of responsibility and accountability to senior government officials, both in core government and statutory authorities, impossible to achieve. At the same time, the political interference has created a culture of uncertainty and distrust among public servants. In the statutory authorities we reviewed, we found board members that are directly involved in the management of day-to-day procurement activities including the negotiation of significant contracts on behalf of the Cayman Islands Government thus ceding any possibility of holding public servants to account and introducing the risk of corrupt behaviour.
150. This report contains several recommendations relating to the development, implementation and operations of an effective procurement function that would ensure the Government achieves its objectives and can be held accountable to the people of the Cayman Islands. We strongly recommend that this report and its findings are considered by the Legislative Assembly and that actions be taken immediately to implement the individual recommendations.

Based on what we found, we concluded that the Government of the Cayman Islands is mismanaging the procurement of supplies, services and assets resulting in a lack of efficiency, transparency and fairness as well as costing the Government millions of dollars more than necessary. If not addressed immediately, the procurement activities will continue to be at significant risk of waste, abuse, and potentially fraud and corruption.



*Alastair Swarbrick MA(Hons), CPFA
Auditor General
George Town, Grand Cayman
Cayman Islands*

5 July 2011

APPENDIX 1 – PROCUREMENT FRAMEWORK IN THE *FINANCIAL REGULATIONS (2010 REVISION)*

- i. The procurement gives preference to suppliers trading, carrying on business or operating within the Islands subject to ensuring value for money and that price and quality of supplies and services is no more than overseas procurement
- ii. All procurement greater than \$50,000 is offered for public tender.
- iii. All procurement, regardless of the amount, where only one supplier can provide the supplies, services or assets, public tender is not required where appropriately supported by the Chief Officer.
- iv. Procurement under the Emergency Powers Law does not require public tenders.
- v. All tenders are evaluated by a Departmental Tenders Committee.
- vi. Tenders greater than \$250,000 are evaluated by the Central Tenders Committee.
- vii. Supplies, services and assets greater than \$250,000 procured by the Cayman Islands Government are in accordance with appropriations of the Legislative Assembly and approved by appropriate government officials.
- viii. Procurement of supplies, services and assets greater than \$300,000 have a completed project profile and project report (business case) with a recommendation to the Governor in Cabinet

APPENDIX 2 - INTERVIEWEES

Interviews of senior government officials

- Donovan Ebanks, Deputy Governor
- Kenneth Jefferson, Financial Secretary
- Ronnie Dunn, Chair, Central Tenders Committee
- Peter Gough, Advisor
- Karin Thompson, Chair, Commission for Standards in Public Life

Interviews of individuals in two ministries and portfolios - Internal and External Affairs and District Administration, Works, Lands & Agriculture (DAWL&A) and two statutory authorities -National Roads Authority and Ports Authority

- Tristan Hydes, Deputy Chief Officer, (DAWL&A)
- Nadisha Walters, Chief Financial Officer (DAWL&A)
- Max Jones, Director, Public Works
- Eric Bush, Assistant Deputy Chief Officer, I&EA
- Vinton Chinsee, Chief Financial Officer, I&EA
- Paul Hurlston, Managing Director, Ports Authority
- James Parsons, Chief Financial Officer, Ports Authority
- Brian Tomlinson, Managing Director, National Roads Authority
- Paul Shreiner, Chief Financial Officer, National Roads Authority

APPENDIX 3 - RECOMMENDATIONS AND MANAGEMENT’S RESPONSE

| Recommendation | Management Response | Responsibility | Date of planned implementation |
|---|---------------------|----------------|--------------------------------|
| <p>1. The Government should appoint someone as a Chief Procurement Officer who would be accountable for the overall development, management and reporting on the Government’s procurement activities. The reporting relationships for this individual would depend on the organization chosen by the Government to implement this crucial function.</p> | | | |
| <p>2. The Government should develop policies, procedures and practices for procurement of supplies, services and assets that would ensure clear direction to officials.</p> | | | |
| <p>3. The Government should determine the kind of information it needs to effectively manage the government’s procurement function and implement the appropriate systems for its capture, management, and reporting.</p> | | | |
| <p>4. The Government should develop and implement a plan to develop the expertise necessary for an effective procurement function both centrally and in the entities.</p> | | | |

| Recommendation | Management Response | Responsibility | Date of planned implementation |
|---|---------------------|----------------|--------------------------------|
| 5. A policy should be developed and guidance should be communicated setting out the circumstances when an entity should seek legal advice or assistance in preparing contracts. | | | |
| 6. The Government should develop and effectively communicate policies, procedures and general guidance to all officials in the Government responsible for conducting procurement. Without this type of guidance, procurement activities will continue to be at risk of mismanagement by government officials. | | | |
| 7. The Government should consider procurement options other than the current open tendering process and provide guidance for when it could be used and how it could be managed. | | | |
| 8. The Government should give priority to the development and mandatory use of standard documents in order to increase the efficiency and effectiveness of procurement. | | | |
| 9. The Government should develop and implement an appeals process. | | | |
| 10. Because of the significant risks and lack of controls identified with the management of the procurement function in the Government, we strongly urge that a compliance audit regime be implemented to conduct a rigorous review of government procurement. | | | |

| Recommendation | Management Response | Responsibility | Date of planned implementation |
|--|---------------------|----------------|--------------------------------|
| 11. All government entities should review their operations and implement an appropriate management framework for the procurement function. | | | |
| 12. The Government should develop a procurement management framework that will ensure large capital projects provide value-for-money, demonstrate alignment with the Government’s objectives, and ensure sustainability for long term capital plans. | | | |
| 13. CTC should ensure that entities have prepared full business cases for all procurements greater than \$250,000 and demonstrate how the entity is managing with due regard for value-for-money. | | | |
| 14. Entities should prepare post implementation or accountability reports to demonstrate how value-for-money was achieved while capturing recommendations for practice improvement. | | | |
| 15. The Government should co-ordinate the procurement of its supplies and services across all entities that will likely save several million dollars and demonstrate due regard for value-for-money. | | | |
| 16. The Government should develop a code of conduct relating to the procurement function that covers all aspects of its management including the expectations for the members of a Departmental Tenders Committee. | | | |

| Recommendation | Management Response | Responsibility | Date of planned implementation |
|--|---------------------|----------------|--------------------------------|
| 17. The Government should develop conflict of interest guidelines and include specific guidance relating to the procurement function including those expected for members to operate effectively on a Departmental Tenders Committee. This would extend the requirement for registers of interests to be completed for all managers in the Government. | | | |
| 18. The Government should develop guidelines for how DTCs should be formed, including the considerations of membership and how they should operate; including their suggested terms of reference. | | | |
| 19. Policies, guidelines, procedures and terms of reference should be developed for the operations of the Central Tenders Committee. | | | |
| 20. As part of the wider review of the procurement management framework, there should be safeguards put in place to ensure that CTC members are appointed without political influence, possibly by the Governor with advice from the Commission on Standards in Public Life. | | | |
| 21. The Government should develop and implement criteria for appointing members to the CTC that would ensure the Committee has the appropriate skills and experience to perform the required duties. | | | |
| 22. The Government should implement timely reporting of the winning bidders and the key terms and conditions | | | |

| Recommendation | Management Response | Responsibility | Date of planned implementation |
|--|---------------------|----------------|--------------------------------|
| of contracts over \$250,000 and consider the threshold for making public all contracts over that amount. | | | |
| 23. The Government should develop conflict of interest guidelines and include specific guidance relating to the procurement function including those expected for members to operate effectively on the Central Tenders Committee. | | | |
| 24. Central Tenders Committee members should be required to sign confidentiality agreements that include significant consequences in the event they are breached. | | | |
| 25. The resources needed to effectively support and operate the Central Tenders Committee should be in place to ensure it can fulfill its mandate. | | | |
| 26. The CTC should be reconstituted to include both public servants and members from the private sector. | | | |
| 27. The open tender process manual should be reviewed and updated regularly and changes made communicated to government entities and the business community. | | | |
| 28. The CTC should follow its own manual and review contracts for their compliance with the tendering process and produce post-implementation reports. | | | |
| 29. The Government should conduct a full review of the PMFL and <i>Financial Regulations</i> to determine if the current procurement framework is still an effective | | | |

| Recommendation | Management Response | Responsibility | Date of planned implementation |
|--|---------------------|----------------|--------------------------------|
| <p>approach to conduct procurement. This could include, for example, the assessment of the current role of the Departmental Tenders Committee and Central Tenders Committee.</p> | | | |
| <p>30. The Government should communicate through legislation, policy, or some other means, the respective roles and responsibilities of politicians and administration for procurement activities that include sanctions in the event that the roles are transgressed.</p> | | | |



July 2011