

## Government of Montserrat – Proposed Changes to the Procurement Regulations

The proposed changes are designed to ensure that the globally accepted principles of public procurement are satisfied. These are as follows:

- Transparency of the public procurement process
- Integrity of both the procurement process and the practitioners
- Value for Money to ensure that public funds are managed with care and due diligence
- Openness to enable the participation of all qualified organisations
- Fairness ensuring that all bidders are treated equally and the decision making is unbiased with no preferential treatment to any organisation or individual
- Competition through market engagement and a good market response will ensure competitively priced contracts
- Accountability of public servants and procurement practitioners in ensuring that public procurement rules are not contravened

The following proposed amendments to the GoM’s Procurement regulations are designed to ensure that all the principles of public procurement are satisfied whilst at the same time ensuring they are kept as simple as possible with the least amount of bureaucracy.

### 1. Procurement Thresholds

- The proposal is to simplify these to three basic thresholds and make the regulations easier to understand.
- It is also proposed to increase the threshold for quotations and formal tenders to \$100,000 EC. This will enable lower value and less strategic procurements to follow a simpler and faster procurement process.
- All higher risk products and services, as deemed by the Procurement Board or the procuring entity should also follow a formal tender process irrespective of value.

East Caribbean Dollars	Montserrat Current	Montserrat Proposed	UK (LB Redbridge)	St Helena
Minimum one written Quotation	Up to 20,000 More than one quote	Up to 20,000 Min. of one quote	Up to 75,000	up to 15,000
Min 2-3 Written Quotes	Not Stated	20,001 to 100,000	75,001 to 150,000	15,001 to 150,000
Formal Tender	20,001 plus SRO 2012 50,001 plus SRO 2014	100,001 plus	150,001 plus	150,001 plus

- The above proposal for a minimum of one quotation for spends up to EC \$ 20,000 may be increased to a higher number of quotations by each department/ministry/Procurement Board.

## **2. Opening of Bids**

At present the regulations state that bids are opened in public and prices of the bids announced. This creates a false sense of the winning bidder being the lowest priced despite the fact there may be other criteria that forms part of the evaluation. There may also be arithmetical errors in the tender price and as such the price being announced would be incorrect.

Public procurement requirements should be open to all qualified organizations and individuals. The public should also have access to information pertaining to public procurement requirements. Access to public procurement information is not absolute. Confidential and proprietary information belonging to organizations and individuals participating in the process should not be available publicly.

The evaluation of offers received should always be kept confidential until the evaluation panel reaches a final conclusion and after the evaluation report is cleared by the designated approving authority. It is unfair to disclose this information before the evaluation has been completed

The changes proposed are as follows:

- Bids do not need to be opened in public
- An electronic procurement system will ensure a full audit trail of the bids submitted with no opportunity for corruption and changes of bids past the submission time and date
- The submitted prices should not be declared publicly at the point of bid opening and the winner should only be declared following the formal evaluation of the tenders.
- All bidders should be advised of the outcome of the procurement at the same time through the electronic procurement portal.
- The unsuccessful bidders should only be advised of their relative position to the winning bid.
- A spreadsheet of all awarded contracts should be published on the GoM website

### 3. Procurement Board

The procurement board should agree the strategy at the front end i.e. before the procurement commences and the final decision of the award. It should be noted that the decision of who to award to is the conclusion of the procurement and evaluation process. The procurement board cannot change the outcome of the procurement process. It is important for the Procurement Board to provide strategic input before the procurement commences to ensure the best outcomes at the end of the process.

Objectives of the procurement Board:

- The Procurement Board should provide strategic input to the procuring entity at the beginning of the procurement process. It should also review the annual procurement plans of the Departments regularly.
- The Procurement Board makes the final decision of award of contract following the presentation of a report by the procuring entity presented to the board

Composition of the Procurement Board:

- To increase the importance and profile of the Procurement Board, it is proposed that the chair of the Board should be the Financial Secretary.
- The Head of Procurement is required to be a member of the Board
- Inclusion of non-government members of the Procurement Board can compromise fairness and confidentiality at the appropriate times and therefore be avoided.
- To ensure ownership, accountability and strategic input, the membership of the Procurement Board should include all the Permanent Secretaries or the most senior accountable officer for each Ministry. Membership of previous Procurement Boards have included the most senior accountable officers from each ministry.
- For legal input, it is proposed that a legal representative from the Attorney General's Office also be a member of the Board.
- Technical expertise should be called to attend procurement Board meetings as required by the Chairman of the Board.
- Governance:
- The Terms of Reference should be set by the Procurement Board

The number of members required to form a quorum of the board should also be agreed. The proposal is three members plus the Chairperson make a quorum.

#### **4. Departmental Bid Committee/Public Procurement Board**

- It appears overly bureaucratic to have a departmental bid committee and a Public Procurement Board. For the size of the economy in Montserrat we should only need one of these groups. The leaders of each project should decide on the evaluation criteria, evaluation panel and final award of the contract. The Procurement Board can approve the strategic direction of the procurement, members of the evaluation panel and the final award decision.

#### **5. Electronic Records and Electronic Procurement**

- More emphasis is required to ensure that records can be kept in electronic form rather than paper.
- E procurement is an electronic method of inviting quotations and tenders. All communications with the suppliers are carried out via the e procurement portal. Tender dossiers are sent electronically and bids received electronically. Responses to clarifications are sent to all interested parties to ensure fairness and equal treatment of all.
- Work has been carried out on the selection and trial of an electronic procurement portal. Following the successful completion of the Health System and Health Financing Review procurement and positive feedback from colleagues involved in this procurement, a decision has been made to use MyTenders as the electronic procurement portal for the Government of Montserrat.
- The e procurement system will enable greater transparency, fairness, competition and value for money in the government procurements. The system will also provide an audit trail and a secure means of communication with the supply base.
- All supplier organisations on the Island should be encouraged to register on the e procurement portal so that they receive immediate notifications of any tenders and requests for quotations leading to greater openness, involvement and competition.

#### **6. Restricted Bidding/Two stage Bidding**

- The processes of restricted and two-stage bidding are effectively the same. One section can be deleted with the remaining section shown under the new heading of Restricted/Two Stage Procurement.
- The restricted process refers to restriction during the request for quotation process. The rewording of the thresholds automatically leads to a restricted process.
- The two stage bidding process invites tenders following a pre-qualification process to a selected number of suppliers

- It is proposed that the restricted process is deleted because it will be covered in the quotation section of the regulations.

## **7. Single Source Procurement**

The time when this applies as stated in the current legislation are very rare. These can be covered by means of a waiver of Procurement Regulations.

- No bids being received is not a justification for opting to use a single source procedure but rather the market engagement has not been carried out sufficiently well to solicit a bid.
- If the procurement procedure only generates a single bid then that supplier can be selected for award as long as a compliant process has been followed resulting in one bid.

## **8. Waiver**

- This provision does not exist in the current regulations. For reasons such as emergency, urgency, i.e. in the best interest of the nation; standardisation, complexity and technical grounds a facility should be available whereby two senior people in the organisation can approve to waive the need to follow the regulations when carrying out a procurement.
- It is proposed that the waiver be approved by way of signature by the Deputy Governor and the Financial Secretary of the Government of Montserrat.

## **9. Tender Security**

- There is a section on suppliers having to provide tender security, i.e. to deposit a sum of money in case the bidder withdraws the bid or does not sign a contract. This is rarely used and in any case a requirement to tender sums of money may be seen to be restrictive to all those that would otherwise be qualified to bid.
- It is proposed that this section be deleted.
- If Tender security is still required, it can be added to the procurement dossier.

## **10. Fines**

The regulations (section 35) refer to fines in various places for misdemeanours. If government staff commit any misdemeanours, they should be subject to disciplinary action. If suppliers are proven to have acted in an unethical manner, they should be eliminated from the process or their bid can be termed as non-compliant.

- It is proposed that references to fines be deleted from the regulations.

## **11. Negotiations**

The regulations state that there should be no negotiations prior to the award of a contract. However, the procuring entity can ask all bidders for a best and final price prior to award. The important point is that there should be no negotiation after award and prior to award. As long as all the bidders are treated equally, a best and final price can be requested. Clarifications to a bid can be requested until close date and time, which is a form of negotiations. This section should be renamed Clarification and reworded to include what is allowed through a public procurement process.

## **12. Evaluation - Price/Quality split**

The regulations don't refer to a price quality split to determine the most economically advantageous tender. Some reference is included in the section for procuring consultants. This area should be strengthened in the regulations.

## **13. Right to Review/Appeals Process**

The current review/appeals process is two stage as follows:

- Stage 1 - Review by Procurement Board/Financial Secretary
- Appeal - Complaints commission established through the constitution of the GoM

To support greater transparency and fairness, it is proposed that this process be strengthened into three stages as follows:

- Stage 1 - Review by the Chair of Procurement Board
- Stage 2 - Review by the Deputy Governor
- Appeal - Complaints Commission (Final decision binding on the supplier and Procurement Board)

It is important to remember that reviews and appeals are avoided by having a good process that complies with the basic tenets of public procurement – open and transparent, fair, non-discriminatory and providing value for money. Good engagement with the supply base and feedback to the unsuccessful bidders are also vital.

## **14. Elements of Procurement included across the EU but not in the Montserrat Regulations**

- Framework Agreements
- Approved List
- Social Value

- Dynamic Procurement System
- Competitive Dialogue
- Competitive Dialogue with Innovation Partnerships

From the above, it is important to include elements of Social Value such as training, skills development, and apprenticeships, working with schools and local community groups and other commitments/contributions to the local community.

We should also include pre-approved lists so that the procurement process is shorter. The pre-approved suppliers should be registered on the electronic procurement portal. The pre-approved lists should be refreshed at regular intervals to enable new suppliers/businesses to be evaluated and included if they pass the approval process.

The use of frameworks should also be included in the regulations where multiple suppliers may be required to provide goods and services to the government of Montserrat.

At this stage in Montserrat's development, I would not propose the inclusion of Dynamic procurement Systems, Competitive Dialogue and Competitive Dialogue with Innovation Partnerships. These procurement routes can be considered as Montserrat becomes more developed as an economy.

## **15. Procurement by Other Bodies**

The current regulations allow GoM to access procurements conducted by other bodies in which the controlling interest is vested in the Crown subject to approval by the Public procurement Board.

- The proposal is to include access to any procurement carried out by any Global public body subject to approval by the Chair of the Procurement Board. This will enable the GoM to access and share procurements with neighbouring countries and islands in the Caribbean region.
- The regulations should allow the following of processes, procedures and other regulations set by funding providers.

## **16. General or Specific Direction of the Minister (Section 50)**

This section gives the Cabinet the authority to direct the procurement board and entity in any way it wishes. It has been agreed to amend this section as follows

*In the exercise of its powers and the performance of its functions, the procuring entity, the Procurement Board and the Departmental Tenders Committee shall conform with any general or special directions given to it by Cabinet.*

(1) *All directions given by the Cabinet must be in writing and must be in relation to national defence, security and other matters of public interest.*

(2) *The Cabinet may only give directions to a procuring entity, the Public Procurement Board or the Departmental Tenders Committee prior to the deadline for submission of a tender.*

## **17. Procurement of Consultants**

This section should be streamlined as it is covered across the regulations. Only the key points related to Consultants should be included, such as the difference between recruitment of temporary staff and consultants.

## **18. Contract Management**

Contract management is generally poor in the public sector. After award of contract, the success of the project or service delivery is dependent on good contract management. A section should be added on the key principles of good contract management.

## **19. Market Engagement**

The GoM's procurement processes would be enhanced through greater Early Market Engagement. This can be achieved through soft market testing and requests for information from the marketplace. This is pre-procurement engagement with the marketplace ahead of the formal procurement process. This activity would inform the GoM of the capability in the marketplace and 'warms' the market ahead of the formal procurement.

## **20. Advertising across CARICOM**

All tender advertisements and notices will be advertised across the CARICOM community as set out in any legal agreements between the Government of Montserrat and CARICOM.

### **Actions Completed and Next Steps**

1. Individual and group meetings to develop the proposed changes with key stakeholders **Completed**
2. Wider consultation of the proposed changes



3. Amendment of the 2012 regulations in conjunction with the Attorney general's office to create the Draft Procurement Regulations 2017
4. Formal approval by the Cabinet

Please contact Taraq Bashir with any comments in relation to the above proposed changes via e mail or in writing.

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