

CAYMAN ISLANDS



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**A BILL FOR A LAW TO PROVIDE THE FRAMEWORK FOR THE  
PROCUREMENT OF GOODS AND SERVICES BY THE CAYMAN  
ISLANDS GOVERNMENT; TO ESTABLISH THE CENTRAL  
PROCUREMENT OFFICE; AND FOR INCIDENTAL AND  
CONNECTED PURPOSES**

**THE PROCUREMENT BILL, 2016**

**MEMORANDUM OF OBJECTS AND REASONS**

The Bill provides the new framework for the procurement of goods and services by the Cayman Islands' Government. The Bill, among other things, seeks to provide for the principles of procurement which will underpin the process of acquisition of goods and services by Government. The Bill also establishes the Central Procurement Office and provides for the Director of the Central Procurement Office.

The Bill is comprised of six Parts. Part 1 contains clauses 1 to 3 and deals with among other things, interpretation and application.

Clause 1 provides for the short title and commencement. Clause 2 provides for the interpretation. Some of the terms defined in this clause include "entity", "procurement", "major project", "life time value" and "competition document".

Clause 3 provides that the Law applies to procurement by an entity, except where the procurement is between entities, contracting for employment and procurement by entities during an emergency. The clause also provides that entities carrying on procurement to which the legislation does not apply shall ensure there is "value for money".

Part 2 contains clauses 4 and 5 and provides for the principles and the code of conduct.

Clause 4 provides that the principles in Schedule 1 shall be observed at all times in the carrying out of procurement.

Clause 5 provides that the Director shall establish a code of conduct for entities involved in procurement. The code shall provide for the conduct of persons involved in procurement, the conduct of suppliers seeking to do business with a procuring entity, record-keeping, confidentiality and disclosure and conflict of interest.

Part 3 contains clauses 6 through 9.

Clause 6 provides for the establishment of the Central Procurement Office. The Office is responsible for providing training, advice and guidance to all entities and persons involved in public procurement.

Clause 7 provides for the Director of the Central Procurement Office and for the responsibilities under this legislation. The responsibilities are set out in Schedule 2.

Clause 8 provides for the establishment of the Public Procurement Committee. The Committee shall provide external oversight of the public procurement process in accordance with prescribed thresholds.

Clause 9 provides for the roles of the Cabinet, the Ministry of Finance and the Chief Officer, among others.

Part 4 consists of clauses 10 through 12 and provides for entity procurement committees.

Clause 10 states that every entity shall establish an entity procurement committee to undertake procurement.

Clause 11 provides for the constitution of entity procurement committees. The appointing Officer is required to ensure that appointees have the requisite knowledge and skills in law and finance and the integrity and good reputation to carry out duties in a competent and politically neutral manner.

Clause 12 provides that the operations of the entity procurement committee shall be in accordance with this legislation.

Part 5 contains clauses 13 through 15 and provides for procurement methods and limits.

Clause 13 provides that the Cabinet shall prescribe the respective thresholds, approval processes and methods of procurement to be utilized.

Clause 14 sets out that an accurate estimate of the total value of procurement project is required prior to the start of the competitive process and that an entity shall not split or subdivide a contract to acquire goods or services in order to limit competition or avoid the requirements of this Law except where doing so will facilitate economic development and the decision to do so is included in an approved business case.

Clause 15 provides that approval for commencing a direct award process shall be obtained by the respective procurement committee and the process shall be documented and its use justified.

Part 6 contains clauses 16 through 21.

Clause 16 addresses the concept of economic development preference. An entity, the provision states, in assessing value for money, shall consider the socio-economic impact and benefits that a procurement project may create, particularly in relation to small and medium sized suppliers that operate in the Islands.

Clause 17 provides that government entities are to take into account information provided by a supplier in the evaluation process.

Clause 18 provides that a procuring entity shall not disclose any information if the non-disclosure of such information is necessary for the protection of essential security interests of Government or if the disclosure would be, among other things, contrary to law unless disclosure is ordered by the court.

Clause 19 provides that a member of the Public Procurement Committee or an entity procurement committee shall not be personally liable in damages for any act done or omitted in the discharge of the member's duties unless the act or omission was in bad faith.

Clause 20 provides that the Cabinet may make regulations prescribing all matters that are required or permitted under this Law to be prescribed, including the making of regulations providing for procurement methods, the training for persons involved in public procurement and the reporting of contract awards.

Clause 21 provides savings and transitional provisions. Among other things, the clause provides that every procurement project being carried out that has not been wholly completed when this Law comes into force shall be deemed to be a procurement project under this Law.

**THE PROCUREMENT BILL, 2016**

**ARRANGEMENT OF CLAUSES**

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3. Application

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ENACTED by the Legislature of the Cayman Islands.

**PART 1 - PRELIMINARY**

1. (1) This Law may be cited as the Procurement Law, 2016.

Short title and  
commencement

(2) This Law shall come into force on such date as may be appointed by the Cabinet and different dates may be appointed for different provisions of this Law and in relation to different matters.

2. In this Law -

Interpretation

“bid” means a formal submission in response to a competition document;

“bidder” means a supplier that submits a bid;

“capital project” means any item that will be capitalised on the balance sheet in accordance with generally accepted accounting practice, and includes the construction or purchase of physical assets and the purchase or development of computer hardware or software;

“Chief Executive Officer” includes Managing Director or such other title by which the head of a statutory authority or government company is called;

“competition document” means the document used to solicit bids and includes an invitation to tender, a request for proposals, a request for quotations, and a request for supplier qualifications;

“competitive process” means any of the methods of procurement recognized under the United Nations Model Law on Public Procurement (2011) or as may be prescribed, except single source procurement;

“direct award” means a contract award outside of a competitive process and includes single source procurement;

“Director” means the Director of the Central Procurement Office;

“emergency” means a situation where -

(2006 Revision)

- (a) a state of emergency is proclaimed under the Emergency Powers Law (2006 Revision);
- (b) an exceptional circumstance occurs with an immediate risk to the safety or health of an employee or a member of the public; or
- (c) there is an immediate risk of serious damage to public or private property;

“entity” means any governmental body or party acting on behalf of a governmental body and includes a ministry, portfolio, statutory authority, government company, the Office of the Complaints Commissioner, the Officer of the Information Commissioner and the Audit Office;

“entity procurement committees” means the procurement committee for an entity;

“life time value” means the discounted net present value of financing obligations calculated using a discount rate of 3.5% which is subject to periodic review to assess its appropriateness and includes the systematic consideration of all relevant costs and revenues associated with the life cycle of the goods, services or works;

“local benefits test” means a request that suppliers, as part of the response to a government competition document, set out -

- (a) the benefit to the economy of the respective bid; and
- (b) specific commitments to benefit local business;



“major project” means a project that is of a value, complexity, risk level or profile that requires that it is given a significant allocation of time and resources from the entity as well as the involvement of stakeholders, other entities, and the Central Procurement Office;

“procurement” means the process by which an entity acquires goods, services or works from an external supplier to support the delivery and maintenance of government programmes, services and infrastructure, such process spanning the complete life cycle from initial concept and definition of the business need to the effective management of markets, through to the end of the useful life of an asset or end of services contract;

“procurement project” means any purchase of goods, services or works by an entity and includes major projects and direct awards;

“procurement valuation” means the estimated purchase or contract value prior to initiating a procurement project;

“public officer” includes an employee of a statutory authority, government company, the Office of the Complaints Commissioner, the Office of the Information Commissioner, the Audit Office or any other governmental body which is required to comply with this Law;

“relevant costs and revenues” means the costs and revenues that are attributable to owning and using the goods, services or works and includes, but is not limited to, planning design, acquisition, use, maintenance and final disposition; and

“supplier” means any person who has submitted a bid, offer, or arrangement or who may submit a bid, offer or arrangement or who has been awarded a contract, including subcontractors, owners, directors, officers, employees, agents, or any affiliated body or any other related parties;

3. (1) This Law applies to procurement by any entity except - Application
- (a) procurement between government entities;
  - (b) procurement by entities during an emergency as defined in this Law;
  - (c) contracting for employment;
  - (d) contracting with an entity established by public sector employees to carry out contracted services for government, this exception applying only to the initial awarding of a fixed term contract for a period up to a maximum of five years;
  - (e) acquisition or disposition of land or any immovable property or rights in relation thereto;

- (f) purchasing original works of art or artefacts;
- (g) insignias for the award of national honours;
- (h) remittances relating to insurance premiums, pensions and benefits;
- (i) education, accreditation or conferences;
- (j) postage and subscriptions for newspapers, magazines and periodicals;
- (k) purchases from regulated utilities including electricity, water and sewage; and
- (l) purchase agreements with community or social groups supplying outputs to government;

(2) Entities carrying on procurement to which this Law does not apply, shall ensure there is “value for money” in accordance with the principles set out in section 4 and Schedule 1.

## PART 2 - PRINCIPLES OF PROCUREMENT

Principles

Schedule 1

4. Every entity shall carry out procurement of goods and services in accordance with this Law and the principles set out in Schedule 1 shall be observed at all times by public officers involved in procurement.

Procurement Code of  
Conduct

5. (1) The Director, after consultation with the Chief Officer in the Ministry of Finance, shall by order published in the Gazette, establish a code of conduct for entities, such code providing for -

- (a) conflict of interest in public procurement;
- (b) the conduct of persons employed to carry out public procurement or persons who are otherwise involved in procurement;
- (c) the conduct of suppliers seeking to conduct business with an entity;
- (d) record-keeping, confidentiality and disclosure requirements; and
- (e) such other matters that the Director or the Chief Officer in the Ministry of Finance may determine are necessary.

(2) The standard of conduct set out in the code of conduct shall constitute the minimum standard required for the diligent and competent discharge of public service duties and responsibilities.

(3) A public officer shall comply with the procurement code of conduct and failure to do so in a material respect shall be grounds for disciplinary proceedings.

(4) A supplier shall comply with the code of conduct and a supplier who fails to do so shall be liable to sanctions, including disqualification from

participating in the public procurement process for a period of time or permanently, as the Chief Officer or the Chief Executive Officer may determine.

**PART 3 - CENTRAL PROCUREMENT OFFICE AND PUBLIC  
PROCUREMENT COMMITTEE**

6. The Central Procurement Office is established and the Office shall be responsible for providing training, advice and guidance to all entities and persons involved in public procurement. Central Procurement Office

7. There shall be appointed a Director of the Central Procurement Office whose responsibilities shall be as set out in Schedule 2. Director  
Schedule 2

8. (1) There is established a Public Procurement Committee the constitution of which shall be as set out in Schedule 3. Public Procurement Committee  
Schedule 3

(2) The Committee shall provide external oversight of the public procurement process in accordance with the prescribed thresholds and shall have the responsibilities set out in Schedule 4. Schedule 4

(3) No Member of the Legislative Assembly or of the Judiciary is eligible for appointment to the Public Procurement Committee.

(4) Members of the Public Procurement Committee, except public officers may, at the discretion of the Deputy Governor, be paid such remuneration, whether by way of salary or fees and such reasonable allowances in respect of expenses properly incurred by a member in the performance of duties under this Law.

(5) Meetings of the Public Procurement Committee shall be in accordance with Schedule 5. Schedule 5

(6) The Chief Officer of the Ministry of Finance shall appoint a person, not being a member of the Committee, to be the recording secretary of the Public Procurement Committee.

(7) The recording secretary shall be responsible for preparing and distributing the agenda for meetings of the Committee and the taking of minutes.

(8) The remuneration and expenses of the recording secretary shall be an expense of the Ministry of Finance.

(9) In the event that a Chief Officer or a Chief Executive Officer does not accept the assessment of the Public Procurement Committee or the entity procurement committee, in a given procurement project, the Chief Officer or the Chief Executive Officer, as the case may be, shall inform the Director of Procurement of the reasons for departing from the recommendation of the committee.

Roles and functions

9. The roles and functions of the Cabinet, the Ministry of Finance, the Chief Officer, the Chief Executive Officer and entity procurement committees are set out in Schedule 6.

Schedule 6

#### **PART 4 - ENTITY PROCUREMENT COMMITTEES**

Entity procurement committees

10. Every entity shall establish an entity procurement committee to undertake the process of procurement in the respective entity.

Constitution of committees

11. (1) A Chief Officer or Chief Executive Officer, or the person designated by either Officer, shall appoint a chairman and at least two persons to be members of an entity's procurement committee, such committee handling procurements within the entity.

(2) The Chief Officer or Chief Executive Officer in making an appointment under subsection (1) shall be satisfied that the person -

- (a) has the requisite knowledge and skills in law and finance and the integrity and good reputation to carry out the duties in a competent and politically neutral manner; and
- (b) has no financial or other interest likely to affect the carrying out of the duties as a member of the committee.

(3) Where the entity is a statutory authority or government company, the Chief Executive Officer shall include the respective Chief Officer's nominee as a member of the entity procurement committee, provided that the nominee meets the criteria for appointment set out in this Law.

(4) A Chief Officer, a Chief Executive Officer, a member of the board of a statutory authority or a government company, a Member of the Legislative Assembly and a member of the Judiciary is not eligible for appointment as a member of an entity procurement committee.

(5) The Chief Officer shall ensure that no members of the committee have a direct "supervisor-supervisee" relationship to avoid the perception or possibility of undue influence.

12. (1) An entity procurement committee shall operate in line with this Law and shall report to the Chief Officer, or the Chief Executive Officer, as the case may be, the outcome of any competitive bidding process carried out under a procurement project. Operations of committee

(2) The Chief Officer or the Chief Executive Officer shall inform the bidders, within such time frame as may be prescribed, of the outcome under subsection (1).

**PART 5 - PROCUREMENT METHODS AND LIMITS**

13. The Cabinet shall, by way of regulations, prescribe the respective thresholds, approval processes and the methods of procurement to be utilized in the Islands. Procurement methods

14. (1) An accurate estimate of the total value of a procurement project, including the delivery, installation, training and other fees integrally linked to the acquisition, is required prior to the start of the competitive process and shall include all of the costs payable to the supplier by the entity which is involved in the procurement process. Procurement valuation

(2) An entity shall not split or subdivide a contract to acquire goods, services or works in order to limit competition or to avoid the requirements under this Law, except where -

- (a) it can be demonstrated that the splitting or subdividing of a contract will facilitate economic development in accordance with the Islands' development preference; and
- (b) the decision to split or subdivide a contract is included in an approved written business case.

15. (1) A direct award process shall be documented and justified based on the specific circumstances and shall be subject to the prescribed thresholds. Direct award process

(2) Approval for commencing a direct award process shall be obtained by the respective procurement committee depending on the threshold limit set for the procurement project.

(3) Every contract awarded pursuant to a direct award process shall be reported in such form as may be prescribed.

**PART 6 - MISCELLANEOUS**

16. (1) In assessing value for money, an entity shall consider the socio-economic impact and benefits that a procurement project may create, particularly as it relates to small and medium sized suppliers that are operating in the Islands. Economic development preference

(2) Subject to the requirement to adhere to the principles of procurement, an entity shall give preference to suppliers who are businesses operating in accordance with the Trade and Business Licensing Law, 2014 (Law 21 of 2014).  
(Law 21 of 2014)

(3) The Cabinet may prescribe such criteria, including thresholds, for entities to -

- (a) undertake pre-procurement impact assessments on local suppliers;
- (b) where adequate local capability exists, solicit bids from businesses operating in accordance with the Trade and Business Licensing Law, 2014 (Law 21 of 2014);
- (c) consider disaggregation of major procurement projects where value for money is achievable, such disaggregation being included in the business case and being subject to approval by the appropriate procurement committee;
- (d) adopt a local benefits test for all procurements within specified thresholds; and
- (e) undertake a plan for local industry participation, as may be prescribed, prior to embarking on major procurement projects.

Local benefits test

17. (1) Entities shall take into account in the evaluation process information provided by a supplier as a result of any requirement for a local benefits test.

(2) Submission of the information by a supplier is voluntary, however, where the relevant information is excluded the committee shall not be able to score the respective bid in relation to the criteria.

Confidentiality

18. (1) A procuring entity shall not, in its communications with suppliers or contractors or with any person, disclose any information if the disclosure of such information threatens the essential security interests of the Government or the disclosure of such information would -

- (a) be contrary to law;
- (b) impede law enforcement;
- (c) prejudice the legitimate commercial interests of the suppliers or contractors; or
- (d) impede fair competition,

except where the disclosure of that information is ordered by a court and, in such case, subject to the conditions of such an order.

(2) A procuring entity shall treat submissions in such a manner as to avoid the disclosure of their contents to competing suppliers or contractors or to

any other person not authorized to have access to the information, other than when providing or publishing information pursuant to this Law.

(3) Any discussions, communications, negotiations or dialogue between a procuring entity and a supplier or contractor shall be confidential and a party to such discussions, communications, negotiations or dialogue shall not disclose to any other person any related technical, price or other information without the consent of any other party or parties to such discussions, communications, negotiations or dialogues, unless the disclosure is ordered by a court or required by law.

(4) Subject to subsection (1), in procurement involving confidential information, a procuring entity may -

- (a) impose on suppliers or contractors requirements aimed at protecting confidential information; and
- (b) require that suppliers or contractors ensure that their sub-contractors, directors, officers and employees comply with the requirements aimed at protecting confidential information.

(5) Every public officer involved in a public procurement project shall keep all information, deliberations and decisions relating to the procurement confidential and shall be required to sign a confidentiality statement for each procurement project that the public officer is involved with.

(6) Every Chief Officer or Chief Executive Officer shall assign the public officer who shall be responsible for the disclosure of pertinent and permissible information relating to the award of a contract.

19. A member of the Public Procurement Committee, an entity procurement committee or the staff of the Central Procurement Office, shall not be personally liable in damages for any act done or omitted to be done in the discharge or purported discharge of the member's respective duties under this Law unless it is shown that the act or omission was in bad faith.

Immunity

20. The Cabinet may make regulations prescribing all matters that are required or permitted under this Law to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Law and, notwithstanding the generality of the foregoing, the Cabinet may make regulations providing for -

Regulations

- (a) the procurement methods;
- (b) the procedure for the selection of an appropriate procurement method;
- (c) the training of persons involved in public procurement; and
- (d) the reporting of contract awards.

Savings and transitional 21. (1) Every procurement project being carried out that has not been started when this Law comes into force shall be deemed to be a procurement project under this Law and this Law shall apply accordingly.

(2) Notwithstanding section 20, the Cabinet may make regulations to provide for such further savings, transitional or consequential provisions to have effect in connection with the coming into operation of any provision of this Law as may be necessary or expedient.

(3) Regulations made in accordance with this section may be given retrospective operation to a day not earlier than the day that this Law come into force and shall expire one year after they come into force.

### **Schedule 1**

(Section 3, 4)

#### **Principles of Procurement**

1. **Accountability**  
Effective mechanisms must be in place in order to enable Chief Officers and Chief Executive Officers to discharge their personal responsibility on issues of procurement risk and expenditure.
2. **Competitive Supply**  
Public procurement must be carried out by competitive process unless specifically justified in accordance with this Law or Government policy.
3. **Consistency**  
Procurement policy shall be similar and consistent across the public sector.
4. **Effectiveness**  
Public sector entities should maximise the contribution to the commercial, regulatory and socio-economic goals of Government in a balanced manner appropriate to the procurement requirement.
5. **Value for Money**  
The procurement processes should be carried out to achieve the most advantageous combination of cost, quality and sustainability over the life cycle of the project.
6. **Fair-dealing**  
Suppliers should be treated fairly and without unfair discrimination, including protection of commercial confidentiality where required. public



sector entities should not impose unnecessary burdens or constraints on suppliers or potential suppliers.

7. **Integration**  
Procurement policy should pay due regard to its impact on the Cabinet's other economic and social policies.
8. **Integrity**  
There shall be no corruption or collusion with suppliers or other persons involved in a procurement project.
9. **Informed decision-making**  
Public sector entities are required to base decisions on accurate information and are required to monitor obligations to ensure that they are being met.
10. **Legality**  
Public sector entities shall conform to legal requirements.
11. **Responsiveness**  
Public sector entities should endeavour to meet the aspirations, expectations and needs of the community served by the procurement.
12. **Transparency**  
Public sector entities should ensure that there is openness and clarity on procurement policy and its delivery. All proposed procurement shall be published on the Government's website in addition to the results of procurement.

## **Schedule 2**

(Section 7)

### **Director of Central Procurement Office**

The Director of the Central Procurement Office shall be responsible for -

- (a) developing, implementing and carrying out the periodic review and recommendations for adjustment of policies and procedures for procurement to be used by all entities including requirements for business case preparation;
- (b) Ensuring all procurement laws, regulations, policies and procedures are promoted, publicized and easily accessible to public servants, suppliers and the general public;
- (c) developing and maintaining standard contract forms, bidding documents, business case templates and any other public

- procurement related documents to be used by all government entities;
- (d) monitoring the operation of the public procurement process and compliance with this Law, procurement policies and procedures, and issuing guidance to entities, as required, in any form, including directives, guidelines, instructions, technical notes or manuals, with respect to the conduct of public procurement and the implementation of the Law, policies and procedures;
  - (e) developing and implementing a Code of Conduct, in consultation with the Chief Officer in the Ministry of Finance, for suppliers, procuring entities and all public officers engaged in procurement activities at all stages, such Code specifying standards of conduct, procedures and best practices;
  - (f) advising Chief Officers on the procurement of Major Projects;
  - (g) establishing and maintaining a common, accessible, electronic platform for use by all entities for the purpose of advertising and reporting results of all public procurement opportunities required;
  - (h) establishing and maintaining a contract performance monitoring database;
  - (i) conducting appropriate orientation, training and education for government officials, entity employees, suppliers and interested members of the public on the government's procurement process;
  - (j) identifying opportunities and establishing government-wide contracts for commonly used goods and services where it can be demonstrated that there is potential for savings through bulk purchasing or consolidation of entity requirements;
  - (k) reviewing and advising on the use of the intranet and electronic procurement tools to reduce or replace manual procurement processes and maximize efficiency;
  - (l) co-ordinating and reporting post implementation reviews to demonstrate whether major projects have achieved the objectives of the business case and projects are completed within agreed financial and timeline commitments;
  - (m) compiling statistics on government-wide procurement and preparing an annual public report to be published in the Annual Public Procurement Report; and
  - (n) advising the Public Procurement Committee and entity procurement committees.

**Schedule 3**

(Section 8)

**Constitution of the Public Procurement Committee**

- (1) The Public Procurement Committee shall consist of eight persons and a recording secretary who shall not be entitled to vote.
- (2) The Governor, acting in accordance with the advice of the Premier, shall appoint from persons in the private sector the chairman and three other members of the Public Procurement Committee, one of whom shall be an attorney-at-law.
- (3) The Governor acting in accordance with the advice of the Leader of the Opposition shall appoint from persons in the private sector one member of the Public Procurement Committee.
- (4) The Governor acting in accordance with the advice of the Deputy Governor shall appoint three members of the civil service to the Public Procurement Committee.
- (5) Each appointee shall be provided with a letter of appointment setting out the terms and conditions of the appointment.
- (6) Every appointment of a committee member shall be published in the Gazette.
- (7) Prior to appointing any person to the Committee, the Governor shall be satisfied that -
  - (a) the person has the skills, knowledge, (procurement, legal & financial) and integrity to carry out the required duties in a highly competent and politically neutral manner; and
  - (b) the person has no financial or other interest likely to affect the exercise of the functions negatively.

**Schedule 4**

(Section 8)

**The Responsibilities of the Public Procurement Committee**

The Public Procurement Committee shall be responsible for -

- (a) reviewing the business case provided by the Public Sector Investment Committee for goods, services or works being procured in accordance with prescribed thresholds;
- (b) reviewing the competition documents prior to issuance to ensure they comply with the business case;
- (c) receiving and providing receipts for all bid submissions expected to exceed the specified thresholds;
- (d) ensuring fairness, impartiality and confidentiality in the treatment of bid submissions in its possession;
- (e) reviewing the recommendations of the entity procurement committees and verifying that the evaluation process was conducted in accordance with the terms and requirements of the original competition document;
- (f) providing assurance to the Chief Officers or Chief Executive Officers that the procurement process has complied with the Law and procurement policy;
- (g) approving applications for “direct award” procurement; and
- (h) assessing the recommendation for award of contract and formally communicating this assessment to the Chairman of the respective entity procurement committee.

#### **Schedule 5**

(Section 8)

#### **Meetings of the Public Procurement Committee**

- (1) The Public Procurement Committee shall meet at least once every month and at such other times as may be necessary to expedite the work of the Committee and such meetings shall be held at such place and time and on such days as the Committee may from time to time determine.
- (2) The recording secretary of the Committee shall circulate the agenda and accompanying documents for the meeting to members five working days prior to the meeting.
- (3) In the absence of the chairman, a Committee member who is elected by the members present shall preside and perform the functions of the chairman of the meeting provided that there is a quorum.
- (4) The quorum of the Committee shall be a simple majority of the Committee members entitled to vote however where a member declares a conflict of interest the quorum will be a simple majority of the remaining members who are entitled to vote.

- (5) In the event of an equality of votes at any meeting, the chairman at that meeting shall have a second or casting vote.
- (6) Where there is a possible or perceived conflict of interest with respect to any matter for discussion, a Committee member shall -
- (a) disclose any interest in that matter; and
  - (b) as soon as the matter comes up on the agenda, immediately leave the place in which the deliberations are taking place and shall not participate, directly or indirectly, in the deliberations and shall not return until a decision has been taken on the matter,
- and the member's declaration of interest and the absence of the member concerned shall be recorded in the minutes of the meeting.
- (7) The Committee may establish its own meeting rules and procedures, and establish sub-committees, as it thinks fit including procedures for dealing with items not included on the agenda.
- (8) Minutes shall be kept in such form as the Committee determines, and shall be confirmed as soon as practicable at the next following meeting of the Committee and signed by the chairman or other person who presided at the meeting at which the minutes were taken.
- (9) The Minutes must include, at a minimum, the date, time, location of meeting, a list of the Committee members in attendance, the substance of all matters discussed or decided, and at the request of any committee member, a record by individual members of any votes taken.
- (10) As soon as may be practicable, the Minutes shall be considered a public document and posted on the Public Procurement Committee website.
- (11) The Committee shall provide the Chief Officer of the Ministry of Finance with a copy of the Minutes as soon as they have been confirmed.

## **Schedule 6**

(Section 9)

### **Roles and Functions**

#### **Role of the Cabinet**

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

**Role of the Ministry of Finance**

(1) The Role of the Ministry of Finance is to develop, implement and maintain macro-economic and budgetary policies and maintain measures, to manage the finances of the Government and exercise supervision and control in all matters relating to the financial affairs of the Cayman Islands.

(2) The Chief Officer in the Ministry of Finance is responsible for implementing and monitoring compliance with this Law and shall be responsible for -

- (a) providing appropriate resources for and oversight of the Central Procurement Office;
- (b) providing appropriate resources and oversight of the Public Procurement Committee;
- (c) ensure that centralized procurement, where appropriate, delivers value for money.

**Role of the Chief Officer in a given Ministry or Portfolio**

The Chief Officer is responsible for delivering the outputs of government that contribute to the overall outcomes that have been established by the Cabinet. The Chief Officer shall be responsible for -

- (a) identifying the need for inputs and directing employees to develop requirements and specifications to be satisfied through procurement;
- (b) ensuring the creation of and authorizing of a documented business case in the prescribed format for procurement, prior to proceeding to market or soliciting bids;
- (c) ensuring an available and approved funding source prior to soliciting bids;
- (d) acquiring goods, services and works required to deliver Ministry or Portfolio outputs;
- (e) authorizing Ministry or Portfolio expenditures and the awarding of contracts;
- (f) ensuring Ministry or Portfolio employees involved in procurement have the appropriate procurement related education and training;
- (g) implementing and ensuring compliance with this Law, and all associated legislation, policies and procedures within the Ministry or Portfolio;
- (h) ensuring that all procurement related documents are retained and secured at all times and disposed of in accordance with existing document management laws and policy;

- (i) ensuring the results of all procurement projects within the Ministry or Portfolio are publicly reported in the prescribed format and timeframe specified in regulations and policy;
- (j) ensuring unsuccessful bidders are notified in writing following the award of contract and provided with an opportunity for a full debriefing by evaluators in the prescribed format and timeline as may be prescribed.

**Role of the Chief Executive Officer**

(1) The Chief Executive Officer is responsible for delivering the outputs of the public authority that contribute to the overall outcomes that have been established by the Cabinet.

(2) The Chief Executive Officer of each public authority will be responsible for -

- (a) identifying the need for inputs and directing their employees to develop requirements and specifications to be satisfied through procurement;
- (b) ensuring the creation of and authorizing of a documented business case in the format prescribed in regulations for the procurement, prior to proceeding to market or soliciting bids;
- (c) ensuring an available and approved funding source prior to soliciting bids;
- (d) acquiring the goods, services and works required to deliver the public authority outputs;
- (e) authorizing public authority expenditures and the awarding of contracts;
- (f) ensuring public authority employees involved in procurement have appropriate procurement-related education and training;
- (g) implementing and ensuring, within their public authority, compliance with this law, and all associated regulations, policies and procedures;
- (h) ensuring all procurement related documents are retained and secured at all times and disposed of in accordance with existing document management laws and regulations;
- (i) ensuring the results of all procurement projects within the public authority are publicly reported in the format and timeframe specified in regulations and policy;
- (j) ensuring unsuccessful bidders are notified in writing following the award of contract and provided with an opportunity for a full debriefing by evaluators in the format and timeline as may be prescribed.

### **Role of the Entity Procurement Committees**

(1) The role of an entity procurement committee is to support the Chief Officer, or the Chief Executive Officer, as the case may be, in delivering the outputs of government that contribute to the overall outcomes that have been established by the Cabinet including the acquisition of goods, services and works within prescribed limits and its principal accountability shall be to the Chief Officer for Ministry or Portfolio procurement or the Chief Executive Officer for Statutory Authority or Government Company procurement.

(2) An entity procurement committee shall be responsible for -

- (a) reviewing the business case for goods, services or works being procured in accordance with prescribed thresholds;
- (b) reviewing competition documents prior to issuance to ensure they are consistent with the business case;
- (c) reviewing and providing a receipt for all eligible bids;
- (d) ensuring fairness, impartiality and confidentiality in the treatment of bid submissions in its possession;
- (e) providing assurance to the Chief Officers or Chief Executive Officers, as the case may be, that the procurement process has complied with the Law and procurement policy;
- (f) conducting the evaluation process in accordance with the terms and requirements of the competition document and recommending the successful bid;
- (g) presenting the evaluation report and recommendation to the Public Procurement Committee when exceeding prescribed thresholds and verifying that the evaluation process was conducted in accordance with the terms of the original competition document;
- (h) making the recommendation for award of contract to the Chief Officer or Chief Executive Officer as the case may be;
- (i) forwarding reports on procurement projects to the Director of Central Procurement for informational and statistical purposes;
- (j) reporting the results of all procurement projects in the prescribed format and timeframe;
- (k) reviewing the draft contract to ensure that the tender price and scope are consistent with the original competition document; and



- (l) reviewing the draft contract prior to contract signing to ensure that the agreed scope is consistent with the original competition document.

Passed by the Legislative Assembly the        day of                        , 2016.

Speaker.

Clerk of the Legislative Assembly.