

## The Mauritian Experience<sup>†</sup>

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### Abstract

The Government of Mauritius initiated the first major reform in Public Procurement (that was successful) in 2006. The Public Procurement Act based on 1994 UNCITRAL Model Law was promulgated in January 2008. The implementation phase did not encounter any major hurdle. This may be due to the successful change management programme which was put in place. Furthermore, an extensive capacity building programme started since 2007 and continued in subsequent years. The contributions of the three institutions namely Procurement Policy Office, Central Procurement Board and Independent Review Panel, were instrumental to the smooth implementation of the new procurement legislation. In 2010, the government decided to undergo a second major reform in public procurement. The Institutional Structure (both at national and public body's level) and Legal Framework are undergoing a complete review. The focus is also on professionalizing the procurement function. Specifically the reform focusses on: simplifying the procurement system, combatting corrupt practices, delivering cash and non-cash benefits and applying sustainable principles. eProcurement, Sustainable Public Procurement, Framework Agreement and Life Cycle Costing are the key instruments that aim to achieve these objectives.

### I. Background

Mauritius is a small island in the Indian Ocean with about 1.3 million inhabitants. Public Procurement is regulated through the Public Procurement Act 2006, Regulations 2008, the Financial Management Manual and other related legislations (Competition Act 2007, Electronic Transactions Act, Prevention of Corruption Act etc). The annual procurement spend is about Rs 30 billion (US\$1 billion) representing

<sup>†</sup> Conference Paper submitted to The Inaugural International Conference on Public Procurement Regulation in Emerging Economies Organised by Faculty of Law, University of Malaya, Kuala Lumpur, on August 9, 2010.

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approximately 15% of GDP. The Procurement Policy Office is the policy making institution that drives procurement in the country. The Central Procurement Board has the responsibility of approving award of contracts beyond certain financial limits. The Independent Review Panel reviews the procurement proceedings when aggrieved bidders are not satisfied with the decision of the Central Procurement Board or the public body.

## **II. Legal System**

The Republic of Mauritius has a hybrid legal system combining both civil and common law practices. Criminal and civil litigation are mainly English while substantive law is modeled on the French Napoleonic code. The domestic legal system is generally non-discriminatory and transparent. Members of the judiciary are independent of the legislature and the government. The highest court of appeal is the Judicial Committee of the Privy Council (JCPC) of England. Mauritius is also a member of the International Court of Justice.

## **III. Major Reform**

In the past there was no comprehensive procurement legislation. The first major reform was initiated in 1999 with the enactment of the Public Procurement, Transparency and Equity Act (PTE) which was based on modern procurement practices. However, the legislation was repealed only after a few weeks of implementation.

In January 2008, the Public Procurement Act, adopted by the National Assembly in 2006, became operational along with the Public Procurement Regulations and Public Procurement (Suspension and Debarment) Regulations. Recently, another set of regulations known as the Public Procurement (Disqualification) Regulations were introduced. All these have significantly transformed the public procurement system. It is also worth noting that, having witnessed some implementation issues, Government responded with a few amendments to the Act and Regulations on several occasions.

The PPA 2006 is based on UNCITRAL Model Law (1994) and World Bank procurement guidelines. The World Bank standard bidding

documents are currently being used with some customizations. After almost four years of implementation it can be concluded that the reform is on the right track.

It is worth dwelling on the reasons for different outcomes of two legislations that are fundamentally the same:

- In 1999, the procurement function in Mauritius was at tactical level. Procurement Officials had little or no professional qualifications. Ten years after, hundreds of procurement officials have successfully completed the Diploma in Purchasing and Supply Management. More than 100 procurement practitioners have completed the degree course in Purchasing and Supply. It appears that in late 1990s, most procurement practitioners were not well versed with the provisions of the influenced people to resist to change.
- Major stakeholders were not fully involved in the 1999 reform. There were some consultations which were not sufficient to convince people about the benefits of change. The PPA 2006 was passed in the National Assembly in 2006 and was effective in 2008. During this period most procurement officials were trained on the provisions of the Act and the Standard Bidding Documents. There had been large consultations.
- The PPTE Act required all persons involved in procurement to declare their assets. Several officers took prior retirement, probably to escape this disclosure. It is undeniable that declaration of assets is a commendable measure that deters corrupt practices. However, the timing of the measure seemed not to be appropriate.
- The decision makers learned the lessons of the past. All measures were taken cautiously. Leadership was also a determinant factor. The change was led by someone who has all the qualities to make things happen and succeed.

It should not be concluded that there has been success in all areas. It has only been stressed that the change was successful. The Government encountered several problems that required attention.

### A. *Findings of a Survey*

In 2009, a survey carried out by Procurement Policy Office revealed that:

- (a) The suppliers believe that the most important obstacles to achieve the procurement objectives are heavy administrative procedures (80%) and the size of the SBDs (60%). The Public Officers also have almost the same opinion. The two obstacles most cited by public officers are SBDs (61%) and administrative procedures (52%).
- (b) 80% of respondents (public officers) and 78% of Suppliers are of opinion that procurement is delayed. 35% of public officers believe that the delay is due to the challenge made by unsatisfied bidder whereas 25% of suppliers consider complex and lengthy procedures as the most important reason for delay.
- (c) 69% of respondents (Suppliers) consider that the SMEs are not competing for government contracts as they are not aware of the contract opportunities. 81% of public officials consider the high cost of bidding as being the most important obstacle.
- (d) 88% of respondents believe that relationship with Suppliers have either improved or remained the same. This also corresponds to the responses of the suppliers (77%).
- (e) A majority of public officers agree that suppliers are not paid within the agreed time. 40% claim that they are paid on time. The suppliers to large majority (82%) claim that they are not paid on time. 35% of them suggest that they are never paid on time.
- (f) 70% of respondents (public officers) suggest that the procurement legislation needs further improvements compared to 79% of Suppliers. 45% of public officers and 38% of suppliers suggest simplifying the bidding documents and procurement processes.
- (g) 33% suggest that procurement practitioners lack the required skills. The preferred method for enhancing capacity is on the job training (89%) and Seminar/workshop/conference (79%).

### B. Remedial Actions

Some measures that have been taken to address the problems identified:

- Bidders are now required to submit a Bid Securing Declaration Form instead of Bid Security which represented a financial and administrative burden to bidders, particularly SMEs. This measure does not apply to large contracts.
- The SBDs have been reduced in size and made more business-friendly.
- A margin of preference was introduced to support SMEs and domestic suppliers.
- Procurement entities have been instructed to pay suppliers promptly.
- Publication of notice of award of contract above a given threshold and procedures for debriefing of unsuccessful bidders, where disclosure is limited to bidder's offer and that of the successful bidder while preserving confidential commercial information.
- In Works contracts, negotiations are permissible where the lowest evaluated bid exceeds 15% of the updated estimated contract value.

### C. Capacity Building

One of the major weaknesses identified during the initial period of implementation was capacity building of procurement officials. A Certification Programme in Public Procurement has been developed and is being run by University of Technology, Mauritius since January 2009. The aim of the training programme, which will run over a period of three years and meant for some 600 officers of the public sector, is to ensure that the officers concerned have the necessary competencies and skills to carry out their functions effectively and efficiently. More than 500 Procurement Officials have successfully completed the programme.

Other programmes include:

- Diploma in Purchasing and Supply Management
- BSc (Hons) in Purchasing and Supply Management
- MBA in Logistics and Supply Chain Management

#### D. *Procurement Integrity*

One of the key objectives of the procurement system is to promote integrity. Important initiatives have been taken to promote good governance. Strategies have thus been designed and are being implemented in order to keep corruption and collusive practices under control. Although the Criminal Code makes provisions for offence of bribery (including bribery for government contracts), the enactment of the Prevention of Corruption Act 2002 (POCA) constitutes a landmark in the fight against corruption. The POCA has set up the Independent Commission Against Corruption (ICAC) whose functions amongst others are to educate the public against corruption, to detect or investigate any act of corruption. The PPO has assisted ICAC to develop a Code of Conduct for public procurement officials. The Code of Conduct supplements the provision of the law, and aims at inculcating in our procurement officials such behaviour and practices that will reinforce the integrity of our public procurement system. The Code of Conduct was launched at the beginning of December 2009.

Another important legislation that promotes good governance is the Competition Act 2007 which established a competition regime in Mauritius. Collusive agreements, which include bid rigging, are considered to be a serious breach of the Competition Act. An entity involved in bid rigging is liable for financial penalties up to 10% of turnover during the period of breach (up to max of 5 years) if committed intentionally or negligently. Since the proclamation of the Act last year, no serious case of bid rigging has been witnessed. This does not necessarily mean that bid rigging does not exist in Mauritius. There have been a few allegations on collusion among bidders. The next few months would definitely clarify the situation. A Memorandum of Understanding between the Procurement Policy Office and the Competition Commission has been agreed. It aims at identifying and preventing collusion and bid rigging in public procurement in Mauritius.

Mauritius has ratified the UN Convention Against Corruption in 2004, the SADC Protocol Against Corruption in 2002 as well as the UN Convention Against Transnational Organized Crime in 2003 and has also

signed the African Union Convention on Preventing and Combating Corruption in 2004.

Transparency International Corruption Perception Index can be considered as a good indicator to measure perception of corruption in public procurement. The following results summarizes the CPI from 2005 to 2011:

Year	CPI Score	Rank
2005	4.2	51
2006*	5.1	42
2007	4.7	53
2008**	5.5	41
2009	5.4	42
2010	5.4	39
2011	5.1	46

Source: Transparency International.

\*The Public Procurement Act passed in the National Assembly.

\*\*The Public Procurement Act promulgated (17 Jan 2008).

The above results may indicate some improvements in corruption in public procurement since the enactment of a modern public procurement law. However, improvements stagnated.

#### **IV. Complaints from Suppliers and Public Bodies**

In the year 2009, 66 complaints were received against suppliers from different public bodies. Most of them related the poor performance of suppliers/contractors. The Policy Office has recently issued regulations for the disqualification of bidders and suppliers and it is expected that the situation may gradually improve with the application of these regulations.

56 complaints were received from suppliers/contractors in the year 2009. It was observed that most of the complaints were against the Ministry of Health and Quality of Life and the Police Department.

### A. *IRP cases*

The Table below shows the number and outcome of cases filed at IRP from 2008-2011:

	2008	2009	2010	2011 (As at Nov 2011)
Number of cases considered by IRP	21	30	24	16
No. of cases determined in favour of Applicants	11	10	11	7
No Merit/Set Aside/Dismissed	10	20	11	7
Not Yet finalized by IRP	0	0	2	2

Source: <http://ppo.gov.mu>

In 2009, less than 2% of contracts awarded were subject to challenge and appeals, which is an indication of the growing trust in the new procurement system and improvements in capacity. Another point worth noting is during the first year after the Public Procurement became effective high number of IRP decisions were in favour of applicants, followed by a significant downturn last year.

### V. **Future Directions**

A major review of the procurement system is currently envisaged to take into account the observations of the COMESA experts and the World Bank. The review has also become necessary based on local experience. The *raison d'être* of the reform is to:

- Further simplify the procurement processes leading to enhanced efficiency.
- Aim at a corrupt-free procurement system.
- Deliver cash and non-cash savings through innovative practices
- Apply sustainable procurement principles.
- Foster bilateral cooperation through G2G.

Three major pillars of the reform are:

- Institutional Structure – National level and Public Body level



- Legal Framework: Rules, Regulations, Procedures
- Resources: People and Tools (technology)

In this respect three major projects are in the process of being implemented: eProcurement, Framework Agreement and Sustainable Public Procurement.

Mauritius recently signed a MOU with the Government of the State of Andhra Pradesh (GoAP) for the sharing of its e-procurement platform. The project will be implemented on a phased basis. Ministry of Health & Quality of Life, Ministry of Information and Communication Technology, as well as the National Development Unit, have been identified for the pilot phase. A stepping stone has already been laid with the introduction of a dedicated public procurement website for the posting of the Procurement Notices, Annual Procurement Plan, Summary of Evaluation Reports, and Notice of Procurement Awards. Implementation in all the public bodies is expected in a year.



Mauritius is one of the six pilot countries selected by UNEP and its partners that are following the Marrakech process for the implementation of Sustainable Public Procurement. According to UNEP, Mauritius is the most advanced country in terms of the stage reached in the implementation process. Currently, the SPP Policy Plan is being

developed. It is expected that implementation of SPP will start in June 2012.

The third project in the pipeline is the introduction of Framework Agreement in the procurement legislation as a procurement strategy to enhance efficiency and value for money. In this respect, a Central Purchasing Body (CPB) might be established. The medium to long term objective of Mauritius is to professionalize public procurement. It is expected that the CPB will be responsible for the award of all routine and repetitive procurements through aggregate demand. At the level of the public body professional procurement officers will buy goods and services where they will use their procurement skills and techniques and thus adding value in the process.

#### **VI. Concluding Remarks**

In public procurement as in all disciplines there is no "one size fit all" solutions. The best practice of one country should not necessarily be appropriate in another country. The Mauritian experience revealed that the context of the country should be considered prior to any major reform in public procurement.