

NATIONAL CONSULTATIONS ON THE COMMUNITY PUBLIC PROCUREMENT REGIME



PRESENTATION

“TOWARDS A UNIFIED PUBLIC PROCUREMENT
MARKET IN THE CSME”

BY

CARICOM SECRETARIAT

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BACKGROUND

- Revised Treaty of Chaguaramas (RTC)
 - Article 239 - (*Built – in-Agenda*)
 - *Elaborate on a protocol on Government Procurement*
 - Free Movement of Services and Goods provisions
 - Non-discrimination principle
- INS/HGC/2003/14/B2.1
 - Further agreed that the Inter-Governmental Task Force (IGTF) be reconstituted
 - The IGTF was mandated to negotiate the Protocol

BACKGROUND

- **Conclusions of negotiations by the IGTF in April 2016**
 - *Tenth IGTF 11-14 April 2016*
- **Approval of policy matters post the FRIP (2011)**
 - *Forty First COTED 12-13 November 2015 (Threshold Review)*
 - *Forty Second COTED 21-22 April 2016 (comments from Member States on offsets, the thresholds and further exclusions)*
 - *Forty Third COTED 17-18 November 2016 (CPVs; SBDS, PSOPs etc.)*
 - *Forty Fourth COTED 13-14 April 2017 (SOLAC issues)*

BACKGROUND

- *Approval of the Legal Instruments*
 - *Twenty Second LAC 17 May 2017 – Protocol for Signature by Conference of Heads; and*
 - *Model Bill for Implementation by Member States*

Provisions on the Protocol

- Part one – General Provisions – definition of terms, etc.
- Part two – Scope and Coverage
- Part three – Information and Communication Technologies
- Part four – Procurement Proceedings
- Part five – Transparency, Fairness and Supplier Challenge

Provisions on the Protocol

- Part six – Technical Cooperation Assistance
- Part seven – Institutional Arrangements
- Part eight – Special Provisions
- Part nine – Final Provisions
- Annex A – Thresholds
- Annex B – Excluded Types of Procurement

Objectives of the Procurement Regime

- To establish the conditions for full integration of the national procurement markets into a single, unified and open area for Public Procurement to bolster the CSME
- Creation of the necessary competitive and non-discriminatory conditions to facilitate achievement of value for taxpayers' money.

Objectives of the Procurement Regime

- Provision of opportunities for access to a single market with regional sales opportunities.
- Strengthening the competitiveness of the regional supplier base and encourage the rational use of scarce resources.

What is Covered?

□ Scope of Coverage

- Goods, Services and Works at or above the thresholds
- All purchasing, rentals, leases, concessions, hire purchasing funded by public funds
- Central and sub-central entities, statutory bodies, state – owned companies and similar undertakings
- Benefit is for public use and not commercial gains

What is not covered?

- Procurement outside the scope of coverage
 - Procurement below the thresholds in Annex A
 - Procurement in Annex B
 - Agreement between Member States and Third States limiting participation
 - Agreement between Member States and International Organizations limiting participation
 - Procurement funded by IFIs with conditions for participation e.g. CDB, World Bank, IADB, etc.

Opportunities for the Private Sector

- National Space for Private Sector
 - Public procurement contracts where each contract is valued below –
 - Goods – USD \$150,000.00
 - Services – USD \$150,000.00
 - Works – USD \$3,000,000.00
 - Regional Procurement opportunities in 14 Member States for goods, services and works above thresholds

The CSME Thresholds

REGIME	GOODS (US\$)	SERVICES (US\$)	WORKS (US\$)
FRIP	100,000	100,000	1,000,000
Approved Thresholds	150,000	150,000	3,000,000
Comparative Thresholds in other Regimes			
CARIFORUM – EC EPA	248,000	248,000	10,400,682
European Union: Central Government (Directive 2004/18/EC)	€134,000	€134,000	€5,186,000
Other Public Sector Authorities	€207,000	€207,000	€5,186,000

Who are the beneficiaries?

- ❑ CARICOM Nationals as defined in Article 32 (5) of the Revised Treaty
 - A natural person in accordance with Article 32 (5) (a)
 - Economic Enterprises as defined in Article 32 (b)
 - A company or other legal entity in accordance with Article 32 (c)

Who are the beneficiaries?

Article 32 (5):

(a) a person shall be regarded as a national of a Member State if such person:

- (i) is a citizen of that State;
- (ii) has a connection with that State of a kind which entitles him to be regarded as belonging to or, if it be so expressed, as being a native or resident of the State for the purposes of the laws thereof relating to immigration; or
- (iii) is a company or other legal entity constituted in the Member State in conformity with the laws thereof and which that State regards as belonging to it, provided that such company or other legal entity has been formed for gainful purposes and has its registered office and central administration, and carries on substantial activity, within the Community and which is substantially owned and effectively controlled by persons mentioned in subparagraphs (i) and (ii) of this paragraph;

Who are the beneficiaries?

Article 32 (5):

- ❑ (b) "economic enterprises" includes any type of organisation for the production of or trade in goods or the provision of services (other than a non-profit organisation) owned or controlled by any person or entity mentioned in sub-paragraph (a) of this paragraph;
- ❑ (c) a company or other legal entity is:
 - ❑ (i) substantially owned if more than 50 per cent of the equity interest therein is beneficially owned by nationals mentioned in sub-paragraph (a) (i) or (ii) of this paragraph;
 - ❑ (ii) effectively controlled if nationals mentioned in sub-paragraph (a) of this paragraph have the power to name a majority of its directors or otherwise legally to direct its actions.

Access to Procurement Opportunities

- ❑ Prohibition of Offsets against suppliers (CARICOM Nationals)
 - qualification and selection
 - evaluation of bids
 - award of contracts
- ❑ National Treatment Principle
- ❑ Non-discrimination and procedural fairness
- ❑ Transparency principle

New Opportunities in Procurement

- Publication of National Register of Suppliers
- 14 National Registers published in the Community Register of Suppliers
- Opportunities for joint bidding and forming consortiums
- Job opportunities for individuals, MSMEs and the private sector

Transparency

- Publication of Annual Procurement Plans on the CPPNB
- Publication of Procurement Opportunities on the CPPNB
- Publication of Contract Award Notice
- PEs shall not use design and technical specifications that have the effect of limiting competition
- Prohibition of discrimination between national and non-national suppliers
- Mechanisms for Suppliers Challenge and Review

Special Provisions

- ❑ Dispute Settlement in Chapter nine of the Revised Treaty shall apply mutatis mutandis
- ❑ Public procurement and the environment
- ❑ General and Security Exceptions in Articles 225 and 226 of the Revised Treaty shall apply mutatis mutandis

PART TWO

CARICOM MODEL PUBLIC PROCUREMENT BILL

FAIRNESS, ABILITY TO CHALLENGE

Model Bill says **procuring entities must treat suppliers (CARICOM nationals) from another Member State** (and their goods, services and works) **equally and no less favorably than they treat suppliers who are nationals in their Member State** and their goods etc..

FAIRNESS

- Procuring entity must not design procurements to exclude them from the scope of the Act or to artificially narrow competition.
- Suppliers who are technically, financially and legally qualified and interested in participating in a procurement opportunity must not be prevented from participating due to discriminatory restrictions or barriers to entry.

TRANSPARENCY, CLARITY, STRAIGHTFORWARD PROCESS

- **Standard Bidding Documents**

- Procuring entities must use the Community Standard Bidding Documents for procurements covered by the regime.*
- Documents will be harmonized across Member States— process & should become clearer to suppliers from different Member States across CARICOM.

TRANSPARENCY, FAIRNESS, CLARITY

- **Technical specifications** - worded in terms of performance and functional requirements. Avoid using trademarks and trade names.
- **Qualification requirements** – not to be used to discriminate against suppliers who are not nationals of your Member State.

TRANSPARENCY, FAIRNESS, STRAIGHTFORWARD PROCESS

Procurement Methods

- ❑ CARICOM regime allows 3 methods of procurement –
 - Open bidding (default procurement method)
 - Restricted bidding
 - Single-source procurement

Procurement Methods (cont'd.)

- If a procuring entity uses a method other than open bidding it must
 - **seek to maximize competition,**
 - **select suppliers fairly and without discrimination**
 - **include in record of procurement proceedings** justifications for the chosen method.

TRANSPARENCY, CLARITY, STRAIGHTFORWARD PROCESS, FAIRNESS

Receiving Bids & Bid Evaluation

The Procurement Standard Operating Procedures (PSOPS): a set of guidelines providing harmonized Community rules on the manner in which bids are to be received, opened and evaluated. Harmonized rules not in the Model Bill.

TRANSPARENCY, FAIRNESS, CLARITY, STRAIGHTFORWARD PROCESS

- **Standstill period** - period of 10 days beginning on the day following the day of dispatch of the contract award notice. No contract signed & challenge now.
- **Contract Award Notice** – NOT AN AWARD OF CONTRACT TO SPECIFIC SUPPLIER. Unsuccessful supplier can challenge procuring entity's decision or actions during standstill period.

TRANSPARENCY, FAIRNESS, STRAIGHTFORWARD PROCESS

❑ Cancellation of Procurement Opportunity

- **At any time before a contract is awarded a procuring entity can, for justifiable reasons, cancel a procurement opportunity and reject all bids without incurring liability.**
- **BUT ... notify suppliers, give reasons*, return unopened bids, record of procurement proceedings.**

TRANSPARENCY, FAIRNESS, CHALLENGE

Record of Procurement Proceedings

- ❑ For every procurement opportunity a record of procurement proceedings must be kept for at least 5 years.
- 1. Brief description of subject matter of procurement;
- 2. Names & addresses of suppliers who submitted bids;
- 3. Name, addresses and qualifications of supplier who submitted successful bid & contract price;
- 4. Summary of evaluation & comparison of bids;
- 5. Performance of successful supplier during course of contract.

ABILITY TO APPEAL, FAIRNESS

Supplier Challenge an Review

□ Supplier Challenge can take 3 forms-

1. An **application to the procuring entity** to reconsider its action or decision which the supplier alleges caused him to suffer loss and did not comply the Procurement Act ;or
2. An **application to an independent review body** to review certain actions and decisions of a procuring entity.
3. Application to the court in your country.

LIABILITY, TRANSPARENCY, FAIRNESS

□ **Categories of Persons Who May be Liable Under Act**

1. Government officers and staff*
2. Suppliers (both individuals and bodies corporate).

Liability can be civil or criminal or both.

Examples of Types of Offences

Collusion, unlawfully influencing an officer, disclosure of confidential information, tampering with records and documents.

Next Steps – Way Forward

- Protocol to be submitted to Thirty Eighth Conference of Heads of Government for signature at the Regular Session in July 2017
- Protocol to be ratified by Member States post Regular Session in 2017
- Protocol will enter into force one (1) month after the deposit of the fifth instrument of ratification to the CARICOM Secretariat
- Model Bill to be implemented by Member States

Next Steps – Way Forward

- CPPNB to Go Live by Fourth Quarter 2017
- Member States without e-procurement systems have National Advertising Portals as workspace
- CPPNB with E-Learning Platform

Other Regional Procurement Initiatives

- Regional Procurement Training Centre – University of Technology (Jamaica) funded by the CBD and World Bank
- Accreditation of UTech as a Centre to provide by CIPS Level IV Training
- E-Procurement Systems being piloted in four (4) OECS Countries
- Three (3) CARICOM Member States to implement full e-procurement systems

END OF PRESENTATION

THANK YOU

Questions and queries

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