

ENTITY PROCUREMENT COMMITTEE

HANDBOOK AND Terms of Reference

**Document Administration**

**Revision History**

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| March 14 2022 | 1.2 | Section 42 & 43 to clarify EPC quorum and voting | Central Procurement Office | Procurement Manager, Central Procurement Office |

**Related Documents and References**

|  |  |
| --- | --- |
| **Prescribed Documents** | **Location** |
| The Procurement Law, 2016 | https://www.procure.gov.ky/procurement-legislation-policy-amp-guidance |
| The Procurement Regulations, 2018 | https://www.procure.gov.ky/procurement-legislation-policy-amp-guidance |
| The Procurement (Amendment) Regulations, 2021 | https://www.procure.gov.ky/procurement-legislation-policy-amp-guidance |
| Schedule 6 of the Public Management and Finance Law (2018 Revision) | <http://www.gov.ky/portal/pls/portal/docs/1/12818563.PDF> |
| The Procurement Manual | https://www.procure.gov.ky/procurement-legislation-policy-amp-guidance |
| Procurement Templates | <https://www.procure.gov.ky/templates> |

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# Abbreviations and Definitions

| **Term / Acronym** | **Definition** |
| --- | --- |
| Bid | a formal submission in response to a competition document |
| Business Case | A management tool that supports decision-making for an investment which provides, among other things:(a) the justification for a specified procurement project;(b) the consideration of alternative solutions;(c) the identification of assumptions, constraints, benefits, costs and risks; and(d) the local impact assessment or industry consultation report where required under the Procurement Law and the Procurement RegulationsBusiness Case Guidance and Templates are located at: <https://www.procure.gov.ky/templates>  |
| Capital Project | As defined in the Procurement Law, 2016 - 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. |
| Competitive Process  | any of the methods of procurement recognized under the United Nations Model Law on Public Procurement (2011) or as may be prescribed, except direct awards. |
| Conflict of Interest | a situation in which the public officer has private interests that could improperly influence the performance of his or her official duties and responsibilities or in which the public officer uses his or her office for personal gain. A conflict of interest may be:* real - exists at the present time;
* apparent - could be perceived by a reasonable observer to exist, whether or not it is the case; or
* potential – could reasonably be foreseen to exist in the future.

Personal gain or interests may be based on:* pecuniary interest – a financial interest, or a financial benefit or financial disadvantage;
* indirect pecuniary interest – where a person with whom you have a close relationship has a financial interest; or
* non-pecuniary bias – a predisposition towards a certain outcome based on some emotional or
* other interest.
 |
| CPO | Central Procurement Office |
| Direct Award | a contract award outside of a competitive process and includes single source procurement.Guidance and forms required for a Direct Award are located at: <https://www.procure.gov.ky/direct-award-process>  |
| 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 |
| EPC | Entity Procurement Committee - As defined in the Procurement Law (2016 Revision) - the procurement committee for an entity |
| Member | Member of the EPC |
| PMFL | Public Management and Finance Law (2018 Revision)  |
| PPC | Public Procurement Committee |
| Procurement Project | As defined in Section 2 of the Procurement Law - any purchase of goods, services or works by an entity and includes major projects and direct awards. |
| PSIC | Public Sector Investment Committee |

# About this Document

1. This Handbook and Terms of Reference combines all the relevant procurement legislation, processes and procedures to form a “one-stop” comprehensive guidance for understanding the role and responsibilities of an EPC.
2. The relevant procurement legislation, processes and procedures for the Government’s procurement of goods, services and works include the:
	1. Procurement Law, 2016
	2. Procurement Regulations, 2018
	3. Procurement (Amendment) Regulations, 2021

All of which can be found here: <https://www.procure.gov.ky/procurement-legislation-policy-amp-guidance>.

1. The website of the CPO ([www.procure.gov.ky](http://www.procure.gov.ky)) also provides guidance and templates including those for direct awards, business cases and bid evaluation.
2. It is encouraged that the above legislation and resources be reviewed for a thorough understanding of the overall Government procurement process to ensure full compliance with the procurement governance framework.

# PART 1 -HANDBOOK

## Purpose, Authority and Role of the EPC

1. The EPC forms part of the procurement governance framework that ensures that Entities achieve value for money for its procurement of goods, services and capital projects.
2. The role of the EPC is to support the Entity’s Chief Officer/Chief Executive Officer or equivalent by providing the assurance that the procurement process has complied with procurement legislation, policies and procedures.

## Evaluating Competitive Awards

1. For competitive awards, procuring entities are required to prepare a written business case if the procurement project is estimated to be valued =>CI$100,000.

**[Business cases are not required for procurement projects that are <CI$100,000 and these projects can be approved by Chief Officer/Chief Executive Officer or equivalent.]**

1. The business case should be prepared in the required format, as shown attached , and shall –
	1. demonstrate the economic need for the project;
	2. include a thorough risk and impact assessment that details costs and the socio-economic impact of the procurement project on small and medium sized suppliers operating in the Islands;
	3. provide a breakdown of all anticipated procurement projects within the larger project;
	4. recommend the procurement method to be utilized;
	5. specify the benefits that the project is expected to deliver;
	6. demonstrate the options to be incorporated into the procurement
	7. process to promote positive economic development of the Islands; and
	8. demonstrate that there is a basis on which a decision may be made on whether to proceed to the procurement stage.
2. In assessing the viability of a business case, the EPC will make judgements across 5 key dimensions or cases of each proposal or business case:
3. **The Strategic Case**: What is the case for change and how does it provide strategic fit? **Desirable characteristics and skillsets:** Experienced in decision-making at an executive level; able to see the big picture; skilled in policy advice and evaluation; understands decision-making in a public sector context and understands how to judge public value, benefits, risks and costs.
4. **The Economic Case**: What is the best choice for optimizing net value to society? **Desirable characteristics and skillsets:** Knowledgeable about conducting economic appraisals (a form of multi criteria decision analysis) to consider and compare options, to find the project solution that offers the best value for money; knowledgeable about analysing a wide range of costs and benefits, and quantifying as many as possible in money terms; experienced in using methods such as cost-benefit analysis and cost-effectiveness analysis, and in undertaking sensitivity analysis, optimism bias
5. **The Commercial Case:** What is the deal and how will it be procured? **Desirable characteristics and skillsets**: expertise in requirements of Procurement Law and experience with procurement strategies and methodologies suitable for projects of varying spend, complexity and risk profiles
6. **The Financial Case**: What is the impact of the proposal on the budget? **Desirable characteristics and skillsets**: experience and expertise in financial appraisals, preparation and evaluation of financial statements, senior management level expertise in public sector accounting rules, knowledgeable about financial modelling (for large, significant and complex projects) ((knowledge of PPPs and alternative forms of private finance will be highly desirable where this is the proposed source of funding).
7. **The Management Case**: What are the necessary arrangements for successful delivery of the scheme? **Desirable characteristics and skillsets**: Experienced and knowledgeable as to best practice and standards in relation to project governance, project management and assurance, risk management, benefits realisation, project evaluation.
8. The EPC will advise the Chief Officer/Chief Executive Officer (or equivalent) of its recommendations as to whether the project should proceed or not.
9. On the advice of the EPC, the Chief Officer/Chief Executive Officer (or equivalent) may authorize the business case including all appendices.
10. Once the business case is authozised, the EPC should assign a procurement number to the project and track its progress in the format prescribed by the CPO.
11. Prior to publication of the tender documents, the EPC must review and approve the content of the tender documents to ensure that they are in line with the business case.
12. Where a procurement project is valued >= CI$250,000, and if recommended for approval by the EPC, the EPC must submit the written business case, evaluation report and recommendation to the PPC verifying that the evaluation process was conducted in accordance with the terms of the original competition document.
13. Where a procurement project is valued >= CI$10.0 million, the Chief Officer/Chief Executive Officer must submit the written business case to the PSIC for review.
14. The EPC will ensure that the evaluation of eligible bid submissions are consistent with the original competition documents.
15. When assessing value for money, the EPC 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.
16. When evaluating bids, the EPC should use the attached Bid Evaluation Orientation Guide - <https://www.procure.gov.ky/evaluation-guide> - to guide and assist with the evaluation of bids.
17. The evaluation of projects may be documented through Bonfire and by using the Project Evaluation “ESTAR” Forms that are attached or located at <https://www.procure.gov.ky/estar-template>.
18. The EPC shall ensure fairness, impartiality and confidentiality in the treatment of bid submissions in its possession.
19. The EPC will advise the Chief Officer/Chief Executive Officer (or equivalent) of its recommendation as to whether or not the contract should be awarded. The EPC will also provide the Chief Officer/Chief Executive Officer (or equivalent) with the assurance that the procurement process has complied with procurement legislation, policies and procedures.
20. If approved by the EPC, the Chief Officer/Chief Executive Officer (or equivalent) should prepare a draft contract and submit to the EPC for review. The EPC will ensure that the tender price and scope are consistent with the original competition document.
21. Once approved by the EPC, the Chief Officer/Chief Executive Officer (or equivalent) should sign and issue the procurement contract.
22. The EPC shall ensure that the procuring entity publishes the results of all procurement projects in the prescribed format and within 30 days of award.

## Evaluating Direct Awards

1. Every contract awarded pursuant to a direct award process shall be reported using the attached Direct Award forms which are also located at <https://www.procure.gov.ky/direct-award-process>.
2. A direct award process may be utilised where –
	1. the goods, services or works are valued at less than ten thousand dollars;
	2. the goods or services are not competitive products and are only available from a single supplier;
	3. the goods or services are required to –
		1. match an existing brand of equipment for compatibility (including where the goods are replacement parts); or
		2. comply with established entity specifications and standards,
		3. and are available from only one supplier;
	4. the goods or services are required to meet physical design or quality specifications and are available from only one supplier;
	5. the goods or services are of a confidential or privileged nature and the disclosure through a competitive process is likely to compromise defence, security, public safety, or is likely to cause economic disruption or is otherwise contrary to the public interest;
	6. construction materials are to be purchased and it can be demonstrated that transportation costs or technical considerations impose geographical limitations on the available supply base, specifically in the case of sand, stone, gravel, asphalt, compound and premixed concrete or similar materials for use in the construction or repair of roads;
	7. no compliant bids have been received in response to a competitive process made in accordance with the Law and these Regulations;
	8. it can be demonstrated that only one supplier is able to meet the requirements of a procurement project;
	9. the goods or services that are being procured are from charitable and philanthropic institutions, or are produced by the labour of persons who are inmates in the prisons or persons with disabilities;
	10. the goods or services are being procured from an entity that operates an entertainment, sporting, convention or similar event in order that the procuring entity may comply with a commercial agreement containing provisions that may be in conflict with the Law and these Regulations.
3. All requests for direct awards must be endorsed by the Chief Officer/Chief Executive Officer (or equivalent) prior to submission to the EPC.

**[Direct awards with a value of <CI$100,000 are approved by the Chief Officer/Chief Executive Officer (or equivalent) .]**

1. The EPC must consider direct awards if the project value is >=CI$100,000.
2. The EPC will advise the Chief Officer/Chief Executive Officer (or equivalent) of its recommendations as to whether or not the direct award should proceed.
3. Where the direct award is >= CI$250,000, and if recommended for approval by the EPC, the EPC must also submit the direct award forms and recommendation to the PPC for approval.

# PART 2 - TERMS OF REFERENCE

## Appointment of Members

1. The EPC shall comprise of a minimum of a Chairman and 2 Members appointed by the Chief Officer/Chief Executive Officer (or equivalent).
2. The Chief Officer/Chief Executive Officer (or equivalent) will ensure that Members –
3. have 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
4. have no financial or other interest likely to affect the carrying out of the duties as a Member of the EPC.
5. A notice of appointment of a Member, which can be done via e-mail from the Chief Officer/Chief Executive Officer (or equivalent) shall set out:
6. the terms and conditions of the appointment;
7. the policies and procedures relating to the EPC;
8. the duties and responsibilities of the EPC; and
9. the approximate frequency and duration of meetings.

Providing this handbook and terms of reference in the appointment notice covers the above requirements.

## Principles of Procurement

1. Members must comply with procurement legislation, policies and procedures and at all times observe the following principles:
2. 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.
3. Competitive Supply - Public procurement must be carried out by competitive process unless specifically justified in accordance with this Law or Government policy.
4. Consistency - Procurement policy shall be and consistent across the public sector.
5. 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.
6. Value for Money - The procurement processes should achieve the most advantageous combination of cost, quality and sustainability over the life cycle of the project.
7. Fair-dealing - Suppliers should be treated fairly and without discrimination, including protection of commercial confidentiality where required. Public sector entities should not impose unnecessary burdens or constraints on suppliers or potential suppliers.
8. Integration - Procurement policy should pay due regard to its impact on the Cabinet's other economic and social policies.
9. Integrity - There shall be no corruption or collusion with suppliers or other persons involved in a procurement project.
10. Informed decision-making - Public sector entities are required to base decisions on accurate information and to monitor obligations to ensure that they are being met.
11. Legality - Public sector entities shall conform to legal requirements.
12. Responsiveness - Public sector entities should endeavour to meet the aspirations, expectations and needs of the community served by the procurement.
13. Transparency - Public sector entities should ensure that there is openness and clarity in the conduct of procurement including in the carrying out of all actions and decisions.
14. The standard of conduct set out in the code of conduct shall constitute the minimum standard required for the diligent and competent discharge of the EPC’s duties and responsibilities:



## Terms of Appointment

1. Appointed members will serve until removed and/or replaced by the Chief Officer/Chief Executive Officer (or equivalent) subject to the composition and skill requirements of the Committee.
2. Members may, at any time, by notice in writing addressed to the Chief Officer/Chief Executive Officer (or equivalent), resign from the EPC.
3. A Member’s appointment may be terminated by the Chief Officer/Chief Executive Officer (or equivalent) if their performance or conduct is deemed to be unacceptable. Unacceptable behaviour includes:
	1. not fulfilling the mandate of the EPC as set out in legislation;
	2. the Member has an unacceptable conflict of interest;
	3. the Member’s conduct is detrimental to the effective governance of the EPC;
	4. the Member has been absent from three consecutive meetings of the EPC without the consent of the chairperson of the EPC;
	5. the Member’s conduct brings the EPC into disrepute;
	6. the Member is convicted of an offence for which he is sentenced by a court to a term of imprisonment.

## Meetings of the EPC

1. The EPC shall meet as necessary in order to conduct project appraisals and reviews of business cases; and such meetings shall be held for as long as necessary and at such place and time and on such days as the chairperson may from time to time determine.
2. A secretary of the EPC shall circulate the agenda and accompanying documents for the meetings to Members at least five working days prior to the meeting or within such shorter period as the chairperson may direct.
3. The chairperson will preside at all meetings of the EPC. In the absence of a chairperson, a Member shall preside and perform the functions of the chairperson of the meeting provided there is a quorum.
4. The quorum of EPC shall not be less than three (3) members, unless a member has recused themselves due to conflict of interest concerns (see #47 below), then it shall not be less than two (2) members.
5. Decisions of EPC shall be determined by a simple majority of those Members who are present at the meeting. Where only two (2) members form a quorum for a meeting, the vote must be unanimous in order to make a recommendation. In any other instance where there is an equality of votes, a chairperson at that meeting shall have a second or casting vote.
6. Where a chairperson has given his or her approval, a Member may attend meetings via telephonic or electronic media.
7. All Meetings shall be held in the Cayman Islands unless agreed otherwise by the Chief Officer/Chief Executive Officer (or equivalent).
8. A Member shall make a declaration of his or her interests in accordance with the Standards in Public Life Law, 2014. The Member shall disclose the nature of his or her interest at a meeting of the EPC as soon as possible after the relevant circumstances have come to his or her knowledge.
9. Where there is a possible or perceived conflict of interest with respect to any matter that comes up for discussion or decision by EPC, the relevant Member shall disclose the interest of that Member and –
10. shall, as soon as the matter comes up on the agenda of the EPC, 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 while the matter is under discussion until a decision has been taken by the EPC; and
11. shall otherwise comply with laws and regulations which deal with conflicts of interest.
12. A declaration of a conflict of interest and the absence of the Member concerned shall be recorded in the minutes of the meeting.
13. The EPC may invite other persons, including persons from the procuring Entity, to attend meetings if additional specialist skills, knowledge or experience are required. Where judged necessary, the EPC may request for external agencies or consultants to provide expert support on appraisals or to fulfil any obligations of the EPC.

## Recording of Meetings

1. The Chief Officer/Chief Executive Officer (or equivalent) will appoint a person, whom can be an EPC Member, to be the recording secretary of the EPC.
2. A recording secretary shall be responsible for preparing and distributing the agenda for meetings and the taking of minutes.
3. The remuneration and expenses of a recording secretary shall be an expense of the Entity except that, where the recording secretary is also a civil servant, the recording secretary shall not receive any remuneration.
4. A recording secretary shall keep minutes of each meeting of EPC in such form as the EPC determines; and the minutes shall be confirmed as soon as practicable at the next meeting of the EPC and signed by the chairperson or by any other person who presided at the meeting at which the minutes were taken.
5. The EPC shall communicate their recommendations to the Chief Officer/Chief Executive Officer (or equivalent) no later than five (5) working days after the minutes of a meeting have been confirmed by the EPC. Minutes should be provided to the Chief Officer/Chief Executive Officer (or equivalent) as requested.
6. Minutes provided by the EPC shall not contain the following information:
7. medical or other personal information;
8. commercially sensitive information; or
9. any other information which is exempt under the Freedom of Information Law (2018 Revision).
10. The EPC may establish its own meeting rules and procedures, and establish sub-committees, as it thinks fit.

## Provision of Information and Statistics

1. The EPC shall keep a record of all procurements for which they are responsible in the format prescribed by the CPO.
2. Upon requests, the EPC will provide reports on procurement projects to the Director of the CPO for informational and statistical purposes.

## No Personal Liability Except for Negligence or Bad Faith

1. Members of the EPC 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.

# PART 3 – FORMS AND TEMPLATES

## Direct Award Forms (<https://www.procure.gov.ky/direct-award-process>)

## Business Case Templates (<https://www.procure.gov.ky/templates>)Project Evaluation “ESTAR” Forms (<https://www.procure.gov.ky/estar-template>)

## Bid Evaluation Orientation Guide (<https://www.procure.gov.ky/evaluation-guide>)

**EPC Procurement Compliance Tracker (**[**https://www.procure.gov.ky/entity-procurement-committee**](https://www.procure.gov.ky/entity-procurement-committee)**)**