

PPADB CIRCULAR NO: 2 of 2010

(Made in terms of section 28 of the PPAD Act)

Ref: TBG 142 II (45) Exch

09 March 2010

The Permanent Secretary to the President
All Permanent Secretaries
The Commander Botswana Defence Force
The Commissioner of Police
Attorney-General
Auditor General
The Registrar of the High Court of Botswana
The President, Industrial Court
The Director General, Directorate on Intelligence and Security
The Director General, Government Implementation and Coordination Office
The Director, Directorate on Corruption and Economic Crime
The Ombudsman
Clerk of the National Assembly
The Secretary, Independent Electoral Commission
All District Commissioners
All Chairpersons, Ministerial Tender Committees

Dear Sir/Madam

**ROLE CLARITY: RESPONSIBILITIES, POWERS AND
FUNCTIONS OF MINISTERIAL TENDER COMMITTEES (MTC'S)
AND PROCUREMENT UNITS (PU'S)**

The kind attention of all addressees is drawn to the subject at caption.

As the authority responsible for the overall management and implementation of the PPAD Act and its Regulations, PPADB has found it necessary to once again take this opportunity to issue a Circular Communication which seeks

to provide role clarity between the statutory functions and responsibilities of Ministerial Tender Committees (MTC's) and Procurement Units (PU's) for each Ministry or Department under whose purview the two have been established. It has even become more necessary to provide such role clarity where substantial responsibilities continue to be so progressively devolved from PPADB to Ministries and Departments.

This Circular Communication No 2 of 2010 is being issued pursuant to the provisions of section 27 as read with section 28 of the PPAD Act which are reproduced hereunder:

Section 27. *"The Board shall ensure that all procuring and disposing entities comply fully with all the provisions of the Act, irrespective of the means of procurement, disposal, or the assets to be procured or to be disposed of."*

Section 28. *"The Board shall advise procuring, and disposing entities on all aspects of procurement and disposal management and particularly on the application of the provisions of the Act"*

The role clarity between the functions and responsibilities of MTC's and PU's is provided hereunder:

ESTABLISHMENT AND MANAGEMENT REPORTING LINES

- MTCs are established by the Board in terms of Section 61 of the PPAD Act which provides that *"The Board shall establish Ministerial Procurement and Asset Disposal Committees and delegate authority in writing to them, for the management of aspects of the public procurement and assets disposal process of the departments encompassed by each Ministry."* It therefore follows that whilst technically MTC's are committees of the Board, they administratively fall under the purview of the Accounting Officer of the particular Ministry concerned.
- Procurement Units are established by Accounting Officers in terms of Regulation 11 of the PPAD Regulations which provides that *"The Accounting Officer shall cause to be established a procurement unit staffed at an appropriate level consisting of such numbers of members as the accounting officer may determine."* It therefore

follows that from an operational point of view, PU's are administrative structures that fall under the direct responsibility of Accounting Officers, both technically and administratively. It should be further noted that the responsibility for establishment of Procurement Units is prescribed by law to vest with Accounting Officers in each Ministry. The Board notes with concern that, according to our records, the majority of Ministries if not all, are yet to establish P.U's. I accordingly exhort all Accounting Officers to comply with the law by establishing P.U's in their respective Ministries as a matter of urgency. Kindly note that this is a statutory responsibility placed upon Accounting Officers and our understanding is that it is not optional but mandatory.

FUNCTIONS AND RESPONSIBILITIES:

- **MINISTERIAL TENDER COMMITTEES (MTC's).** Whilst the functions of the MTC's are set out at Regulation 9(1) and (2) in general terms, the Board has, pursuant to the provisions of Section 61 of the PPAD Act cited above as read with Section 62, in addition specifically delegated in writing to MTC's the authority and functions to adjudicate and award bids, on its behalf, falling within the applicable financial ceilings. The financial thresholds are determined by the Board from time to time on a biennial basis in terms of Section 65(1) of the PPAD Act. The first such delegation of authority was issued by the Board to MTC's via TBG 83 III (58)IJ dated 04 November 2003 and the second one via TBG 142 (11) Exch dated 26 March 2008.
- **PROCUREMENT UNITS (PU's)**

The Procurement Unit is the center of expertise for the majority of the procurement activities of the procuring entity. Its functions are unambiguous and are clearly set out under Regulation 12 and 13 of the PPAD Regulations. In general terms, the principal function of a Procurement Unit is to manage all procurement and disposal activities of the procuring and disposing entity, save for adjudication and award of contracts. More specifically the Procurement Unit shall:

- (a) manage all procurement and disposal activities of the procuring and disposing entity, except adjudication and award of contracts;

- (b) implement decisions of the Ministerial Committee;
- (c) liaise directly with the Board on all matters pertaining to the Board;
- (d) plan the procurement by the procuring entity;
- (e) recommend procurement procedures to the procuring entity;
- (f) check and prepare statements of requirements;
- (g) prepare tender documents;
- (h) maintain lists of suppliers;
- (i) evaluate or manage the evaluation of bids;
- (j) prepare contract documents;
- (k) issue approved contracts documents;
- (l) administer and manage contracts once placed;
- (m) arrange payments to contractors;
- (n) maintain and archive records of procurement;
- (o) prepare monthly reports for the Ministerial Committee;
- (p) coordinate projects and liaise with the procuring entity's departments about all other aspects of their procurement;
- (q) act as a procurement coordinator for the user department of the procuring and disposing entity; and
- (r) liaise with the Secretary to the Ministerial Committee to ensure that submissions to the Ministerial Committee are correct and submitted on time.

The Procurement Unit shall also be responsible for the day to day preparation and assembling of standardized bidding packages as well as processing of payments to contractors.

SEPARATION OF DUTIES

A public procurement system must invariably be constituted of structures that are independent of each other and yet mutually complimentary and reinforcing. Principle, logic, experience from elsewhere and efficiency all favour such a model. Regulation 14(2) provides that "A member of a procurement unit shall not while he or she is a member of the procurement unit, sit in any Ministerial Committee."

In support of this provision is Regulation 15 which provides that Accounting Officers, Procurement Units and Ministerial Committees shall act independently in relation to their respective functions and powers.

It is worth noting that Regulation 14(2) as read with Regulation 12(a) clearly emphasize separation of powers and responsibilities to avoid conflict of interest by disallowing an officer to be a member of both an MTC and a PU

at the same time. In this regard we wish to strongly appeal to Accounting Officers to ensure discontinuation of the practice, wherever this may be happening. This clearly amounts to conflict of interest as it is tantamount to permitting the officer to becoming both *“player and referee at the same time”* which is in violation of Regulations 12(a) and Regulation 14(2). Such practice is also inconsistent with best international practice.

Furthermore Regulation 14(2) provides that “A member of a procurement unit shall not, while he or she is a member of the procurement unit, sit in any Ministerial Committee.” Kindly note that this Regulation is consistent with and complimentary to Regulation 12(a) cited above.

In further explaining the distinction and separation between roles and responsibilities of MTC's and PU's as well as their collective responsibility, I wish to give the following illustration. Tracing the path to be followed through in executing a particular procurement activity, the Procurement Unit will be responsible for, inter alia, procurement planning, preparation and issue of tender documents as well as ensuring that the procurement process is executed appropriately in accordance with the approved procedure. The tender will eventually be evaluated by the Procurement Unit, which then submits its evaluation report with recommendations to Ministerial Tender Committee for adjudication and award of the bid. Note that the MTC does not carry out the evaluation of tenders but rather this is the responsibility of PU's.

COLLECTIVE RESPONSIBILITY: MTC'S, PU'S AND PE'S


Kindly note that whilst the functions and responsibilities of MTC's and PU's are distinctively separate and should be maintained as such, they are nonetheless mutually reinforcing and complimentary for the effective management and efficient discharge of the procurement and asset disposal functions of a Procuring Entity. The more effective the PU and MTC for a particular Ministry are, the more efficient is that Ministry likely to be with regards to procurement planning, project implementation and service delivery, everything else being equal. For each entity to effectively play its part, there is an urgent need for substantial shift in mindset coupled with a willingness to adhere strictly to the legal and regulatory framework of the PPAD Act.

It is expected that the Procurement Unit shall work in close collaboration with the MTC in the delivery of outputs of a procurement activity and in implementing a procurement plan for the procuring entity or user department. With the Board retaining overall regulatory and compliance monitoring responsibility, it is manifest that both of these structures shall in turn work closely with Board.

From a procurement perspective, the PPAD Act envisages a situation where, in the interest of effective procurement management to yield efficiency gains in project implementation and service delivery by Ministries and Departments, substantial responsibilities are devolved to Procuring Entities. This will enable them to better manage aspects of procurement transactions through well established, fully resourced and functional structures such as MTC's and PU's with the Board retaining overall regulatory and compliance monitoring responsibility.

I trust that the information I have provided above does sufficiently communicate the necessary role clarity between the Ministerial Tender Committees and Procurement Units with regards to their functions, powers and responsibilities. As evidenced above the two are not synonymous and should not be used interchangeably.

Yours faithfully



A.V. LIONJANGA
EXECUTIVE CHAIRMAN

CC: Senior Private Secretary to the President
Col: D. Masilo