
FOURTH SESSION – SEVENTH PARLIAMENT

SECOND REPORT

OF THE PORTFOLIO COMMITTEE ON BUDGET, FINANCE AND INVESTMENT

PROMOTION

ON

THE OPERATIONS OF THE STATE PROCUREMENT BOARD

Presented to Parliament August 2012

S.C. 27, 2012

ORDERED IN TERMS OF STANDING ORDER No. 159:

(1) At the commencement of every session, there shall be as many committees to be designated according to government portfolios as the Standing Rules and Orders Committee may deem fit.

(2) It shall be the function of such committees to examine expenditure, administration and policy of government departments and other matters falling under their jurisdictions as Parliament may, by resolution determine.

(3) The members of such committees shall be appointed by the Standing Rules and Orders Committee, from one or both Houses of Parliament, and such appointments shall take into account the expressed interests or expertise of the Members and Senators and the political and gender composition of Parliament.

TERMS OF REFERENCE OF PORTFOLIO COMMITTEES S.O 160

Subject to these Standing Orders, a portfolio committee shall-

a) consider and deal with all Bills and Statutory Instruments or other matters which are referred to it by or under a resolution of the House or by the Speaker;

b) consider or deal with an appropriation or money bill or any aspect of an appropriation or money bill referred to it by these Standing Orders or by or under resolution of this House;

c) monitor, investigate, enquire into and make recommendations relating to any aspect of the legislative programme, budget, policy or any other matter it may consider relevant to the government department falling within the category of affairs assigned to it, and may for that purpose consult and liaise with such a department; and

d) consider or deal with all international treaties, conventions and agreements relevant to it, which are from time to time negotiated, entered into or agreed upon.

On Tuesday, 6th September 2011, the Speaker announced that the Committee on Standing Rules and Orders nominated the following members to serve on the Portfolio Committee on Budget, Finance and Investment Promotion:-

Hon Beremauro G.

Hon Chinyadza W.

Hon Cross E.

Hon Dube M.

Hon Khumalo M.

Hon Kanzama F.

Hon Madzimure W.

Hon Matshalaga O.

Hon Muchinguri O.

Hon Muguti C.

Hon Mukanduri

Hon Ndava R.

Hon Nyaude B.

Hon Sibanda D.

Hon Zhanda P.

Hon Zhanda to be Chairperson

1. INTRODUCTION

1.1 The State Procurement Board (SPB) is established in terms of section 4 of the State Procurement Act, Chapter 22:14 of 1999. The Board's functions are as follows:

a) To conduct procurement on behalf of procuring entities, where the procurement is of a class prescribed in the procurement regulations;

b) To supervise procurement proceedings conducted by procuring entities in order to ensure proper compliance with the Act;

c) To investigate instances of impropriety where this is suspected and to take corrective action; and

d) To perform any other function that is conferred or imposed on the State Procurement Board, by or in terms of the Act or any other law.

1.2 The Portfolio Committee on Budget, Finance and Investment Promotion resolved to conduct an inquiry into the operations of the State Procurement Board. This followed allegations, by both contractors and procuring entities, of corruption, poor decisions on the award of tenders and the failure to adequately follow up on the performance of contractors. Players in the pharmaceutical and construction industry pointed out to these and other challenges the respective industries were facing with the procurement process. Articles in the print media also reported on litigation that was being instituted against the SPB by aggrieved suppliers over the manner in which tenders had been awarded.

2. OBJECTIVES

The objectives of the inquiry were as follows:

a) To establish challenges that were being faced by SPB in executing its mandate;

b) To be appraised of the challenges faced by contractors in the adjudication of tenders and implementation of projects:

c) To identify the gaps within the relevant legislation and recommend changes that will improve the system.

3. METHODOLOGY

In the course of the Committee's inquiry, public hearings were held in both Bulawayo and Harare. The Committee received oral evidence from the Chairman of the State Procurement Board and a written submission from the Minister of Finance. The Committee also studied procurement policies and procedures in other countries and those applied by multilateral agencies.

4. COMMITTEE'S FINDINGS

4.1 Significance of the State Procurement Board

4.1.1 The Committee noted that state procurement covers anything up to 40 per cent of the national budget as well as the procurement needs of local authorities, state owned corporations and parastatals as well as public utilities. It further noted that state procurement involves at least 20 per cent of the Gross Domestic Product and therefore is an issue of considerable concern. The primary goal of any state procurement system is to take advantage of competition between suppliers, secure value for money for all forms of expenditure of public funds, limit corruption and promote transparency at all levels of the system. In 2010, through the enactment of the Public Finance Management Act, Parliament strengthened the role of the Ministry of Finance in this critical field by making the Ministry responsible for the proper management and accountability of all public resources. The State Procurement Board is an important component in that process.

4.2 Accessibility of the SPB

4.2.1 Stakeholders cited the challenge arising from the centralisation of the SPB offices in Harare. They pointed out that most of the tenders are advertised in the Herald, a situation which favours contractors located in Harare. Contractors outside the main cites also have challenges in collecting tender documents and submitting bids. To them the tender process is both costly and time-consuming as it demands that one travels to Harare, resulting in some cases, disqualifications arising from the late submission of documents. To circumvent this challenge, the Committee agrees with stakeholders' proposal for the decentralisation of the SPB offices beginning with the major towns. Stakeholders also proposed that the SPB should establish a website from which forms can be downloaded and documents submitted electronically for the Board's consideration.

4.2.2 The Committee notes that the SPB is also seized with the subject of e procurement and acknowledges the efficiency gains expected from computerisation of the tender process. It is hoped that this matter is given the urgent attention it deserves so that the plight of contractors is addressed.

4.3 Delays in the awarding of contracts

4.3.1 Another serious impediment to the proper functioning of the SPB noted was the unnecessary delays in awarding of tenders which results in delays in projects implementation and costs escalations. The Committee noted with concern that some tenders were not being processed within the time frames stipulated in the procedures. The SPB blamed some of the delays on the procurement entities which failed to observe the 15 working days stipulation to adjudicate tenders and submit recommendations to the SPB. The Committee submits that the maximum time the SPB should take in processing projects of a complex nature should be three months and the rest should be disposed of in relatively shorter periods of time. The Administrative Court should assist by giving priority to appeals on the SPB decisions brought to its attention.

4.3.2 The Committee noted that the SPB has limited human and financial capacity to assess and manage state procurements. The Executive Chairperson of the SPB submitted that the Board is supported by a staff complement of 30 officers against a requirement of about 50 officers. Given the large volumes of tender documents of up to 1955 considered in 2011, it is the Committee's well considered view that the thresholds should be revised upwards to allow the procurement entities to adjudicate most of the tenders. The Committee therefore proposes that all tenders with a value of less $100 000 be awarded without review but that they be submitted to the SPB for oversight and audit.

4.4 Awarding of tenders

4.4.1 The Committee noted that tenders are often awarded to the lowest bidders. It further noted that in awarding the tenders the SPB often disregarded the recommendations of the professional team resulting in failure by the contractors to perform. Failure to perform was a consequence of lack of capacity on the part of contractors and also due to numerous prior commitments on the part of some contractors. The Committee submits that the recommendations of the experts should be taken seriously by the SPB to ensure value for money in the implementation of

projects.

4.4.2 The Committee was concerned about the lack of a monitoring mechanism to ensure that non-performing contractors are held to account. It established serious shortcomings in terms of implementing and monitoring of contracts awarded by the SPB. The SPB apparently has no interest in the outcome of contracts and argued that the implementing agency has the responsibility of monitoring implementation, yet in some cases their recommended contractors will have been ignored. The Committee proposes the introduction of a stage return system which compels accounting officers to update the SPB on developments relating to the execution of contracts on a regular basis and a final report and assessment of value for money when the contract is completed and handed over.

4.4.3 During the course of the inquiry, the Committee gathered that guidelines for local company preferences were not clearly understood or were being deliberately ignored. Criticism was levelled at the SPB in particular and the state in general, for awarding tenders to foreign contractors who ignored local procurement and the potential for subcontracting local firms in the execution of contracts. Reference was made to Statutory Instrument No. 171 of 2002, section 20, which provides in that:

> *"When a comparative schedule of tenders for contracts is being prepared, locally based contractors and suppliers should be allowed a ten per centum preference on purchase price or contract price, over external contractors."*

Section 21 of the same statute relating to preferences to previously economically disadvantaged contractors was reportedly not being implemented. Stakeholders proposed the revision of the preferences to either twenty five or thirty percent. However, the Committee does not fully agree with the proposal but is in favour of a slight adjustment.

4.4.5 The Committee observes that the current liquidity crunch and high unemployment rate are serious challenges affecting the country's economy which can be addressed through awarding tenders to local contractors. It noted, with great concern the awarding of tenders to some external contractors who go on to import labour, tools, equipment and other materials readily

available in the country. The Committee observed that procedures relating to Built - Operate – Transfer and Built – Own – Operate systems need to be reviewed in view of the potential abuse through inflation of costs and to ensure there is monitoring and accountability in the implementation of the projects.

5.1 Corruption within the tendering process

5.1 Concern was raised on the issue of corruption in the awarding of tenders by the SPB. The SPB ruled out the opening of tender documents before the official opening process but submissions from the stakeholders suggest that some people are privy to the results of the SPB's decisions before these are made public. The Committee proposes a review of the procedures and introduction of measures that will enhance integrity, transparency and accountability in the process.

6.0 Recommendations

6.1 The Committee is convinced that the present procurement system has shortcomings cited in this report. This justifies the need for an urgent review of the State Procurement Act and its attendant Regulations. As the Ministry of Finance conducts this review, it is the Committee's fervent hope that the Ministry will incorporate consider the following recommendations:

6.1.1 That the structure of the Board provides for a non-Executive Board by creating the post of a Chief Executive Officer, who will be responsible for the day to day administration of the State Procurement Board. The composition of the Board should include persons with the skills and experience required for such a body, and provisions to enable it to secure the services of such consultants as may be required to review complex contracts and tenders;

6.1.2 That all tenders valued at less than $100 000 be awarded by the procuring agencies and that their decisions be submitted to the SPB for oversight and review purposes over and above the annual external audit;

6.1.3 That for all tenders with a value of more than $100 000, each procuring entity be responsible for receiving tender documents, evaluating them and making an appropriate adjudication and recommendation to the relevant decision making body. Once a decision has been made at this level, it is communicated to the SPB for review and confirmation and should the SPB differ in its view of the award, it shall state its reasons to the procuring entity. In the event the two parties disagree, a decision should be made by a special review committee of the SPB including

specialists in the area covered by the tender;

6.1.4 That the SPB should should establish a website that will contain all schedules of all state funded tenders that are being issued and all the requisite information and documents for the state procurement. The same facility should be extended to the submission of documents by e mail;

6.1.5 That the reviewed regulations should specify the pre-qualification criteria for contractors wishing to submit bids for state procurements;

6.1.6 That the regulations should set out new procedures including the preferences of up to 15% to be advanced to local contractors , requirements to external contractors for subcontracting to local firms and the optimum use of resources;

6.1.7 That the regulations should provide for standard conditions in all contracts for penalties for late completion or non performance against contracted obligations; and

6.1.8 That implementing agencies be compelled to submit progress reports on progress in all contracts and a final report and assessment of value for money when the contract is completed. The system must be transparent and accountable with full disclosures to decisions reached.

7.0 Conclusion

7.1 The Committee's deep conviction is that the final responsibility of the use of public funds, the delivery of value for money and public accountability rests with the accounting officers of the ministries, state corporations, parastatals and local authorities. Procurement agencies are therefore well placed to monitor and evaluate the implementation of projects. The small size of the State Procurement Board, relative to the large numbers of bids and competencies of the Board Members render it unsuitable to process most of the tenders especially those of a technical nature. The Committee wishes to emphasises the urgency of this matter which is intended at addressing wasteful expenditure at a time the country is short of liquidity and needs to create employment for the majority of its citizens, particularly the youths.