



**THE SECOND REPORT OF
THE COMMISSION FOR STANDARDS IN PUBLIC LIFE**

8 FEBRUARY, 2011

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SECTION ONE

INTRODUCTION

Pursuant to section 117 (9) (g) of the Cayman Islands Constitution Order 2009, the Commission for Standards in Public Life (the Commission) shall continue to make every effort to ensure that it complies with its duty to report to the Legislative Assembly at regular intervals and, in any event, at least every six months. The Commission will further seek to ensure that such reports are tabled as soon as practical following submission so that they may become public documents. The Commission will through such transparency measures, inform the public accordingly and allow them to be judge as to the merit of the work of the Commission to date.

Since the submission for tabling of the first report, the Commission has met on the following dates: 6 September, 2010; 1 November, 2010; 22 November, 2010; 13 December, 2010; and 17 January, 2011. The next meeting of the Commission is scheduled to take place on Monday, 21 February, 2011.

Over the past six month period the Commission has continued to engage in research through various avenues such as interviews, discussion meetings and reviews of relevant processes and documentation. The Commission continues to educate itself on the already existing policies and procedures for which it now has a constitutional mandate to oversee.

The Commission has also continued its efforts to assist in the drafting of the requisite enabling legislation, the need for which formed a part of its first report on 12 August, 2010.

The goal of the Commission is to make well informed and strong evidence based recommendations to any policies, standards and procedures whether it be during the creation or review of such documents. It is proposed that the findings and recommendations contained in this report be used as a platform for further work by the Commission, facilitate its current interests in government procurement systems and allow a forum for making the necessary recommendations to the Legislative Assembly.

SECTION TWO

WORK OF THE COMMISSION

This section speaks to the work that the Commission has undertaken during the reporting period. Much of this work is indicative of the voluminous amount of research being completed by the Commission before being able to identify strong evidence based recommendations when establishing procedures, recommending codes and monitoring standards as required by section 117 (9) of the Constitution.

1. Request for Legal Opinion

To effectively assume responsibility for the supervision of registers of interest as mandated by section 117 and section 121 of the Constitution the Commission took steps to obtain the advice of the Honourable Attorney General with a view to seeking clarification regarding the mandate laid down in section 117 as read in conjunction with section 121 of the Constitution.

The legal opinion dated 21 June, 2010 confirmed the earlier view taken by the Commission regarding the parameters of the powers and functions outlined in sections 117 and 121 of the Constitution and also served to validate the Commission's continued request for enabling standards in public life legislation in order to fulfill its constitutional remit.

2. Draft Standards in Public Life Bill

Upon tabling the first report of the Commission His Excellency the Governor, Mr. Duncan Taylor CBE, and the Honourable Attorney General, Mr. Sam Bulgin endorsed the Commission's request for supporting legislation in order to fulfill their constitutional mandate. The Commission's call for the implementation of the requisite legislation coupled with its recommendation that consideration be given regarding the need to make the necessary amendments to the Register of Interests Law (1996) is further validated as a means through which an appropriate and applicable register of interests can be made available.

Over the past six month period the Commission has worked closely with the Legal Drafting Department with a view to expediting the drafting process of the proposed Standards in Public Life Bill. The Commission has spent countless hours researching various aspects of the Bill which when in its final 'draft' stage will be released to stakeholders within the Government in order to gather feedback and make decisions regarding the implications and overlap of responsibilities with the Register of Interests Law (1996).

It is the recommendation of the Commission that the Register of Interests Law (1996) and any consequential amendments thereto be retained as a separate law and that the Standards in Public Life Bill be introduced as a corresponding law to deal specifically with the mandate of the Commission in accordance with the provisions outlined in section 117 and 121 of the Constitution. The Chair has on behalf of the Commission continued to express the need and urgency for this legislation and the commitment of the Commission to work hand in hand with the legal department to advance the law. The Commission also confirmed its intention to examine means through which it can garner public awareness and support for the standards in public life legislation.

Once the relevant information is gathered and decisions are made clarifying the roles of the various stakeholders the Bill will be presented to Cabinet for discussion with the expectation that it is then forwarded to the Legislative Assembly where it will undergo the mandatory 21 day public consultation phase.

3. Procurement and Public Tendering

The Commission strongly believes that the concept of transparency in government has merit but there is a delicate balance and it therefore follows that a thorough review of these processes must be completed on a regular basis.

The Commission recognizes that the objective of the procedural rules for submission, receipt and opening of tenders is to ensure fairness, equity and transparency in the procurement process and therefore approached its initial review of the policies and procedures currently in place for awarding public contracts with these principles in mind. The Commission further recognizes that having a close relationship with the Central Tenders Committee and the offices of the Auditor General will assist the Commission in the fulfillment of its constitutional mandate having met with both entities to discuss current tendering practices and procedures.

a. Central Tenders Committee (CTC)

The Chairman of the Commission met with the Chairman of the CTC, Mr. Ronnie Dunn, on 28 September, 2010 to discuss the policy and procedures surrounding the tendering process and role of the CTC in this regard. During these discussions the Chair sought to ascertain whether there was scope for improvement in both the tendering process itself and the governing legislation.

As part of its review process the Commission focused its attention on the role of the CTC as a recommendation making body with particular emphasis being placed on the following:

- i. The current practices and procedures and whether they meet the standards set out in the governing legislation;

- ii. whether these practices and procedures achieve the best value for money as envisaged by the law itself;
- iii. whether procurement practices promote open and effective competition by ensuring the highest degree of transparency in all areas;
- iv. whether the provision of a register of interests (completed by all CTC members) could be useful in providing an additional safeguard to compliment this process and prevent the rise of any potential conflicts of interest on behalf of its members;
- v. whether the public tender bidding system ensures that there is approved capital and/or a recurring operating budget for a project; and if is there scope for improvement in this area;
- vi. the duality that may exist between the role of the CTC as a recommendation making body charged with providing information and advice to the Government on contracts put out to public tender and the relationship with the Minister of Finance who is charged constitutionally with ensuring best practices for all government expenditures on services and to whom the Chairman of the CTC reports;
- vii. the relationship between the blanket powers conferred on the Minister of Finance constitutionally and the guidelines given to the CTC on the regulations surrounding the bidding process as set out in Part IX of the Financial Regulations that have been issued under the authority of the Public Management and Finance Law (2010 Revision) (PMFL);
- viii. whether any amendments need to be made to the PMFL 2010 and its related regulations to clarify these dual roles and blanket powers; and
- ix. identifying any additional strengths and weaknesses of the procurement system not addressed in the Commission's initial findings.

As part of the remit to review and establish procedures for awarding public contracts, the Commission examined the manner in which members are appointed to the CTC. In so doing, the Commission sought to obtain copies of the terms of reference and any other written policies which govern the appointment of members to the CTC. By way of response, the Commission was informed that section 41 (2) of the Financial Regulations (2010 Revision) is the only documentation which governs the appointment of members to the CTC. This section of the regulations merely states that all tenders submitted with a value of \$250,000 or more must be evaluated by a Central Tenders Committee comprising of *"the Chief Officer (Public Finance) of the Ministry (or his nominee) must serve as chairman and such other persons as may be appointed from time to time by the Financial Secretary"*. The Commission believes that the membership of the CTC should comprise individuals who possess the requisite professional aptitudes and skills from which to draw their experiences in making sound decisions.

The Commission also believes that appointments to the CTC should be made on the basis of merit, subject to the need to achieve a balance of relevant skills and backgrounds on the Committee. The

principles of good practice in appointments, training, operations, codes of conduct and conflicts of interest should be adjusted. The CTC should seek to enhance good practices by extending its meetings (including the agendas and minutes) to public scrutiny.

Furthermore, the Commission believes that there is scope for improvement in the tendering process itself. The Chairman of the CTC has been invited to provide the Commission with any recommendations that in his view may assist the Commission in its examination as to any weaknesses in the system in an attempt to improve and enhance the tendering process on an overall basis.

For more information on the CTC or the tendering process we encourage members of the public to view their website at www.centraltenders.gov.ky

b. Auditor General

The Chairman of the Commission met with the Auditor General, Mr. Alastair Swarbrick, on 25 October, 2010 and again on the 20 January, 2011 to discuss his role as auditor for the tendering processes. The Commission intends to work closely with the Auditor General to review the tendering processes in detail and will put forward recommendations as part of its constitutional remit. The Commission is aware that the Auditor General is currently carrying out a thorough review of the public tendering processes. The Commission is also mindful that the findings and recommendations arising from this review may have a direct bearing on specific matters found in the constitutional remit of the Commission. Any such findings and recommendations forming a part of this report will no doubt assist the Commission in fulfilling its mandate under section 117 (9) (d) which charges the Commission with reviewing and establishing procedures for awarding public contracts.

c. Public Management and Finance Law (2010 Revision) and Regulations

The principles and processes involved in procurement and public tendering are outlined in the Financial Regulations that have been issued under the authority of the Public Management and Finance Law (2010 Revision) (PMFL). The Commission reviewed these regulations (sections 36-41) including relevant sections from the earlier 2005, 2007, 2008 revisions and 2009 amendments.

d. Government Procurement Systems

The Commission has researched government processes in various overseas jurisdictions to garner further clarity on the checks and balances of these systems both regionally and within the international arena. Research on the World Trade Organizations (WTO) plurilateral agreement on government procurement indicated that this document contained the essential cornerstone principles of non-discrimination and transparency that corresponded with the intent of the local regulations on tendering processes. The WTO's placement of greater emphasis on procedures for providing transparency of laws,

regulations and practices regarding government procurement also bodes well with Cayman's procedural obligations to government sanctioned tendering practices.

The Commission supports the use of detailed procedural obligations which procuring entities have to fulfill to ensure the efficient application of its basic principles. These provisions serve to effectively codify recognized good practices in the area of government procurement aimed at ensuring efficiency and value for money. These provisions also guarantee that access to procurement is open and that equal opportunity is given to both domestic as well as foreign suppliers and suppliers in competing for government contracts.

5. Website

The Commission has recently launched its website www.standardsinpubliclifecommission.ky where the public will find copies of the minutes of meetings as well as any other documentation used to assist the Commission in meeting their constitutional mandate. Whilst the Commission is not a public authority, they are nevertheless committed to openness, transparency, and serving the public interest in compliance with the Freedom of Information Law (2007). The Commission will endeavour to post as much information regarding the work of the Commission subject to the need from time to time to withhold any information which in its discretion is deemed confidential or crucial in nature to completing its work (such as during an investigation).

6. Policies and Procedures Manual

The Commission is currently in the final stages of preparing a policies and procedures manual that will work in tandem with the Standards in Public Life Bill to support the work of the Commission. This manual will be made available to the general public via the Commission's website once it is finalized.

SECTION THREE

THE WAY FORWARD

The Commission remains committed to using its best endeavours to promote practices in government that allow for more effective action and provide greater transparency in the government procurement process overall.

It appears to the Commission, that if followed *accurately* the procedure currently dictated by local legislation for procurement and public tendering is a fairly healthy and robust one. Nevertheless insofar as this also relates to the accurate application of the law itself, the Commission's recent review of both procurement legislation and practices to date confirms its continued belief that there is scope for improvement.

It is the recommendation of the Commission that effective immediately all members of the CTC are asked to complete a full disclosure of all pecuniary and business interests in order to clarify if there are any conflicts of interest.

It is also the view of the Commission that certain contracts should be exempt from the application of procurement requirements. These limited exceptions would include those relating to defence and national security.

In the next phase of work, the Commission intends to consider the general practice and procedure governing contracts falling outside the remit of the CTC including those that are generally evaluated by a Tender's Committee established by a Chief Officer of a purchasing "prescribed entity, statutory authority or government body". The Commission will be seeking to ascertain whether any changes need to be made in the process governing these 'lesser' contracts.

The Commission believes that the legal framework for public procurement should extend to all tendering activities regardless of value including those contracts which fall below the thresholds at which the CTC is required to oversee.

The Commission considers it imperative that in all dealings with suppliers, contracting authorities must preserve the highest standards of honesty, integrity, impartiality and objectivity. In particular, those engaged in the commissioning of tender contracts must:

- i. be seen to be fair, efficient, firm and courteous;

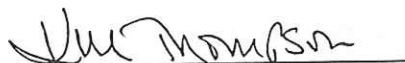
- ii. maintain the highest possible standards of integrity with all business relations;
- iii. foster appropriate standards of professional competence amongst those for whom they are responsible;
- iv. have in place a formal process to ensure that any complaints from suppliers or potential suppliers are dealt with in a professional, objective and timely manner; and
- v. declare any personal interest which it may be viewed as a potential conflict.

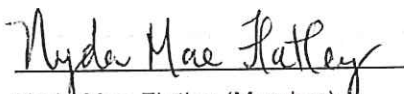
The Commission also intends to take an in depth look at the question of appointments to statutory boards and how conflicts of interests or corruption (whether real or perceived) can be avoided during this process. The Commission is particularly interested in the qualifications of members and whether or not members are equipped to make the best decisions and to handle all matters falling within their remit. The Commission will also take additional steps to consider whether or not any specific professional expertise is required by these bodies where the scope of their work requires or would benefit from such skills in their operational processes.

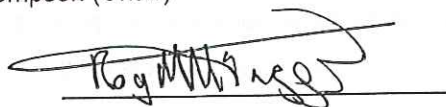
The preliminary recommendation of the Commission is that the terms of reference for the members of the CTC (and other like Government/Statutory Boards) make express provision to ensure that those persons appointed to these Boards will possess a specialized professional aptitude or skill relevant to the work of the Board which would enhance their decision making ability when evaluating bids for public tender.

Lastly, in the fulfillment of its remit, the Commission will be seeking to engage in formal training to assist the members in handling the workload of the Commission. It is nevertheless recognized that prior to engaging in any training opportunities the Commission must be provided the full scope of its powers so as to gain the best value for time and money during any training undertaken.

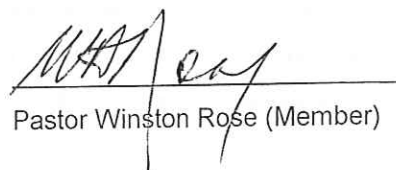
Dated this 8th day of February 2011


Karin M. Thompson (Chair)


Nyda Mae Flatley (Member)


Roy McTaggart (Member)


Hedley Robinson (Member)


Pastor Winston Rose (Member)