



SAINT HELENA
AUDIT SERVICE
External Auditors

2012/13

**Report on the Role of the
Tender Board**

V65

August 2012

Introduction

- 1.1 As part of the ongoing work of the St Helena Audit Services (SHAS), issues raised by the Public Accounts Committee (PAC) are reviewed on a regular basis to document progress and actions taken. This report updates the PAC with regards to one particular issue, the clarification of the role of the Tender Board (TB).
- 1.2 The Value for Money (VFM) report "Compliance with Contract Regulations" issued in November 2011 formed the basis of the questioning by the PAC in their Formal Session on the 18th of November 2011. In their report following the Session they concluded that "*the Tender Board currently operates without any written terms of reference; its role and function require clarification and review to enable it to add value to the process of contract regulation*".
- 1.3 This reports details the progress made since the report was issued; through a review of the minutes of the TB and discussion with relevant officers and two members of the TB.
- 1.4 The findings from this report will be shared with the PAC, members of the TB, Chief Secretary and Corporate Management Team. Owing to the nature of work, Appendix one and two, which covers the review of TB minutes, will not be made public as they relate to confidential minutes.
- 1.5 The recommendations are detailed in Appendix three.

Process

- 2.1 TB minutes from the 8th of November 2011 to the 18th of June 2012 were obtained and reviewed. The review focused on agenda items being considered by the TB and issues being discussed in order to form an opinion as to whether the TB is adding value to the process of contract regulation.
- 2.2 Further, interviews were held with a number of key players; the Chair of the TB, a member of the TB and relevant Directors and Heads of Departments.

Findings

- 3.1 There are no Terms of Reference covering the role of the TB and the Board use the Contracts Regulations as a guide. Section 10.5, Meeting of the Tender Board, provides a very brief overview as to the running of the TB meetings and states under part (g), "*The Board is otherwise entitled to regulate its proceedings*". How the Board regulates its own proceedings is yet to be defined or documented. Some 8 months later, the concerns raised in the PAC report of November 2011 have not been addressed.
- 3.2 The review found that the TB does follow the Contract Regulations, and evidence shows this is to be the case, but in a number of areas it is not deemed to be a good use of the TB's time and efforts. It is vital that the review of Contract Regulations reviews the role of the TB and ensures that it does not have to deal with trivial items but focus on providing VFM. It is planned that the Terms of Reference for the TB will be considered as part of the review of the Contract Regulations as the role of the Board may change; but this has yet to be completed.
- 3.3 In order to understand the need for Terms of Reference (ToR) recommended by the PAC, a detailed review of the minutes of the TB was carried out to determine the actions and working practices of the Board. Meetings and discussions took place with key players on the operation of the Board, including the Chairperson. Key findings from the review are detailed here in the body

of the report and further details can be found in Appendix A – Review of the Tender Board Minutes.

- 3.4 It is highly recommended that in the meantime the Board review its own functions and processes and start to consider the future Terms of Reference through discussion with the Director of Corporate Procurement (DCP), who is leading the review of the Contract Regulations (see recommendation one). If this is not done, then further delays will be incurred in the introduction of the Terms of Reference.

Recommendation 1

It is recommended that the Board review its own functions and process and to consider the future Terms of Reference, through discussion with the Director of Corporate Procurement.

- 3.5 There have been a number of instances where the TB has asked for minor points to be clarified or discussed non TB issues; it is questionable as to whether this level of intervention is of any benefit to the process. This, I believe, has led to delays in procurement for no added benefit (see recommendation two).
- 3.6 The current revision of the Contract Regulations will further help the functioning of the TB, as in a number of cases the Board has to carry out work to conform with the current Regulations, which adds nothing to the process of procurement.

Recommendation 2

The Board should focus its limited resources on key procurement issues and tenders over £20,000.

- 3.7 Communication between the Board and Directors is very formal. Usually, formal letters are issued, the response documented at the next meeting, and then if necessary a further letter is issued. This is an inadequate communication process which is adding unnecessary bureaucracy and time delays to the procurement process. This should cease immediately and alternative forms of communication, such as emails, should be used (see recommendation three).
- 3.8 Communication with persons providing tenders is very formal and can be extremely slow, it is not helped at times by the quality of supporting information provided by Directorates to the TB. This can clearly be seen in the minutes with regards to tenders No. 253 and No 256 (see Appendix two for details); both tenders required further additional information with regards to inclusion of customs duties and whether a tender was for one or two vehicles. Formal letters were sent on several occasions to the tenderer, yet some 4 weeks after the request, nothing was received. It is not clear why the TB had not involved the Director earlier in the process to obtain the information. Further, the tenderer in question is a large Island business and should have been contacted directly via another form of communication such as email or telephone to speed up the process (see recommendation three).

Recommendation 3

The TB should ensure that its working practices are effective and are not slowing down the process of procurement. Communications processes need to improve immediately; the issuing of formal letters should cease in most instances and emails should be used as a more regular form of communication.

- 3.9 Directors rarely attend meetings to respond to issues. It was noted that this had occurred only twice in the period under review and on both occasions this was an update on the wharf project. The majority of the TB discussions revolve around Infrastructure projects and issues are addressed in the main to the Director of Infrastructure & Utilities (I&U). It is recommended that officers from I&U attend the meetings as and when is needed, rather than issuing letters asking for explanations. Officers could be asked to be on standby and then contacted to attend the meeting if needed (see recommendation four).

Recommendation 4

Officers should be requested to attend the TB on a regular basis to answer any questions the TB may have with regards to tender. Officers should be asked to be on standby when requests and recommendations are being considered by the Board. This should be implemented immediately.

- 3.10 The TB members have a regulatory function to approve the tender lists held by individual Directorates and the TB spends a considerable amount of time discussing and approving persons to be invited to tender. It is not clear what benefit this provides to the procurement process. This, I believe, should be for the accounting officer to decide, and the TB should not be involved in this process. This is delaying the process of procurement and action needs to be taken to avoid this (see recommendation five).

Recommendation 5

The Contract Regulations need to be revised to ensure that the TB focuses on key procurement projects and is not involved in non-productive work.

- 3.11 Number of quotes were significantly under £20k limit, yet went out to tender and involved the tender board. Two examples of this are contracts No 258 and No 261. In the main, only tenders over £20k should be sent out to tender and involve the TB. Current practice (as mentioned above) is not a good use of time and is poor Value For Money (VFM) (see recommendation six).

Recommendation 6

The TB should focus efforts on tenders over £20k. Further, the current limit of £20k needs to be revised upwards, so freeing up the efforts of the TB. It is recommended that the review of the Contract Regulations considers an increase in the current £20k limit.

- 3.12 Directorates need to ensure that robust and realistic estimated prices are calculated before the TB is involved. The TB can only rely on information supplied by directorates, unnecessary time and effort is being wasted on opening and registering none relevant tenders sent to the TB.

Recommendation 7

We recommend that Directorates ensure that realistic estimated prices are calculated, to avoid unnecessary use of the Tender Board.

- 3.13 Once the tenders have been opened, the Secretary forwards them to the relevant accounting officer. This, again, is a very formal process, with letters being exchanged and tenders being photocopied. It is recommended that the original tenders are passed on immediately after the meeting and that the accounting officer acknowledges receipt of the tenders via email or by signing the register, there seems little need to photocopy the tenders. This will further speed up the process (see recommendation eight).

Recommendation 8

It is recommended that the original tenders are passed on immediately after the meeting and that the accounting officer acknowledges receipt of the tenders via email or by signing the register.

- 3.14 A number of contracts documented in the minutes referred to one project. As this is a specialist service with only bidder (examples of this are tenders No.244 and N0.245, with a total value of £82,500), I would question why this approach is being taken and why we are not negotiating directly with the company to provide the service on an on-going basis. Evidence here that VFM is not being achieved and consideration should be given to negotiating services (see recommendation 9).

Recommendation 9

Consideration needs to be given to negotiating contracts directly to achieve VFM where there is only one possible bidder for the work, this should be considered as part of the review of the Contract Regulations.

- 3.15 The future of the TB and the need for such a body needs to be questioned, it is recommended that alternative structures and processes be explored that may be more appropriate, and that this is done as part of the review process of Contract Regulations (see recommendation 10).

Recommendation 10

It is recommend that the role of the Tender Board be reviewed and alternative structures and processes be explored that may be more appropriate this should be carried out in line with the review of the Contract Regulations.

Conclusion

- 4.1 St Helena Government (SHG) currently reports regularly to DFID on the progress being made on Infrastructure Project via the DAPM tracker. It has been well documented that failure to spend against budgeted expenditure could result in the reduction of future funding. It is therefore vital that SHG does everything possible to ensure that their own processes are working efficiently and they are not delaying the process. This report has highlighted some delays in the TB process which could impact on procurement and ultimately on overall infrastructure spend. The recommendations in this report need to be actioned urgently to ensure that the process is improved.
- 4.2 In our opinion the purpose of the Board needs to be re-defined, as there is little evidence that the current process is adding anything to the procurement process. The evidence suggests, on the other hand, that the TB function is delaying the procurement process rather than supporting VFM. It is adding additional costs to the procurement exercise, especially with regards to employee costs – those of the TB and Officers involved in the process. The role of the TB needs to be considered as part of the review of the Contract Regulations, as the TB tends to follow what the regulations ask of it, and it is highly questionable if it is providing VFM.
- 4.3 The administrative process needs to be revised immediately. Forms of communications should include emails, and Officers should be invited to attend meetings on a regular basis. The use of formal letters should be revised as this is clearly leading to delays in the process.
- 4.4 Finally, the current review of the procurement process and tender regulations needs to examine the need for the TB or a substantially revised TB with clearly defined ToR and purpose. The role of accounting officers in this process needs to be enhanced; they should be held accountable and be allowed to make informed decisions rather than being heavily scrutinised and micro-managed.

Appendix one: Review of Board Minutes (not made public as they relate to confidential minutes).

Date	Tender	Brief Details	Issue	Auditor's Comment

Appendix two: Detailed examples of showing delays in the tendering process Tender No 253 & 256 Tender No 253 (not made public as they relate to confidential minutes).

Date	Action

Appendix Three: Detailed recommendations and comments

	RECOMMENDATION	Officer responsible	Priority	Implementation Date	Comments	Chief Auditor Remarks
1	It is recommended that the Board review its own functions and process and to consider the future Terms of Reference, through discussion with the Director of Corporate Procurement.	DCS	High	September-October 2012	Agreed – Board will take this forward as part of the review of Contract Regulations	Noted acceptance.
2	The Board should focus its limited resources on key procurement issues and tenders over £20,000. It should not be concerned with minor or trivial issues.	DCS	High	Immediately.	Agreed. The Board should focus on key procurement issues and procurement over £20k. It is pointed out here that the Board has to date sought to ensure compliance with the existing Contract Regs in all aspects of its deliberations.	Noted acceptance.
3	The TB should ensure that its working practices are effective and are not slowing down the process of procurement. Communications processes need to improve immediately; the issuing of formal letters should cease in most instances and emails should be used as a more regular form of communication.	DCS	High	August 2012	Agreed - This is already now happening.	Noted acceptance.

	RECOMMENDATION	Officer responsible	Priority	Implementation Date	Comments	Chief Auditor Remarks
4	Officers should be requested to attend the TB on a regular basis to answer any questions the TB may have with regards to tender. Officers should be asked to be on standby when requests and recommendations are being considered by the Board. This should be implemented immediately.	DCS	High	Implemented.	Agreed - This was put in place during June 2012.	Noted acceptance. This was implemented during the course of the audit.
5	The Contract Regulations need to be revised to ensure that the TB focuses on key procurement projects and is not involved in non-productive work such as the approving of tender lists.	Corporate Procurement	High	September 2012	Contract Regs are being reviewed – a first draft is anticipated in September 2012	Noted review.
6	The TB should focus efforts on tenders over £20k. Further, the current limit of £20k needs to be revised upwards, so freeing up the efforts of the TB. It is recommended that the review of the Contract Regulations considers an increase in the current £20k limit.	DCS/ Corporate Procurement	High	August 2012	Agreed. This is happening already as tenders that are opened by the Board which fall significantly below £20k, are referred to the directorate for appropriate action. Contract Regs are being reviewed – a first draft is anticipated in September 2012	Noted acceptance.
7	We recommend that Directorates ensure that realistic estimated prices are calculated, to avoid	All directorates	Medium	With immediate effect	None	Noted acceptance.

	RECOMMENDATION	Officer responsible	Priority	Implementation Date	Comments	Chief Auditor Remarks
	unnecessary use of the Tender Board.					
8	It is recommended that the original tenders are passed on immediately after the meeting and that the accounting officer acknowledges receipt of the tenders via email or by signing the register.	DCS	Medium	August 2012	Agreed - This is already happening	Noted acceptance. This was implemented during the course of the audit.
9	Consideration needs to be given to negotiating contracts directly to achieve VFM where there is only one possible bidder for the work, this should be considered as part of the review of the Contract Regulations.	DCS/DCP	High	September/October 2012	Agreed. To a certain extent, CR 9 provides for this already. However, in relation to para 3.14 of this report (Tenders 224 and 245) - there are other providers of this service.	Noted acceptance.
10	It is recommend that the role of the Tender Board be reviewed and alternative structures and processes be explored that may be more appropriate this should be carried out in line with the review of the Contract Regulations.	DCP/ Corporate Procurement	High	September 2012	CR are being reviewed – a first draft is anticipated in September 2012 and the Board will respond to the first draft.	Noted review.