

**Management
of Government
Procurement**
- Case Studies

August 2011





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EXECUTIVE SUMMARY

1. On July 5, 2011, I submitted an audit report on the *Management of Government Procurement* to the Legislative Assembly. In that Report, I discussed my findings from the review of the government's practices for the procurement of supplies, services and assets greater than \$250,000.
2. This report includes the results of our review of three significant Government procurements; the CI\$155 million loan in 2010/11, the Closed Circuit Television System (CCTV) in late 2010 and Jazz Fest in December 2009.
3. The audit work followed on from the wider scope audit conducted of government procurement that reviewed management processes in the Government against the current regulatory framework and best practices.
4. Whilst our review of the three procurement case studies identified some areas of good practice and compliance with the regulatory framework, it confirmed what we found in the wider scope audit that significant weaknesses in the procurement practices are leading to waste of public money and risks for fraud and corruption resulting from lack of guidance and political interference.
5. In particular, our review of the government loan identified a number of issues. The Minister of Finance has the powers under the *Public Management and Finance Law (2010 Revision)* to enter into loans on behalf of the Government, and the Minister of Finance believed that by cancelling the second loan tender and contracting with Cohen and Company that he was acting in the best interests of the Government and would achieve significant savings.
6. However by cancelling the second loan tender we found that:
 - The Government paid an extra CI\$450,000 in legal and arrangement fees for the short term financing alone, when compared to winning bid from the second tender. Had the Government proceeded with obtaining long-term financing through Cohen and Company, the extra arrangement and legal fees would have been significantly more; and
 - Contracting with Cohen and Company did not comply with the financial regulations. The contract awarded to Cohen and Company provided intermediary services and did not provide a loan as the original tender requested. The contract was awarded without going through an open tendering process while disregarding the advice of Ministry of Finance officials that awarding a contract to Cohen and Company created risks for the Government.

7. Therefore, in my opinion the process used to acquire the contract with Cohen and Company lacked transparency and fairness. In addition, I believe that the award of the contract to Cohen and Company did not provide good value-for-money and resulted in CI\$450,000 of extra costs to the Government.
8. By early January 2011, Ministry of Finance officials determined that Cohen and Company could not deliver on the promises it laid out only two months earlier. With the cancellation of the agreement with Cohen and Company, the Ministry of Finance, with the assistance of an expert consultant, successfully tendered for the loan and obtained value-for-money in early 2011.
9. The Government paid CI\$307,000 to arrange the long term loan obtained in April 2011 as a result of the tendering process conducted by Finance officials with the assistance of an expert consultant; considerably less than had it proceeded with the arrangement with Cohen and Company.
10. By reviewing the three case studies in this Report, I confirmed the conclusions in my previous report. I urge the senior officials in the Government once again to develop and implement an action plan that will address the recommendations in this report and those included in the previous report.

INTRODUCTION

10. In June 2011, the Office of the Auditor General issued a performance audit report on the “Management of Government Procurement”.
11. As part of that audit to determine whether the Cayman Islands Government procurement framework for acquiring supplies, services and assets greater than \$250,000 ensures best value-for-money, while conforming with good public sector procurement practice, we carried out three case studies of specific procurements:
 - Government borrowing of \$155 million
 - Closed Circuit Television Contract (CCTV)
 - Jazz Fest 2009
12. This report follows up the report “Management of Government Procurement”, and provides the detailed findings from each of the three case studies. In Appendix 1, we have included the description of the open tender process currently being used by the Government. The process is explained further in the performance audit report “Management of Government Procurement”.

AUDIT OBJECTIVE, SCOPE AND CRITERIA

13. The overall objective, scope and criteria for our audit of government procurement are set out in our report “Management of Government Procurement” and are reproduced here in Appendix 2. It is against these criteria that these three procurements were reviewed, and in particular whether they were carried out in accordance with *Financial Regulations (2010 Revision)* and any underpinning policies and guidance on government procurement.

AUDIT APPROACH AND METHODOLOGY

14. We conducted our audit in accordance with methodology used by supreme audit institutions for the conduct of performance audits. This included three audit phases: planning, execution and reporting, and included the following:
 - reviewing key documents and interviewing officials involved in the transactions (details in Appendix 3);
 - with respect to the loan transaction we reviewed all key documents relating to the three tendering processes undertaken by the Ministry of Finance, as well as the contracting process for intermediary services resulting in a contract with Cohen and Company; and
 - we also identified practices used in other jurisdictions for government borrowing to assess the reasonableness of the practices used by the Cayman Islands Government.

15. In addition to sources used on the audit of Government's management of procurement, best practices were also obtained from:

- the International Standards of Supreme Audit Institutions(ISSAIs);
- Department of Finance, Government of Canada;
- Bank of Canada;
- Export Development Corporation, Canada;
- Government of Ontario, Canada;
- Office of Government Commerce, UK;
- OECD;
- Caribbean Development Bank;
- World Bank;
- International Monetary Fund; and
- practices used in Barbados and Jamaica.

TIMING AND AUDIT RESOURCES USED

16. The following individuals formed the audit team and conducted this audit:

- Martin Ruben, CGA - performance audit manager, Office of the Auditor General;
- Alan Quinn, consultant, procurement specialist; and
- Bernard Keating, PhD, MA (economics), consultant, finance specialist.

17. The audit was conducted from December 2010 to May 2011 and covered transactions from May 2009 through April 2011.

CASE STUDY 1: GOVERNMENT BORROWING OF CI\$155 MILLION

BACKGROUND

18. As a result of the 2010/11 budget process, the Government identified the need to borrow CI\$155 million. The borrowings were to be used to finance ongoing capital projects and investments. On June 10, 2010, the Foreign Commonwealth Office (FCO) approved the borrowings subject to four conditions:
- the measures contained in the 3 year plan must be fully implemented. The Government was encouraged to publish the plan alongside the budget and to provide progress reports annually;
 - the proceeds of divestment activity will be used to establish a dedicated sinking fund within the next year to build reserves and offset debt attached to the recent bond issue. The Government was encouraged to include this in the budget speech;
 - the Government would seek to restructure existing loans to put in place arrangements to pay down debt (including the recent bond issue) over the long term; and
 - the Government would ensure the Cayman Islands have a full, up-to-date, set of audited accounts by the end of the next financial year (for June 30, 2011).
19. The Cayman Islands Government has recently started to borrow significant amounts of money on a regular basis to finance its many programs and large capital projects. In addition, statutory authorities and government companies borrow to fund their operations. In Table 1 below are the balances at year end of public sector debt over the last five years:

Table 1: Summary of public sector debt at year-end (including accrued interest) (CI\$ million)¹:

	2006-07	2007-08	2008-09	2009-10	2010-11 (forecast)
Core Government	176	287	419	500	630
Other government entities	156	163	166	164	165
Loans paid by Government on behalf of entities	7	6	5	4	3
Total Public Sector Debt	339	457	589	668	798

¹ Amounts provided by Ministry of Finance and are unaudited

Table 2: Summary of interest cost on public sector debt (CI\$ million)²:

	2006-07	2007-08	2008-09	2009-10	2010-11 (forecast)
Core Government	7.5	7.0	12.6	21.2	27.3
Other government entities	7.3	9.4	7.1	6.1	6.7
Loans paid by Government on behalf of entities	.3	.3	.2	.1	.1
Total Interest Costs	15.1	16.7	19.9	27.5	34.1

20. The rules for the borrowing of funds by the Cayman Islands Government are outlined in the *Public Management and Finance Law (2010 Revision)* (the Law or PMFL). This Law provides the framework and limits by which the Government can borrow money. Responsibility for borrowing on behalf of the Government is given to the Minister of Finance whose powers are outlined in Section 33 and 34 of the Law (Appendix 4).
21. The Government went through three separate tendering processes in the period from July 1, 2010 through to April 18, 2011 when a long-term loan agreement was signed. Below in Table 3 is a recap of the timelines for the three tendering processes and hiring of an intermediary service carried out by the Government.

² Amounts are provided by Ministry of Finance and are unaudited

Table 3: Timelines for financing of Cayman Islands debt for 2010/2011

Date	Event	First Loan Tender	Second Loan Tender	Hiring Intermediary Services	Third Loan Tender
June 10, 2010	Authorization from FCO for 2010/2011 borrowing				
July 9 and 16, 2010	Advertised open tender for new loan	X			
July 23, 2010	Bid submission deadline	X			
July 28, 2010	Deadline extended	X			
August 24, 2010	Termination of process	X			
August 26 and September 3, 2010	Advertised open tender for new loan		X		
September 9, 2010	Bid submission deadline		X		
September 22, 2010	Ministry recommends First Caribbean International Bank (FCIB) and RBC loan to CTC		X		
October 12, 2010	CTC accepts recommendation of FCIB and RBC for loan		X		
October 19, 2010	Premier discusses Cohen and Co. offer with Cabinet			X	
October 15 & December 14, 2010	Agreement letters signed with Cohen and Co.			X	
January 27, 2011	The Government sent a termination letter to Cohen and Co.			X	
March 7, 2011	Ministry issues invitation for selective tendering				X
March 15, 2011	Bid submission deadline				X
April 13, 2011	CI\$155million loan awarded to FCIB				X
April 18, 2011	Loan signed by parties to the agreement				X

THE CAYMAN ISLANDS GOVERNMENT HAS NO FORMAL MANAGEMENT FRAMEWORK IN PLACE FOR PUBLIC DEBT

22. Managing government's debt is, in many ways, similar to managing one's personal debts. When an individual is looking at choices for financing their personal expenditures, there are a number of options to consider such as whether to borrow short term or long term, to maintain a savings account to borrow from a large financial institution or borrow from a family member, or if we get some extra money, whether we should repay our borrowings or spend the money on something we would like to have but otherwise would not have bought. Our personal borrowing and repayment strategy is usually dependent on our personal risk model and the resulting appetite to borrow and repay over time. While it may not be documented, most people could describe what their borrowing strategy looks like.
23. Best practice for managing borrowings by a government also requires that there should be a framework in place for the management of the Cayman Islands Government debt. Such a framework might be based on the following general guidelines for debt management in developed countries:
- a risk monitoring and oversight function supported by analytical capacity which is independent of funds management operations;
 - a risk culture where risk management is highly valued and considered as an integral part of treasury management activities;
 - all existing and new lines of business are thoroughly reviewed on an ongoing basis to identify relevant risks;
 - risk mitigation strategies for credit, market liquidity, legal and treasury operations;
 - risks are measured, both quantitatively and qualitatively;
 - reports are provided to management on a regular basis on issues such as risk management and the government's overall risk position;
 - periodic reviews of risk management policies, procedures and operations are conducted by internal staff and external experts; and
 - risk management practices are in line with those of comparable sovereign countries.
24. We found that the Ministry of Finance which is responsible for the management of public debt in the Cayman Islands Government has no formal debt management framework. During our audit, Ministry officials agreed that a framework was needed mainly in respect of new borrowings and for the management and supervision of those debts that are subject to shocks and volatility in the markets, and that there are informal practices currently in place. In agreeing with our audit finding, they commenced work immediately to draft one for consideration by Cabinet. According to the PMFL under section 34, the framework for borrowing should be approved by the Cabinet. The framework and strategy that we discuss later in this section should provide the "terms and conditions" for borrowing to ensure that the delegation of responsibility to the Ministry of Finance is clearly defined and properly documented.

25. We asked Ministry of Finance officials, who are responsible for funds management operations, whether economic projections prepared by the statistical agency and an independent outlook for the financial markets were taken into account before the tendering process. This analysis would have formed a significant part of the business case that is required by the tendering process. We found that forecast and outlook projections were not used by Ministry of Finance officials.

KNOWN RISKS ARE NOT BEING MANAGED EFFECTIVELY

26. An essential element of managing public debt is the identification of risks that need to be managed. To effectively manage those risks, there should be a clear understanding of the Government's options for borrowing and the impact they would have on future Government operations. This would include, for example, a determination of how much of the loan portfolio should be paid back over the long term, medium term or short term. As well, a risk mitigation strategy would include a list of the types of debt that the Government would want to have in its portfolio. For example, options would include loans paid back over the entire term with interest and principal, loans with interest only payments, bond issues, etc.
27. We were informed that the terms of new borrowings were determined based on the economic and financial markets existing at the time and the Government's capacity to meet future payments over the life of the borrowings; however, this is considered a short term view. We found that risk is measured informally after the fact through information provided to credit rating agencies. We were not made aware of proactive risk mitigation measures that were being taken in a regularized fashion. For example, every two months, there is an analysis of the identified risks associated with the debt portfolio and actions taken to ensure the situations associated with those risks were mitigated.
28. With regard to an independent review of the risk management policies (even though they are informal), we were not made aware that there has ever been one. Mr. Geoffrey Bell, the technical consultant who the Government hired to assist with the final tendering process in early 2011 indicated that it would be appropriate.
29. The Government sought legal advice on the implications of restructuring its existing loans to put in place arrangements to pay down the debt over the long-term, as requested by the Cabinet. The advice received argued against this proposal citing the adverse effect on investors/bond holders.
30. Without a debt management framework that effectively manages and mitigates risk, it is our opinion that the Government is not proactively managing key ratios relating to its credit rating, such as debt/GDP, debt/revenues, and debt-service/revenues. Proactive risk management would examine how incremental debt affects these ratios. The terms and conditions of any new borrowings by the Government could be negotiated with an eye on these ratios and the impact it would have in both the short and long terms. As the volume of outstanding debt increases, the risk of a credit downgrade does too, in the absence of a credible debt management framework.

31. The long term loan facility taken out by the Cayman Islands Government on April 18, 2011 with FirstCaribbean International Bank contains a clause that would require the renegotiation of interest rates if the current Moody's rating of Aa3 was downgraded below Moody's A2. While there is very little risk of credit risk downgrade according to Ministry officials, we believe more needs to be done to effectively manage this risk and ensure the Government doesn't end up paying more interest costs in the future.

Recommendation #1: The Ministry of Finance should develop a debt risk management framework as a high priority and implement the organization and management practices required to effectively manage the existing debts and that would also ensure future borrowings are obtained with due regard for value-for-money.

HIRING COHEN & COMPANY DID NOT CONFORM TO THE FINANCIAL REGULATIONS

32. On October 15, 2010, the Minister of Finance entered into an agreement with Cohen & Company Capital Markets, LLC (Cohen & Company) that is headquartered in New York City to facilitate the acquisition of borrowings related to the authority to borrow CI \$155 million in 2010/11. Acting as an intermediary, Cohen & Company's role was to arrange short term borrowing and a long term bond issue with a financial institution. The Government entered into this agreement without going through an open tendering process required by the financial regulations and practices outlined in the Central Tenders Committee guidelines.
33. Concerned about raising a loan of approximately CI\$20 million for Cayman Airways (which was not part of the tendering process), the Minister of Finance instructed the Ministry of Finance officials to withhold notifying the winning bidder of the September 9th tender. Although the Ministry of Finance was directed by the Minister of Finance to include the refinancing of the CI\$20 million loan for Cayman Airways in the intermediary contract, this was not done. According to Finance officials, the FCO's borrowing approval of CI\$155 million was for the entire public sector and did not include CI\$20 million borrowings in respect of Cayman Airways. In other words, one of the main reasons expressed by the Minister of Finance for hiring the services of Cohen & Company could not be followed through by Finance officials due to the lack of authority to proceed in the first place.
34. The decision to contract with Cohen & Company was made by the Minister of Finance against the advice of Ministry of Finance officials. We were informed by the Minister of Finance that he directed the Government to enter into a contract with Cohen & Company as it was his belief that Cohen & Company offered better value-for-money, and it would have saved the Government a total of CI\$24 million over the fifteen year term that the borrowing would have occurred. The basis for these savings was contained in submissions to Cabinet that we reviewed as part of our audit.

35. The Minister of Finance informed us that he was unhappy that both the first and second tender processes did not include refinancing for the CI\$20 million debt of Cayman Airways. He also informed us that he had the following concerns: that Ministry staff did not have the skills to conduct the loan acquisition process; there were conflicts of interests with government officials; and, about the general process that led to the approval by the Central Tenders Committee of the loan awarded to the First Caribbean Bank and Royal Bank of Canada. He informed the audit team that he believed that the results of the tendering process did not provide best value-for-money. He indicated that his unease with Ministry officials' advice resulted in him going to his political party colleagues for advice and asking them whether they believed better rates could be obtained from the markets.
36. From our review of the information, Ministry officials identified significant risks associated with Cohen & Company to the achievement of the proposed savings; however, these were not discussed in the information that went to Cabinet. The risks were communicated to the Minister of Finance by the Financial Secretary based on a thorough review by Finance officials. The concerns ranged from the likelihood that the interest rates promised could not be achieved to the fact that there was significant reputational risk from dealing with Cohen and Company. The concerns regarding Cohen & Company's original offer raised by Ministry officials in an email to the Minister of Finance when they learned he was going to cancel the tendering process and contract with Cohen and Company included:
- no short-term funding was formally promised by Cohen & Company while the long-term loan/bond was put in place;
 - all three of Cohen & Company's options were bullet bonds, (which only require interest payments to the maturity date). In addition, the interest rate recommended by Cohen & Company would have fluctuated daily, (so the true interest cost of the loan is unknown and the amount shown in the analysis of the options provided were not appropriate);
 - there was a danger of reputational damage to the Government being associated with Cohen & Company in view of one of its principals being charged with securities fraud; and
 - Cohen & Company is not listed on the Bloomberg website as one of the leading contenders in underwriting issues in the capital markets. The Ministry official indicates that "I find it quite difficult to believe that Cohen & Company has the ability to deliver what it says". Furthermore, the costs associated with the underwriting costs were approximately double (CI\$1.55 million vs. CI\$777,000) the FCIB/RBC bid in the tender process.
37. Below in Table 4 is a timeline and costs associated with the services provided by Cohen & Company and the short term loans they arranged on behalf of the Cayman Islands Government.

Table 4: Financing additional debt from October 15, 2010 through January 27, 2011

Date	Event	Impact	Cost
October 15,2010	Contract signed with Cohen & Co. to provide intermediary services to obtain bond financing.	Agree to fee of 1% of gross proceeds of notes (CI\$1.55 million). Cap all other fees at CI\$391,000	NIL – Cohen did not follow through
October 22,2010	Interim financing agreement signed with Scotia Bank & Trust (Cayman) Ltd.	An advance of CI\$78 million borrowed at LIBOR plus 2.25% for 90 days plus fees.	Interest: CI\$491,617, Arrangement fee: CI\$191,937
December 14, 2010	Engagement letter signed with Cohen & Co. to provide advice on the form and structure of a Bridge Loan.	Fee of 0.5% of gross proceeds of loan, all legal fees and expenses relating to documentation of the loan and Cohen & Co. expenses.	Arrangement fee: CI\$149,400 +CI\$23,640 pending for travel
December 14, 2010	Interim financing agreement signed with Banque Havilland S.A. for CI\$30.2 million at LIBOR plus 2.25%	Responsible for significant bank, legal and out-of-pocket expenses	Interest: CI\$75,911 Arrangement fee: CI\$75,600
January 20,2011	Extension agreement signed with Scotia Bank & Trust (Cayman) Ltd	Continuation of CI\$78 million borrowed at LIBOR plus 2.25% for 90 days.	Interest: CI\$488,970 Arrangement fee: CI\$116,203
January 27,2011	Termination of Cohen & Co. agreement		
Total Interest Charges			CI\$1,056,498
Arrangement Fees		CI\$533,140	
Legal and Miscellaneous Fees		CI\$321,635	
Total Fees			CI\$854,775
Total fees and interest charges			CI\$1,911,273

Notes:

- Interest charges were taken from loan amortization documents that were stamped “paid”.
- Expenses other than interest costs were taken from “Financing Expenses 1 July 2010-26 April 2011”.
- Scotia Bank arrangement fees for the loan extension

38. From our review, it is also our opinion that there was insufficient due diligence on the part of the Government to assess the likelihood that the proposed borrowing facilities and savings from those facilities could be achieved at the costs outlined. In other words, it is our opinion that the decision to award Cohen & Company a contract on the basis of their proposal fell far short of what we would expect for the Government to have entered into a contract of this nature. For example, we would have expected the Government to have reviewed the borrowing option put forth by Cohen & Company and compared it against other companies who could offer the same type of facility.
39. In awarding the contract in October 2010 to Cohen & Company, we found that the Government did not comply with financial regulations and associated contracting rules designed to ensure that the awards of contracts greater than \$250,000 provide a fair and transparent process with due regard for value-for-money. In paying all the fees associated with the hiring, including the extra legal and arrangement costs, of Cohen & Company and using them to arrange the short term financing arrangements noted above, we believe the Government of the Cayman Islands got little value-for-money for the costs of services that were provided.

Recommendation #2: The Cayman Islands Government, including the Minister of Finance should follow the Financial Regulations related to the procurement of supplies, services and assets.

Recommendation #3: The Cayman Islands Government should only deal with lenders that are well known in the financial domain.

40. The Minister of Finance was concerned about the cost of financing the CI\$155 million loan when the recommendation was made by Ministry officials after the second tendering process was complete. He informed us that he went to his political party for advice at that time.
41. We were informed by Mr. Peter Young, the UDP Treasurer that he pointed the Premier in the direction of Cohen & Company based on his knowledge of the industry. We found that Mr. Young provided information to the Ministry of Finance officials from Cohen & Company as well as some analysis to assist them in securing the intermediary agreement on behalf of the Government.
42. In our opinion, Mr. Young, who is not a public servant, was providing a service to the Government of the Cayman Islands in that regard. As he is not a public servant, or under contract, Mr. Young is not subject to the same contractual obligations as a public servant or a contractor.
43. We have concerns when this occurs as we expect that all transactions conducted by the Government be carried out by public servants or individuals under contract to enable the effective management of any risks related to the transaction. We expected to find management practices in place to ensure that any real or perceived conflicts of interests were appropriately managed and the risks mitigated and found none.

Recommendation #4: When non-public servants are requested to act on behalf of the Government, there should be formal and transparent contractual arrangements in place and they should be subject to the same codes of conduct and conflict of interest rules as public servants to ensure they are acting in the best interests of the Government of the Cayman Islands.

EXTRA COSTS INCURRED FOR INTEREST AND LOAN FEES

44. In approving the contract with Cohen & Company, the Minister of Finance believed there would be significant cost savings for the long term financing, mainly associated with promised lower interest rates. The Minister of Finance estimated the savings initially to be around CI\$24 million. To obtain the lower interest rates for the borrowing promised by Cohen & Company, the Government was prepared to pay a significant amount for an interest rate cap upfront. The costs were estimated from CI\$2.36 million for a 7% cap to CI\$4.83 million for a 4.5% cap. In the short term, Cohen & Company promised to raise funds for government financing, “in a matter of days”. The decision by the Minister of Finance to hire Cohen & Company also included a commitment from them to provide funding for Cayman Airways which never materialized in the contract that was signed. In fact, the funding of approximately CI\$20 million for Cayman Airways was a significant reason given for cancelling the tendering process conducted by Ministry and proceeding with a contract with Cohen & Company. In fact, the Government did not have authority from the FCO to obtain additional loans, including a loan on behalf of Cayman Airways.
45. It should be noted that the contract with Cohen & Company did not provide any firm commitment in terms of providing funding for the terms under which Cabinet discussed the agreement. The signed contract only provided the terms for how Cohen & Company would arrange loans but with no specific timelines, interest rates or other borrowing terms. It did, however, provide for Cohen & Company to receive a 1% arrangement fee that would have cost the government CI\$1.55 million and legal fees and expenses of approximately CI\$390,600.
46. From the time the contract with Cohen & Company was signed on October 15, 2010 to the time the contract was cancelled on January 27, 2011, the contractor was unable to provide the promised long term financing. In a press release on February 2, 2011, the Minister of Finance announced that the Government had been advised that the 4.5% interest rate cap on long-term financing could not be obtained at the price previously represented to government. The increase in the price of the cap was of such a magnitude that it would wipe-out the cost savings promised by engaging Cohen & Company. Through a review of Ministry of Finance documentation, we found that the cap at 4.5% (the interest rate offered during the tender process of a traditional 15 year loan) went from CI\$4.83 million up to approximately CI\$21 million. In addition, while Cohen & Company had proposed a 15 year bond to the Government in October 2010, the company offered a 7 year bond issue during the negotiations that ensued.
47. Cohen & Company did, however, arrange two short term loans with financial institutions as shown in Table 5.

Table 5: Short term loans arranged by Cohen & Company

Date	Financial institution	Amount \$US millions	Term	Rate
October 22,2010	ScotiaBank	92.5	90 days	LIBOR+ 2.25%
December 14, 2010	Banque Havilland	36	37 days	LIBOR + 2.25%

48. Ministry of Finance officials arranged an extension of the first short term loan with ScotiaBank for a further three months.
49. It should be made absolutely clear from our review of the documentation and communications with Ministry officials from the time the agreement with Cohen & Company was signed to the date it was cancelled that the Minister of Finance and not Ministry of Finance officials directed the negotiations that ultimately led to the decision to cancel the agreement. Ministry officials informed us that they were not included in the negotiations or management of the contract. For example, they had to process high arrangement fees of CI\$75,600 plus legal fees for a CI\$30.2 million one month short term loan with Banque Havilland in December 2010 only months after they acquired a short term loan with ScotiaBank of CI\$77.7 million that cost CI\$191,937 plus legal fees. The additional loan was required because of cash shortages and the inability to put long term financing in place.
50. In arranging loans with financial institutions, we expected that the Government would deal exclusively with top tier banks and financial institutions; a practice that had been followed by the Government for previous borrowing activities. To assess whether this was the case in 2010/11, we conducted our own research into Banque Havilland, one of the institutions recommended by Cohen & Company and which was used by the Government to finance its public debt requirements. We found out that Banque Havilland was opened in September 2009 and offers private banking services to high net worth individuals and high net worth families. The bank is owned by the Rowland family of Great Britain. From our review of worldwide financial institutions, it is not a top tier bank or lending institution.
51. We compared the costs incurred by the Government by arranging the borrowing through the terms of the contract with Cohen & Company on October 15, 2010 to the arrangements in the FCIB/RBC winning bid from the second tender process.

Table 6: Extra Costs for Short-Term Borrowing (CI\$)

	Arrangement with Cohen & Company	FCIB/RBC	Difference
Arrangement and legal fees	854,775	404,779	449,996

Notes: See Table 4 for the fees paid relating to the arrangement with Cohen and Company including those paid to ScotiaBank, Banque Havilland and Cohen & Company including legal fees.

52. By our calculations summarizing the information received from Ministry officials, the Government paid approximately an additional \$449,996 in fees for its short term borrowings by dealing with Cohen & Company instead of proceeding with the winning bidder from the Ministry of Finance open tendering process in October 2010.

Table 7: Extra Costs for Long-Term Borrowing (CI\$) (Assuming that the Government had proceeded with the option)

	Cohen & Co	FCIB/RBC	Difference
Arrangement fees	1,550,000	1,081,797	468,203
Legal fees	385,950 + Expenses	(Included in above)	385,950+Expenses
Total	1,935,950	1,081,797	854,153

Notes:

The following assumptions were made in making the comparisons:

- If the proposal submitted by FCIB/RBC on September 9th, 2010, had been accepted by the CIG one bridge-loan would have been adequate to satisfy government requirements in the October 12, 2010 through April18, 2011 period.
- The start date, October 12, was chosen since CTC gave its approval for loans from FCIB/RBC on this date. On April18, 2011 a long-term facility was finally put in place.
- Interest charges calculated in the table above have used the dates when emergency bridge financing was provided by a variety of banks in the October 12, 2010 through April18, 2011 period.

53. Had the Government proceeded with the long-term financing arrangements as outlined in the contract with Cohen & Company, it would have cost over CI\$854,000 more in fees for the transaction compared to the winning bid from the second tender process. Not included would have been the additional fees for whatever company issued the bond.
54. The contract with Cohen & Company specified that the Government would deal with them exclusively for a period of six months from the date of execution of the agreement. Therefore, the exclusivity provisions ended on April 15, 2011. ScotiaBank had to be repaid by April 18, 2011.

Recommendation #5: To ensure effective governance, the Government should have a clear accountability framework, for Ministry officials and the Minister of Finance, for carrying out the transactions of the Government.

THE MINISTRY OF FINANCE NEEDS TO ENHANCE ITS EXPERTISE TO MANAGE PUBLIC DEBT

55. In carrying out its responsibilities to manage the public debt portfolio and respond effectively to the Government's needs for borrowing, we expected that the Government would have the appropriate capacity and expertise. While we did not assess the individual qualifications and experience of the officials responsible for managing public debt, we reviewed the documentation supporting the tendering process for the CI\$155 million loan, interviewed the officials involved as well as the consultant used by the Government and reviewed the practices in place to manage public debt (see earlier section).
56. We found that the Departmental Tendering Committee (DTC) that was organized to obtain this loan did not have detailed knowledge of financial markets. However, Ministry of Finance officials believe they were competent to assess the loan offers submitted to the Government and carrying out the functions required by the procurement process. The DTC could have included, for example, a criterion for someone on the Committee to have a background in the financial markets. Other criteria may include, for example, an individual with procurement expertise and another who has a background in public debt financing.
57. For the third tendering process, the Government hired an expert consultant to assist the Department Tendering Committee to prepare the request for proposal and assess the bids that were received. We reviewed the documentation prepared for the third tendering process and compared them with the documentation for the first and second processes and found that there were significant improvements made. In the first two tendering processes, the requests for proposal included both a requirement for a bridge loan and long term financing but lacked the details for the financing terms sought by the Government, making the DTC evaluation process very difficult to complete.

Recommendation #6: The Ministry of Finance should review its operational requirements for management of public debt and augment its expertise for acquiring or renewing government borrowing.

GOOD TENDERING PRACTICES INTRODUCED BY MINISTRY OFFICIALS

58. Good tendering practice starts with clear statements in the tendering documents of what exactly the Government wants bidders to address. It is also important to follow tendering rules, such as the time allowed for bidders to prepare their submissions. Another good practice is the establishment of a list of prequalified bidders should a selective process be chosen in accordance with the guidelines prepared by the Central Tenders Committee. In addition, good practice would include robust evaluation criteria that are balanced, clear and rational to ensure that the best overall bid is selected. In summary, we believe that good practice would preclude such possibilities as collusion and bid-rigging.

59. While the Government does not have any clear guidelines in place for officials (as described in our July 2011 report on management of government procurement) to follow the open tendering process advocated by the Central Tenders Committee directives, we found evidence when reviewing the last tendering process that certain practices were followed that should be considered in the future. These included:
- using a selective tendering process that ensures an efficient process while being fair and transparent;
 - hiring a subject matter expert to develop the business requirements section for the request for proposal; and
 - using a subject matter expert to assist in the evaluation of the bids received and scoring of the evaluation criteria.
60. We found improvements in the tendering documents and evaluation criteria for the last round of tendering that occurred in March and April 2011,
61. The first two tendering processes conducted by the Ministry of Finance were complicated by the requirement for bidders to provide a bridge loan facility. This led to discussions of drawdown amounts, standby fees and apparent assumptions by lenders on the drawdown schedule. This appears to have affected the projected interest costs of both the bridge facility and the long-term loan. This is critical since the evaluation criteria used by the DTC placed a high weight on the costs of the loans. When bids were evaluated in previous tenders processes, the cost of bullet bonds which only require interest payments during their term were compared directly with fully amortized bonds resulting in a more complex and difficult evaluation process.
62. The third tender documents prepared with the assistance of the expert consultant specified that the Government wanted a loan agreement with no principal payments for first five years. The principal would then be fully amortized in the remaining 10 years of the 15 year term. This kind of language permits all bidders to provide loans offers on the same basis.
63. In addition, the third tender documents asked for the loan to be structured on a fixed interest rate basis. This provides certainty to the bidders and demonstrates that the Government knows the market, has an understanding of likely future trends and developments, and is clear on how it is managing interest rate risks.
64. The March 2011 tender also asked bidders to provide a cap on all fees and expenses that the lender/underwriter would seek to be compensated for from the Government.

65. Finally, the third tender documents included a more balanced set of evaluation criteria than those used in the previous two tender processes. For example the July 2010 tender evaluation criteria allocated 80% of the score to financing costs while the March 2011 tendering document only allocated 25% for this criterion. This resulted in a more robust loan agreement for the Government and discouraged bidding based on unknown flexible future rates and possibly self-serving assumptions of costs by the competitive bidders.
66. The total fees paid for the CI\$155 million long term loan resulting from the third tender were CI\$307,000.

CONSEQUENCES OF LOAN TENDERING PROCESS CARRIED OUT BY MINISTRY OF FINANCE OFFICIALS

67. Due to the extensive media coverage, knowledgeable companies in the financial markets are keenly aware of the two cancelled tendering processes and the contract signed with Cohen & Company. They will have observed that the Cayman Islands Government “stumbled” on three separate occasions in their attempt to obtain financing in 2010/2011.
68. If these practices continue, there is a risk that the major lending companies may become apprehensive about dealing with the Cayman Islands Government.

Recommendation #7: Best practices identified during the last tendering process should be captured and documented for inclusion in guidelines to be developed by Ministry of Finance officials for the management of public debt.

CASE STUDY 2: CLOSED CIRCUIT TELEVISION CONTRACT (CCTV)

BACKGROUND

69. In May 2010, Cabinet approved an overall budget of CI\$2.0 million for the Portfolio of Internal and External Affairs (I&EA) to progress with the development of a CCTV programme. The contract for the purchase of a CCTV system together with other elements of a National CCTV program is a key part of the overall initiative by the Cayman Islands Government to:
- reduce the fear of crime;
 - promote community safety;
 - stimulate continuing economic growth within the community;
 - encourage the use of public and commercial facilities;
 - assist in the reduction, prevention and detection of crime;
 - provide high quality evidence to be used by the Police, Immigration, and Customs to prosecute offenders;
 - monitor road traffic circulation and improve road safety; and
 - protect property.
70. A tendering process ensued. A total of 5 bids were received of which four were deemed by the CTC as qualified. Following a technical evaluation of the four qualified bids by a consultant and further evaluation by the DTC, two of the four bids were found to be compliant and evaluated against the tender criteria. It should be noted that during the evaluation process, the chair of the DTC excused himself from the proceedings resulting from a potential conflict of interest he had with one of the bidders.
71. On September 9, 2010, the CTC approved the DTC recommendation to award the contract to The Security Centre Limited. In December 2010, the Portfolio of Internal and External Affairs awarded a contract to The Security Centre Limited in the amount of CI\$1,377,366 for Phase I of a project to supply, install and maintain a Public Safety Camera System (CCTV). The contract has been amended several times by way of change orders increasing the total value to CI\$1,951,965.85 as of May 18, 2011.

72. In late September 2010, the Governor asked the Office of the Auditor General to review the tendering process for the CCTV contract as the DTC recommendation that was approved by the CTC was being delayed pending a review by Cabinet. We conducted that review in October 2010 and reported our interim audit findings to officials in the Portfolio of Internal and External Affairs as well as the Governor. We completed our audit work in April and May 2011 after the contract was signed and the project to install the system was underway.
73. We found that the tendering process was generally in accordance with the procedures outlined in the Central Tenders Committee manual. The Invitation to Tender document contained a comprehensive description of the requirements and other necessary elements for a good tender document. Timelines were respected and there was appropriate expertise and experience on the CCTV project team that also acted as the Departmental Tenders Committee.
74. As at the time of audit, the total committed costs associated with the purchase and installation of the first phase of the Government's National CCTV programme is approximately CI\$2.3 million with a further commitment of approximately CI\$525,000 per year to operate the system.
75. We did not obtain any information or conduct any review work on the second phase of the National CCTV programme that will expand the capacity of the existing system to monitor a greater area of Grand Cayman and Cayman Brac.

BUSINESS CASE WAS WEAK

76. The first step in a procurement process is the development of a comprehensive business case that considers different alternatives, and demonstrates how management would achieve best value for money over the complete operating life of the asset. We found that I&EA did not prepare a comprehensive business case and instead used an analysis by the Royal Cayman Islands Police Service. That analysis looked at implementation and operational issues associated with the implementation of a CCTV programme, but did not look at cost options. Other evidence about how the CCTV System would address the objectives was included in the Invitation to tender documents and in a confidential briefing paper to Cabinet in October 2009. Neither of these documents discussed costing options for the implementation of the system or the operations of an ongoing programme.
77. We expected that a project such as the CCTV programme would have a robust business case that included a complete review of options to address the business needs identified. As well we expected that the business case would include not only the cost of installing hardware and software, but the also the cost of ongoing operations.

78. During our audit, we were informed that the annual cost of operating a CCTV programme for the Cayman Islands would be approximately CI\$525,000 and that Cabinet had only been apprised at the beginning of May 2011 of these expenditures for inclusion in the 2011/12 budget. This information was not made available to legislators when the programme was approved as part of the 2010/11 budget. By that time, it was too late to make a decision to not proceed with the National CCTV programme.
79. We expected that Cabinet would have been provided with more complete costing information in approving the CI\$2.0 million budget for the programme in May 2010. We found that the decision was made with unclear deliverables and more work needed to be done to determine how much the programme would cost, including the initial outlay and the ongoing operations.

Recommendation #8: To understand the cost of significant projects and demonstrate value-for-money, entities should prepare detailed business cases following, at a minimum, the guidelines outlined in the Financial Regulations.

DELAY BY CABINET OF THE OPEN TENDER PROCESS IS CONCERNING

80. As a result of concerns by Cabinet regarding specific details of the procurement process conducted by I&EA for the CCTV system, the award of the contract to the successful bidder was delayed several weeks.
81. On Sept 6, 2010, I&EA officials were advised by the Financial Secretary on behalf of Cabinet to halt the tendering process, three days before the CTC recommended the winning bidder. Cabinet directed I&EA to respond to a series of questions during the remainder of September.
82. While we were informed that there were no additional costs to the Government because of the delay, the delay was troublesome in that it created angst among the bidders in tender process. As noted earlier in this report, the CTC's open tender process is a critical element of the Government's framework to ensure fair and transparent procurement. We believe that Cabinet's intervention in this important administrative process goes against the principles of good procurement practice.

CONTRACT PROVIDES GOOD FRAMEWORK FOR SYSTEM ACQUISITION AND INSTALLATION

83. We reviewed and assessed the terms and conditions included in the contract against generally accepted provisions found in public sector contracts. We found that it provided the necessary information required by the contractor to fulfill the terms of the contract, as well as the obligatory terms and conditions required to ensure compliance with laws and protect the interests of the Cayman Islands Government. We were advised that legal advice was provided during the phase of contract development.

PROJECT DELAYS WERE AVOIDABLE

84. When the project was approved in May 2010, the CCTV project team estimated that the system could be installed and operating by December 2010. It is now expected that the system will be installed and running by August 2011. Installation of the CCTV cameras was expected to start in early June.
85. In managing the project, we believe the Government did not do enough to ensure it was completed in a timely fashion recognizing the importance of this programme to the objectives it was trying to achieve. When it was approved, there was considerable urgency associated with the need for a camera system as a key component to achieve the wider range objective to reduce crime in the Cayman Islands, which had even greater impacts on tourism and the economy.
86. In June 2010, the CCTV project team identified the need for a legislative change relating to use of CUC assets, such as fiber optic cable, as part of the CCTV camera network. To proceed with their use, the Information & Communication Technology Authority (ICTA) were advised to commence work to amend legislation for the assets to be used. The ICTA did not take the necessary action on timely basis and it was only on May 9, 2011 that legislation was finally passed to facilitate the installation of the CCTV cameras on the CUC poles and to use their fiber optic cable.
87. While it was outside the scope of this audit to review the operational issues relating to the ICTA delay, we believe it would be very beneficial for a review of the circumstances that occurred and for action to be taken in the future to avoid such delays.

Recommendation #9: The Government should determine the reasons for the delays in having the legislation come forward to facilitate the CCTV programme and hold to account those responsible for its delay.

UNCLEAR WHETHER ADVANCE PAYMENT SHOULD HAVE BEEN MADE

88. In accordance with the terms of the contract with The Security Centre Limited, an advance payment was made to the contractor in the amount \$344,341 representing 25% of the total original value of the contract. Because there are no guidelines available, it is unclear whether an advance payment was warranted and whether the risks associated with making advance payments were appropriately managed.
89. While advance payments are warranted in certain situations, there is a need for guidance to ensure the Government considers the financing and interest costs as well as the risks involved with issuing advance payments. We expected to see the rationale and guidance for supporting the need for such a payment, but found no evidence that this was considered by government officials.

Recommendation #10: When developing policies and guidelines for the management of the Government’s procurement function, there should be clear guidance provided on the inclusion of advances in government contracts.

CHANGE ORDERS NOT IN ACCORDANCE WITH CONTRACT

90. The contract with The Security Centre Limited was amended several times by the project authority to purchase additional equipment. Amendments to contracts are often necessary and valid requirements particularly in phased approach projects.
91. While the contract allowed for amendments and describes the process to be followed, the “Change in the Work” process described in the contract was not being followed when we conducted our audit work. The process that was being used was based on the contractor’s procedures rather than those called for in the contract which ensured proper approval of changes and authorization of the extra costs. To date, those extra costs amounted to \$574,599.85.
92. When we brought this matter to the attention of the Project Authority, action was taken immediately to bring the change order process in line with the contract requirements and restore control over the changes that were being made.

CONTRACT SPLIT TO AVOID TENDERING CONTRACT

93. At the end of June 2010, the Portfolio of Internal and External Affairs entered into three separate contracts with a company called Security Risk Management Consultants, Inc. located in Columbus, Ohio. Each contract was valued at CI\$48,580 and the total for the three contracts was CI\$145,740. One contract related to providing consulting services on procurement, another on project management and the third on on-site technical support.
94. The Financial Regulations requires an entity to use a public tendering process (without CTC oversight) for all contracts greater than CI\$50,000.
95. While the issuance of three separate contracts under CI\$50,000 is technically in accordance with the Financial Regulations, it is clear in this case that the contracting process was structured to avoid the intent of the Financial Regulations. In fact, we found little or no evidence that the time spent by the contractor could be identified as being associated with one contract or another.
96. Since the contracts were signed, approximately CI\$147,000 has been expended to date and we were informed that a contract amendment was being processed to increase the value of the three contracts by CI\$30,000 to CI\$175,740.

Recommendation #11: Guidance needs to be developed to ensure the intent of the Financial Regulations, such as the limits for public tendering, are not circumvented by government officials.

CASE STUDY 3: JAZZ FEST 2009

97. In October 2009, the Cayman Islands Department of Tourism (DOT) awarded a contract to BET Event Productions (BEP) valued at CI\$1,252,522 to coordinate the production of Cayman Jazz Fest 2009 held on December 3-5, 2009. BEP, in consultation with DOT was responsible for coordinating many of the production, organizational and technical aspects of the Festival.
98. Included in BEP's numerous responsibilities were the negotiation and award of contracts to participating artists and technical crew and entering into agreements with suppliers for services such as stage design and construction, sound, lighting, and accommodation for artists. While the contract with BEP was for the total cost of producing the event, any commitments entered into by BEP required the prior written approval of DOT.

CONTRACT WITH BEP BROKE THE RULES IN THE FINANCIAL REGULATIONS

99. DOT did not go out for tender for this contract, as required by Section 37(1) of the Financial Regulations. The Regulations provide the opportunity for Chief Officers to use a supplier without going to tender when a case is made that only one supplier can provide the service. This was not the situation in this case. We understand from DOT officials that there are other companies offering the same services.
100. The requirement for a contractor to produce Jazz Fest 2009 should have been subjected to not only a public tendering process, but oversight by the Central Tenders Committee. This was not done.
101. Before the contract was signed, it was reviewed by the Department's legal advisor and reviewed by a Risk Analyst officer in the Ministry of Finance. We reviewed the contract for the elements required to comply with good public sector procurement practices and conclude that it contains the necessary information required by the contractor to fulfill the terms of the contract, as well as the obligatory terms and conditions required to ensure compliance with Cayman laws and protect the interests of the Cayman Islands Government.

WORK STARTED BEFORE THE CONTRACT WAS SIGNED

102. DOT authorized BEP to commence work on this project prior to putting a formal contract in place. Project work started in June 2009; however, the contract was not signed until October 2009. Although a verbal commitment to suppliers by individuals who have been delegated contract authority is construed to be a legally binding contract, this practice is not in accordance with good contracting principles. In order to protect the interests of both parties, a contractual commitment should have been in place by way of a written contract duly signed by both parties.

ADVANCE PAYMENTS ON THE CONTRACT WERE SIGNIFICANT

103. The contract with BEP contained provisions for the following advance payments:

- CI\$726,348 (approx. 63% of total amount) upon signing of the contract on October 26, 2009; and
- CI\$394,674 (approx. 95% of remaining balance) on or before November 15, 2009.

104. As noted earlier in this report, advance payments are warranted in certain situations; however, there needs to be consideration of the financing and interest costs, as well as the risks involved for the issuance of these payments. In our review of the contract, we noted that most of the artists' contracts, a significant part of the contract amount, called for all of their fees to be paid prior to the event. We believe the advance amounts were excessive and that undue risks were taken by DOT officials.

CONTRACT COULD HAVE BEEN BETTER MANAGED

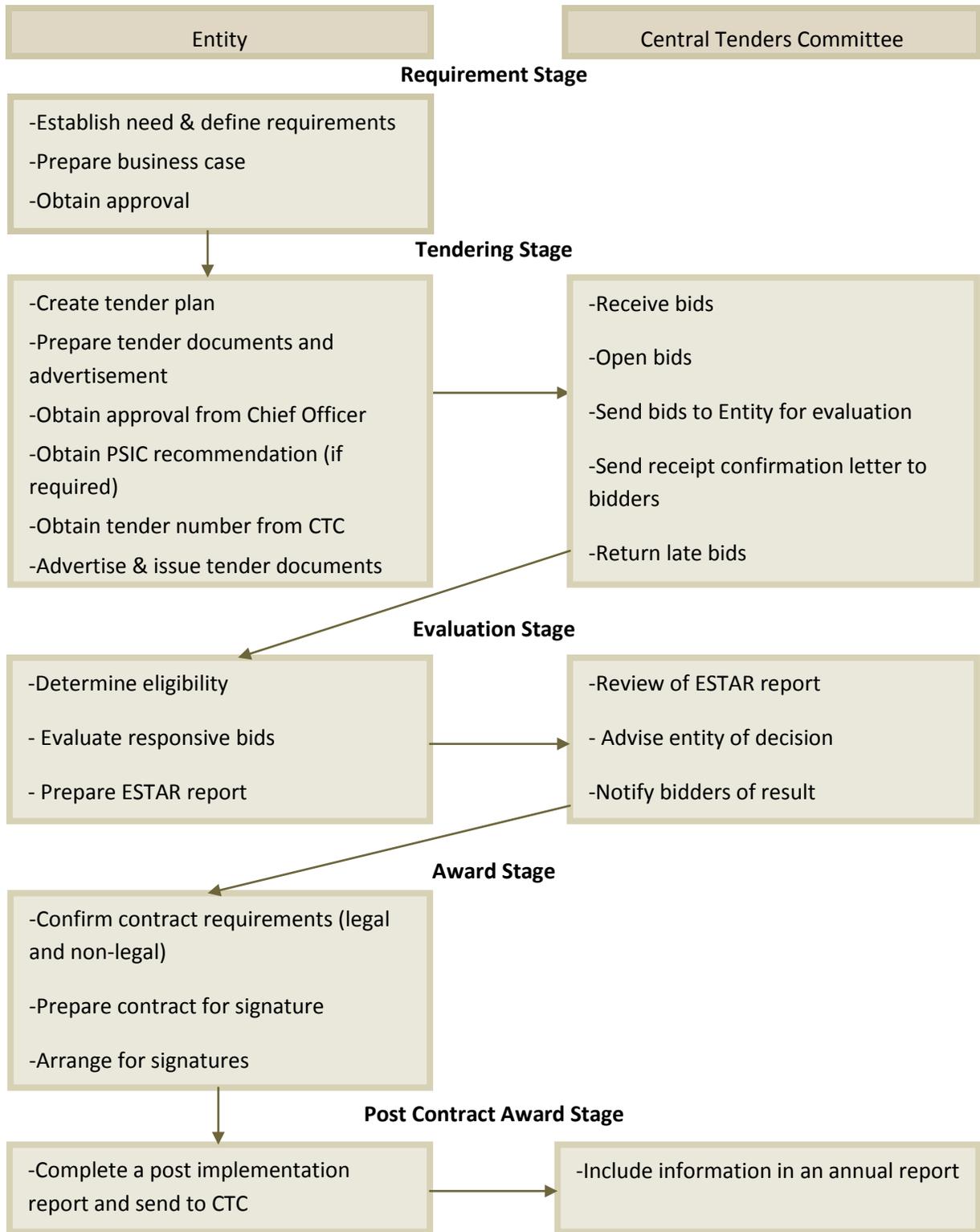
105. BEP itself was paid CI\$71,400 directly for its role in the production; however, it is unclear whether this amount represents good value-for-money. There was no evidence provided to demonstrate whether the amount paid was reasonable.

106. The terms of the contract stated that BEP required the prior written approval of DOT before entering into any financial commitments. We reviewed contracts with artists, hotels and several other suppliers and, in several cases, found no evidence that prior written approval of DOT was obtained.

107. Under the terms of the contract, BEP was responsible for the overall coordination of all technical matters related to the Festival. The BEP contract required negotiation and agreements with suppliers to meet the technical aspects of the project. Many of the services provided by the sub-contractors did not have agreements signed as required.

108. The net expenditure to the Government for Jazz Fest 2009 was CI\$808,263 (expenses of CI\$1,367,905 less revenue of CI\$405,686). As a result of conducting our audit, DOT officials prepared a post mortem of the event operations indicating that the value of the festival was worth CI\$1.7 million to the Cayman Islands Government. While we did not audit this assertion, we believe it would have been more valuable to provide that kind of analysis before an event like this is contemplated.

APPENDIX 1 - PROCUREMENT PROCESS FLOWCHART



APPENDIX 2 - AUDIT CRITERIA

The eight criteria used in our overall audit of the Management of Government Procurement were:

1. Procurement is made in accordance with the *Financial Regulations (2008 Revision)*.
 - i. The procurement gives preference to suppliers trading, carrying on business or operating within the Islands subject to ensuring value for money and that price and quality of goods and services is no more than overseas procurement
 - ii. All procurement greater than \$50,000 is offered for public tender.
 - iii. All procurement, regardless of the amount, where only one supplier can provide the supplies, services or assets, public tender is not required where appropriately supported by the Chief Officer.
 - iv. Procurement under the Emergency Powers Law does not require public tenders.
 - v. All tenders are evaluated by a Departmental Tenders Committee.
 - vi. Tenders greater than \$250,000 are evaluated by the Central Tenders Committee.
 - vii. Good, services and assets greater than \$250,000 procured by the Cayman Islands Government are in accordance with appropriations of the Legislative Assembly and approved by appropriate government officials.
 - viii. Procurement of supplies, services and assets greater than \$300,000 have a completed project profile and project report (business case) with a recommendation to the Governor in Cabinet.
2. The government has an appropriate management framework and is effectively organized to carry out the procurement function.
3. The government has developed and communicated clear policies and directions for its officials to procure supplies, services and assets (including those over \$250,000).
4. The government has developed clear principles for what it expects from government officials for the procurement of supplies, services and assets.
5. There is appropriate expertise in the government to procure supplies, services and assets.
6. The government has developed and implemented ethical standards and a code of conduct for the procurement of supplies, services and assets.
7. The government has developed and implemented clear guidelines for officials in the procurement function that ensure due regard for value-for-money.
8. Entities have specific policies and practices in place that ensure that the procurement process is impartial, open and encourages competitive offers.

APPENDIX 3 - INTERVIEWEES

Interviews were conducted with the following Government officials:

Government loan:

- Hon. McKeeva Bush, Premier
- Donovan Ebanks, Deputy Governor
- Kenneth Jefferson, Financial Secretary
- Geoffrey Bell (financial consultant)
- Debra Welcome, Accountant General and Chair of Departmental Tendering Committee
- Gloria Myles, Deputy Accountant General
- Ronnie Dunn, Chair, Central Tenders Committee

CCTV

- Eric Bush, Assistant Deputy Chief Secretary, (Uniformed Division), Internal and External Affairs
- Wesley Howell, Deputy Director, Computer Services Department
- Brent Finster, Manager, 911 Emergency Communications
- Vinton Chinsee, Chief Financial Officer, Internal and External Affairs
- Ronnie Dunn, Chair, Central Tenders Committee

Jazz Fest 2009

- Christopher Linton, Former manager, Finance and Administration, DOT
- Rosa McLean, Manager, National Promotions and Events
- Kyle McLean, Manager, Finance and Administration, DOT
- Shomari Scott, Acting Director, DOT
- Ronnie Dunn, Chair, Central Tenders Committee

APPENDIX 4 – SECTIONS 33 AND 34 OF THE PMFL

33. (1) Where a power or duty is expressed or imposed on the Minister of Finance under this Law, the Minister of Finance may authorise a member of the Governor in Cabinet or a public officer, by signed instrument in writing, to exercise or perform on his behalf all or part of that power or duty.

(2) The Minister of Finance may revoke or amend an authorisation given under subsection (1).

(3) The giving of an authorisation does not prevent the exercise of a power or the performance of a duty by the Minister of Finance personally.

34. (1) Subject to subsection (3), the Minister of Finance may, on behalf of the Governor in Cabinet -

(a) borrow money;

(b) make a loan;

(c) give a guarantee; and

(d) enter into any financial transaction or financial obligation for the purpose of avoiding or reducing an adverse impact on executive assets, executive liabilities, executive revenue, or executive expenses, that may be caused by currency or interest rate fluctuations, or by credit, liquidity or funding risks,

on such terms and conditions as the Governor in Cabinet may determine.

(2) Subject to section 33, no person other than the Minister of Finance may enter into any transaction of a kind referred to in subsection (1).

(3) The Minister of Finance shall not -

(a) borrow money on behalf of the Governor in Cabinet, unless the borrowing -

(i) has been authorised by an appropriation;

(ii) is consistent with the statement of borrowings included in the annual plan and estimates or supplementary annual plan and estimates for that financial year; and

(iii) has been approved by the Foreign and Commonwealth Office of the United Kingdom, where any of the principles of responsible financial management specified in section 14(3)(c), (d) or (e) are in breach;

(b) make a loan, unless the loan -

(i) has been authorised by an appropriation; and

(ii) is consistent with the statement of loans included in the annual plan and estimates or supplementary annual plan and estimates for that financial year; or

(c) give a guarantee, unless the guarantee has been authorised by resolution of the Legislative Assembly.

APPENDIX 5 - RECOMMENDATIONS AND MANAGEMENT’S RESPONSE

Recommendation	Management Response	Responsibility	Date of planned implementation
<p>1. The Ministry of Finance should develop a debt risk management framework as a high priority and implement the organization and management practices required to effectively manage the existing debts and that would also ensure future borrowings are obtained with due regard for value-for-money.</p>			
<p>2. The Cayman Islands Government, including the Minister of Finance should follow the Financial Regulations related to the procurement of supplies, services and assets.</p>			
<p>3. The Cayman Islands Government should only deal with lenders that are well known in the financial domain.</p>			
<p>4. When non-public servants are requested to act on behalf of the government, there should be formal and transparent contractual arrangements in place and they should be subject to the same codes of conduct and conflict of interest rules as public servants to ensure they are acting in the best interests of the Government of the Cayman Islands.</p>			

Recommendation	Management Response	Responsibility	Date of planned implementation
<p>5. To ensure effective governance, the Government should have a clear accountability framework, for Ministry officials and the Minister of Finance, for carrying out the transactions of the Government.</p>			
<p>6. The Ministry of Finance should review its operational requirements for management of public debt and augment its expertise for acquiring or renewing government borrowing.</p>			
<p>7. Best practices identified during the last tendering process should be captured and documented for inclusion in guidelines to be developed by Ministry of Finance officials for the management of public debt.</p>			
<p>8. To understand the cost of significant projects and demonstrate value-for-money, entities should prepare detailed business cases following, at a minimum, the guidelines outlined in the Financial Regulations.</p>			
<p>9. The Government should determine the reasons for the delays in having the legislation come forward to facilitate the CCTV programme and hold to account those responsible for its delay.</p>			

Recommendation	Management Response	Responsibility	Date of planned implementation
<p>10. When developing policies and guidelines for the management of the Government’s procurement function, there should be clear guidance provided on the inclusion of advances in government contracts.</p>			
<p>11. Guidance needs to be developed to ensure the intent of the Financial Regulations, such as the limits for public tendering, are not circumvented by government officials.</p>			

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Complaints

To make a complaint about one of the organisations we audit or about the OAG itself, please contact Garnet Harrison at our address, telephone or fax number or alternatively email: garnet.harrison@oag.gov.ky

Freedom of Information

For freedom of information requests please contact Garnet Harrison at our address, telephone or fax number. Or alternatively email: foi.aud@gov.ky

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