

GOVERNMENT PROCUREMENT IN THE CAYMAN ISLANDS
Report of the Procurement Sub-Committee



22nd. January 2013

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List of Abbreviations:

CIG	-	Cayman Islands Government
CO	-	Chief Officer
CSPL	-	Commission for Standards in Public Life
CTC	-	Central Tenders Committee
DTC	-	Departmental Tenders Committee
FFR	-	Framework for Fiscal Responsibility
MPC	-	Ministry Procurement Committee
PSIC	-	Public Sector Investment Committee
P&Ps	-	Policies and Procedures
PMFL	-	Public Management & Finance Law
PPPs	-	Public-Private-Partnerships
CPO	-	Central Procurement Office
PSC	-	Procurement Sub-Committee
RFP	-	Request for Proposals
PC	-	Procurement Committee

1. Executive Summary:

A Working Group with the mandate of developing a new framework for procurement was appointed by the Honourable Deputy Governor in May 2012. The Working Group appointed this Procurement Sub-Committee (PSC) on 7th August, 2012 with a mandate to report back to the Working Group with recommendations on how to improve government's existing procurement system. In late October 2012, following production of the PSC's draft report, procurement experts from the States of Jersey procurement office visited Cayman at the invitation of the Deputy Governor to meet with stakeholders, review the PSC's draft report and make recommendations. Their report supports the majority of the findings and recommendations of this PSC report and a number of the recommendations of the Jersey experts have been included in the PSC report. This is the report of the PSC.

The PSC's view is that a number of areas of the current procurement system function reasonably well and with some amendments and strengthening, can function very well. The PSC's recommendations are therefore based on strengthening areas of the current system, with significant changes in some areas, as opposed to completely casting aside the existing system and creating an entirely new regime.

A number of factors inhibit effective procurement practices within the Cayman Islands Government (CIG). The Auditor General's reports on procurement have highlighted concerns about procurement best practice not being followed in some procurements. In addition, the PSC has identified the following factors that inhibit effective procurement:

- a. Lack of detailed policies and procedures to guide Chief Officers, Tenders Committees and civil servants involved in procurement.
- b. Limited procurement methods are permitted under current laws and regulations. This often prevents procurements being carried out by the optimum procurement method.
- c. The organization and governance structure in which procurement is carried out lacks clarity of role and robust governance.
- d. Appropriate business cases to justify and confirm a project's viability are not prepared in a consistent manner prior to projects being implemented.
- e. Generally the civil service does not have staff with the high level procurement qualifications and experience for the volume and complexity of some of the procurements that government undertakes.

The report of the PSC makes the following recommendations to address the forgoing and to strengthen government procurement:

- i. The report recommends a new governance structure which identifies the various entities involved in procurement and details the reporting structure under which these entities should operate.

- ii. The report supports the establishment of a three person central procurement office (CPO) under the auspices of the Deputy Governor's Office to be headed by a suitably qualified and experienced Director of Procurement. The CPO will be responsible for, *inter alia*, establishing procurement policies and procedures, developing and maintaining standard government procurement documentation, procurement oversight, carrying out some centralized procurement, advising government entities on procurement and training of employees involved in procurement. The CPO will also undertake contract and post implementation reviews.
- iii. The report recommends that the CTC continues its current oversight role until such time as the CPO is fully staffed and operational. The oversight function carried out by the CTC should be independent of the executive with the private sector members being appointed by His Excellency the Governor and civil service members being appointed by the Deputy Governor. It is proposed that the CSPL nominate one of their members to sit on the CTC. The CTC membership should consist mainly of civil society representatives with support from suitably qualified civil servants.
- iv. When the CPO is fully staffed and operational, with robust procurement policies and procedures established and in use throughout the service, it is recommended that the CTC function is changed. At this time, the PSC recommends that the CTC be renamed the Procurement Committee (Major Projects) (PC) and that the PC report to the CPO. The Director of Procurement will then chair the PC.
- v. The report recommends the addition of the "*competitive dialogue*" form of procurement to provide appropriate procurement options for complex procurements.
- vi. The report recommends some amendment to the manner in which procurement takes place in the \$50 – 250,000 range to clarify roles and strengthen oversight.
- vii. The report recommends support of the regulations mandating the requirement for business case production in a standard format prior to a project being implemented for all projects over \$250,000. The existing PSIC should be reactivated and the membership should be appointed by the Minister of Finance and should reflect the necessary skills.(economics, finance, human resources etc)
- viii. The report recommends that detailed policies and procedures be developed for all areas of procurement to guide Chief Officers, Procurement Committees and civil servants involved in procurement.
- ix. The report recommends that policies and procedures be developed to ensure that adequate project management is in place for all significant projects.
- x. The current system of appropriating and funding capital projects motivates poor procurement practices due to the rush to spend available funds before they are lost at the end of each budget year. The report recommends that CIG reviews how it appropriates and funds capital projects and considers the use of a "Capital Development Reserve Fund" which would ring fence capital funds and prevent unspent capital funds from expiring at the end of the budget year.

- xi. It is recommended that the Director of Procurement be recruited as soon as possible as it will be difficult to advance these procurement recommendations without having this level of expertise available.

The PSC recommends the adoption of the recommendations contained in this report. The PSC's strong view is that adoption of these recommendations will result in procurement being carried out in a fairer, more efficient, more transparent, and more uniform manner. The resulting improved efficiencies in procurement will translate into substantial cost savings for government although it was not possible to quantify these in the limited timeframe available.

2. Introduction:

A Working Group with the mandate of developing a new framework for procurement was appointed by the Honourable Deputy Governor in May 2012. The Working Group appointed this Procurement Sub-Committee (PSC) on 7th August, 2012 with a mandate to report back to the Working Group with recommendations on how to improve government's existing procurement system.

In arriving at its recommendations, the PSC has reviewed existing legislation contained in the Financial Regulations under the Public Management and Finance Law (PMFL), the two recent reports on procurement issued by the Office of the Auditor General, the Keith Luck Report on procurement and the Framework for Fiscal Responsibility (FFR) which we understand will soon be passed into Law.

The membership of the PSC comprises Max Jones, Director PWD (Chair), Reshma Sharma, Attorney General's Office (member), Nick Freeland, Chairman Central Tenders Committee (CTC) (member), Peter Gough, Deputy Governor's Office (member) and Alastair Swarbrick, Auditor General (advisor to PSC)

3. Definition of Procurement:

Procurement is the "whole process of acquisition from third parties and in-house providers and covers goods, services and works. The process spans the whole life cycle from initial concept and definition of business need to the effective management of markets, through to the end of the useful life of an asset or end of services contract".

4. Overriding principles governing procurement:

It is recommended that the “overriding principles” that underpin government procurement be developed and that these be set out in the Public Management and Finance Law. At some point in the future it may be necessary to have specific legislation for procurement.

Appendix A details the overriding principles governing procurement that have been developed by the CTC to guide its procurement oversight functions. These principles could be adopted, amended or used as a starting point to develop CIG’s overriding procurement principles.

5. Governance Structure and Organizational Arrangements:

a. Introduction

There are number of agencies currently involved in the procurement of goods and services and the acquisition and disposal of assets. It is important to define the role of each agency and to ensure that there is no confusion over who is accountable and to whom. Role clarity is paramount and the governance structure should ensure that the principles of good procurement are adhered to, namely accountability, competitive supply, value for money, consistency, fairness and transparency. It is assumed that oversight bodies should be as independent as possible from the executive bodies they are overseeing.

b. Background

In the main, procurement has been decentralized in the public sector; the purchase of computers and paper has been tendered for centrally in the last few years. The Central Tenders Committee (CTC) has overseen procurement of goods and services over \$250,000 and Tenders Committees, commonly referred to as Departmental Tenders Committees (DTCs) have been established for procurement between \$50,000 and \$250,000. The Financial Regulations establish a Public Sector Investment Commitment (PSIC) to advise Cabinet on the viability of major capital development projects. This has not met since the PMFL was passed.

The Office of the Auditor General has been critical of the processes adopted for some procurements as they have not been in line with best practice and also there has been alleged political involvement in the process.

The Cabinet has recently announced that it will be setting up a Central Procurement Office (CPO) of three persons, but has not budgeted for the additional staff. It is assumed that the funding for this new unit of government will be derived from savings achieved from bulk purchasing of common user items.

The Chief Officers have the responsibility for developing the business case, ensuring that the project is appropriately managed, entering into contracts, and ensuring successful project outcomes.

The present structure is detailed in Appendix 2. There is a mixture of oversight, executive and advisory functions carried out by each of the entities identified therein.

c. Points for Discussion

The issues identified by the audit reports and other discussions have centered on the following:-

There are six entities involved in procurement. These are shown diagrammatically in the existing procurement structure at Appendix 2:-

- i. The Ministry/Portfolio (Chief Officer) has the responsibility to deliver the outputs of government that contribute to the overall outcomes that have been established by Cabinet. This responsibility includes acquiring goods and services. In this regard, the Chief Officer has the principal accountability to Cabinet for procurement. This accountability should not be undermined by any central processes.
- ii. The PSIC, as established by and set out in the Public Management and Finance Law, is an advisory committee to Cabinet that reviews the business case submitted to it by Chief Officers and makes recommendations to Cabinet on the viability of the project.
- iii. The CTC is an oversight body that ensures that the tendering process is fair, competitive, open and transparent and provides value for money. This Committee oversees tendering for goods and services over \$250,000. The members are currently appointed by the Financial Secretary.
- iv. The Commission for Standards in Public Life (CSPL) has been given the constitutional responsibility “*to review and establish procedures for awarding public contracts*”. In the course of its discussions, the PSC recognizes that the remit of this body vis-à-vis the PO - should it be established - will require further clarification to avoid a duplication of efforts and resources with respect to procurement and related matters.
- v. The Cabinet decides, after advice from the PSIC whether a project is approved and its priority and whether it should be included in the capital development programme.
- vi. The DTCs deal with lower levels of procurement from \$50,000 to \$250,000.
- vii. This report proposes the addition of a Procurement Office (PO). The PSC report makes recommendations on where the PO should fit in the overall structure.

The challenge going forward is clarify the role of each of the entities listed above and to ensure they are put into a governance structure that provides government with value for money, aligns with international best practice and contributes to the social and economic outcomes established by Cabinet and that is ethical, fair and transparent. Ideally, oversight and advisory functions will be kept separate with no overlapping roles or conflicts. However, the PSC recognizes that from a

value for money standpoint, this can be difficult to achieve in a small country. This may result in some advisory / executive agencies also operating in an oversight capacity.

d. Recommendations:

The proposal attempts to clarify the roles of each agency and to ensure the governance structure reflects that role.

The proposed procurement structure for the interim is detailed in the chart at Appendix 3. When the CPO is fully established, the final procurement structure detailed in the chart at Appendix 4 will come into effect. The principal procurement functions of each agency are specified in Appendix 5.

- i. In the interim the CTC will continue to exercise an oversight role that ensures that the procurement exercise is carried out in line with international best practice and the principles set out in its terms of reference e.g. transparency, fairness, integrity, value for money and competitive supply. When the CPO is fully established, the CTC will be renamed the PC and will report to the CPO. (The new committee title, PC, better reflects the committees functions as the committee reviews not only tenders, but also procurements that do not involve tendering) The Director of procurement will chair the new PC.
- ii. To support their independence it is proposed that the private sector members of the CTC/PC be appointed by the Governor and the civil service members be appointed by the Deputy Governor. This, bearing in mind that procurement is an executive function with responsibility for procurement of goods and services falling to the public service. The PSC supports the current membership of the CTC with the majority of members being appointed from the private sector (currently 4 private sector and 3 civil service members) including at least one lawyer and one accountant. It is recommended that the proposed Director of Procurement be appointed as one of the civil service members of the CTC (until such time as the CPO is fully established and the PC is formed. At that point the Director of Procurement will chair the PC) and a member of the CSPL be an ex officio member. The Governor and the Deputy Governor appointing the members of these committees will reduce the potential for political influence in the procurement process.
- iii. The PSIC is purely an advisory body to the Cabinet. It is recommended that the Finance Minister appoint this committee from public servants that have the necessary finance, economics, and strategic and human resource competencies. The Chief Officers would present their business case to the PSIC which would in turn advise Cabinet whether the project was well thought through, credible and sustainable and achieved the specified outcomes. It is recommended that the PSIC be operationalised immediately.

- iv. It is recommended that the CPO be established under the Deputy Governor's Office. The recommended functions of this office are detailed in 6 below.
- v. The role of Cabinet is to establish procurement policy that meets their economic and social objectives, supports investment in the local economy and job market. Cabinet receives reports from the PSIC on the sustainability of proposed projects.

6. Proposed Central Procurement Office:

It is recommended that a Central Procurement Office (CPO) be established under the Deputy Governor's office. This would be headed up by a Director of Procurement. We understand that Cabinet has approved the establishment of a three person procurement office. It is recommended that the responsibilities of the Procurement Office are:

- a) Developing and maintaining policies and procedures (P&Ps) for procurement to be used by all government entities.
- b) Developing and maintaining standard procurement documentation such as contract forms, tender forms and business case templates to be used by all government entities.
- c) Advising on and approving procurement strategies on significant projects.
- d) Carrying out oversight of procurements in the \$50-250K range. (See clause 10 below)
- e) Providing support and advice to the CTC / PC, Chief Officers, and civil servants engaged in procurement activities at all stages of procurement.
- f) Training government employees involved in procurement in government's procurement policies and procedures, government's standard contracts and tender documentation and best procurement practices.
- g) Carrying out centralized procurement in appropriate areas where better prices can be obtained through bulk purchases.
- h) Reviewing and advising on the use of the intranet and e-procurement tools to reduce / replace manual procurement processes and maximize efficiency.
- i) Undertake contract oversight / review to ensure contract adherence.
- j) Undertake post implementation reviews to ensure that projects have achieved the objectives of the business case and are within financial and timeliness limits.
- k) Responsible for the PC with the Director chairing PC meetings.

It is recommended that the Director of Procurement be recruited as soon as possible. In the absence of funding for a procurement consultant, it is difficult to envisage how procurement recommendations can be advanced significantly without having such expertise available. The Director will also be able to advise on the staffing needs of the CPO.

7. Centralized Procurement:

It is recommended that the majority of procurement continues to be carried out on a decentralized basis by Ministries and Departments. However, when established, it is recommended that the proposed CPO review government procurement patterns and identify areas of procurement that would benefit from centralized procurement and in turn result in efficiencies and cost savings to Government. This would most likely be in those areas showing high volume purchases across government such as office supplies and office equipment.

8. Permissible Procurement Methods:

The current Law and Regulations permit three main types of procurement. These are:

- a. Open tendering
- b. Restricted Tendering
- c. Sole Source Supply

These have proven restrictive in some situations. The PSC recommends that a fourth type of procurement, competitive dialogue, be added to the forgoing.

Competitive dialogue is a process used in complex tenders where open or restricted tendering processes are unlikely to provide a successful outcome. The contracting entity enters into a dialogue with service providers with the aim of developing one or more proposals capable of fulfilling the project requirements, prior to inviting tenders from service providers.

The PSC also recommends that the proposed CPO evaluate the need for and benefits that may be derived from the use of framework contracts and advise if framework contracts should be added to the permissible procurement methods.

9. CTC / Future PC and its mandate

The CTC's / future proposed PC's mandate is to provide oversight on tenders with values in excess of \$250,000.

The PSC supports the continuation of the CTC's current mandate and the current membership make-up until the CPO is fully established. As stated earlier the PSC recommends that the CTC members be appointed by the Governor and the Deputy Governor. The proposed Director of Procurement will be a standing member of the CTC until the CPO is fully established. It is also proposed that the CSPL appoint a member to serve on the CTC.

The PSC notes that the CTC has had to go beyond its mandate in some areas by preparing guidance for various tendering processes and by reviewing project business case documentation as the entity tasked with that is not functioning. The PSC supports the CTC in this as these are

essential elements for a project to be successful. However, the PSC's view is that the implementation of the recommendations of this report will allow the CTC/ future PC to revert to the intended oversight role.

The PSC recommends that when the CPO is fully staffed and operational, with robust procurement policies and procedures established and in use throughout the service, that the CTC function is changed. The CTC will be renamed the Procurement Committee (Major Projects) (PC) and the PC will report to the CPO. The Director of Procurement will then chair the PC.

The PSC fully supports continued private sector involvement in the PC. However, when the PC is fully established under the CPO, the PSC believes that the mix of private and public members could be reviewed to provide greater flexibility to ensure the best mix of skills and expertise available from the public and private sectors at any given time.

10. Amended Procedures for Purchases from \$50K to \$250K:

Regulation 41 of the Financial Regulations requires that tenders with a value of less than \$250K be evaluated by a tenders committee established by the Chief Officer.

There has been confusion over the intended role of the tenders committee's which are commonly referred to as DTC's. One school of thought is that they are intended to carry out an oversight role. The other is that they are responsible for implementing the tender process, evaluating (scoring) the tenders received and making recommendations on award of contract.

In practice these DTC's have usually operated in the latter role.

It is recommended that going forward, the DTC's appointed by the CO be renamed Ministry Procurement Committees (MPCs) (recognizing that they are appointed by the CO and often contain a mix of Ministry and Departmental personnel). The MPCs will be responsible for implementing the tender process, evaluating (scoring) the tenders received and making recommendations on award of contract in the \$50K to \$250K range. Oversight of procurement in this range will be carried out by the proposed CPO which will be staffed with persons qualified and experienced in procurement. Policies and procedures (P&Ps) for this will need to be developed.

11. Existing thresholds for Procurements:

The PSC recommends that the current thresholds for tendering be maintained. These are:

- a. All procurements over \$50,000 to be offered for Public Tender unless there are convincing reasons to the contrary.
- b. Tenders in excess of \$250,000 are to be submitted to the CTC / PC.

- c. Tenders from \$50,000 to \$250,000 will be carried out through Chief Officer and the MPC with oversight from the proposed CPO.

12. Strengthening of Procurement Policies and Procedures:

There is a significant weakness in the widespread lack of P&Ps to guide procurement. It is recommended that moving forward, a major effort be made to provide clear procurement P&Ps. This is to support both those responsible for undertaking procurement, those charged with oversight of procurement and those submitting tenders and proposals

The PSC notes that the CTC is developing guidance in a number of these areas which will provide a good starting point for the proposed Director of Procurement to commence his work on P&Ps. Some of the relevant areas requiring P&Ps identified by the PSC in this regard are set out below. However, this list is not intended to be exhaustive and it is expected that the proposed Director of Procurement will draw up a detailed schedule of all policies and procedures required:

- a. **P&Ps to guide Chief Officers, CTC / PC, the proposed Ministry Procurement Committee's and the CPO:** There is a need for policies and procedures to be developed across the board to guide all entities in procurement.
- b. **P&Ps for Purchases up to \$50,000:** P&Ps for purchases up to \$50,000 should identify, amongst other things, a minimum value above which quotations are required.
- c. **P&Ps for each of the 4 permissible procurement methods:** Policies and procedures are required for each of the 4 recommended procurement areas of open tendering, qualified tendering, sole source supply and competitive dialogue. These P&P's must provide clear criteria on the circumstances when each of these procurement methods can be used.
- d. **P&Ps for giving preference to local suppliers:** The Financial Regulations require that preference be given to local suppliers. P&Ps are required to detail how this preference is to be achieved. Consideration could be given to allowing a fixed percentage cost advantage to local over overseas suppliers to reflect the benefit of funds remaining in the local economy.
- e. **P&Ps for capital project appraisal:** The Financial Regulations Part X11, clauses 45 – 49 stipulate the requirements for capital project appraisal. This requires submission of a project profile (standard format) for projects in the \$300,000 to 1,000,000 range and submission of a project profile and a project report (standard format) for projects in excess of \$1,000,000. The PSIC, which has the responsibility for reviewing these documents and making recommendations to Cabinet on the viability of the capital projects, has not met in recent years.

The PSC notes that clause 14 through 19 of the FFR stipulate requirements for project appraisal and business case preparation. Clause 14 states *“The CIG will ensure that all*

projects, whether funded from recurrent surpluses, conventional borrowing or all alternative financing transactions, are suitably appraised before the procurement stage to ensure value for money and that a robust cost benefit analysis has been carried out”.

The PSC fully supports the basis of all substantial projects (whether entity or executive, revenue earning or non-revenue earning) having a documented business case and recommends the following.

- Once established the CPO should review and prepare policies and procedures for project business case preparation, review and approval. This should include reviewing the existing project profile / project report documentation and amending as necessary to ensure an appropriate business case template document.
 - The law / regulations should be reviewed and strengthened to make it mandatory that the business case process is completed, prior to a project moving to implementation. At present it is too easy for a project to proceed in the absence of any business case.
 - The PSIC will need to be staffed appropriately in order that it meets regularly and fulfills its mandate efficiently. Timeframes in which the PSIC must review and make recommendations to cabinet on project business cases should be stipulated in guidance.
 - The PSC recommends that the lower limit for projects requiring a business case be aligned with the lower limit for projects requiring submission to CTC / PC. This will mean that all projects over \$250,000 will require submission of a business case to PSIC and tender oversight by the CTC / PC.
- f. **P&Ps for the use of standard form procurement documents:** It is recognized that the standardization of procurement documents such as RFPs, tender documents, contract documents and business case templates is desirable for a number of reasons including consistency / suitability of CIG procurement documents and reduction of replication of work by agencies carrying out procurement. It is recommended that the proposed CPO develop and maintain appropriate standard form documents and produce procedures where appropriate for the use of these documents.
- g. **P&Ps for conflicts of interest:** There needs to be clear policies and procedures to mitigate and manage the risks of personal and business interests impacting on the objectivity, equity and fairness of public procurement, to ensure that government and the public service obtain the best value from public resources. The PSC recommends that:
- A clear definition of the types of interests that require to be declared should be developed. This would include the interests of close family members and also any other close personal relationships not captured by this, which could potentially be interpreted as carrying a risk of bias in the conduct of the individual’s duties. It is not practical to be exhaustive in developing this and identifying all potential areas

where conflicts will arise but this it should include the following test: whether “an external observer, knowing the facts of the situation, would reasonably think that the person might be influenced by the interest”.

- The CTC / PC develops policies and procedures that require all members to make an annual declaration of all personal and business interests, updated during the year for any changes. The policies and procedures would identify how any conflicts that are identified will be managed and the requirement of members to recuse themselves from procurement discussions where they are conflicted. It should also identify what action would be taken where a conflict was not recorded and a member was involved in discussions and decisions inappropriately.
 - Policies and procedures should be developed for civil and public servants involved in procurement. These should be complimentary to any measures introduced by the CSPL in respect of registering interests by all civil and public servants. It should require civil and public servants to formally affirm that they have no conflicts (or potential conflicts) of interest in each procurement they are involved with During the course of procurement if a conflict arises it would also require the officer to formally identify it and recuse themselves from any further involvement. It should also identify what disciplinary action would be taken for non-compliance.
- h. **P&Ps for confidentiality issues:** Clear P&Ps need to be developed to ensure that there is appropriate confidentiality during the procurement process, to ensure that information is not used for personal gain or fair competition is not prejudiced. The PSC recommends that:

All supplier and tender information relating to a procurement exercise must be treated as confidential up until the award of contract stage. The release or provision of any information, particularly to another interested party, is strictly prohibited prior to this.

- A policy should be developed for CTC / PC, requiring all members to keep all deliberations and information confidential, including an annual signed declaration to affirm.
- A policy should be developed explicitly requiring all public servants to treat all information relating to procurement as confidential. This could include a requirement to formally sign a confidentiality statement for each procurement (over \$50k) they are involved in.
- After the contract award stage certain information should or may be publicly disclosed. The responsibility for disclosure of such information should be clearly assigned within each public authority

i. **P&Ps for freedom of information:** To promote freedom of information, transparency and confidence in public procurement the PSC recognizes the importance of pro-actively providing or disclosing certain information about each procurement over \$50k after the award of contract. The PSC recommends that

- policies and procedures be developed regarding what information unsuccessful tenderers should be provided with, and also what information should be made publicly available on each procurement as a matter of course.
- The policy and procedures should recognize that there are limited circumstances where such information may still be withheld from publication. These circumstances include but are not limited to:
 - o would impede law enforcement or would otherwise be contrary to the public interest,
 - o would prejudice the legitimate commercial interests of particular undertakings or
 - o might prejudice fair competition.
- The responsibility for disclosure of such information should be clearly assigned within each public authority

Specifically, the PSC recommends that

- any unsuccessful candidates or tenderers must be informed promptly (within xx days) that their tender was not successful.
- certain information on the contract awarded including the name of the successful contractor(s) and the price, or range of prices, paid, must be made available on the relevant website within xx days.

The PSC further recommends that in addition to the proactive disclosure of information relating to each procurement exercise over the \$50k threshold, the P&Ps should also establish the minimum value above which all procurements should be proactively disclosed every quarter.

The PSC recognizes that under the freedom of information law any records relating to a tendering procedure of a public authority covered may be requested by any party. Whilst certain records may be exempt from the provisions of the law on grounds of confidentiality or commercial sensitivity, it is recognized that there is no class of procurement record that can be considered as a matter of course to be exempt from disclosure. Each record must be examined on its own merits. In light of this the PSC recommends that procurement P&Ps require:

- Requests for proposals to indicate that all information provided may be subject to freedom of Information.
 - Requests for proposals to request Tenderers to indicate, with supporting reasons, any information included with their tenders which they wish to be regarded as confidential.
 - Public Authority's to normally consult with a tenderer before deciding on whether to disclose such information in response to an FOI request.
- j. **P&Ps for restricted tendering:** Currently those wishing to procure on a restricted tendering basis (pre-qualification) must first seek the approval of the CTC prior to proceeding. It is recommended that P&Ps be developed which provide guidance on when to use restricted tendering, thereby removing the requirement for CTC / PC approval of restricted tendering.
- k. **P&P's for Project Evaluation (after project completion):** Project evaluation has not typically been carried out on CIG projects. The aim is to evaluate the performance of a project within a reasonable timeframe after completion to determine if the project has achieved the project goals established at the outset (in the business case) This ensures that lessons learned are taken into account in future projects. This function would be carried out by the CPO.

The PSC notes that clause 23 of the FFR requires that CIG conduct project evaluations on all projects with a lifetime value of more than CI\$10 million.

The PSC recommends that P&Ps are developed for project evaluation.

- l. **P&Ps for management of risks associated with advance payments:** It is recommended that appropriate P&Ps be developed to mitigate the risk to government when payments are made to contractors and suppliers prior to goods and services being received. These upfront payments may be in the form of mobilization payments, deposits or other forms of advance payments. The P&Ps should address the following:
- As a general rule payments for supplies and services should be made only when such supplies and services have been received by government. This is to mitigate against the risk of advance payments which place government funds at risk should the contractor or supplier fails to deliver. Documents inviting quotations and tenders should clearly state that payments will only be made for completed works or services.
 - However, it is recognized that there are many occasions when payments must be made in advance for certain supplies and services.
 - Where significant mobilization payments are made on contracts, performance bonds, advance payment securities or similar instruments should be used to

mitigate the risk associated with these upfront payments. The procedures should stipulate the form of the performance bond or other instrument and the minimum value of mobilization payment requiring a bond. (In CIG accepted practice has been around \$2 million)

- Where significant deposits are required to be paid to suppliers (frequently required by overseas suppliers) letters of credit or similar instruments should be used to mitigate the risk associated with these payments. The procedures should stipulate the form of the letter of credit or other instrument and the minimum value of deposit requiring such protection.
- The procedures should also provide guidance to mitigate the risks for any other forms of advance payments that are being utilized.

13. Project and Contract Management

Strong project and contract management is fundamental to the effective procurement of any significant project or service. One of the Project Manager's primary functions is to manage a project's procurement. It is recommended that procedures be developed to provide guidance on minimum project management requirements. The procedures should address:

- a. That it is the Chief Officers responsibility to ensure that appropriate project managers / project management teams are in place for the procurement / delivery of any significant project or service. (The PSC notes that the FFR states "*The Cayman Islands Government will put together sufficiently competent teams to manage all projects and ensure receipt of high quality services and products as agreed at the procurement stage*")
- b. The Project Manager's role runs from project inception through project completion.
- c. Project management reporting lines should be clearly identified.
- d. On major projects, a project steering committee should be established by the Chief Officer to oversee the project. The steering committee membership should have a broad range of expertise relevant to the project (Financial / technical etc.) The Project Manager should report to the steering committee.
- e. On complex projects, particularly those using Public-Private-Partnerships (PPPs) specialist legal, financial, accounting and other specialized technical services may well be required to ensure successful outcomes. Project management procedures should address this. (The PSC notes that the FFR mandates that CIG must obtain appropriate independent advice in such areas on all projects with a lifetime value exceeding CI\$10 million and utilising PPPs).

14. Challenges posed by CIG Annual Budget Process for Capital Projects:

Whilst the budget system is not strictly speaking a part of the PSC's remit, the PSC felt it necessary to comment on this due to the negative effect the current budget process has on procurement and capital projects generally. Government's current budget system allocates funds for capital projects on an annual basis. Any unspent funds expire at the end of the budget year. This creates uncertainty that funding for approved projects will be provided in follow on years which in turn causes projects phases to be rushed to ensure that funds provided in the current budget year are fully expended. This has several negative effects on projects and procurements. Some of the effects of this are:

- a. Rushed procurements: In many cases this leads to poor procurement practices and procurement policies and procedures not being adhered to.
- b. Rushed project design and development: It is fundamental for a successful project that appropriate timeframes are allocated in project schedules for defining, researching and designing the project. When this does not occur, outcomes are poorly conceived projects, poorly designed projects and costly changes throughout the life of the project.
- c. Projects commenced with partial funding approval. This is becoming more commonplace and results in major projects being split into small phases often constructed by small contractors. The outcome is inevitably lower quality, higher cost projects.

It is recommended that government look into the adoption of a system for funding capital projects which allows funds to be moved from the annual budget to a separate capital development reserve fund account. These funds are then ring fenced. As such the funds do not expire at the end of the budget year. (Similar to the manner in which the National Hurricane Reserve Fund and the Infrastructure Reserve Fund are operated) This allows unspent capital funds to carry from one budget year to the next. This removes some of the project funding uncertainty and avoids the year end rush to spend funds which would otherwise expire.

15. Statutory Authorities and Governments Owned Companies:

It is the recommendation of the PSC that the findings of this report apply to Statutory Authorities and Government Owned Companies in addition to Civil Service Entities. In respect of this the role of the Boards' in procurement will need to be clearly established.

16. Legislative Reform

Having identified some of the salient areas of procurement to be addressed, further consideration will have to be given to those matters which should be incorporated into the relevant statutory framework and those which may be appropriately dealt with administratively by means of

policies/procedures documents (some of which have already have been identified earlier on). The PSC also notes that the terms of the FFR may require some legislative amendment to the existing regime; however, the scope of any such amendments is beyond the remit of the PSC and no attempt is made to address same in this report.

In carrying out any review for the purposes of legislative reform, consideration would also have to be given to whether a specific law dealing exclusively with procurement should be implemented thus removing all references to procurement from the Financial Regulations. This, of course, would be a matter of policy and perhaps best determined at a later stage when a more in-depth examination has been conducted (ideally with the assistance of some procurement expert).

APPENDIX 1:



Central Tenders Committee



Guidance document 3-01 - Principles Governing Public Procurement:

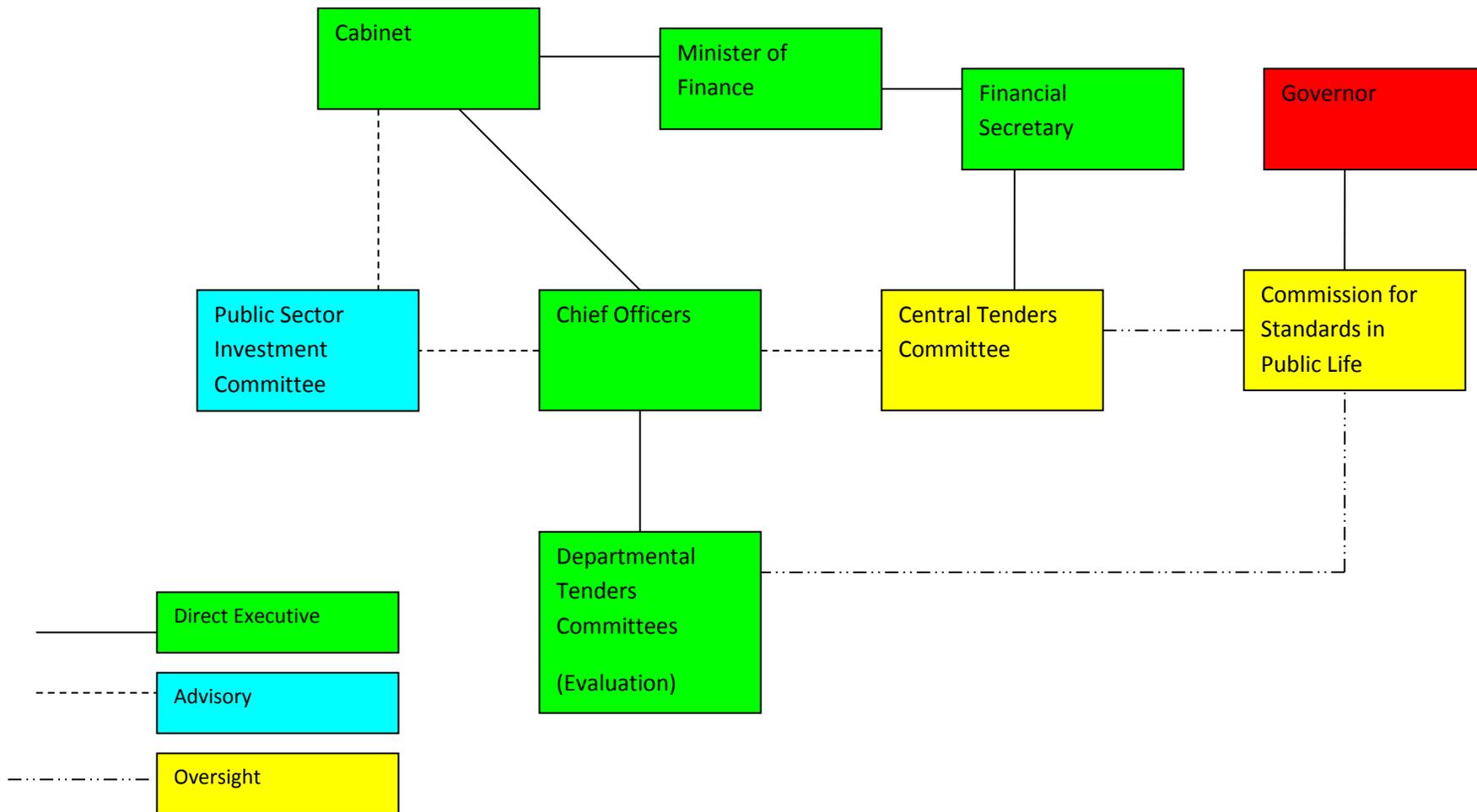
This document outlines the principles which underpin procurement in the public sector. These principles are foundational for the policies, procedures, guidance and decisions of the Central Tenders Committee. The twelve principles governing public procurement are:

1. **Accountability:** effective mechanisms must be in place in order to enable Chief Officers and their equivalents in other public sector entities to discharge their personal responsibility on issues of procurement risk and expenditure.
2. **Competitive Supply:** procurement should be carried out by competition unless there are convincing reasons to the contrary.
3. **Consistency:** suppliers should, all other things being equal, be able to expect the same general procurement policy across the public sector.
4. **Effectiveness:** public sector entities should maximise the contribution to the commercial, regulatory and socio-economic goals of government in a balanced manner appropriate to the procurement requirement.
5. **Value for Money:** the procurement processes should be carried out to achieve the most advantageous combination of cost, quality and sustainability over the life cycle of the project.
6. **Fair-dealing:** suppliers should be treated fairly and without unfair discrimination, including protection of commercial confidentiality where required. Public sector entities should not impose unnecessary burdens or constraints on suppliers or potential suppliers.
7. **Integration:** procurement policy should pay due regard to its impact on the Cabinet's other economic and social policies, rather than cut across them.
8. **Integrity:** there should be no corruption or collusion with suppliers or others.
9. **Informed decision-making:** public sector entities need to base decisions on accurate information and monitor requirements to ensure that they are being met.
10. **Legality:** public sector entities must conform to legal requirements.
11. **Responsiveness:** public sector entities should endeavour to meet the aspirations, expectations and needs of the community served by the procurement.

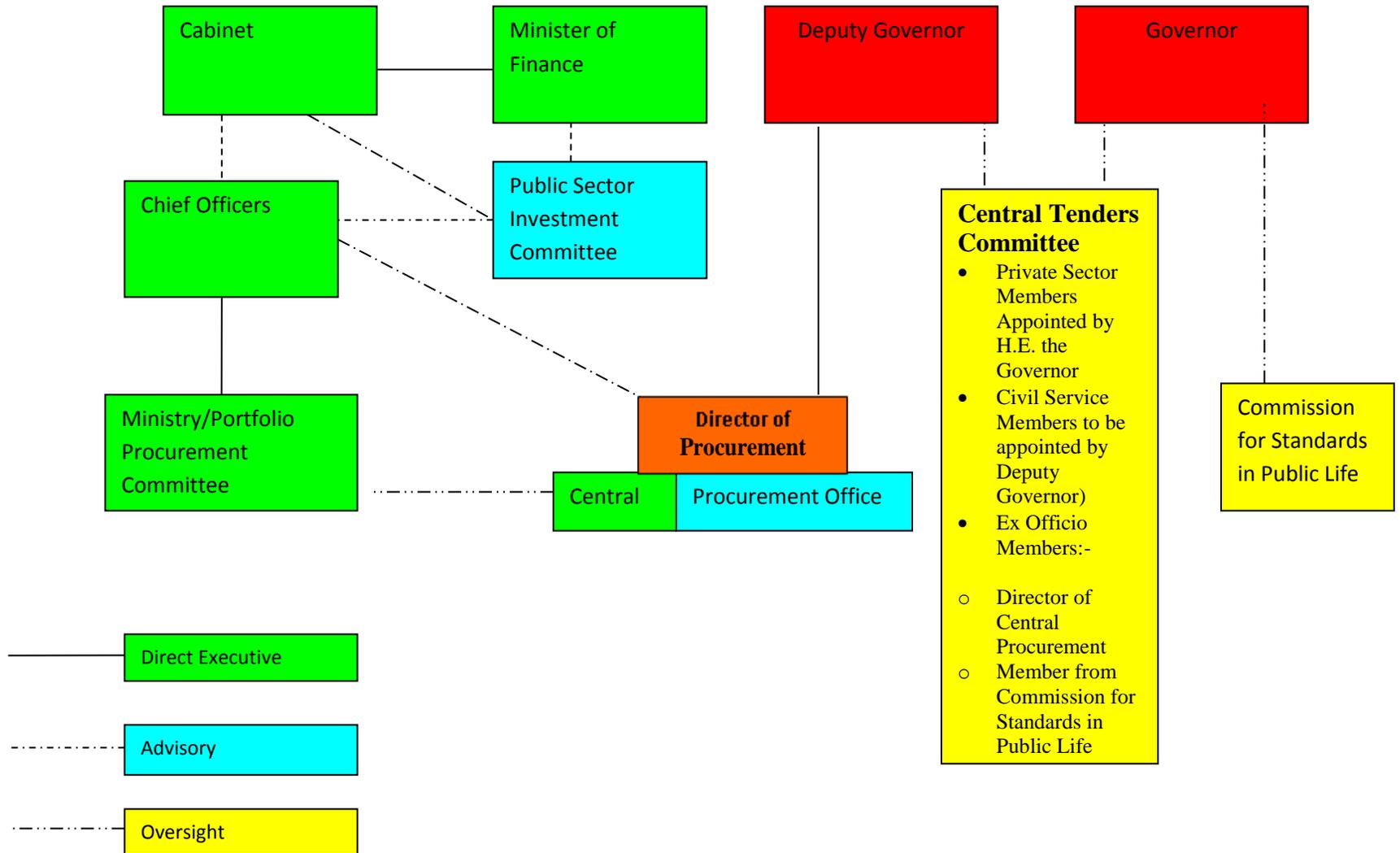
Transparency: public sector entities should ensure that there is openness and clarity on procurement policy and its delivery.

APPENDIX 2

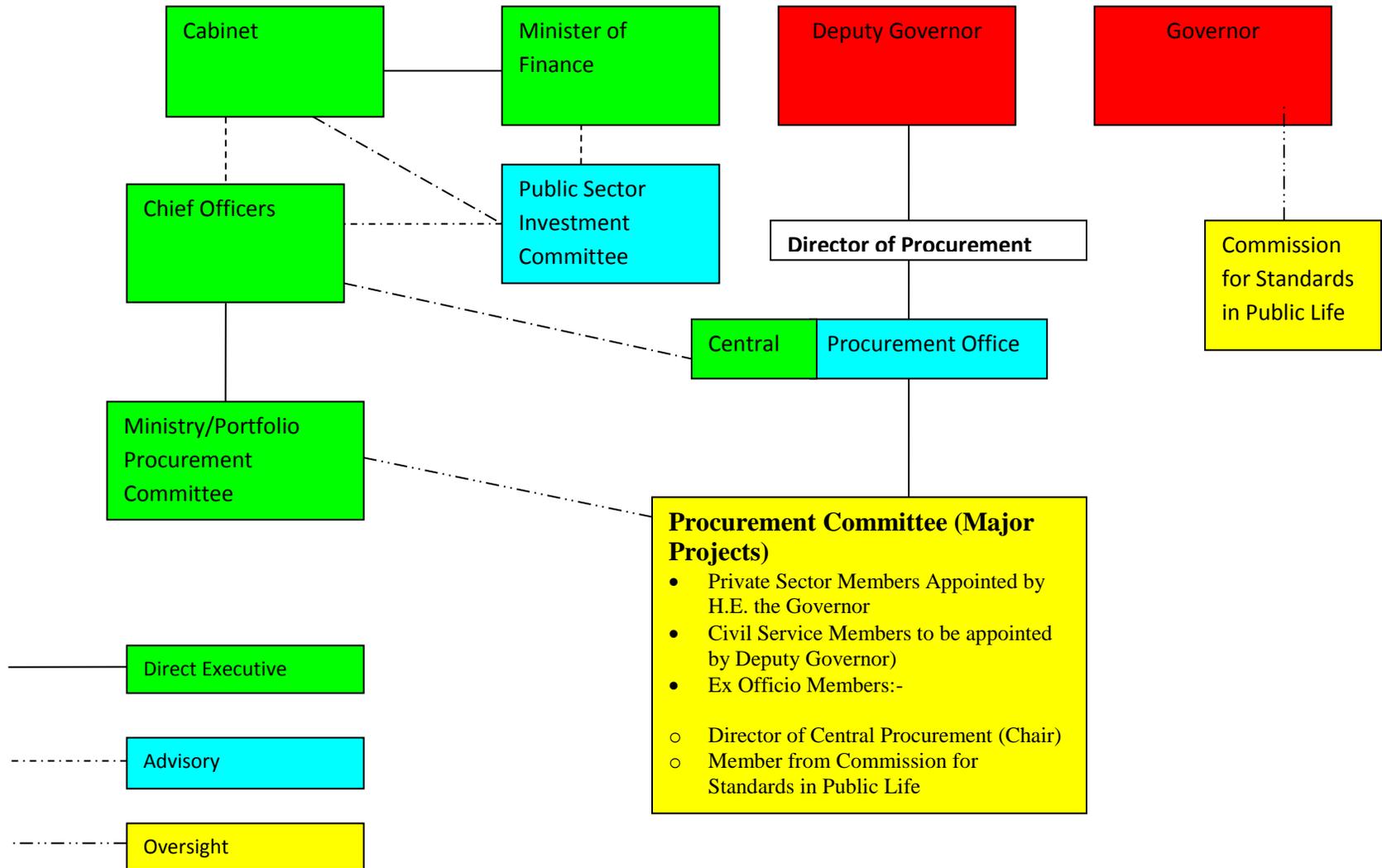
EXISTING PROCUREMENT ORGANISATION STRUCTURE



APPENDIX 3: PROPOSED PROCUREMENT ORGANISATION STRUCTURE - INTERIM SOLUTION



APPENDIX 4: PROPOSED PROCUREMENT ORGANISATION STRUCTURE - FINAL



APPENDIX 5: Principal Functions of Main Procurement Entities:

