



**MINISTRY OF FINANCE AND THE PUBLIC SERVICE**

# **OFFICE OF PUBLIC PROCUREMENT POLICY**

## **Role of Boards in Public Procurement**

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**This guidance provides direction to public boards of directors on their role in public procurement within their designated government entities.**

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## Introduction

### Interpretation:

In this Guidance Note:-

**Accountable Officer** refers to any public officer including an “Accounting Officer” concerned in/or responsible for the collection, receipt, custody, issue or payment of public moneys or other public property.

**Accounting Officer** refers to any person designated as such by the Minister pursuant to Section 16 of the Act and charged with the duty of accounting for any expenditure on any service in respect of which moneys have been appropriated under the Financial Administration and Audit Act or any other enactment,

**Board** refers to the Board of Directors of the Public Body as prescribed in law or constitution.

**Board processes** denotes all the activities and practices that add up to enhance effective boardroom deliberations and successful outcomes. They include the preparation for, attendance and participation in board meetings, the agenda items, frequency and duration of meetings and board leadership.

**Budget** means the annual estimates of revenue and expenditure prepared by the Minister responsible for finance pursuant to section 115 of the Constitution of Jamaica.

**Budget Call** means written instructions issued by the Minister to departments for the submission of proposals for their budgets, corporate plans and operational plans in respect of the ensuing financial year.

**Business Sensitive Procurement** refers to special procurements undertaken to take advantage of business opportunities that would impact the financial viability and core business of the procuring entity.

**Corporate Governance** here refers to the laws, regulations, voluntary codes, principles, guidelines, management practices and leadership styles that independently or collectively serve to advance shareholders’ wealth and stakeholders’ welfare. It represents both the long-term survival and the effective and efficient survival of the Public Body.

**Public Body/PB** means -

- (a) a statutory body or authority being a body corporate established by an Act of Parliament over which the Government or an agency of the Government exercises control; or
- (b) a company registered under the Companies Act, being a company in which the Government or an agency of the Government, by the holding of shares or otherwise, is in a position to direct the policy of that company.

**Public Funds** means -

- (a) funds allocated to a procuring entity out of the Consolidated Fund;

- (b) Government grants or loans made to a procuring entity; or
- (c) all other moneys which may in any manner become payable or vested in a procuring entity in respect of any matter incidental to its functions.

All other words are given the meaning imputed by:

1. Section 2 of The Public Procurement Act 2015 (as amended) herein referred to as “The PPA”;
2. Section 6 of the Public Bodies Management and Accountability Act, 2012 herein referred to as “The PMBAA”
3. The Corporate Governance Framework for Public Bodies, 2011 herein referred to as “The CGF”.

### **Scope:**

This guidance note is applicable to **all** public boards in Government of Jamaica **procuring entities**. More specifically, **procuring entities**, are defined under the Public Procurement Act, 2015, as:

- a) a Ministry, department, Executive Agency or other agency of Government;
- b) a public body;
- c) a local authority;
- d) any other body that is the recipient of public funds and duly authorized to apply those funds to public procurement.

Further, **the head, in relation to a procuring entity**, as defined by the PPA means -

- (a) in relation to a Ministry, the Permanent Secretary;
- (b) in relation to a department of Government, the head of the department, however designated; and
- (c) in relation to a public body or Executive Agency, the head of the public body or Executive Agency, however designated.

These procedures should be read in conjunction with the tools (instruments and documents) and any other administrative guidance issued, from time to time, by the Office of Public Procurement Policy (OPPP), MOFPS. This administrative guidance is therefore a valuable tool which offers public boards in all procuring entities the opportunity to standardize and streamline for consistency in their interpretation of public procurement procedures and practices.

### **Context:**

This administrative guidance arose out of a necessity to provide direction to public boards of directors, herein referred to as public boards, on their role in public procurement within their

designated government entities, as recommended by the Office of Public Procurement Policy (OPPP) in the Ministry of Finance and the Public Service (MOFPS). This guidance therefore directly clarifies the boards' role to support their oversight, accountability and corporate governance requirements. For present purposes, "oversight" is the term broadly used to provide a net of safety, to ensure that procuring entities make the best possible procurement decisions in the circumstances, thereby minimizing risk and loss of public funds.

The authority for this guidance is derived from the Public Procurement Act 2015 ("the PPA"), the Public Bodies Management and Accountability Act ("the PBMAA") and the Corporate Governance Framework for Public Bodies in Jamaica, 2012 ("The CGF"). The PPA and its Regulations established the legislative framework which laid the foundation for a modern public procurement regime in Jamaica while the aforementioned PBMAA and the CGF delineate the standards of corporate governance that are to be upheld by public bodies in Jamaica.

It is important to note that the CGF states that -

*"The Government of Jamaica has recognized that the major legislation which addresses the matter of corporate governance, transparency and accountability in public bodies, the Public Bodies Management and Accountability Act (PBMA), as well as the various enabling legislations of Public Bodies are unspecific about certain issues such as the roles and responsibilities of the Board and Management, procedures for the conduct of the Board and the relationship between Ministers, Boards and Management. "*

Further, the CGF itself provides limited coverage of the procurement responsibilities of public boards and in the absence of more specific guidelines, some degree of ambiguity has largely existed as it relates to the boards' role in the procurement function.

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## **Law, Framework and Compliance**

### **The Law:**

In respect of the:

- ***The Public Procurement Act 2015 (as amended) ("The PPA) and***
- ***The Public Bodies Management and Accountability Act, 2012 ("The PMBAA")***

1. Section 7(1) of the PPA provides that:

The Office of Public Procurement Policy shall be responsible for the development of public procurement policy, providing policy implementation guidance, training and advice to persons participating in public procurement and without prejudice to the generality of the foregoing, the Office shall -

(c) from time to time, issue administrative guidance, in any form, including directive, guidelines, instructions, technical notes or manuals, with respect to the conduct of public procurement and the implementation of this Act and regulations.

2. Section 19 of the PPA states that:

Except where otherwise specifically provided in this Act, procuring entities shall procure goods, works and services in accordance with –

- a) this Act and the regulations;
- b) any administrative guidance issued by the Office under section 7(1)(c); and
- c) The code of conduct, if any, issued under section 8.

3. Section 20 of the PPA states that -

The head of every procuring entity shall have overall responsibility for the conduct of all processes connected with procurement for that entity and, in particular, shall -

- a) develop an annual procurement plan for the procuring entity;
- b) establish a specialist procurement unit staffed by persons competent and adequately trained to manage and execute the procurement proceedings engaged in by the procuring entity; and
- c) ensure that public procurement engaged in by the procuring entity complies with section 19.

4. Section 6 of the PBMAA provides that:

Every board shall

a) Take such steps as are necessary -

- i) for the efficient and effective management of the public body;
- ii) To ensure the accountability of all persons who manage the resources of the public body;

b) develop adequate information, control, evaluation and reporting systems within the body;

c) develop specific and measurable objectives and performance targets for that body;

d) advise the responsible Minister on matters of general policy relating to the management of the body;

e) notwithstanding the provisions of any relevant enactment or any constituent document, enter in a performance contract with its Chief Executive Officer (or person performing like duties, by whatsoever title designated) on terms approved by the responsible Minister and the Minister of Finance.

5. Section 6A of the PBMAA sets out that -

Every public body shall adhere to the Government's procurement rules and guidelines made under any enactment.

## **The Framework:**

In respect of the:

- ***The Corporate Governance Framework for Public Bodies, 2012 (“The CGF”)***
1. The CGF 2012 outlines the role and responsibilities of the board and is supported by the following principle:

*“The Board is the primary decision-making authority of the Public Body and constitutes the fundamental base for corporate governance for the organization. All Boards should establish and disclose their roles and responsibilities to avoid any misunderstanding between the Board’s role and that of the executive management.”*

2. The CGF, 2011 further provides the following recommended practices, inter alia, relating to the roles and responsibilities of the board:
  - a. Each Board must have a Charter which defines the roles and responsibilities of the Board including its responsibilities for corporate governance and its code of ethics;
  - b. The Board should be responsible for the strategic direction of the Public Body ensuring alignment with the policy direction of government;
  - c. The Board should provide leadership oversight within a framework of prudent and effective controls that enable risks to be assessed and managed. This framework must specify the parameters within which the CEO is provided with delegated authority.
  - d. The Board should retain full and effective control over the Public Body while allowing the CEO to take full responsibility for its day-to-day operations.
  - e. The Board should take responsibility for the performance of the Public Body by monitoring CEO performance, ratifying strategic decisions and approving expenditure within stipulated limits.

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## **How to Comply:**

### *Public Boards: Their general role*

Corporate governance embodies processes and systems by which corporate entities are directed, controlled, managed and held to account. Corporate Governance influences how objectives are set and achieved; how risk is monitored and assessed; and how performance is optimized. It encompasses authority, accountability, stewardship, leadership and direction of an organization. Corporate Governance therefore involves the totality of the systems and frameworks that ensure

that a culture of accountability permeates the organization, so that individuals know what their responsibilities are and are equipped with the appropriate tools and skills to exercise them.<sup>1</sup>

The public board plays a crucial role in corporate governance, acting as the primary stakeholder responsible for overseeing the management and strategic direction of government entities within the following **GENERAL** parameters:

### 1. Strategic Planning

The public board must:

- set overall direction and strategy of the government entity;
- collaborate with the management team to develop plans and goals that align with the entity's mission and vision and
- monitor the entity's progress towards achieving its goals.

### 2. Fiduciary Responsibility and Accountability

The public board must:

- act in a fiduciary capacity; they possess a legal duty to uphold the best interests of the government entities which they serve;
- make informed decisions, exercise due diligence and ensure compliance with GoJ's laws, regulations and procedures;
- hold accountability for the entity's performance and
- balance both the public's best interest with the management team through the creation of a harmonious and effective corporate governance framework.

### 3. Risk Management

The public board must:

- oversee the entity's risk management practices by identifying, assessing and mitigating risks to the entity's operations, reputation or financial stability;
- establish risk management policies and procedures;
- monitor compliance with risk management policies and policies;
- ensure the implementation of appropriate risk management controls and
- ensure compliance with all relevant GoJ laws, regulations and procedures.

### 4. Financial Oversight

The public board must:

- oversee the entity's financial performance and
- review financial reports, audit results and other financial information to ensure the entity is financially stable and the accuracy of financial statements.

### 5. Appointment and Evaluation of Management

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<sup>1</sup> Corporate Governance Framework for Public Bodies, 2011

The public board must:

- appoint and evaluate the performance of the executive management team and
- Set performance targets, evaluate executive compensation and undertake succession planning.

## 6. Stakeholder engagement

The public board must:

- consider the varied interest of the entity's stakeholders to contribute towards more informed decisions and
- establish a foundation of trust and accountability with its stakeholders.

### *Public Boards: Their procurement role*

Procurement, as the largest expense item in an entity's cost structure, with a typical spend of 60 to 80% of the operational/ revenue budget, is uniquely positioned to act as either the facilitator or obstacle in achieving organizational objectives. These organizational objectives reflect what an organization expects to achieve in pursuit of its long-term vision, through the collective effort of all its functions, and the charting of direction provided by organizational strategies. Focus must therefore be shifted from reactive purchases to proactive, value-based supply chain management by integrating procurement as an integral component of the strategic planning process. Thus, public boards, in their capacity as the custodians for organizational strategy are required to drive the push for leveraging the entity's total procurement effort in order to improve organizational efficiency, sustainability, strategic partnerships and growth.

Having regard to the general role and responsibilities of public boards previously outlined, public boards are advised to strictly conform to the following course of action, with respect to their interaction with the procurement function:

#### 1. Procurement Strategy:

All too often there is a disconnect between organizational objectives and strategy and that relegates the role of procurement to a compliance function because it was not traditionally seen as strategically important as the other business objectives such as audit or accounts. Therefore, public boards must:

- Seek to understand and interrogate how the procurement unit's objectives align with the entity's own overall strategic goals and objectives. This is based on the premise that procurement objectives should cascade from the corporate goals identified in the corporate strategy/plan. Boards are to ensure that procurement decisions contribute to both short-term and long-term objectives by scrutinizing their impact on the entity's strategic goals, financial health, and risk profile;
- Ensure that as far as possible, the objectives of the individual major procurements are in alignment with the time-scales and objectives of the corporate strategy/plan;
- While not micromanaging procurement teams, establish performance expectations by monitoring Key Performance Indicators that are set and agreed by management..

Use of performance reports to assess effectiveness of procurement activities is recommended.

- Identify areas of strength and weakness in the organizational procurement strategy and develop strategies to treat with the weaknesses;
- For procuring entities which heavily undertake business sensitive procurements, recommend the implementation of business continuity methodologies/strategies within the value chain to ensure minimal interruption to the business operations as a result of interruptions in suppliers/vendors operations

## 2. Category and Spend Management

Public Boards must:

- Act as champions for the pursuit of strategic procurement practices and/or opportunities in procuring entities. Strategic procurement is a value-added consideration with a remit for not only procuring at the best price, but to meet a more strategic function in the context of the organization as a whole. These functions include any activity which aligns to the values and mission of the organization. For example: looking at cost, ethics, risks, supplier management and supply chain optimization, thereby bringing a whole new dimension to the “make or buy” decision process.

Further, by posing critical questions, public boards should seek to actively engage in steering procurement practices that not only optimize cost but also attract socially and environmentally responsible investments, stimulate innovation and support the local market (MSMEs and domestic content considerations);

- Conduct periodic assessments of the entity’s procurement spend to ensure that procurement processes undertaken for certain categories of expenditure are cost effective, adapted to changing market dynamics, and enhance agility and responsiveness;
- Steering procurement practices that attract responsible investments: Promoting socially and environmentally responsible investments, stimulating innovation, and supporting local markets.
- Recommend suitable solutions to address category spend issues. These include and are not limited to:
  - i. Mandates to reduce operational costs;
  - ii. Standardizing the quality of the entity’s negotiations;
  - iii. Consolidating low value transactional procurement processes;
  - iv. Identifying opportunities for contract consolidation;
  - v. Mandates for classifying and tracking spend and performing data analytics, enabling procurement to quickly deliver enhanced data and insights to facilitate decision-making and
  - vi. Separating the execution of operational and strategic procurement activities to improve alignment with the organizational procurement strategy.

## 3. Risk Management

Public boards should:

- undertake a systematic process of identifying, assessing and prioritizing the risks associated with strategic procurements in the context of their enterprise risk management (ERM) responsibilities. This includes establishing clear risk management policies, monitoring compliance, and ensuring appropriate controls are in place to mitigate potential disruptions and financial losses;
- Recommend and deploy coordinated resources to minimize, monitor and control impact of said risks. These risks directly and indirectly damage the financial viability and reputation of the entity and may also result in legal proceedings.

#### 4. Organizational procurement policy

Public boards are well placed to influence the development of internal procurement policies to ensure continual improvement as a means of mitigating costs and overall enterprise risk, the consequences of which may manifest as:

- poor cost control with little understanding of who is spending how much, with which suppliers, what is being bought, and are the right payments being made.
- exposure to fraud and corruption through the lack of control over accountabilities, responsibilities, records, audit trails and vested interests.
- poor reputation through late payment, adversarial behaviour, lack of regard for environmental and corporate social responsibilities, lack of regard for disreputable, unethical, or illegal practice.
- insecure supply chains through poor understanding of supply markets, inadequate supplier management, lack of demand knowledge, invisibility of technical and commercial change.

The public board must therefore:

Steer the development of organizational procurement policy/ policies in a pragmatic way, tailored to meet the needs of the procuring entity. These policies include and are not limited to the establishment of:

- Standard Operating Procedures (SOPs)
- Service Level Agreements (SLAs)
- Standardization Policies
- Ethical standards

#### 5. Monitoring of the Annual Procurement Plan

The annual Procurement Plan is intimately connected to the public body's strategic corporate objectives. Essentially, the annual procurement plan, *inter alia*, details the intended procurement of goods, works and services, estimated quantities of such and corresponding costs, procurement methodology to be utilized and projected schedule for such products to be procured. Since the requirement for this plan is set out in Regulation 3 of The Public Procurement Regulations, 2018, it is therefore imperative that public boards regard this as an important aspect of its governance framework and seek to implement monitoring mechanisms for the annual procurement plan roll-out.

A monitoring mechanism is important: -

- given that the planned procurements have implications for other competing public body corporate priorities;
- since it can serve as a key tool to measure the performance of the public body's procurement function over a given twelve-month period and
- it serves also as a tool to gauge whether the procuring entity and similarly the public body's overall corporate objectives are attainable.

The public body must therefore:

- Guide the development of the annual procurement plan by mandating executive management to provide a proper justification of its design and structure, including the empirical basis on which the plan was formulated inclusive of the items (goods, works, services, quantities, estimates, etc.,) contained therein. **Public boards should not be directly involved in the preparation of the annual procurement plan.**
- In furtherance of the aforementioned, mandate the following course of action:
  - i) require that the annual procurement plan be submitted for the appropriate review and sign-off prior to submission to the Ministry of Finance and the Public Service;
  - ii) establish internal systems for the annual procurement plan's swift (set strict timelines) review;
  - iii) review the annual procurement plan and monitor its implementation to ensure alignment with corporate priorities and a sound rationale for procurement decisions.
  - iv) where the public board deems it necessary to effect changes to any aspect of the plan, that such be properly documented including the basis for any change.
- keep abreast of the progress of the procurement function through updates without interfering with the day-to-day decisions of the procurement arm or directly involve itself in actual tender processes save an except where it is aware of clear and blatant breaches of any of the various pieces of governing legislations including existing procurement law and policy.
- exercise due care to ensure that where oversight procurement committees are deployed, that they should not be utilized as a mechanism to unduly interfere in the day-to-day procurement affairs of the public body.

#### 6. Setting reporting obligations regarding the Procurement function

The Public board should:

- in collaboration with executive management, develop the necessary tools and systems to inform themselves of the state of affairs of programmes in the public body. These tools may take the form of internal policies/procedures to streamline, structure and guide the execution of portfolio programmes, standard operating procedures and specific reports.

Reports that touch and concern the public body's operations should, *inter alia*, include the following:

- timeframes for the submission of reports to the public board;
- justification for deviations from established plans inclusive of the annual procurement plan;
- implications and impacts of a deviation (a deviation may take the form of a change in pre-set timeline for a purchase, change in the methodology for a purchase, or a decision not to proceed with a purchase) and
- spend analysis mechanism to review all planned and executed procurement expenditure against deviations and possible alternatives.

## 7. Measuring Procurement Performance through Accountability measures/systems

Section 20(b) of The Public Procurement Act, 2015 requires the head of the procuring entity to establish a specialist procurement unit within the procuring entity/public body. The specialist procurement unit is one of the critical organs of the public body designed to increase the likelihood of the body meeting its corporate mandate. While the responsibility to establish specialist procurement unit rests squarely on the shoulders of the head of procuring entity, the public board should:

- take an interest in measuring procurement performance so that the link to the ten dimensions of good board performance<sup>2</sup> is strengthened. However, the public board should not directly or indirectly exert undue influence over the process to establish the specialist procurement unit but should rather oversee that process.
- as a management best practice, require the chief executive officer to furnish a roadmap for the activity, including the risk mitigation measures, and funding resource needs for the specialist unit. Accountability for this activity can be shared. However, the lines of demarcation should be properly understood. While the actual tasks akin to the selection and recruitment process rests on the shoulders of executive management, the ultimate responsibility rests with the board. Through accountability and monitoring systems/tools, the public board, as part of their strategic oversight role, will be able to gauge and measure the overall performance of the specialist procurement unit. Quantitative and qualitative metrics are to be used to measure procurement performance from a macro, organizational level, in view of:
  1. achieving cost savings versus cost avoidance;
  2. monitoring the procurement spend;
  3. assessing procurement's impact on the entity's cash flow and bottom line;
  4. assessing the procurement spend versus the approved budget per individual business unit and
  5. assessing the return on investment (ROI) for procurement

Similarly, such monitoring may also take the form of setting internal policies and reporting procedures which should outline qualitative and quantitative measurable outcomes. A few considerations in establishing proper internal accountability and monitoring systems may, *inter alia*, include:

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<sup>2</sup> 2016 Government of Jamaica – Board Performance Evaluation Framework

- i. being structured to enable a comparison against the public body's corporate objectives;
- ii. detailing key performance indicators to indicate whether the specialist procurement unit is meeting set objectives
- iii. **Regularly review financial reports and performance metrics** tracking Key Performance Indicators (KPIs) such as cost savings, compliance rates, and procurement cycle times to ensure that procurement activities are meeting strategic objectives.
- iv. attesting to the efficient management of the public body's procurement function and
- v. determining whether new internal policies are necessary to improve and or enhance the public body's procurement systems.

Procurement's delivery of added value and contribution to the entity's achievement of its business objectives should be mainly demonstrated by:

- improved risk management;
- improved cost control;
- increased sustainability and diversity in the entity's supply chain;
- improved supplier performance; and
- increase collaboration across business units

### **Further Information and Guidance:**

For further information, please contact the Office of Public Procurement Policy in the Ministry of Finance and the Public Service by sending an e-mail to: [opppcustomercare@mof.gov.jm](mailto:opppcustomercare@mof.gov.jm) or by calling 876-932-5264.