



Government Contracts and Procurement

Public Officers' Law Seminar :
Understanding the Law
26th and 27th October 2016

*Hjh Noor Sukhairiyani binti DSLJ Hj Md Kassim,
Senior Counsel
Hjh Badariah binti Hj Yahya,
Deputy Senior Counsel*

www.agc.gov.bn



Objective

- Understanding Government's procurement and approval process.
- Understanding Government's Contractual Documents.
- Application to Government's Contractual Documents.
- Ensuring compliance to Government's Contractual Documents and approval process – contract management.
- A fair and reasonable price for a high quality on-time Scope of Work.



Government Contract Signatories

- Who can sign Government contracts?
 - JPM Circulars – 01/1984, 11/1984 & 06/2007
- Director?
- Permanent Secretary?
- Minister?



Public Officers' Responsibility

- Project manager must be familiar with essential activities in contract planning, tendering and contract administration.
- Sanctions in place against errant or negligent Government / public officers who have not properly discharged their duties in accordance with the procedural, regulatory and legal framework of tendering
- Public officers are subject to Financial Regulations



The Importance of Contract Management

- Money is involved
- Goods and Services are being procured
- Failure can result in
 - lack of compliance
 - missed opportunities
 - broken relationships
 - costly arbitration



Procurement & Contract Process

- Tender
- Contract Drafting
 - Pre or Post Tender
 - Negotiated Contract
- Contract Signing
- Contract Performance
- Contract Closure/Closeout



Tender / Invitation to Tender

4 sections:

- Section 1 – Instructions to Tenderer
- Section 2 – Specifications
- Section 3 – Requirements
(Schedules to be used)
- Section 4 – Contract



Elements of Contract Formation

- Offer
 - &
 - Acceptance
- } Mutuality – X offers, Y accepts
- It is to note that a contract does not have to be formed in a single document (where X and Y sign on the same piece of paper).
 - Considerations
 - Intention to create legal relations



Contracting Instruments

- Letter of award/ letter of appointment / letter of commissioning/letter of offer/letter of acceptance

- 'Award' / 'appointment' following:
 - Tender procedure
 - Non-tender procedure



Contract Format

(1) Main Contract

- Contains general agreed terms
- Usually not changed

(2) Schedules

- Contain specific information
- Project specific



Contractual Documents

- Agreement for the Purchase of Goods & Services
- Master Supply & Services Agreement
- Consultancy Services Agreement
- Technical Services/ Maintenance Agreement
- Construction/ Building & Civil Work Agreement
- Non-Disclosure Agreement
- Tenancy Agreement



Contract Terms

- Parties to the Contract
- Commencement date / Duration of the Contract
- Type of Procurement (services or goods – outright purchase / leasing / hybrid)
- Scope / Specifications of services or goods
- Project Schedule
- Payment Schedule
- Performance Bond (if any)



Contract Terms

- Liquidated Agreed Damages
- Acceptance Procedure
- Intellectual Property Rights
- Warranty (services included?)
- Maintenance
 - Commencement
 - Duration
 - Response times
 - Down times
 - Severity Level
 - Resolution time
 - Compensation
 - Local/Foreign support
- Termination



Boilerplate Clauses

- Liability
- Waiver
- Confidentiality
- Severability
- Personnel
- Entire Contract
- Gifts
- Amendments and Variations
- Force Majeure
- Taxes and Duties
- Notices
- Assignment and Sub-contract
- Compliance with Law
- Collusion
- Conflict of Interest
- Indemnity
- Governing Law & Dispute Resolution



Common & Practical Issues in Contracts

- Performance before contract signed
- Backdating of contracts
- Performance Bond – MOF Circular 1/2014
- Liquidated Damages
- Delivery and Acceptance of Services and Goods
 - Verification and supporting documents
 - Timing
 - Delays and Liquidated Damages



Common & Practical Issues in Contracts

- Payment
 - Payment Schedule
 - Payment upon signing
 - Advance Payment Bonds
 - Verification and supporting documents
- Stamp Duties
- Indemnity & Liability
- Termination for Convenience



Contract Closure/ Closeout

- The process for completing and settling each contract
 - Ensuring that all deliverables are received and services performed as per the agreement
 - Documenting final acceptance
 - Considering any outstanding obligations from either party
 - Considering any outstanding claims or issues
 - Ensuring that final payment is made
 - Collecting Liquidated Damages and returning Performance Bond
 - Ensuring that contract documentation are filed
 - Ensuring certifications, warranty, spare parts list, operation manuals and training have been provided
 - Procedures for record maintenance
 - Post contract review meeting for evaluation



QUESTION AND ANSWER SESSION

Public Officers' Law Seminar :
Understanding the Law
26th and 27th October 2016

www.agc.gov.bn



THANK YOU

Public Officers' Law Seminar :
Understanding the Law
26th and 27th October 2016

sukhairiyani.kassim@agc.gov.bn
badariah.yahya@agc.gov.bn

www.agc.gov.bn