

REPUBLIC OF RWANDA



MINISTRY OF JUSTICE
P.O. BOX 160 KIGALI

PREVENTION OF LOSS BY SMART CONTRACTING AND MANAGEMENT

Presentation by BUSINGYE Johnston
Minister of Justice/Attorney General

Workshop for DG-Corporate Services & Procurement Officers

Introduction

- The Government is at the service of the citizens public funds are collected through taxes and other contributions from Citizens.
- Public funds are for the benefit of Citizens.
- It should be our common ambition to ensure that contracts are well implemented and achieve their objectives
- Loss of Public funds resulting from bad contracting and poor contract management should not be tolerated by any one holding Public office.
- Zero litigation or at least a 100% win should be our ultimate target
- Together we can prevent or drastically reduce loss of public funds.

- ❑ The issue of Government incurring losses due to poor drafting and management of contracts is not news;
- ❑ The 14th NLR recommended to **Streamline drafting and management of contracts between the Government and private operators and hold accountable those responsible for causing losses to Government...**;
- ❑ The Auditor General's annual report (2016) – indicate loss in billions of Rwf;
- ❑ It should be our common ambition to ensure that contracts are well implemented and achieve their intended Purpose;
- ❑ Loss of Public funds resulting from bad contracting and poor contract management should not be tolerated by any one holding Public office.

Avoid bad contracting

- Get it right from the beginning of the Process by avoiding bad contracting. This entails:
- Ensuring that terms of reference/specifications are clear enough and indicated what we need.
- Avoid awarding a tender to an incompetent or a blacklisted contractor.
- Ensuring that documents submitted by the contractor are genuine
- Ensuring no conflict of interest.
- Avoid provisions that favour one party (mainly the contractor)
- Record and archive every document: A contract is ALL that went into it.

What leads to Poor Contract Management?

1. Failure to:

- Detect
- Prevent
- Resolve
- Mitigate disputes

2. Conflict of interest: when food becomes too hot to swallow yet too sweet to ignore

- Makes us blind, deaf and dumb,
- We fail to act,
- Inertia overcomes us,
- We develop justifications for bad choices,
- We make suicidal decisions

What leads to Poor Contract Management.....

- Systemic weaknesses
- Lack of a clear link between the project and the organization's strategic priorities
- Lack of senior ownership of the project
- Lack of clarity on roles and responsibilities
- Not seeking or complying with legal advice
- Disregard of procedures in case of breach

What leads to Poor Contract Management.....

- Poor project management skills – day to day record keeping, oversight of deadlines and managing performance of the contractor
- Not enough time taken to break down the implementation of the project into manageable and measurable steps, that are then monitored.
- Not identifying potential problems early and seeking to address them

- Poor, late, clumsy, wrongful, illegal, unprocedural termination
- Investing public funds in projects with poor or without prior feasibility studies
- **Awarding unplanned tenders or “adjusting” existing ones**

Consequences of poor contract drafting and management include


- Financial Losses such as those indicated in the AG's report
- Delayed works and services
- Receiving uncompleted works
- Open ended corruption and embezzlement
- Dragging the GOR into unnecessary law suits
- Staff issues Prosecution, resignations, abscondment, dismissal etc.
- Retarding Socio-Economic Development
- Negative effects on GDP, Jobs, Growth, Taxes etc.

Provision of Leadership that minimizes Litigation

- Corporate Services DGs as Chief Budget Managers are Leaders of GoR institutions who should always provide leadership that ensures successful execution of contracts and minimises litigation to the lowest possible level.
- Matters that can be settled out of court; institutions should endeavor to solve them amicably and if necessary by the Committee in charge of out of court settlement.
- Contribute to the eradication a culture of non compliance with Law.
- Don't expect solutions from management of the problem GoR caused (e.g|: Attorney General, Court, amicable settlement committee, etc..)

Building a Culture

- ❑ **There is need to build a Culture to institutionalize best practice:**
 - A culture of Managing Contracts from day one:
 - A Culture of disclosing classified contracts to classified People
 - A culture of prevention of litigation or settling out of court
 - A culture of seeking Legal Opinion from in-house Legal Officers or the Attorney General
 - A culture of supporting the Attorney General when the institution is sued in Court:
 - A culture of personal integrity
 - A culture of early detection of risk and early response
 - Treat the opposite Party with courtesy, and caution: he has his interest at heart – cannot have GoR's interest
 - A culture of holding violators accountable:

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- When awarding tenders consider the following:
 - ❖ Think about this country, the institution, your position and your responsibility
 - ❖ Look forward to positive outcomes of the process you are going to be involved in.
 - ❖ Be proud that you can leave a mark in building our country by conducting successful processes that start from preparation of tender documents, tender award, contract negotiation, contract management etc.
 - Ensuring no conflict of interest.
 - Avoid temptation stick to concept of UBUPFURA MUBE INYANGAMUGAYO

Conclusion

- Public funds serve a common interest; they have to be protected against misuse by us all.
- Poor contract management leads loss of funds, time, image, credibility, multiplier losses, etc...
- Awareness and effective leadership are a key to best contract management practice
- It is always important to comply with law to be sure you are well managing a public contract.
- Any public servant causing loss to Gvt due to poor contract management should account for it.
- Government of Rwanda is not about to stop pursuing those who manage contracts poorly and cause Loss.



THANK YOU