

JAMAICA

No. 12-2018

I assent,

[L.S.]

Sgd. P. L. Allen  
Governor-General.

28<sup>th</sup> day of August 2018

AN ACT to Amend the Public Procurement Act.

[ **The date notified by the Minister**  
**bringing the Act into operation** ]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Public Procurement (Amendment) Act, 2018, and shall be read and construed as one with the Public Procurement Act, 2015, (hereinafter referred to as the "principal Act").

Short title  
and  
construction.

2. Section 2 of the principal Act is amended—

Amendment  
of section 2  
of principal  
Act.

(a) in the definition of—

(i) "international competitive bidding", by deleting the words "that is not limited to national bidders" and

“approved unregistered supplier” means a person, firm or entity approved by the Commission under section 18;

“bidder” means a supplier who submits a bid;

“bid security” means the bank guarantee or other form of security to be used in public procurement proceedings and submitted by a bidder together with a bid to secure the obligations of the bidder relating to participating in the procurement proceedings and the obligation to sign a procurement contract once the bid is accepted;

“closed framework agreement” means a framework agreement in which a supplier is excluded from becoming a party unless that supplier became a party, at the time of the making of the agreement;

“domestic content” means goods, materials, components, services or labour originating from or made in Jamaica as may be prescribed;

“domestic margin of preference” in evaluating bids and determining the successful bid, means the application of a prescribed increase on bid price in a manner favourable to an eligible bidder who is Jamaican;

“eligible bidder” means a person, firm or entity eligible to participate in a public procurement process in accordance with section 32 of the Act;

“Jamaican” or “from or made in Jamaica”, in respect of special and differential treatment measures—

- (a) in relation to an individual, has the meaning assigned to it by the

preference, offsets and set asides, applied to give special consideration to a class of suppliers and to provide incentives for the greater participation of disadvantaged economic actors;

“supplier” means—

- (a) an approved registered supplier;
- (b) an approved unregistered supplier; and
- (c) any other person, firm or entity that is eligible to participate in procurement proceedings under this Act;

“ultimate effective control” has the meaning assigned to it by section 2 of the *Companies Act*;

“ultimate ownership” has the meaning assigned to it by section 2 of the *Companies Act*.

3. Section 5 of the principal Act is amended—

- (a) in paragraph (g), by deleting the words “and approved unregistered suppliers”;
- (b) in paragraph (i), by inserting immediately after the words “participation of” the words “micro,”.

Amendment  
of section 5  
of principal  
Act

4. Section 7(1) of the principal Act is amended—

- (a) in paragraph (c), by inserting immediately after the words “the conduct of public procurement” the words “, including the application of special and differential treatment measures”; and
- (b) by renumbering paragraph (n) as paragraph (o), and inserting next after paragraph (m), the following—

Amendment  
of section 7  
of principal  
Act

“(n) review and make recommendations for the establishment of framework agreements for procuring entities, including any modification as appropriate; and”.

**9.** Section 20 of the principal Act is amended in paragraph (a), by deleting the words “develop an” and substituting therefor the words “develop and provide to the Office a copy of the approved”.

Amendment  
of section 20  
of principal  
Act

**10.** Section 21(2) of the principal Act is amended by deleting the words “the administrative guidance” and substituting therefor the words “such administrative guidance as may be”.

Amendment  
of section 21  
of principal  
Act

**11.** Section 23 of the principal Act is amended by deleting subsection (5) and renumbering subsections (6) and (7) as subsections (5) and (6).

Amendment  
of section 23  
of principal  
Act

**12.** Section 24(2) of the principal Act is amended in paragraph (a) by—

Amendment  
of section 24  
of principal  
Act

- (a) deleting the words “all known suppliers” and substituting therefor the words “as many suppliers as possible”; and
- (b) inserting immediately after the word “supplying” the word “competitively”.

**13.** Section 25 of the principal Act is amended—

Amendment  
of section 25  
of principal  
Act

- (a) in subsection (1)—
  - (i) in paragraph (a), by deleting the words “or approved unregistered supplier”;
  - (ii) in paragraph (c), by deleting the word “or”;
  - (iii) by renumbering paragraph (d) as paragraph (e) and inserting next after paragraph (c), the following paragraph—
    - “(d) the time and cost involved in considering a large number of bids would be disproportionate to the estimated value of the procurement; or”; and
- (b) in subsections (3) and (4), by deleting the words “or approved unregistered supplier” wherever they appear.

the need to consider multiple variables affecting the commercial or financial aspects of the proposals;

- (c) the variables affecting the commercial or financial aspects of the procurement—
  - (i) cannot be precisely assessed;
  - (ii) are incapable of specification by the procuring entity at the outset of the procurement proceedings; and
  - (iii) can only be determined and agreed upon during negotiations; and
- (d) it is not necessary to negotiate any non-commercial or non-financial aspect of the procurement.

Request for quotations

25E.—(1) Subject to paragraph (2), a procuring entity may engage in procurement by means of a request for quotations for readily available goods, works or services—

- (a) that are specifically produced or provided to the particular description of the procuring entity; and
- (b) for which there is an established market.

(2) Procurement by means of a request for quotations shall be—

- (a) limited to procurement by way of restricted bidding; and
- (b) utilized in the case of a selection criteria based primarily on price.

Framework agreements

25F. A procuring entity may engage in procurement under an open framework agreement or a closed

special and differential treatment measures as may be prescribed.”.

- 16.** Section 32 of the principal Act is amended by deleting— Amendment  
of section 32  
of principal  
Act
- (a) the marginal note and substituting therefor the following—

“Eligibility  
requirements.”;  
and

- (b) the word “qualification” and substituting therefor the word “eligibility”.

- 17.** Section 38(2) of the principal Act is amended in paragraph (b) by deleting the word “offset” and substituting therefor the words “applicable special and differential treatment measures”. Amendment  
of section 38  
of principal  
Act

- 18.** Section 44 of the principal Act is amended— Amendment  
of section 44  
of principal  
Act
- (a) in subsection (4)—

- (i) in paragraph (a), by inserting immediately after the words “process;” the word “or”;
- (ii) by deleting paragraph (b) and renumbering paragraph (c) as a paragraph (b); and

- (b) in subsection (5), by deleting the words “the the” and substituting therefor the word “the”.

- 19.** The principal Act is amended in the heading for Part VI by deleting the words “, *Review and Appeal*” and substituting therefor the words “*and Review*”. Amendment  
of Part VI of  
principal  
Act

- 20.** Section 51 of the principal Act is amended— Amendment  
of section 51  
of principal  
Act
- (a) by deleting subsection (2);

- (b) renumbering subsections (3), (4), (5), (6), (7) and (8), as subsections (2), (3), (4), (5), (6) and (7), respectively;

- (c) in subsection (4), as renumbered, by deleting the words “subsection (1), (2) or (3)” and substituting therefor the words “subsection (1) or (2)”;

Amendment  
of enact-  
ments of  
principal

66.—(1) The *Financial Administration and Audit Act* is amended by deleting section 19B and substituting therefor the following—

“Acquisition  
of goods,  
etc 19B. The acquisition of goods,  
or services by, or the carrying out  
of any works for any department  
shall be governed by the provisions  
of the *Public Procurement Act*”.

(2) The *Financial Administration (Supplies) Regulations, 1963*, are revoked.

(3) The *Public Sector Procurement Regulations, 2008*, are revoked.”.

25. Section 67 of the principal Act, as renumbered, is amended— Amendment  
of section 67  
of principal  
Act

(a) by deleting the marginal note and substituting therefor the following—

“Savings and  
transitional  
provisions.”;

(b) by deleting subsection (1) and renumbering subsections (2), (3), (4) and (5), as subsections (1), (2), (3) and (4);

(c) in subsection (1), as renumbered, by deleting the word “commended” and substituting therefor the word “commenced”;

(d) in subsection (4), as renumbered, by—

(i) renumbering paragraphs (c) and (d) as paragraphs (d) and (e); and

(ii) inserting next after paragraph (b) the following—

“(c) the *National Contracts Commission (Interim Provisions) Act, 2017*”.

26. The First Schedule to the principal Act is amended— Amendment  
of First  
Schedule to  
principal  
Act

(a) in paragraph 1(a) of Part A, by deleting the words “donated by the Government of Jamaica to” and substituting therefor the words “donated to the Government of Jamaica by”; and

On the 3rd day of July, 2018 the House of Representatives agreed to the amendments made by the Senate.

PEARNEL CHARLES, CD, MP, JP

*Speaker.*

*This printed impression has been carefully compared by me with the authenticated impression of the foregoing Act, and has been found by me to be a true and correct printed copy of the said Act*

*Sgt Valerie A Curtis*  
*Clerk to the Houses of Parliament*