

A BILL

ENTITLED

AN ACT to Amend the Public Procurement Act.

[]

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

substituting therefor the words “that does not restrict the participation of any supplier”;

- (ii) “invitation to bid”, by deleting the words “or approved unregistered suppliers”;
- (iii) “national competitive bidding”, by deleting the words “national bidders” and substituting therefor the words “approved registered suppliers”;
- (iv) “open bidding”—
 - (A) in paragraph (a) by inserting immediately after the words “a bid;” the word “sir”;
 - (B) by deleting paragraphs (b) and (c) and substituting therefor the following paragraph—
 - “(b) in the case of national competitive bidding, any approved registered supplier is entitled to submit a bid;
- (v) “single-source procurement”, by deleting the words “specific supplier or specific approved unregistered supplier” and substituting therefor the word “supplier”;
- (b) by deleting the definitions of “approved unregistered supplier”, “bidder”, “offsets” and “supplier”;
- (c) by inserting in their correct alphabetical sequence the following definitions—
 - “ “approved annual procurement plan” means the procurement plan approved by the head of the procuring entity;
 - “approved registered supplier” means a person, firm or entity registered under section 16;

“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

*Constitution of Jamaica and the
Jamaican Nationality Act;*

- (b) in relation to a body, means a body—
- (i) constituted or registered under the laws of Jamaica;
 - (ii) which has its registered office and central administration, and carries on substantial activity, within Jamaica; and
 - (iii) more than fifty percent of the equity interest in which is under the ultimate control or ownership (as defined in the *Companies Act*) by a Jamaican;

“offsets” means any condition or undertaking that encourages local growth and development or which improves balance of payments accounts, including investment requirements, requirements for use of domestic content and the licensing of technology;

“restricted bidding” means a bidding process in which a limited number of suppliers are invited to bid;

“set asides” means the portion of the annual procurement budget of the Government of Jamaica contained in the approved annual procurement plan allocated for procurement proceedings for participation by categories of national suppliers as may be prescribed;

“special and differential treatment measures” means measures, including domestic margins of 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;”.

3. Section 5 of the principal Act is amended—

Amendment
of section 5
of principal
Act.

- (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,”.

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

Amendment
of section 7
of principal
Act.

- (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—

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

Amendment
of section 11
of principal
Act.

5.—(1) Section 11(1) of the principal Act is amended—

- (a) in paragraph (c), by deleting the words “as suppliers and” and substituting therefor the words “as approved registered suppliers and”;
- (b) in paragraph (d), by deleting the word “suppliers” and substituting therefor the words “approved registered suppliers”; and
- (c) by deleting paragraph (e) and substituting therefor the following—
 - “(e) subject to subsection (3), establish and maintain a register of approved suppliers, differentiated according to classification;”.

(2) Section 11 of the principal Act is amended by inserting next after subsection (2) the following—

- “ (3) Subsection (1)(e) shall not apply in respect of suppliers other than approved registered suppliers and approved unregistered suppliers.”.

Amendment
of section 15
of principal
Act.

6. Section 15(1)(a) of the principal Act is amended by deleting the words “as a supplier” and substituting therefor the words “as an approved registered supplier”.

Amendment
of section 16
of principal
Act.

7. Section 16 of the principal Act is amended by deleting—

- (a) the marginal note and substituting therefor the following—
 - “Registration
of approved
registered
suppliers.”; and
- (b) the words “as a supplier” wherever they appear and substituting therefor in each case, the words “as an approved registered supplier”.

Amendment
of section 18
of principal
Act.

8. Section 18(2) of the principal Act is amended by deleting the words “a supplier” and substituting therefor the words “an approved registered supplier”.

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.

Insertion of new sections 25A, 25B, 25C, 25D, 25E, 25F and 25G in principal Act.

14. The principal Act is amended by inserting next after section 25 the following sections—

“Manage-
ment of
procure-
ment
methods.

25A. A procuring entity shall manage a selected method of procurement by applying, in the manner prescribed, any of the following procedures—

- (a) a single stage bidding;
- (b) a two-stage bidding;
- (c) a request for proposals, without negotiation;
- (d) a request for proposals, with consecutive negotiation;
- (e) a request for quotations; or
- (f) a framework agreement.

Bidding in stages.

25B. Where a procuring entity engages in procurement by means of open bidding it may be conducted in a single stage or in two stages.

Request for proposal without negotiation.

25C. A procuring entity may engage in procurement by means of a request for proposal without negotiation if the bidding process is one in which the technical, financial and other criteria of each bid are evaluated, and the bids ranked accordingly, with the procurement contract being awarded to the highest-ranked bidder without negotiation.

Request for proposal with consecutive negotiation.

25D.—(1) A procuring entity may engage in procurement by means of a request for proposal with consecutive negotiation where—

- (a) the procurement subject-matter is complex;
- (b) the holding of negotiations is necessary in order to determine the commercial or financial aspects of the proposals due to

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 framework agreement in accordance with prescribed procedures.

Splintering procurement to avoid requirements of Act prohibited.

25G. The head of a procuring entity shall not—

- (a) authorize a less competitive method of procurement than would otherwise have been applicable to a procurement by a splintering of a single procurement into separate procurements to—
 - (i) artificially reduce the estimated value of the procurement; or
 - (ii) to apply a procurement method to any splintered part of the procurement, which would not have been applicable, had it not been for the artificial splintering of the procurement; or
- (b) to manage or administer a procurement by splintering a single procurement into separate procurements to avoid the proper application of the procurement method thresholds or the procurement contract approval limits under this Act.”.

Amendment of section 31 of principal Act.

15. Section 31 of the principal Act is amended—

- (a) in subsection (1), by deleting the words “section 23(4)” and substituting therefor the words “sections 23(4), 24(1)(b) and 25(1)(d)”;
- (b) in subsection (3), by deleting the words “in the matter referred to in subsection (1)” and substituting therefor the words “in the manner referred to in subsections (1) and (2)”;

(c) by inserting next after subsection (3), the following—

“ (4) In accordance with subsection (2), a procuring entity may apply to a procurement proceeding any 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 39
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)”;
- (d) in subsection (5), as renumbered, by deleting the words “subsections (7) and (8)” and substituting therefor the words “subsections (6) and (7)”;
- (e) in subsection (6), as renumbered, by deleting the words “subsection (8)” and substituting therefor the words “subsection (7)”;
- (f) in subsection (7), as renumbered, by deleting the words “subsection (7)” and substituting therefor the words “subsection (6)”.

Amendment
of section 53
of principal
Act.

21. Section 53(2) of the principal Act is amended by deleting the words “section 51(3).”

Amendment
of section 60
of principal
Act.

22. Section 60(1) of the principal Act is amended—

- (a) by deleting paragraph (e) and substituting therefor the following—
 - “(e) special and differential treatment measures;”;
- (b) in paragraph (g), by inserting immediately after the words “decisions by” the word “the”.

Amendment
of section 61
of principal
Act.

23. Section 61(1) of the principal Act is amended—

- (a) in paragraphs (a) and (d), respectively, by deleting the words “or approved unregistered supplier” wherever they appear; and
- (b) in paragraph (b), by deleting the words “cancelled or approved under this Act may be” and substituting therefor the words “cancelled, approved or”.

24. The principal Act is amended by deleting section 65, renumbering section 66 as section 67, and inserting next after section 64 the following sections—

Repeal and replacement of section 65 of principal Act.

“Repeal of
National Contracts Commission (Interim Provisions) Act, 2017.”

65. The *National Contracts Commission (Interim Provisions) Act, 2017*, is repealed.

Amendment of enactments 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 *etc.* 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*”.

Amendment
of First
Schedule to
principal
Act.

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

- (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
- (b) in Part B, by deleting the heading and substituting therefor the following—

“Conditions for exemption of goods, works and services donated to the Government of Jamaica by a Non-Governmental Organization under Part A.”

Amendment
of Second
Schedule to
principal
Act.

27. Paragraph 1(2)(c) of the Second Schedule to the principal Act is amended by inserting immediately after the words “Jamaica Bar Association” the words “or such other association as may represent attorneys-at-law”.

Amendment
of Third
Schedule to
principal
Act.

28. The Third Schedule to the principal Act is amended—

- (a) in paragraph 8, by deleting the words “to act in that behalf” and substituting therefor the words “by the Chairman to signify the documents and decisions of the Review Board”;
- (b) in paragraph 9(2), by deleting the words “section 57” and substituting therefor the words “section 51”.

Repeal of
Fourth
Schedule.

29. The principal Act is amended by repealing the Fourth Schedule.

Passed in the House of Representatives this 15th day of May, 2018 with twenty-three (23) amendments.

FRANKLIN WITTER
Deputy Speaker

MEMORANDUM OF OBJECTS AND REASONS

The Public Procurement Act (hereinafter referred to as the "Act"), regulates the procurement of goods, works and services by procuring entities. The Act has not yet come into operation.

This Bill seeks to amend the Act to ensure that its provisions are effective and in keeping with internationally accepted standards and procedures for public procurement at the time of its commencement.

AUDLEY SHAW
Minister of Finance and the Public Service.

A BILL

ENTITLED

**AN ACT to Amend the Public Procurement
Act.**

As passed in the Honourable House of Representatives.

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(GOVERNMENT PRINTERS), DUKE STREET, KINGSTON, JAMAICA.

SECTION 2 OF THE PRINCIPAL ACT WHICH IT IS
PROPOSED TO AMEND

2. In this Act, unless the context otherwise requires—

“accounting officer” has the meaning assigned to it by section 2 of the *Financial Administration and Audit Act*;

... ..

“bid” means a response to an invitation to bid issued by a procuring entity, including a tender, a proposal, a quotation and a bid from a bidder;

“bidder” means a supplier or approved unregistered supplier, as the case may be, who submits a bid;

“bidding documents” means the standard form bidding documents developed by fhs Office for use in public procurement proceedings and all amendments made to the document for the purposes of a procuring entity and documents attached or incorporated by reference, that individually and collectively—

- (a) invite bids;
- (b) establish the objects of a bid;
- (c) specify the conditions of a proposed procurement contract; and
- (d) establish the applicable bidding procedures;

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

... ..

“Chief Public Procurement Policy Officer” means the public officer appointed as the head of the Office and so designated under section 6(2);

... ..

“document” means anything in which information of any description is recorded;

... ..

“Executive Agency” means a body designated an Executive Agency under section 4 of the *Executive Agencies Act*;

... ..

“International competitive bidding” means a procurement method that is not limited to national bidders;

“Invitation to bid” means a written communication to one or more suppliers or approved unregistered suppliers inviting them to submit bids for the supply of goods, works or Services;

... ..

“National competitive bidding” means a procurement method that is limited to national bidders;

... ..

“offsets” means measures, including margins of preference and set asides to encourage Jamaica’s economic growth and development or improve Jamaica’s balance of payment accounts or provide incentives for the greater participation, of disadvantaged economic actors, which measures may relate to requirements as to domestic content, national suppliers, the licensing of technology, the transfer of technology, investment requirements or similar arrangement;

“open bidding” means a bidding process in which—

- (a) in the case of international competitive bidding, any person, firm or entity is entitled to submit a bid;
- (b) in the case of national competitive bidding, any national supplier is entitled to submit a bid; and
- (c) in accordance with section 15, any supplier, and where applicable any approved unregistered supplier, is entitled to submit a bid;

... ..

“the regulations” means regulations made under section 60;

“sector committee” means a committee established pursuant to section 13;

... ..

“single-source procurement” means procurement of goods, works or services for a specific supplier or specific approved unregistered supplier pursuant to an invitation to bid, without a competitive procurement process;

... ..

“supplier” means a person, firm or entity that is registered under section 16 and is eligible to participate in procurement proceedings under this Act;

SECTION 5 OF THE PRINCIPAL ACT WHICH IT IS
PROPOSED TO AMEND

5. The objects of this Act are to—
- (a) maximise economy and efficiency in public procurement;
... ..
 - (g) promote competition among suppliers and approved unregistered suppliers for the supply of goods, works and services;
... ..
 - (i) encourage national growth by enabling the participation of small and medium sized enterprises in public procurement.
... ..

7.—(1) The Office 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—

- (a) monitor the operation of the public procurement process and compliance with the provisions of this Act and regulations made hereunder;
... ..
- (c) from time to time, issue administrative guidance, in any form, including directives, guidelines, instructions, technical notes or manuals, with respect to the conduct of public procurement and the implementation of this Act and regulations;
... ..
- (m) present an annual report to the Minister regarding the functioning of the public procurement system;
... ..
- (n) perform such other functions relating to public procurement as may be assigned to it by the Financial Secretary.

SECTION 11 OF THE PRINCIPAL ACT WHICH IT IS
PROPOSED TO AMEND

- 11.—(1) Subject to the provisions of this Act, the Commission shall—
- (a) promote and facilitate the attainment of the objects specified in section 10;
... ..

- (c) register classify persons, firms or entities as suppliers and approve persons, firms or entities as approved unregistered suppliers for the purpose of this Act;
- (d) continuously assess suppliers for capacity and performance consistent with registration and classification requirements under the Act;
- (e) establish and maintain register of suppliers, differentiated according to classification;

SECTIONS 15 and 16 OF THE PRINCIPAL ACT WHICH IT IS
PROPOSED TO AMEND

15.—(1) Subject to subsection (3), a person, firm or entity shall not present bids or otherwise participate in public procurement unless that person, firm or entity is—

- (a) registered as a supplier under section 16; or

16.—(1) Any person, firm or entity desirous of being registered as a supplier and classified for the purposes of participating in public procurement under this Act may apply to the Commission in the prescribed form and manner.

(2) If the Commission is satisfied that an applicant meets the requirements prescribed by the Commission under section 61, it may register and classify the applicant as a supplier.

SECTION 18 OF THE PRINCIPAL ACT WHICH IT IS
PROPOSED TO AMEND

18.—(1) ...

(2) Subject to subsection (1), a procuring entity that is desirous of inviting or receiving bids from or otherwise engaging or participating in the public procurement with a person, firm or entity that is not a supplier shall apply to the Commission, in writing, for the Commission's written approval to do so.

SECTIONS 20 AND 21 OF THE PRINCIPAL ACT WHICH IT IS
PROPOSED TO AMEND

20. 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;

21.—(1)

(2) The operations of procurement committees established under subsection (1) shall be managed by procuring entities in accordance with the administrative guidance issued by the Office under section 7(1)(c).

SECTIONS 23, 24 AND 25 OF THE PRINCIPAL ACT WHICH IT IS PROPOSED TO AMEND

23.—(1)

(5) Notwithstanding anything contained in any other law to the contrary, the participation of a national bidder in international competitive bidding shall not be required, to be on the same basis as that of a foreign bidder and a national bidder shall not, as a condition for participation, be required to take any action or observe any procedure or formality that is not required of a foreign bidder.

(6) Where participation is limited as permitted under subsection (4), the limitation shall be stated in the invitation to bid or to pre-qualify, as the case may be, and shall be otherwise in accordance with such provisions as may be prescribed.

(7) The regulations may prescribe the procedures for open bidding and make other provision in relation thereto.

24.—(1)

(2) Where a procuring entity engages in procurement by means of restricted bidding—

(a) in the circumstances referred to in subsection (1)(a), then it shall invite all known suppliers who are capable of supplying the goods, works or services, as the case may be, to bid;

... ..

25.—(1) A procuring entity may, in accordance with the prescribed procedures and subject to subsection (2), engage in single-source procurement only where—

(a) the goods, works or services to be procured are available from a particular supplier or approved unregistered supplier only, or a particular supplier has exclusive rights in respect of such goods, works or services, such that no reasonable alternative or substitute exists, and the use of any other method of procurement would not be practicable;

... ..

(c) the procuring entity determines that the use of any other method of procurement is not appropriate for the protection of the national security or defence interests of Jamaica; or

- (d) the situation is one of emergency or extreme urgency and the engaging in any other method of procurement would be impractical because of the time involved in using any such other method.

... ..

(3) Where a procuring entity engages in single-source procurement, it shall invite a proposal or price quotation from a single supplier or approved unregistered supplier.

(4) A procuring entity shall engage in negotiations with the supplier or approved unregistered supplier from which a proposal or price quotation is invited, unless negotiations are not feasible in the circumstances of the procurement concerned.

SECTIONS 31 AND 32 OF THE PRINCIPAL ACT WHICH IT IS PROPOSED TO AMEND

31.—(1) A person, firm or entity shall be permitted to participate in procurement proceedings without regard to nationality, except where the procuring entity decides to limit participation in procurement proceedings on the basis of nationality on the ground specified in section 23(4).

... ..

(3) A procuring entity shall, when first inviting participation in procurement proceedings, declare in the invitation to pre-qualify (where applicable) or the invitation to bid, whether the participation in the procurement proceedings is limited in the matter referred to in subsection (1), and any such declaration may not later be altered.

... ..

32. A person, firm, or entity shall, in order to be eligible to participate in the public procurement process, meet such qualification requirements as may be prescribed.

SECTION 38 OF THE PRINCIPAL ACT WHICH IT IS PROPOSED TO AMEND

38.—(1)

(2) The successful bid shall be—

- (a) where price is the only award criterion, the bid with the lowest bid price; or
- (b) where there are price and other award criteria, the most advantageous bid ascertained on the basis of the criteria and procedures for evaluation bids specified in the bidding documents in accordance with section 35 and any offset prescribed by the regulations under section 60(1)(e).

... ..

SECTION 44 OF THE PRINCIPAL ACT WHICH IT IS
PROPOSED TO AMEND

44.—(1)

(4) A standstill notice shall not be required in the case of the award of procurement contracts—

- (a) pursuant to a framework agreement, unless the award of the procurement contract is by way of a competitive process;
- (b) Where the contract price is less than the Tier 1 Limit; or
- (c) where the procuring entity determines that there is an urgent need in the public interest that requires, the procurement to proceed without a standstill period, in which case, the decision of the procuring entity that such urgent considerations exist and the reasons for the decision shall be included in the record of the procurement proceedings.

(5) Subject to section 48(5)(b) the procuring entity, upon determining the successful bid, shall—

- (a) forthwith, on the expiry of the standstill period; or
- (b) promptly, where there is no standstill period, dispatch the notice of acceptance of the successful bid to the successful bidder and the dispatch of this notice shall constitute the award of contract.

HEADING TO PART VI OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO AMEND

PART VI.—*Reconsideration, Review and Appeal*
Reconsideration by Procuring Entity

SECTION 51 OF THE PRINCIPAL ACT WHICH IT IS
PROPOSED TO AMEND

51.—(1)

(2) A procuring entity may apply to the Review Board in writing within the prescribed time-frames for a review of—

- (a) the failure or refusal to approve the award of a procurement contract;
or

- (b) the failure or refusal of the Commission to approve as an unregistered supplier a person, firm or entity pursuant to an application made under section 18.

... ..

SECTION 53 OF THE PRINCIPAL ACT WHICH IT IS
PROPOSED TO AMEND

53.—(1)

(2) In relation to proceedings under section 51(2) or 51(3), the Review Board may determine who, in addition to the applicant and the Commission, shall be entitled to participate in the proceedings.

... ..

SECTIONS 60 AND 61 OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO AMEND

60.—(1) The Minister may make such regulations as he thinks fit to give full effect to the provisions of this Act, and without prejudice to the generality of the foregoing, regulations may prescribe provisions in relation to—

- (a)
- (e) offsets;
- (g) the procedure for the review of the actions and decisions by Review Board, including its powers to make interim or ancillary orders;

61.—(1) The Commission may, with the approval of the Minister, make regulations prescribing—

- (a) the evaluation criteria or qualifications required for the registration and classification of suppliers or approved unregistered suppliers;
- (b) the circumstances in which registration under this Act may be modified, suspended, cancelled or approved under this Act may be withdrawn and the procedures for such modification, suspension, cancellation or withdrawal of approval;
- (d) forms, fees and procedures for the registration or classification of suppliers or approved unregistered suppliers.

FIRST, SECOND AND THIRD SCHEDULES TO THE
PRINCIPAL ACT WHICH IT IS PROPOSED TO AMEND

FIRST SCHEDULE

(Section 4)

*Goods, Works and Services not subject to
Parts III and V of this Act*

PART A.

1. The procurement methods and processes set out in Parts III and V do not apply to the following goods, works and services—

- (a) goods, works and services donated by the Government of Jamaica to a non-governmental organization under the conditions specified in Part B of this Schedule;

...

...

...

PART B.

*Conditions for exemption of goods, works and services
donated by the Government of Jamaica to a Non-Governmental
Organization under Part A.*

...

...

...

SECOND SCHEDULE

(Section 9(3))

*Constitution and Procedure of the Public
Procurement Commission*

1.—(1) Members of the Commission shall be persons of high integrity, being persons who have not been convicted of any offence involving fraud, dishonesty or moral turpitude.

(2) The Commission shall consist of the following nine members, who, subject to paragraph 2, shall be appointed by the Governor-General by instrument in writing—

- (a) ...
- (c) an attorney-at-law with at least five years experience in contract or commercial law and administrative law nominated by the Jamaican Bar Association;

...

...

...

SECTION 65 OF THE PRINCIPAL ACT WHICH IT IS
PROPOSED TO REPEAL AND REPLACE

65.—(1) The provisions of the enactments specified in the first column of the Fourth Schedule are amended in the manner specified in the second column of the Fourth Schedule in relation to them, respectively.

(2) Each amendment to an enactment referred to in subsection (1) shall be construed as one with the enactment specified in relation thereto.

SECTION 66 OF THE PRINCIPAL ACT WHICH IT IS
PROPOSED TO AMEND

66.—(1) The following regulations are repealed—

- (a) the *Financial Administration (Supplies) Regulations, 1963*; and
- (b) the *Public Sector Procurement Regulations, 2008*.

(2) Any procurement proceedings commenced under an existing law before the appointed day but not concluded before that day shall continue after the appointed day and shall be concluded as if this Act had not been enacted.

(3) If, on the appointed day, a matter relating to public procurement is pending before any court, the National Contracts Commission, the Procurement Appeals Board or the Financial Services Commission pursuant to an existing law, the matter shall continue to be dealt with and brought to a conclusion as if this Act had not been enacted.

(4) Nothing in this section shall be construed to affect any civil or criminal liability incurred by any person under an existing law before the appointed day.

(5) In this section “existing law” means—

- (a) the *Contractor-General Act*;
- (b) the *Financial Administration and Audit Act*;
- (c) the *Financial Administration (Supplies) Regulations, 1963*; and
- (d) the *Public Sector Procurement Regulations, 2008*.

THIRD SCHEDULE (Sections 50(2)
and 51(4))

*Constitution and Procedure of the Procurement
Review Board*

1.—(1)

8. All documents made by and all decisions of the Review Board may be signified under the hand of the Chairman or any member of the Board authorized to act in that behalf.

9.—(1)

(2) The Review Board may meet in panels of not less than three members to hear and determine applications made to the Board under section 57 of this Act.

... ..

FOURTH SCHEDULE TO THE PRINCIPAL ACT
WHICH IT IS PROPOSED TO REPEAL

FOURTH SCHEDULE (Section 65)

Amendment of Enactments

Enactment

Amendment

*The
Contractor-
General's Act*

Section 2

1. Delete the definition of—

- (a) “Commission”;
- (b) “government contract” and substitute therefor the following—
“government contract” includes—
 - (a) a procurement contract awarded under the Public Procurement Act, 2015;

Enactment

Amendment

- (b) any licence, permit or other concession or authority issued by a public body; or
- (c) an agreement entered into by a public body for the carrying out of building or other works or for the supply of any goods or services;”

(c) “sector committee”

- 2. Delete Part IIIA.
- 3. Delete the Third Schedule.

The Financial Administration and Audit Act

Section 19B

Delete section 19B and substitute 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, 2015*.”