

THE PUBLIC PROCUREMENT ACT, 2014

(Act of 2014)

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SCHEDULES.

ABILL

ENTITLED

AN ACT to Consolidate and modernise the law relating to the public procurement of goods, works and services; and for related matters.

[]

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:—

PART I.—*Preliminary*

1. This Act may be cited as the Public Procurement Act, 2014, and shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*.

Short title
and
commencement.

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;

Interpreta-
tion.

“appointed day” means the day appointed by the Minister under section 1;

“approved unregistered supplier” means a person, firm or entity approved by the Commission to invite or receive bids or otherwise engage or participate in public procurement under section 18;

“award of contract” means a notice of the award of the procurement contract or the framework agreement under section 46;

“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 the Office for use in public procurement proceedings including all amendments made 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, including the obligation to sign a procurement contract if the bid is duly accepted;

“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;

“Caribbean Community” means the Caribbean Community established by the Revised Treaty of Chaguaramas signed in the Bahamas on July 5, 2001;

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

“closed framework agreement” means a framework agreement that does not permit the addition of parties who were not initially parties thereto;

“Commission” means the Public Procurement Commission established by section 9;

“consulting services” means services that are of an intellectual, research, technical or advisory nature provided by a person as a consultant;

“contractor” means a bidder to whom a procurement contract has been awarded by a procuring entity;

“corrupt practice” means the offering, giving, receiving or soliciting, of anything of value, directly or indirectly, whether tangible or intangible, to improperly influence, interfere with or change the outcome of the registration of a supplier, procurement proceedings or the execution or performance of a procurement contract;

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

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

“exempt goods or services” means goods or services declared exempt from the application of this Act, or any provision thereof, by order of the Minister under section 3(3);

“exempt public body” means a public body declared exempt from the application of this Act, or any provision thereof, by order of the Minister under section 3(3);

“framework agreement” means an agreement between one or more procuring entities and one or more selected suppliers establishing certain key commercial elements that shall apply to contracts to be awarded pursuant thereto;

“functions” includes powers and duties;

“goods” means—

- (a) things of every kind and description, whether tangible or intangible, including—
 - (i) commodities, agricultural crops, raw materials, products and equipment; and
 - (ii) matter in solid, liquid or gaseous form; and
- (b) services incidental to the supply of such things, if the value of those incidental services does not exceed that of the things themselves;

“head” in relation to a procuring entity, 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;

“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;

“local authority” means—

- (a) in relation to the parishes of Kingston and St. Andrew, the Council of the Kingston and St. Andrew Corporation;
- (b) in relation to any other parish, the Parish Council of the parish; and

(c) a Municipal Council of a Municipality established under section 3 of the Municipalities Act;

“national bidder” means a bidder who is a supplier and is a national of or a body incorporated in Jamaica or in another Member State of the Caribbean Community;

”Office” means the Procurement Policy Office established by section 6;

“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 accordance with section 24(4), any supplier, and where applicable any approved unregistered supplier, is entitled to submit a bid;

“open framework agreement” means a framework agreement to which a contractor may become a party subsequent to the conclusion of the agreement by the initial parties;

“international competitive bidding” means a procurement method that is not limited to national bidders invitation of bids from all interested suppliers or unregistered suppliers;

“performance security” means a security guaranteeing the performance of a procurement contract;

“pre-qualification” means the screening by a procuring entity of suppliers in which such factors as financial capability, reputation and management are considered in order to develop a list of qualified suppliers who may be allowed to submit bids;

”pre-qualification documents” means documents that set out the terms and conditions of pre-qualification proceedings issued by a procuring entity under the regulations for the purposes of section 41;

“procurement method threshold” means a value limit that is prescribed above which a procuring entity requires the approval of the head of the procuring entity to employ a particular procurement method;

“procurement” means the acquisition of goods, works or services by any means, including, where applicable, by purchase, rental, lease or hire-purchase, and the acquisition of works, and consulting or other services;

“procurement committee” means a procurement committee established by the head of a procuring entity under section 21(1);

“procurement contract” means the contract between a procuring entity and a contractor resulting from procurement proceedings;

“procurement contract approval limit” means, as appropriate, the Tier 1 Limit and Tier 2 Limit, respectively, and—

- (a) the “Tier 1 Limit” is the prescribed maximum value of a procurement contract that a procuring entity is permitted to award with the prior approval only of the head of the procuring entity;
- (b) the “Tier 2 Limit” is the prescribed maximum value of a procurement contract that a procuring entity is permitted to award with the prior approvals only of the head of the procuring entity and the Commission, respectively;

“procurement proceedings” means the process of effecting a public procurement, from the initiation of the process to the award of a procurement contract;

“Procurement Review Board” or “Review Board” means the body established by section 56;

“procuring entity” means—

- (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;

and includes an entity acting on behalf of any of the entities in connection with any procurement proceedings;

“public body” 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;
- (c) funds placed at the disposal of the Government or a procuring entity under agreement with development partners; or
- (d) 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;

“public private partnership” has the meaning assigned to it by the Public Bodies Management and Accountability Act;

“public procurement” means procurement by a procuring entity;

“record of procurement proceedings” means the record required by section 48(1) to be kept by a procuring entity;

“the regulations” means regulations made under section 66;

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

“services” means any object of procurement other than goods and works, and includes consulting services;

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

“standard bidding document” means any form of bidding document prescribed by the regulations;

“standstill period” means the period commencing from the date of dispatch of a notice under section 45(2) and ending as specified in the bidding documents or as otherwise prescribed;

“supplier” means a person who is registered under section 16 and is eligible to participate in procurement proceedings under this Act;

“works”—

- (a) means the carrying out of any of the following activities, namely, construction, reconstruction, assembly, altering, manufacturing, processing, fabrication, erection, installation, fitting out, improvement, commissioning, demolition, maintenance, repair and renovation involved with building, civil engineering, structural engineering, electrical engineering, mechanical engineering and other engineering and technology projects; and
- (b) includes goods and services incidental to the carrying out of the activities referred to in paragraph (a), if the value of those goods and

services does not exceed that of the activities themselves.

3.—(1) Subject to subsections (2) and (3) and section 4, this Act applies to all public procurement. Application of Act.

(2) This Act does not apply where—

- (a) the terms of a public private partnership otherwise govern a public procurement exercise;
- (b) the procurement concerns exempt goods or services;
- (c) the procurement is being undertaken by an exempt public body; or
- (d) it relates to a subject matter that is excluded from public procurement proceedings under section 4.

(3) The Minister may, by order, subject to affirmative resolution declare that this Act, or any provision thereof, shall not apply—

- (a) in respect of the procurement of such goods or services, or any class of goods or services; or
- (b) to a public body,

as the Minister may, subject to such terms and conditions, if any, specify.

4.—(1) The methods of procurement and procurement process set out in Parts III and IV, respectively, of this Act do not apply to any public procurement specified in the First Schedule. Subject matters excluded from public procurement.

(2) The Minister may by order, subject to affirmative resolution, amend the First Schedule. First Schedule.

(3) Notwithstanding subsection (1), a procuring entity may, subject to any financial limits set out in directions issued by the Financial Secretary and with the written approval of the Chief Procurement Officer, and subject to such procurement methodology, terms and conditions, if any, as the Chief Procurement Officer may, in guidelines issued for the purposes of this section specify, negotiate and execute the procurement of the goods and services mentioned in subsection (1).

Objects of
Act.

5. The objects of this Act are to—

- (a) maximise economy and efficiency in public procurement;
- (b) promote economic development through public procurement;
- (c) obtain value for money in public procurement;
- (d) promote integrity and engender public confidence in the public procurement process;
- (e) foster transparency in the public procurement process;
- (f) encourage participation in public procurement;
- (g) promote competition in the supply of goods, works and services; and
- (h) provide for the fair and equitable treatment of all persons participating in the public procurement process.

PART II.—*Administration*

The Office of Public Procurement

Establishment
of the Office.

6.—(1) There is hereby established a unit to be called the Office of Public Procurement which shall be under the direction of the Financial Secretary.

(2) The Financial Secretary shall assign to the Office, in such numbers as may, from time to time, be necessary, public officers with training and experience in procurement, one of whom shall be appointed as the head of the Office and designated as the Chief Procurement Officer.

Functions of
the Office.

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;

- (b) review the methods, procedures and processes used in public procurement and recommend any modifications, as appropriate;
- (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 made hereunder;
- (d) develop a code of conduct for procuring entities, their officers and employees specifying standards of conduct, procedures and best practice guidelines for public procurement;
- (e) develop standard forms of contracts, bidding documents, pre-qualification documents and any other public procurement related documents for use by procuring entities;
- (f) establish and manage an electronic procurement system for the public sector;
- (g) develop and maintain a database of public procurement statistics;
- (h) undertake research and statistical analysis to inform policy development in relation to public procurement;
- (i) prepare and conduct training programmes for—
 - (A) public officials, procuring entities, suppliers, contractors and members of the public concerning public procurement;
 - (B) professional certification of public procurement practitioners;
- (j) represent the Government in multilateral or bilateral trade negotiations relating to public procurement;
- (k) communicate and co-operate with financial and development institutions, professional procurement associations and any other entities on matters of public procurement;

- (l) make recommendations to the Minister and advise the Minister on the exercise of his powers under sections 3(3) and 4(2);
- (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.

(2) The annual report under subsection (1)(m) shall, in addition to any other matters reported on, include information on the matters referred to in section 4(3).

Code of
conduct.

8.—(1) The Chief Procurement Officer, with the approval of the Financial Secretary, may issue a code of conduct for procuring entities for use by their officers and employees and the code shall include provisions that—

- (a) address conflicts of interest in public procurement;
- (b) contain measures to govern the conduct of persons employed or otherwise concerned with public procurement, procurement method selection and procedures, and personnel training requirements;
- (c) specify record-keeping, confidentiality and disclosure requirements; and
- (d) address any other matter concerning public procurement that the Chief Procurement Officer considers necessary.

(2) For the purposes of this Act, the standard of conduct set out in the code of conduct shall constitute the minimum standard required for the competent discharge of the duties and responsibilities to which they relate.

(3) The Chief Procurement Officer shall cause the code of conduct and all amendments thereto, to be published in the *Gazette* and otherwise made available to the public.

(4) For greater certainty, breach of the code of conduct constitutes grounds for disciplinary proceedings against any public officer,

employee or agent of a public body under the Public Service Regulations, 1961, or, as the case may be, other applicable disciplinary proceedings.

The Public Procurement Commission

9.—(1) There is hereby established, for the purposes of this Act, a body to be called the Public Procurement Commission. Establishment of the Commission.

(2) The Commission shall be a body corporate to which the provisions of section 28 of the Interpretation Act shall apply.

(3) The provisions of the Second Schedule shall have effect as to the constitution and procedure of the Commission and otherwise in relation thereto. Second Schedule.

10. The principal objects of the Commission shall be to— Principal objects of the Commission.

- (a) ensure prudence in the use of public funds;
- (b) promote efficiency and integrity in the public procurement process; and
- (c) ensure transparency, fairness and equity in the registration of persons, firms and entities under this Act and the award of procurement contracts.

11.—(1) Subject to the provisions of this Act, the principal function of the Commission is to promote and facilitate the attainment of the objects specified in section 10 and, without limiting the generality of the foregoing, the Commission shall — Functions of the Commission.

- (a) approve or endorse the award of procurement contracts of a value above the Tier 1 Limit;
- (b) register and classify persons, firms or entities as suppliers and approve persons, firms or entities as approved unregistered suppliers, for the purposes of this Act;
- (c) continuously assess suppliers for capacity and performance consistent with registration and classification requirements under this Act;

- (d) establish and maintain a register of suppliers, differentiated according to classification;
- (e) keep records of its decisions and all matters in relation thereto;
- (f) establish, manage and oversee the activities of sector committees and examine and consider their recommendations;
- (g) make recommendations to the Minister for improving the public procurement processes, procedures and the award of procurement contracts; and
- (h) perform such other functions as may be assigned to it under this Act or any other enactment.

(2) The Commission may do anything or enter into any transaction which it considers necessary for the proper discharge of its functions.

Policy
directions.

12. The Minister may, after consultation with the Chairman of the Commission, give to the Commission directions of a general character as to the policy to be followed by the Commission in the performance of its functions under this Act, in relation to matters appearing to the Minister to concern the public interest, and the Commission shall give effect to such directions.

Sector Committees

Establishment,
etc. of sector
committees.

13.—(1) The Commission may establish such number of sector committees as it considers necessary, which shall each consist of such persons as appear to the Commission to have experience and expertise relevant to the purpose of the respective sector committees for the purpose of assisting the Commission in carrying out its functions under this Act.

(2) Each sector committee shall be subject to the general direction and control of the Commission.

(3) The Commission may, after consultation with the Office, make rules to govern the proceedings of sector committees.

(4) No action, suit or prosecution or other proceedings shall be brought or instituted personally against any member of a sector committee for any act done or omitted to be done, in good faith, in pursuance or execution or intended execution of this Act.

(5) Where any member of a sector committee is exempt from liability by reason only of the provisions of subsection (4), the Commission shall be liable to the extent that it would have been if that member were an employee or agent of the Commission.

14. The principal function of a sector committee is to receive and examine tender reports of procurement contracts above the Tier 1 Limit and make recommendations to the Commission with respect to the award in relation thereto.

Functions of
sector
committees.

Public Procurement Suppliers

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—

Participation
in public
procurement.

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

(b) an approved unregistered supplier under section 18.

(2) A bid from a person, firm or entity not registered or approved as referred to in subsection (1) is disqualified and shall not be considered by a procuring entity.

(3) This section shall not apply in relation to procurement of goods or services by international competitive bidding under section 23 or by single-source procurement under section 29 of a value not exceeding the procurement method threshold.

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.

Registration
of suppliers.

(2) If the Commission is satisfied that an applicant meets the requirements prescribed by the Commission under section 68, it may register and classify the applicant as a supplier.

Registration,
suspension
etc. of
registration.

17. The Commission may suspend or cancel the registration of any person, firm or entity in the circumstances and in accordance with the procedure prescribed by regulations made under section 68.

Approved
unregistered
suppliers.

18.—(1) Subject to subsection (4), 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.

(2) The Commission, on receipt of an application under subsection (1), shall consider it and may—

- (a) in writing, approve subject to such terms and conditions, if any, as the Commission may determine; or
- (b) refuse to the application.

(3) Where the Commission refuses to approve an application made under subsection (1), the Commission shall advise the applicant in writing, stating the reasons for its decision.

(4) This section applies only in relation to procurement in respect of a category of goods and services for which there is no classification criteria prescribed by the Commission.

Procuring Entities

Procuring
entities to act
in accordance
with Act, etc.

19. 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 under section 7(1)(c); and
- (c) the code of conduct, if any, issued under section 8.

Responsibilities
of head of
procuring
entity.

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;

- (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 the public procurement engaged in by the procuring entity complies with section 19.

Procurement Committees

21.—(1) Subject to subsection (2), the head of a procuring entity shall establish a procurement committee to review procurement proceedings for that procuring entity and such other committees as may be prescribed. Establishment of procurement committees.

(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).

- 22.** The functions of a procurement committee shall be to— Functions of procurement committees.
- (a) review and make recommendations to the head of the procuring entity with respect to the award of procurement contracts that the head of the procuring entity requires the procurement committee to review;
 - (b) review evaluation reports on bids with respect to the award of procurement contracts referred to in paragraph (a);
 - (c) in accordance with requirements of section 48, maintain proper records of the proceedings of the committee, including records of the recommendations of the committee and the reasons therefor.

PART III.—*Methods of Public Procurement*

23.—(1) Subject to subsection (2), a procuring entity shall engage in public procurement by means of open bidding. Open bidding.

(2) A procuring entity may, if it appears to be necessary to do so, use a method of procurement other than open bidding in the circumstances specified in sections 27 to 29 and shall—

- (a) select such other method of procurement as would best accommodate the circumstances of the procurement concerned; and
- (b) to the extent practicable, seek to maximise competition.

(3) Where a procuring entity uses a method of procurement other than open bidding, it shall include in the record required under section 49 a statement of the reasons and the circumstances on which it relied to justify the use of that other method.

(4) Where the estimated value of procurement is lower than the procurement method threshold, a procuring entity may limit participation in open bidding procurement proceedings to national bidders.

(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.

Two-stage
bidding.

24.—(1) A procuring entity may engage in procurement by means of open bidding in two-stages where in the opinion of the procuring entity the character of the goods, works or services is subject to rapid technological advances or there are any other factors that would require

the procuring entity as a first stage, to have in the bidding process to have discussions with bidders so as to enable the procuring entity to—

- (a) refine aspects of the description of the goods, works or services to be procured; and
- (b) formulate and issue detailed specifications relating to them; in order to allow the procuring entity to obtain the most satisfactory solution to its procurement needs.

(2) The procuring entity having concluded the procedures referred to in subsection (1) may enter into the second stage of the process in which the procuring entity invites bids to be submitted in accordance with the detailed specifications formulated from the procedures of the first stage.

(3) The regulations may prescribe provisions governing public procurement by means of open bidding in two-stages and make other provision in relation thereto.

(4) The provisions of Part IV shall apply *mutatis mutandis* to proceedings for open bidding in two-stages, except where otherwise provided by the regulations.

25.—(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 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 cannot be precisely predicted or are incapable of specification by the procuring entity at the outset of the procurement proceedings, and the variables can only be determined and agreed upon during negotiations,

and it is not necessary to negotiate any non-commercial or non-financial aspect of the procurement.

Request for proposal with consecutive negotiation.

(2) In order to ensure obtaining fair and reasonable financial proposals, the procuring entity engaging in procurement by means of a request for proposal with consecutive negotiation shall—

- (a) set a threshold on the basis of the technical, quality and performance characteristics of the proposals, and then rank the proposals that meet or exceed the threshold, ensuring that the bidders with which it will negotiate are capable of providing the required subject matter of the procurement; and thereafter
- (b) hold negotiations on the commercial or financial aspects of the proposals, in the first instance, with the bidder that the procuring entity on its evaluation of the proposals ranked highest, and in the event of termination of negotiations with that bidder, the procuring entity shall hold negotiations with the second highest-ranked bidder, and thereafter, in the event of termination of negotiations with the second highest-ranked bidder, shall hold negotiations with the next ranked bidder, and so on, until it concludes a procurement contract with one of the ranked bidders.

(3) The regulations may prescribe provisions governing public procurement by means of a request for proposal with consecutive negotiation and make other provision in relation thereto.

(4) In this section—

“financial aspects” includes the final price of the subject-matter of the procurement;

“termination of negotiations” means the rejection of a bidder’s final financial proposal and the consequential exclusion of that bidder from further participation in that procurement proceeding and from eligibility for award of a procurement contract.

Request for proposal without negotiation.

26.—(1) A procuring entity may engage in procurement by means of a request for proposal without negotiation where—

- (a) the purpose of the procurement contemplates an innovative solution to a technical matter and involves complex

considerations for which there may be multiple solutions which the procuring entity may not have knowledge of before commencement of the procurement proceedings; and

- (b) the procurement process facilitates the procuring entity identifying the most appropriate solution.

(2) Procurement by means of a request for proposal without negotiation refers to a bidding process 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.

(3) The regulations may prescribe provisions governing public procurement by means of a request for proposal without negotiation and make other provisions in relation thereto.

27.—(1) Subject to subsection (2), a procuring entity may engage in procurement by means of restricted bidding where—

Restricted
bidding.

- (a) the goods, works or services to be procured are, by reason of their highly complex or specialized nature, available from a limited number of suppliers;
- (b) the time and cost involved in considering a large number of bids would be disproportionate to the estimated value of the procurement;
- (c) given the nature of the procurement, it is in the public interest that the procurement should be confidential, and restricted bidding is required to maintain confidentiality; or
- (d) where there is an urgent need for the subject matter of the procurement, whether arising from the occurrence of a catastrophic event or otherwise, there is an urgent need for the subject matter of the procurement, making it impractical to use any such other competitive method of procurement because of the time involved in using any such other method.

(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;
- (b) in the circumstances referred to in subsection (1)(b), then it shall, in a non-discriminatory manner, select suppliers from which to invite bids and, where practicable, bids should be invited from a minimum of three bidders so as to ensure effective competition.

(3) The provisions of Part IV shall apply *mutatis mutandis* to restricted bidding proceedings, except where otherwise provided by the regulations.

Request for quotations.

28.—(1) A procuring entity may engage in procurement by means of a request for quotations for readily available goods, services or works—

- (a) that are not specifically produced or provided to the particular description of the procuring entity; and
- (b) for which there is an established market,

but where the estimated value of the contract exceeds the procurement method threshold, the procuring entity shall obtain the prior approval of the head of the procuring entity to engage in procurement by means of this method.

(2) A procuring entity that engages in procurement under subsection (1) shall request quotations from as many suppliers as practicable, but not less than three.

(3) The regulations may prescribe provisions governing public procurement by means of a request for quotations and otherwise in relation thereto.

Single source procurement.

29.—(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;

- (b) the procuring entity, having procured goods, equipment, technology or services from a contractor, determines that additional supplies must be procured from that contractor for reasons of standardization or because of the need for compatibility with existing goods or services, taking into account the effectiveness of the original procurement in meeting the needs of the procuring entity, the limited size of the proposed procurement in relation to the original procurement, the reasonableness of the price and the unsuitability of alternatives to the goods or services in question;
- (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;

(2) A procuring entity shall not engage in single-source procurement, without the prior written approval of the head of the procuring entity, if the estimated value of the procurement exceeds the prescribed procurement method threshold.

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

(5) The regulations may prescribe provisions governing public procurement by means of single-source and make other provision in relation thereto.

Frame-work
agreement.

30.—(1) A procuring entity may, in accordance with the prescribed procedures, engage in procurement under a framework agreement.

(2) A framework agreement may be—

- (a) an open framework agreement; or
- (b) a closed framework agreement.

(3) A procuring entity may engage in the prescribed procedures for the award of a framework agreement where it determines that—

- (a) the need for the goods, works or services, as the case may be, is expected to arise on an indefinitely and on a repeated basis during a given period of time; or
- (b) by virtue of the nature of the goods, works or services concerned, the need for them may arise on an urgent basis during a given period of time.

(4) The regulations may prescribe procedures governing public procurement by means of framework agreements and make other provision in relation thereto.

Co-operative
agreement.

31.—(1) A procuring entity may, with the prior written approval of the Financial Secretary, enter into a co-operative agreement for procurement with one or more of any of the following—

- (a) another procuring entity;
- (b) the Government of foreign state or public authority or other public entity established under the law of a foreign state;
- (c) the Caribbean Community established within, or any other regional body under the auspices of the Caribbean Community or any other regional body of which Jamaica is a member.

(2) The head of a procuring entity that has entered into a co-operative agreement with another procuring entity under subsection (1)

(a) may, without being required to have the prior written approval of the Financial Secretary, vary or cancel the agreement in a manner that is consistent with the terms of the agreement.

(3) The regulations may prescribe provisions governing public procurement by means of co-operative agreements and make other provisions in relation thereto.

32.—(1) Subject to subsection (2), where it appears to the Financial Secretary upon a report by the Auditor-General, the Contractor-General or the Commission that any person who is or was an officer or employee of a procuring entity—

Surcharge by
Financial
Secretary.

- (a) has been responsible for the procuring entity engaging in a method of public procurement in contravention of the provisions of this Part, that resulted in a deficiency or loss of public moneys which would not have been likely to occur had the procuring entity engaged in the appropriate method of procurement in accordance with the provisions of this Part; and
- (b) no explanation as to the method of the selection of the method in section 1(a) is furnished to the satisfaction of the Financial Secretary is furnished,

the Financial Secretary may surcharge against that person the amount, of the deficiency or loss of public moneys, as the case may be, or such lesser amount as the Financial Secretary may determine.

(2) No such surcharge shall be made after the expiration of three years from the date that such deficiency or loss of public moneys comes to the attention of the Auditor-General, the Contractor-General or the Commission, as the case may be.

(3) In this section “public moneys” has the meaning assigned to it in section 2 of the Financial Administration and Audit Act.

33.—(1) The Financial Secretary shall cause the Auditor-General and the accounting officer of the procuring entity to be notified of any surcharge made under section 32.

Notification
of surcharge.

(2) The accounting officer, on being notified under subsection (1), shall notify the person surcharged and shall, subject to sections 34 and 35, recover the amount surcharged from such person.

Withdrawal
of surcharge.

34. The Financial Secretary may, at any time, withdraw any surcharge in respect of any deficiency or loss for which a satisfactory explanation is received or if it otherwise appears that no surcharge should have been made, and the Financial Secretary shall notify the Auditor-General and the accounting officer of the procuring entity concerned of the withdrawal of any such surcharge.

Remedy of
person
aggrieved by
surcharge.

35.—(1) Subject to subsection (2), any person dissatisfied with any surcharge made against him under section 32 shall have the right to appeal to the Privy Council established by section 82 of the Constitution of Jamaica within a period of one month after he has been notified of the surcharge.

(2) The Governor-General, in his discretion, may—

- (a) authorize an appeal to be made after the expiration of such period of one month;
- (b) direct such further investigation as he thinks necessary.

(3) After such further investigation as may be directed by the Governor-General, acting in his discretion, the Privy Council may make such order concerning the surcharge, including directing that the appellant be released wholly or in part from the surcharge, as may appear just and reasonable.

(4) An order under subsection (3), shall be transmitted to the Financial Secretary, to the accounting officer of the procuring entity and to the Auditor-General.

PART IV. —*The Procurement Process General Provisions*

Notification
to public of
procurement
opportunity.

36. A procuring entity that intends to engage in the procurement of goods, works and services shall notify the public of a procurement opportunity in the prescribed manner.

Participation
in procure-
ment
proceedings.

37.—(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).

(2) Except when authorized or required to do so by this Act, the regulations or any other law, a procuring entity shall establish no requirement limiting the participation of persons, firms or entities in procurement proceedings that discriminates against or among any of them or against or among any categories of them.

(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 manner referred to in subsection (1), and any such declaration may not later be altered.

38. 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.

Qualification
of suppliers.

39.—(1) A procuring entity shall provide the bidding documents to each person, firm or entity who responds to the invitation to bid in accordance with the procedures and requirements specified in the bidding documents.

Bidding
documents.

(2) Where pre-qualification proceedings have been engaged in, the procuring entity shall provide bidding documents to each person, firm or entity that has been pre-qualified and that pays the price, if any, charged for such documents, being a price that does not exceed the cost of providing the documents.

(3) The bidding documents shall include the following—

- (a) the description of the subject matter of the procurement;
- (b) the form and manner in which the bids should be presented;
- (c) the bid validity period;
- (d) provisions for the modification and withdrawal of bids;
- (e) the manner, place and deadlines for presenting bids and where applicable, applications for pre-qualification;

(f) any other matter as may be prescribed.

Evaluation
criteria.

40. A procuring entity shall set out in the bidding documents such technical, financial and other criteria as may be relevant to the procurement concerned, and in evaluating bids and determining the successful bid the procuring entity shall—

- (a) use only those criteria and procedures set out in the bidding documents;
- (b) apply those criteria and procedures in the manner disclosed in such documents; and
- (c) not apply criteria or procedures that are not authorized under or pursuant to this Act.

Pre-
qualification
proceedings.

41.—(1) A person, firm or entity may engage in pre-qualification proceedings with a view to identifying, prior to inviting participation in procurement, suppliers that are qualified.

(2) The regulations may prescribe provisions governing pre-qualification proceedings.

Cancellation
of procure-
ment.

42.—(1) A procuring entity may cancel a procurement—

- (a) at any time prior to the acceptance of the successful bid; or
- (b) after the successful bid is accepted, in the circumstances referred to in section 45(10).

(2) The procuring entity shall not open any bids or proposals after it has taken the decision to cancel a procurement.

(3) The procuring entity shall—

- (a) include in the record of the procurement proceedings and promptly communicate to any bidder that submitted a bid, its decision to cancel a procurement;
- (b) promptly publish a notice of the cancellation of the procurement in the same manner and place in which the original information regarding the procurement proceedings was required to be published; and

- (c) return any bids or proposals that remain unopened at the time of the decision to the bidders that presented them.

(4) Unless the cancellation of the procurement is a consequence of irresponsible or dilatory conduct on the part of the procuring entity, a procuring entity shall incur no liability by virtue of it exercising its power to cancel a procurement under subsection (1).

43.—(1) A procuring entity shall exclude a person, firm or entity from procurement proceedings if—

Exclusion from procurement proceedings.

- (a) the person, firm or entity offers, gives or agrees to give, directly or indirectly to any current or former officer or employee of a procuring entity or other governmental authority a gratuity in any form, an offer of employment or any other thing of service or value, so as to influence an act or decision of, or procedure followed by, the procuring entity in connection with the procurement proceedings; or
- (b) the person, firm or entity has an unfair competitive advantage or a conflict of interest that would be likely to impair the integrity of the procurement proceedings.

(2) Any decision of the procuring entity to exclude a person, firm or entity from the procurement proceedings under this section shall have regard to the objects specified in section 5, and the reasons therefor shall be included in the record of the procurement proceedings and promptly communicated to the person, firm or entity concerned.

44.—(1) Where the contract price of a successful bid exceeds the Tier 2 Limit a procuring entity shall not make the award without the prior approval of the Cabinet.

Approval of contract award.

(2) Where the contract price of a successful bid exceeds the Tier 2 Limit a procuring entity shall not make the award without the prior approval of the Commission.

(3) Where the award of a procurement contract requires the prior approval of the Commission or of the Commission and the Cabinet, as the case may be, that approval shall be deemed to be a condition precedent to the formation of a binding procurement contract.

(4) The head of the procuring entity shall take all necessary measures to ensure that the procuring entity does not unduly delay taking any actions required to obtain the relevant approvals referred to in subsection (3).

(5) Where the award of the procurement contract is not approved in accordance with this section, the procuring entity may either cancel the procurement or select the next successful bid from among those remaining in effect, in accordance with the procedures set out in this Act, the regulations and the bidding documents.

(6) Where the award of a procurement contract is subject to or contingent on the prior approval of any other authority subsections (3), (4) and (5) shall apply *mutatis mutandis*.

Acceptance
of successful
bid.

45.—(1) Subject to the provisions of this section, the procuring entity shall, having considered the bids submitted and determined the successful bid, accept the successful bid, unless—

- (a) the bidder presenting the successful bid is disqualified under the regulations;
- (b) the procurement is cancelled under section 42;
- (c) the bidder presenting the successful bid is excluded from the procurement proceedings on the grounds specified in section 43; or
- (d) the procurement, the bid or the bidder contravenes or is otherwise not compliant with the provisions of this Act or regulations made hereunder.

(2) Subject to section 44, the procuring entity shall notify each bidder, in writing, of the determination of the successful bid and the commencement of the standstill period (hereinafter referred to as the “standstill notice”) which shall include—

- (a) the name and address of the bidder who presented the successful bid;
- (b) the contract price;
- (c) the duration of the standstill period as determined in accordance with the bidding documents; and

(d) any other matters as may be prescribed.

(3) Prior to the expiry of the standstill period and without limiting the effect of section 54 (5)(b) or any other power of the Review Board to suspend procurement proceedings, the procuring entity—

- (a) shall not act on its determination to accept the successful bid and execute or perform the procurement contract; and
- (b) shall afford the bidders to whom the standstill notice was dispatched the opportunity to query, apply for reconsideration or otherwise challenge the decision of the procuring entity as to which one of the bids qualified to be the successful bid.

(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 framework agreement is by way of a competitive process;
- (b) where the contract price is less than the Tier 1 Limit the procurement contract approval limit; or
- (c) where the procuring entity determines that urgent public interest considerations require 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 54 (5)(b) or any other power of the Review Board to suspend procurement proceedings, 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.

(6) Between the time when the notice of acceptance is dispatched to the successful bidder and the signing of the procurement contract, neither the procuring entity nor that successful bidder shall intentionally take any action that interferes with the formation of a binding procurement contract or impedes or frustrates the performance of the procurement contract.

(7) The head of a procuring entity shall take necessary measures to ensure that the procuring entity obtains any approvals required, prior to the expiration of—

- (a) the bid validity period specified in the bidding documents; or
- (b) the period of effectiveness of any bid security which may be required.

(8) A procuring entity shall not request an extension of the bid validity period or the period of the effectiveness of the bid security without, in writing, notifying the Chief Procurement Officer and the notice shall state the reasons why the extension has become necessary.

(9) For the purposes of this section, a notice is dispatched when it is promptly and properly addressed or otherwise directed and transmitted to the intended recipient by a means of communication specified in the regulations.

(10) On the conclusion of the formation of the procurement contract and, if required, the provision by the contractor of a performance security, notice of the procurement contract shall be given promptly to other bidders, specifying the name of the contractor that has entered into the contract and the contract price.

Public notice
of award.

46.—(1) On the formation of a binding procurement contract or the conclusion of a framework agreement, a procuring entity shall promptly publish, in the prescribed manner, a notice of the award of the procurement contract or the framework agreement, specifying—

- (a) the name of the contractor or contractors to which the procurement contract or, as the case may be, the framework agreement was awarded; and

(b) in the case of a procurement contract, the contract price.

(2) On or before June 30 in each year, a procuring entity shall publish a notice in the prescribed manner of such awards made in the preceding financial year.

47.—(1) A procuring entity shall not disclose any information specified in subsection (3) or otherwise obtained in the course of any activities relating to public procurement if—

Confidential-
ity.

(a) non-disclosure of such information is necessary for the protection of national security or defence interests of Jamaica; or

(b) disclosure of such information would—

(i) be contrary to law;

(ii) impede law enforcement;

(iii) prejudice the legitimate commercial interests of a supplier, bidder or contractor; or

(iv) impede fair competition;

unless disclosure of that information is ordered by the Review Board or any court, and, in such case, subject to such conditions as may be specified in the order.

(2) Except where information is provided or required to be published under or pursuant to a provision in this Part, a procuring entity shall treat applications to pre-qualify and bid in such a manner as to prevent or protect against the disclosure of their contents to competing suppliers or to any other person not authorized to have access to this information.

(3) Information referred to in subsection (1), is information relating to the examination and evaluation of bids other than the summary of the evaluation of bids.

(4) Nothing in this section shall be construed as limiting the application of any provision of any other law that restricts the disclosure of information.

Record of
proceedings.

48.—(1) A procuring entity shall maintain a record of its procurement proceedings, including documents relating to procurement contracts awarded and performed and any other information required to be kept under this Act or the regulations.

(2) Subject to section 47, the regulations may make provision for the disclosure of portions of the record by a procuring entity to suppliers, bidders, contractors or members of the public.

Examination and Evaluation of Bids

Responsive
bid.

49.—(1) Subject to subsection (2), a procuring entity shall regard a bid as responsive if it conforms to all the requirements set out in the bidding documents.

(2) The procuring entity may regard a bid as responsive even if it contains—

- (a) minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set out in the bidding documents ; or
- (b) errors or oversights that can be corrected without touching on the substance of the bid.

Grounds for
rejection of
bids.

50. A procuring entity shall reject a bid where—

- (a) the bidder or bid is not in compliance with the provisions of this Act or any regulations made hereunder;
- (b) the bid is not responsive within the meaning section 49.

Successful bid.

51. —(1) A procuring entity shall evaluate the bids that—

- (a) have not been rejected under section 50; and
- (b) are responsive within the meaning of section 49,

in order to ascertain the successful bid, as described in subsection (2), in accordance with the criteria and procedures set out in the bidding documents.

(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 evaluating bids specified in the bidding documents in accordance with section 40.

(3) Notwithstanding that the successful bidder has participated in pre-qualification proceedings pursuant to section 41, the procuring entity may require the successful bidder to demonstrate its qualifications again, in accordance with criteria and procedures set out in the bidding documents.

52. Any document, notification, decision or other information generated— Record-keeping.

- (a) in the course of procurement proceedings and communicated as required under this Act;
- (b) in connection with a reconsideration or review under Part V; or
- (c) in the course of a meeting or forming part of the record of procurement proceedings under section 48,

shall be in a form that provides an accessible record of the content of the information.

53. A procuring entity shall observe such requirements as may be prescribed the regulations with respect to communication in procurement proceedings. Communication.

PART V. — Reconsideration, Review and Appeal Reconsideration by Procuring Entity

54. —(1) Subject to section 55, where a person, firm or entity (in this Part referred to as an “aggrieved party”) claims to have suffered or to be likely to suffer loss or injury due to an action or decision of a procuring entity taken in procurement proceedings which the aggrieved party alleges does not comply with the provisions of this Act or any regulations made hereunder, the aggrieved party may apply to the procuring entity for a reconsideration of such action or decision. Application for reconsideration of procuring entity’s decision.

(2) Unless an application is made within the period specified in subsection (4), the procuring entity is not obliged to reconsider its action or decision.

- (3) An application for reconsideration under subsection (1)—
- (a) shall be in writing addressed to the head of the procuring entity and submitted within the time specified in subsection (4); and
 - (b) shall clearly identify the loss or injury suffered or likely to be suffered and the alleged non-compliant action or decision.
- (4) An application for reconsideration of—
- (a) the terms of the invitation to bid or pre-qualify or of any decision or action taken by the procuring entity in pre-qualification shall be submitted before the deadline for submitting bids; and
 - (b) other decisions or actions taken by a procuring entity in the procurement proceedings shall be submitted during the standstill period or, where no such period applies, before the award of the procurement contract or the framework agreement, as the case may be, in accordance with section 45(5).
- (5) A procuring entity shall, on receipt of an application under subsection (1)—
- (a) promptly give notice of and publish the application in the prescribed manner;
 - (b) within five days of the receipt of the application decide whether the application should be considered or dismissed, and if it is to be considered, whether the procurement proceedings are to be suspended, and the period of suspension; and
 - (c) observe the prescribed requirements with respect to the giving of notice to the aggrieved party and other participants in the procurement proceedings.
- (6) A procuring entity may dismiss the application if it decides that—
- (a) the application is manifestly without merit or was not made within the deadline specified in subsection (4); or

- (b) the aggrieved party does not have sufficient interest to properly bring the application.

(7) In relation to an application which it has considered, a procuring entity may vary, reverse or uphold any action or decision taken in the procurement proceedings to which the application relates and shall—

- (a) issue its decision within fourteen days of receipt of the application; and
- (b) observe the prescribed requirements with respect to the communication of the decision.

(8) A decision taken by a procuring entity under subsection (5), (6) or (7) shall be in writing and shall state the action taken and the reasons therefor and, together with the application shall become part of the record of procurement proceedings received by the procuring entity under this section.

(9) Where—

- (a) a procuring entity fails to observe the requirements of this Act or the regulations with respect to the giving of notice and the communication of its decision on an application; or
- (b) an aggrieved party is dissatisfied with a decision of the procuring entity made pursuant to subsection (5), (6) or (7), the aggrieved party is entitled to commence proceedings before the Review Board under section 57, and where such proceedings are commenced, the competence of the procuring entity to consider the application ceases.

(10) Where an application is made to the Review Board, the procuring entity shall provide the Review Board with access to all documents and information in its possession relating to the matter in respect of which the application was made.

55. Section 54 shall not apply to the decisions of a procuring entity concerning—

- (a) the method of procurement;

Matters excluded from reconsideration.

- (b) the rejection of a bidder's bid pursuant to section 50.

Review by Procurement Review Board

Establishment of Review Board.

56.—(1) There is hereby established, for the purposes of this Act, the Procurement Review Board.

Third Schedule.

(2) The provisions of the Third Schedule shall have effect as to the constitution of the Review Board and otherwise in relation thereto.

Application to the Review Board.

57.—(1) An aggrieved party, having received a decision on an application for reconsideration under section 54, may apply to the Review Board in writing within the prescribed time-frames for a review of—

- (a) an action or decision of a procuring entity in procurement proceedings; or
- (b) the failure of a procuring entity to issue a decision for reconsideration under section 54 within the time-frames specified in that section.

(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.

(3) A person, firm or entity who is aggrieved by—

- (a) the failure or refusal to register a person;
- (b) the decision of the Commission to suspend or cancel the registration of a supplier; or
- (c) the decision of the Commission in respect of their classification of a supplier for the purpose of registration under section 16(2),

may apply to the Review Board within the prescribed time-frame for a review thereof.

(4) Subject to the provisions of this section and the Third Schedule, the Review Board shall deal with applications for review in the prescribed manner.

(5) In making its decision on an application made under subsection (1), (2) or (3), the Review Board shall address any suspension in force and shall take one or more of the following actions, as appropriate—

- (a) prohibit the procuring entity or the Commission, as the case may be, from acting, taking a decision or following a procedure that is not in compliance with the provisions of this Act or any regulations made hereunder;**
- (b) require the procuring entity or the Commission, as the case may be, having acted or proceeded in a manner that is not in compliance with the provisions of this Act or regulations made hereunder to act, to take a decision or to proceed in a manner that is in compliance with the provisions of this Act or regulations made hereunder;**
- (c) overturn in whole or in part an act or a decision of the procuring entity or the Commission, as the case may be, that is not in compliance with the provisions of this Act or regulations made hereunder other than any act or decision bringing a procurement contract or a framework agreement into force;**
- (d) revise a decision by the procuring entity or the Commission, as the case may be, that is not in compliance with the provisions of this Act or any regulations made hereunder, other than any act or decision bringing a procurement contract or a framework agreement into force;**
- (e) confirm a decision of the procuring entity or the Commission, as the case may be;**
- (f) order that any procurement proceedings be terminated;**
- (g) dismiss the application;**
- (h) require the payment of compensation for any reasonable costs incurred by the applicant as a result of an act or decision**

of, or procedure followed by, the procuring entity in the procurement proceedings or the Commission, as the case may be, that is not in compliance with the provisions of this Act or regulations made hereunder, and for any loss or damages suffered, which shall be limited to the costs of the preparation of the bid or the costs relating to the application, or both; or

- (i) take such other action as it considers to be appropriate in the circumstances.

(6) Where the Review Board is satisfied that a public hearing under this section would be likely to have any of the consequences specified in subsection (7) or that the disclosure of any particular information in the proceedings would be likely to have any such consequence, the Review Board may—

- (a) require the proceedings or any part thereof not to be heard in public; or
- (b) implement measures to avoid disclosure in the proceedings of any information that would be likely to have any such consequence.

(7) The consequences referred to in subsection (6) are that the conduct of a public hearing or the disclosure of the particular information in the proceedings would be likely to—

- (a) impair the national security or defence interests of Jamaica;
- (b) be contrary to law;
- (c) impede law enforcement;
- (d) prejudice the legitimate commercial interests of suppliers, bidders, procuring entities; or
- (e) impede fair competition.

Power of
Review Board
to obtain
assistance,
examine
persons, etc.

58. In considering an application made under section 57, the Review Board may—

- (a) obtain such information and such technical, legal or other assistance as it may require; and

- (b) summon and examine—
- (i) any officer or employee of the procuring entity;
 - (ii) any member or employee of the Commission; or
 - (iii) any other person involved in the procurement proceedings.

Supplementary Provisions Relating to Review

59.—(1) Any person, firm or entity with a sufficient interest in the procurement proceedings to which an application under section 57(1) relates, as well as the procuring entity and any other public body whose interests are or could be affected by the application shall have the right to participate in proceedings under section 57(1). Right to participate in proceedings.

(2) In relation to proceedings under section 57(2) or 57(3), the Review Board may determine who, in addition to the applicant and the Commission, shall be entitled to participate in the proceedings.

(3) Any person entitled to participate in proceedings pursuant to subsection (1) or (2) who, having been duly notified of the proceedings, fails to participate in the proceedings shall be barred from subsequently challenging under section 54 or 57 the decisions or actions that are the subject matter of the application.

PART VI.— *Civil Liability and Offences*

60.—(1) A person who—

Civil liability.

- (a) contravenes any provision of this Act or the regulations;
- (b) aids, abets, counsels or procures the contravention of any such provision; or
- (c) conspires with any other person to contravene any such provision,

is liable in damages for any reasonably foreseeable loss caused to any other person by such conduct.

(2) An action under subsection (1) shall not be commenced at time after two years from the time when the cause of action arose.

Compensation order on conviction.

61.—(1) Where a person is convicted of an offence under this Act or the regulations, the court may, in addition to any penalty imposed, order the person convicted to pay a fixed sum as compensation to any person who has suffered loss as a result of the commission of the offence.

(2) An order under subsection (1) shall be without prejudice to any other remedy which the person who has suffered loss may have under any law.

(3) The court may make an order under subsection (1) of its own motion or upon the application of any person in accordance with subsection (4).

(4) A person who has suffered loss as a result of the commission of an offence under this Act or any regulations made hereunder may apply to court for an order under subsection (1), at any time before sentence is passed on the person against whom the order is sought.

Corrupt practice.

62.—(1) A person commits an offence if the person –

- (a) directly or indirectly, unlawfully influences or attempts to influence any officer, employee or agent involved in the procurement process or otherwise engages in any corrupt practice in relation to public procurement;
- (b) deceives or misleads a person carrying out functions under this Act or regulations; or
- (c) practices or is concerned in any fraudulent act to avoid the requirements of this Act or any regulations made hereunder.

(2) A person who commits an offence under subsection (1) is liable—

- (a) on summary conviction before a Resident Magistrate to a fine not exceeding three million dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment; or
- (b) on conviction on indictment in a Circuit Court to a fine or to imprisonment for a term not exceeding seven years or to both such fine and imprisonment.

63.—(1) Subject to subsection (6), the members of the Commission, the members of the Procurement Review Board and every person having an official duty, being employed in or concerned with the administration of this Act shall regard and deal with as secret and confidential, all information, books, records or other documents disclosed to them in the execution of or relating to the exercise of functions under this Act. Prohibited disclosures.

(2) Subject to subsection (6), a person who had an official duty or was employed in the administration of this Act shall maintain, after such duty or employment is terminated, the confidentiality of all information, books, records or other documents relating to the exercise of functions under this Act.

(3) Subject to subsection (6), a person referred to in subsection (1) or (2) shall not disclose any secret, confidential or privileged information or document relating thereto regarding the conduct of or in connection with any public procurement proceedings, obtained in consequence of the performance of duties under this Act.

(4) A person referred to in subsection (1) or (2) commits an offence who, having possession of or control over any information, book, record or other document who at any time communicates or attempts to communicate any such information or anything contained in such book, record or document to any person, otherwise than pursuant to—

- (a) the provisions of this Act or the regulations or any other enactment; or
- (b) an order of the Court.

(5) A person who commits an offence under subsection (4) is liable on summary conviction before a Resident Magistrate to a fine not exceeding one million dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(6) A person shall not be liable for an offence under subsection (4) where the disclosure of the information, book, record or other document—

- (a) was required or necessary in the discharge of his official duties, and was in conformity with the provisions of this Act or the regulations made hereunder;
- (b) was made pursuant to an order by a court;
- (c) is required or permitted under the provisions of any other law; or
- (d) is required of the Government of Jamaica in satisfaction of its obligations under any treaty to which Jamaica is a party.

False records,
etc.

64.—(1) A person commits an offence who intentionally and unlawfully—

- (a) falsifies, destroys, injures, defaces, removes or conceals any record or register required to be kept under this Act or any regulations made hereunder, or any duly authorized or certified extract or copy thereof; or
- (b) certifies any document to be a copy or extract of any record or register referred to in paragraph (a), knowing such document to be false in any material way.

(2) A person who commits an offence under subsection (1) is liable on summary conviction before a Resident Magistrate to a fine not exceeding three million dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

Commission
of an offence
by body
corporate.

65.—(1) Subject to subsection (2), where a body corporate commits an offence against this Act, every director, manager, secretary or other similar officer concerned with the management of the body corporate is a party to the offence and is liable to be convicted for the offence and to the punishment provided for the offence, whether or not the body corporate is prosecuted or convicted of the offence.

(2) A director, manager, secretary or similar officer concerned with the management of a body corporate shall not be liable for an offence against this Act unless the court is satisfied that—

- (a) the offence was committed with his connivance; or
- (b) he had not exercised reasonable diligence to prevent the commission of the offence, having regard to the nature of his functions in that capacity and to all the circumstances of the case.

PART VII.—*Miscellaneous*

66.—(1) The Minister may make such regulations as he thinks Regulations. 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) procedures, standards and criteria for the various methods and subject matter of procurement;
- (b) the establishment, management and operation of an electronic procurement system for the public sector;
- (c) the bidding process;
- (d) the provision of bid security, and any other security required in connection with procurement proceedings and performance security;
- (e) the margins of preference and other measures to be applied in international competitive bidding to enhance the relative competitiveness of any sector that as a matter of policy is being favoured for developmental purposes;
- (f) the procedure for the reconsideration of the actions and decisions of procuring entities;
- (g) the procedure for the review of the actions and decisions by Review Board, including its powers to make interim or ancillary orders;

- (h) provisions in relation to fees;
- (i) forms, including the standard forms of contracts, bidding documents, pre-qualification documents and any other public procurement related documents developed by the Office for use by procuring entities; and
- (j) any other thing required to be prescribed under this Act.

(2) Regulations made under paragraphs (a), (c), (f) and (g) under subsection (1) shall be subject to affirmative resolution.

(3) Notwithstanding section 29(b) of the Interpretation Act, regulations made under this Act may provide that a person who contravenes the regulations commits an offence and is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding two million dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

67. The Minister may, by order subject to affirmative resolution, amend any monetary penalty specified in this Act.

The Minister may by order amend monetary penalty.

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

Commission may make regulations for classification, etc.

- (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 suspended or cancelled or approval under this Act may be withdrawn and the procedures for such suspension, cancellation or withdrawal of approval;
- (c) the content and form of registers and other records to be maintained by the Commission, the availability of such registers for inspection, the production of copies as extracts therefrom and any other matter relating to the establishment, maintenance and safeguarding of registers and other records.

(2) Regulations made under subsection (1) shall be subject to affirmative resolution.

69. This Act binds the Crown.

Act binds
The Crown.

70.—(1) This Act shall be reviewed, from time to time, of a Committee of both Houses of Parliament appointed for the purpose.

Review of Act
by
Parliamentary
Committee.

(2) The first such review shall be conducted not later than five years after the appointed day.

71.—(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.

Amendment of
enactments.

Fourth
Schedule.

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

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

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

Repeal,
savings and
transitional
provisions.

(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.

FIRST SCHEDULE

(Section 4)

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

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

- (a) land or any immovable property or rights in relation thereto;
- (b) works of art;
- (c) contracts of employment;
- (d) medallions and insignias for use pursuant to the National Honours and Awards Act;
- (e) for national defence or national security;
- (f) goods, works and services under a multi-lateral or bilateral agreement to which Jamaica is a party, or an agreement between Jamaica and an international organization;
- (g) goods, works and services relating to or connected with the operations of Jamaican diplomatic missions or consulates.

Constitution and Procedure of the Public Procurement Commission

Constitu-
tion of Com-
mission.

1.—(1) 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) a Chairman, who shall be a person with experience in the public service and with knowledge and expertise in public procurement, recommended by the Minister from a panel of three persons nominated by the Contractor-General or in the event of there no longer being a Contractor-General the Chairman of any body established to oversee the award and implementation of government contracts;
- (b) three persons with knowledge and experience in the field of procurement or complementary disciplines, being persons recommended by the Minister and selected from a panel of eight persons nominated by associations representing the private sector and professional bodies, respectively;
- (c) an attorney-at-law nominated by the Jamaican Bar Association;
- (d) a public officer engaged in financial administration, nominated by the Financial Secretary;
- (e) a public officer appointed by the Minister responsible for works; and

(1) The Chief Procurement Officer and the Executive Director of the Commission, each of whom shall be an *ex-officio* member.

(2) 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.

Tenure of
office.

2.—(1) The Chairman shall hold office for a term of five years and, subject to sub-paragraph (3), shall be eligible for re-appointment for not more than one further term.

(2) The other members of the Commission, other than the members referred to in paragraph 1(2), shall hold office for a term of four years and, subject to sub-paragraph (3), shall be eligible for re-appointment for not more than one further term.

(3) A person shall not be re-appointed as a member before the expiration of at least one year from the date on which that person last served on the Commission.

3. The Governor-General may appoint any person to act temporarily in place of any member of the Commission in the case of the absence or inability of such member to act. Temporary appointment.

4.—(1) The office of a member of the Commission shall become vacant— Vacancy.

- (a) if he resigns his office; or
- (b) if his appointment is terminated in accordance with paragraph (7).

(2) If any vacancy occurs in the membership of the Commission, such vacancy shall be filled by the appointment of another member who shall, subject to the provisions of this Schedule, hold office for the remainder of the period for which the previous member was appointed, so, however, that such appointment shall be made in the same manner and from the same category of persons as the appointment of the previous member.

5. The names of all the members of the Commission as first constituted and every change of membership thereof shall be published in the *Gazette*. Gazetting of appointments.

6.—(1) A member of the Commission may at any time resign his office by instrument in writing addressed to the Governor-General and transmitted through the Chairman, and from the date of the receipt by the Governor-General of such instrument, the member shall cease to hold office. Resignation.

(2) The Chairman may at any time resign his office by instrument in writing addressed to the Governor-General, and such resignation shall take effect from the date of receipt of such instrument by the Governor-General.

7. The appointment of a person as a member of the Commission may be terminated if that person— Termination of appointment.

- (a) becomes of unsound mind or becomes permanently unable to perform his functions by reason of ill-health;
- (b) becomes bankrupt or compounds with, or suspends payment to his creditors;
- (c) is convicted of any offence involving fraud, dishonesty, or moral turpitude; or

- (d) has engaged or is engaging in conduct which, in the opinion of the Minister, disqualifies the member from holding office on the Commission or has engaged or is engaging in such activities as are reasonably considered prejudicial to the interest of the Commission;
- (e) fails to attend five consecutive meetings of the Commission without the leave of the Commission;
- (f) fails to carry out the functions of his office as specified by or under this Act; or
- (g) is convicted and sentenced to a term of imprisonment over one year or to death.

Procedure and meetings.

8.—(1) The Commission shall meet at least once every month and as often as may be necessary or expedient for the performance of its functions under this Act, and such meetings may be held at such places and times and on such days as the Commission may determine.

(2) The Chairman shall preside at all meetings of the Commission, and if the Chairman is absent from a meeting the members present shall elect another member to preside at that meeting.

(3) Five members shall constitute a quorum of the Commission.

(4) The decisions of the Commission shall be by a majority of votes, and in addition to an original vote, the Chairman or other member presiding at the meeting, shall have a casting vote in any case in which the voting is equal.

(5) Subject to any provisions of this Act to the contrary, the Commission may regulate its own proceedings.

(6) The validity of any proceedings of the Commission shall not be affected by any vacancy among the members or by any defect in the appointment of a member.

(7) Minutes in proper form of each meeting of the Commission shall be kept and shall be confirmed as soon as practicable at a subsequent meeting.

Appointment of officers, etc.

9.—(1) The Commission shall appoint and employ for the purposes of this Act—

- (a) an Executive Director who shall be responsible for the day-to-day management of the Commission; and

- (b) such other officers, employees and agents as it considers necessary to assist the Commission in the discharge of its duties under this Act,

at such remuneration and on such terms and conditions so, however, that the salaries and emoluments assigned to any post under this Act shall conform with the guidelines approved by the Minister responsible for the public service.

(2) Every person appointed to the staff of the Commission shall, before he performs any function assigned to him under or by virtue of this Act, take and subscribe an oath in the form set out in the Annex to this Schedule, to be administered by the Executive Director or, in the case of the Executive Director, by the Chairman.

(3) The Governor-General may, subject to such conditions as he may impose, approve the appointment of any officer in the service of the Government to any office with the Commission, and any public officer so appointed shall, in relation to pension, gratuity or other allowance, and in relation other rights as a public officer, be treated as continuing in the service of the Government.

10. The funds of the Commission shall consist of—

- (a) such sums as may from time to time be appropriated by Parliament for the purposes of the Commission;
- (b) with the approval of Cabinet, fees charged for services rendered by the Commission under this Act; and
- (c) all other moneys which may in any manner become payable to or vested in the Commission in respect of any matter incidental to its functions.

Funds
and
resources.

11. All moneys of the Commission not immediately required to be expended in meeting any of its obligations or discharging of any of its functions may be invested in securities issued or guaranteed by the Government or the Bank of Jamaica.

Power to
invest.

12.—(1) The accounts and financial transactions of the Commission shall be audited annually by the Auditor-General and a statement of accounts so audited shall form part of the annual report referred to in paragraph 13(2).

Accounts and
audit.

(2) The Commission shall, before a date specified by the Minister—

- (a) submit to the Minister a statement of accounts in a form satisfactory to the Minister and audited in accordance with the provisions of sub-paragraph (1);

- (b) submit to the Minister for approval an estimate of revenue and expenditure for the ensuing financial year.

Reports.

13.—(1) The Commission may, at any time, be required by Parliament to submit a report to Parliament in respect of any matter in which the Commission is involved under this Act.

(2) The Commission shall submit to Parliament an annual report relating generally to the execution of its functions and may at any time submit a report relating to any particular matter or matters which, in the Commission's opinion, require the special attention of Parliament.

(3) Reports under this section shall be submitted to the Speaker of the House of Representatives and the President of the Senate who shall, as soon as practicable, cause them to be laid on the Tables of the House of Representatives and the Senate, respectively.

(4) Subject to paragraph 14, the Commission may, in the public interest, from time to time publish in such manner as it thinks fit, reports relating to such matters as are mentioned in sub-paragraph (2), but no such report shall be published until after it has been laid pursuant to sub-paragraph (3).

Disclosure of interest.

14.—(1) A member who is in any way directly or indirectly interested in any contract or other matter whatsoever which falls to be considered by the Commission, or in any contract made or proposed to be made by the Commission, shall forthwith disclose the nature of his interest to the other members upon the conflict of interest arising, and the disclosure shall be recorded in the minutes of the next meeting of the Commission, and the member shall not take part in any deliberation or decision of the Commission with respect thereto.

(2) A disclosure made by a member under sub-paragraph (1) to the effect that he is a director or shareholder of, or has a significant economic relationship with, a specific company, firm or other entity and is to be regarded as interested in any contract which is made with the company, firm or other entity, shall for the purposes of sub-paragraph (1), be a sufficient disclosure of his interest in relation to any contract so made.

(3) A member need not attend in person at a meeting of the Commission in order to make a disclosure that he is required to make under this paragraph, if he takes reasonable steps to secure that the disclosure is made by notice which is taken into consideration and read at the next meeting held after the disclosure is made.

15. If the Commission finds, during the course of its work, that there is evidence of any breach of duty or misconduct or criminal offence on the part of a public officer or a member of a public body, the Commission shall refer the matter to the person or body competent to take disciplinary action against the officer or member and, in all such cases, shall lay a special report before Parliament. **Disciplinary action.**

16.—(1) Without prejudice to the provisions of paragraph 15, no action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Commission in respect of any act done, in good faith, in pursuance of or intended execution of this Act. **Indemnity.**

(2) Where any member of the Commission is exempt from liability by reason only of the provisions of this paragraph, the Commission shall be liable to the extent that it would be if the member were a employee or agent of the Commission.

17. There shall be paid to the Chairman and other members of the Commission such remuneration (whether by way of honoraria or allowances) as the Minister responsible for the public service may determine. **Remuneration of members.**

18. The office of a member of the Commission shall not be a public office for the purposes of Chapter V of the Constitution of Jamaica. **Members not public officers.**

Annex to First Schedule

(First Schedule
paragraph 9(2))

Oath to be taken by persons appointed by the Commission

I,.....do swear that I will faithfully perform any functions assigned to me under the Public Procurement Act, and I will not, on any account, at any time whatsoever, except in so far as provisions of this Act authorize, directly or indirectly reveal any information or the nature or contents of any documents communicated to me in the performance of any functions assigned to me by virtue of the Act.

So help me God.

THIRD SCHEDULE

(Section 56 (2))

Constitution and Procedure of the Procurement Review Board

1.—(1) The Procurement Review Board shall be appointed by the Minister and shall consist of seven members— Appointment of members.

- (a) one of whom shall be either an attorney-at-law who has practised for a period of not less than ten years, or a retired Judge, who shall be the Chairman; and
- (b) six persons who have qualifications and wide experience in matters related to procurement, public administration, law, economics, finance or engineering.

(2) Persons appointed to the Review Board shall be of high integrity, and any person who has been convicted of an offence involving fraud, dishonesty or moral turpitude is disqualified from being so appointed.

2. The appointment of each member of the Review Board shall be evidenced by instrument in writing and, subject to the provisions of this Schedule— Tenure of office.

- (a) the Chairman shall hold office for such period not exceeding three years as the Minister may determine; and
- (b) the other members shall hold office for such period not exceeding two years as the Minister may determine.

(3) The Chairman and other members of the Review Board shall be eligible for re-appointment, but any such re-appointment shall be for no more than two further terms.

3. The Minister may appoint any person to act in the place of the Chairman or any other member of the Review Board, in the case of the absence or inability to act of the Chairman or other member. Acting appointments.

4.—(1) Any member of the Review Board, other than the Chairman, may at any time resign his office by instrument in writing addressed to the Minister and transmitted through the Chairman, and on the date of the receipt by the Minister of such instrument that member shall cease to be a member of the Review Board. Resignations.

(2) The Chairman may at any time resign his office by instrument in writing addressed to the Minister, and such resignation shall take effect from the date of receipt of such instrument by the Minister.

- Revocation of Appointment.** 5. The Minister may at any time revoke the appointment of the Chairman or any other member of the Review Board and shall revoke the appointment if the member—
- (a) is unable to perform the functions of the office by reason of infirmity of mind or body;
 - (b) is adjudged a bankrupt or deemed to be insolvent;
 - (c) is convicted of an offence involving fraud, dishonesty or moral turpitude;
 - (d) has engaged or is engaging in conduct which, in the opinion of the Minister, disqualifies the member from holding office on the Review Board or has engaged or is engaging in such activities as are reasonably considered prejudicial to the interest of the Review Board;
 - (e) fails to attend five consecutive meetings of the Review Board without the express permission of the Chairman, or in the case of the Chairman, the Financial Secretary; or
 - (f) fails to carry out the functions of his office as specified by or under this Act.
- Filling of vacancy.** 6. If any vacancy occurs in the membership of the Review Board such vacancy shall be filled by the appointment of another member who shall, subject to the provisions of this Schedule, hold office for the remainder of the period for which the previous member was appointed.
- Publication of membership.** 7. The names of the members of the Review Board as first constituted and every change in the membership thereof shall be published in the *Gazette*.
- Authentication of documents.** 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.
- Procedure.** 9.—(1) The Review Board shall meet at such times as may be necessary or expedient for the transaction of business and such meetings shall be held at such places and times and on such days as the Review Board may determine.
- (2) The Review Board may meet in panels of not less than three members to hear and determine applications made to the Review Board under section 57 of this Act.

(3) Members of any panel that does not include the Chairman shall elect one of their number to be the chairman of that panel and the Chairman who shall have an original and a casting vote in any case in which the voting is equal.

(4) Except in the case of a panel which does not include the Chairman, the Chairman or in his absence, any other person appointed to act temporarily as Chairman, shall preside at the meetings of the Review Board and shall have an original and a casting vote in any case in which the voting is equal.

(5) The quorum at any meeting of the Review Board shall be three.

(6) Decisions of the Review Board or any panel thereof shall be by a majority of votes.

(7) There shall be kept a full record of all proceedings of the Review Board and such record or part thereof shall, at the request of any participant in the proceedings held under section 57 of this Act, be made available to the participant.

(8) Subject to the provisions of this Schedule and to the regulations the Review Board may regulate its own proceedings.

10. There shall be paid to the Chairman and other members of the Review Board such remuneration (whether by way of honoraria or allowances) as shall conform with the guidelines approved by the Minister responsible for the public service. Remuneration of members.

11.—(1) No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Review Board in respect of any act done, in good faith, in pursuance or execution or intended execution of the provisions of this Act. Protection of members.

(2) Where any member of the Commission is exempt from liability by reason only of the provisions of this paragraph, the member shall be liable to the extent that he would be if the member were a employee or agent of the Review Board.

12.—(1) Any member of the Review Board who has any interest, directly or indirectly in any matter in respect of which an application is made to the Review Board— Disclosure of interest.

- (a) shall disclose the nature of the interest to the Board; and
- (b) shall not take part in any deliberations or decisions of the Board with respect to that review.

(2) A notice given by a member at a meeting of the Review Board to the effect that he is interested in a matter before the Review Board for review shall, for the purposes of sub-paragraph (1), be a sufficient disclosure of his interest in relation to that matter submitted for review.

(3) A member need not attend in person at a meeting of the Review Board in order to make a disclosure which he is required to make under this paragraph if he takes reasonable steps to ensure that the disclosure is made by notice, in writing, which is taken into consideration and read at such a meeting.

Office not
public office.

13. The office of Chairman or member of the Review Board shall not be a public office for the purposes of Chapter V of the Constitution of Jamaica.

FOURTH SCHEDULE

(Section 71)

*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, 2014;
 - (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" .

Enactment*The Financial
Administration
and Audit Act*

Section 19B

Amendment

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

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, 2014.”.

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to modernise the law relating to public procurement in Jamaica.

The Bill establishes a framework for the administration of public procurement applying international best practice. The framework comprises the following—

- (a) the Procurement Policy Office, which will be mainly responsible for making recommendations to the Government with respect to the policies to be adopted for public procurement and for supporting persons who participate in the public procurement process;
- (b) the Procurement Commission which, as successor to the National Contracts Commission, has, as its main objects, the promotion of efficiency in public procurement proceedings and the implementation of procurement contracts, as well as the promotion of transparency and equity in the award of procurement contracts and is also responsible for the registration and classification of suppliers;
- (c) sector committees which are established by the Commission to assist it in reviewing and recommending the award of procurement contracts; and
- (d) procuring entities which are required to observe the prescriptions of the Act with respect to public procurement. Among their functions is the duty to monitor the execution of all procurement contracts to which it is a party.

Procuring entities are obliged to prepare a procurement plan for each financial year and to ensure that the estimate of the cost of any planned procurement is committed in their annual budgets.

The head of a procuring entity has overall responsibility for the procurement activities of the entity and is required to establish internal procurement committees to manage the entity's procurement process.

A person aggrieved by the decision of a procuring entity or its failure to action may apply to the Procurement Review Board, which is established under the Bill, to have the matter reviewed. Provisions pertaining to the constitution and procedure of the Board appear in the Third Schedule of the Bill.

Further, the relevant provisions of the *Financial Administration and Audit Act* and the *Public Bodies Management and accountability Act* are amended to make it clear that public procurement is to be governed by the provisions of the Bill.

By the inclusion in the Bill of appropriate savings and transitional provisions, care is taken to ensure—

- (a) that any procurement proceedings that are in progress immediately before the date on which the new law takes effect proceeds to conclusion without disruption; and
- (b) that rights enjoyed or liabilities incurred before that date will not be affected by the new law.

PETER PHILLIPS, Ph.D, M.P.
Minister of Finance and Planning.



ABILL

ENTITLED

**AN ACT to Consolidate and modernise the law
relating to the public procurement of
goods, works and services; and for related
matters.**

**As introduced by the Honourable Minister of Finance and
Planning.**

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SECTION 2 OF THE CONTRACTOR-GENERAL ACT
WHICH IT IS PROPOSED TO AMEND

2. In this Act—

“Commission” means the National Contracts Commission established under section 23B;

“contractor” means any person, firm or entity with whom a public body enters into any agreement for the carrying out of any building or other works or for the supply of any goods or services and includes a person who carries out such works or supplies such goods or services for or on behalf of any public body pursuant to a licence, permit or other concession or authority issued or granted to that person by a public body;

... ..

PART IIIA OF THE CONTRACTOR-GENERAL ACT
WHICH IT IS PROPOSED TO AMEND

PART IIIA—*National Contract Commission*

23A. In this Part “prospective contractor” means any person, firm or entity proposing to obtain the award of a government contract.

23B.—(1) There is hereby established for the purposes of this Act a body to be called the National Contracts Commission.

(2) The provisions of the Third Schedule shall have effect as to the constitution of the Commission and otherwise in relation thereto.

23C. The principal objects of the Commission are the promotion of efficiency in the process of award and implementation of government contracts and ensuring transparency and equity in the awarding of such contracts.

23D.—(1) The functions of the Commission shall be to carry out such activities as may be necessary to give effect to the principal objects specified in section 23C and to perform such other functions as may be conferred on the Commission under this or any other enactment, and without limiting the generality of the foregoing, such functions shall include—

- (a) examining applications for the award of government contract;
- (b) approving or overseeing the award of government contracts within the specified limits;
- (c) in the case of government contracts above the specified limits, making recommendations to the Cabinet regarding the award of such contracts;

- (d) registering prospective contractors for the purposes of this Part and classifying such contractors according to the level and scope of government contracts to which such registration applies;
- (e) establishing and keeping up-to-date lists of contractors so registered, distinguished according to the category of work for which they have been registered;
- (f) continuously assessing the financial and human resources, technical, financial and managerial capacity and performance of contractors;
- (g) making recommendations to the Cabinet for improving the efficiency of the purposes for the granting and implementation of government contracts;
- (h) overseeing the activities of sector committees;

(2) The Commission may do anything or enter into any transaction which it considers necessary or desirable for the proper performance of its functions.

(3) For the purposes of subsection (1), a government contract is within the specified limit if the contract sum does not exceed such amount as may be approved by the Cabinet from time to time and published in the *Gazette*.

23E.—(1) The Commission may make regulations prescribing—

- (a) the qualifications required of prospective contractors for registration and classification under this Part;
- (b) the procedure for the submission of tenders for government contracts;
- (c) the requirement for contractors to enter into performance bonds;
- (d) competitive bidding in relation to government contracts;
- (e) the circumstances in which registration may be cancelled and the procedure for such cancellation.

(2) Regulations under subsection (1) shall be subject to negative resolution.

23F.—(1) The Commission may establish such number of sector committees as it considers necessary for the purpose of assisting the Commission in the carrying out of its functions under this Part.

(2) The primary function of each sector committee shall be to approve the award of government contracts within the limits specified pursuant to section 23D (3).

(3) Subject to the provisions of this Act, each sector committee shall be subject to the general direction and control of the Commission.

(4) No action, suit or prosecution or other proceedings shall be brought or instituted personally against any member or a sector committee for any act done or omitted to be done in good faith in pursuance or execution or intended execution of this Act.

(5) Where any member of a sector committee is exempt from liability by reason only of the provisions of subsection (4), the Commission shall be liable to the extent that it would have been if that member were an employee or agent of the Commission.

23G.—(1) Any person, firm or entity desirous of being registered and classified for the purposes of this Part may apply to the Commission in the prescribed manner for such registration and classification.

(2) If the Commission is satisfied that an applicant meets the prescribed requirements, it may issue to that applicant a certificate of registration and classification in the prescribed form.

(3) Where the Commission refuses an application for registration and classification it shall notify the applicant in writing of the reasons for such refusal.

(4) The Commission may cancel the registration of any person, firm or entity in accordance with regulations made under section 23E (e).

23H.—(1) For the purposes of classifying prospective contractors, the Commission shall take into account the following factors—

- (a) financial soundness;
- (b) technical and managerial competence and experience;
- (c) general level of expertise;
- (d) specialization in the supply of the relevant goods or services or in the carrying out of the relevant works;

23J.—(1) The funds and resources of the Commission shall be provided from funds vested in the office of the Contractor-General under this Act.

(2) Subject to the approval of the Cabinet, fees may be charged for services rendered by the Commission under this Act.

THIRD SCHEDULE OF CONTRACTOR-GENERALS ACT
WHICH IT IS PROPOSED TO AMEND

THIRD SCHEDULE

(Section 23B)

National Contracts Commission

1. The Commission shall consist of the following members, appointed by the Governor-General by instrument in writing—

- (a) six *ex-officio* members, of whom—
 - (i) one shall be selected from a panel of three persons nominated by the Contractor-General who shall be the Chairman;
 - (ii) five other *ex-officio* members designated by the Cabinet, who shall be employees of public bodies, provided that not less than three shall be public officers;
- (b) one member selected from a panel of five persons nominated by the Joint Consultative Committee of the Building Industry or by any body performing similar functions which may replace it by whatever name called; and
- (c) one member selected from a panel of five persons nominated by the Professional Societies Association of Jamaica, or by any body performing similar functions which may replace it by whatever name called.

2. Each member of the Commission shall, subject to the provisions of this Schedule, hold office for a period of seven years and shall be eligible for reappointment.

3. The Governor-General may appoint any person to act temporarily in the place of any member of the Commission, in the case of the absence or inability to act of such member.

4.—(1) The office of a member of the Commission shall become vacant—

- (a) if he resigns his office;
- (b) if his appointment is terminated in accordance with this Schedule;

(2) If any vacancy occurs in the membership of the Commission, such vacancy shall be filled by the appointment of another member, who shall, subject to the provisions of this Schedule, hold office for the remainder of the period for which the previous member was appointed, so, however, that such appointment shall be made in the same manner and from the same category of persons as the appointment of the previous member.

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5. The names of all the members of the commission as first constituted and every change of membership thereof shall be published in the *Gazette*.

“sector committee” means a committee established under section 23F;

6. A member of the Commission may at any time resign his office by instrument in writing addressed to the Governor-General and transmitted through the Chairman, and from the date of the receipt by the Governor-General of such instrument the member shall cease to hold office.

7. The appointment of a person as a member of the Commission may be terminated if that person—

- (a) becomes of unsound mind or becomes permanently unable to perform his functions by reason of ill health;
- (b) becomes bankrupt or compounds with, or suspends payment to, his creditors;
- (c) is convicted of any offence involving dishonesty;
- (d) is convicted and sentenced to a term of imprisonment or to death.

8.—(1) The Commission shall meet at least once every three months and subject thereto, as often as may be necessary or expedient for the performance of its functions under this Act, and such meetings may be held at such places and times and on such days as the Commission may determine.

(2) The Chairman shall preside at all meetings of the Commission and if the Chairman is absent from a meeting the members present shall elect another member to preside at that meeting.

(3) Five members shall constitute a quorum of the Commission.

(4) The decisions of the Commissions shall be by a majority of votes and in addition to an original vote, the Chairman or other member presiding at the meeting shall have a casting vote in any case in which the voting is equal.

(5) Subject to any provisions of this Act to the contrary, the Commission may regulate its own proceedings.

(6) The validity of any proceedings of the Commission shall not be affected by any vacancy among the members thereof or by any defect in the appointment of a member thereof.

(7) Minutes in proper form of each meeting of the Commission shall be kept and shall be confirmed as soon as practicable at a subsequent meeting.

9. There shall be paid to the members of the Commission such remuneration whether by way of salary, honorarium, travelling or other allowances as the Cabinet may determine.

10.—(1) The seal of Commission shall be kept in the custody of the Chairman or any officer authorized by the Commission in that behalf, and shall be authenticated by the signatures of the Chairman and another member authorized to act in that behalf.

SECTION 19B OF THE FINANCIAL ADMINISTRATION AND AUDIT ACT
WHICH IT IS PROPOSED TO AMEND

19B.—(1) All agreements for the supply of goods or services to, or the carrying out of any work for any department shall be on such terms and subject to such conditions as the Minister may, by regulations, prescribe.

(2) Without prejudice to the generality of subsection (1) regulations made under that subsection may prescribe—

- (a) the extent to which an officer is authorized to enter into the agreement;
- (b) procedures relating to—
 - (i) the offer and acceptance of tenders;
 - (ii) the signing of such agreements;
- (c) the form of agreements and the conditions to be stipulated therein;
- (d) measures relating to the execution of agreements and the making of payments thereunder.

(3) Notwithstanding section 29 of the Interpretation Act, regulations made under this section may provide for the imposition of penalties on summary conviction in a Resident Magistrate's Court of a fine not exceeding one million dollars or imprisonment for a term not exceeding one year or of both such fine and imprisonment.

(4) Regulations made under this section shall be subject to affirmative resolution.