

**A BILL
ENTITLED**

AN ACT to Validate and confirm all acts in relation to the registration and classification of prospective contractors, including the charging of fees done in good faith and inadvertent as to the absence of statutory authority, by the National Contracts Commission and other persons in the exercise of its functions in purported fulfillment of its principal objects during the period commencing on February 11, 1999, and ending on the day appointed for the coming into operation of the *Public Procurement Act, 2015*; to indemnify persons against liability arising out of their carrying out of such acts; and for connected matters.

WHEREAS on February 11, 1999, the National Contracts Commission (hereinafter called “the Commission”) was established by section 23B of the Contractor-General Act (hereinafter called “the former Act”):

AND WHEREAS the Integrity Commission Act, 2017, came into operation on the 22nd day of February, 2018 and amended the former Act:

AND WHEREAS the former Act, as amended by the Integrity Commission Act, 2017, became the National Contracts Commission (Interim Provisions) Act, 2017 (hereinafter called “the Act”):

AND WHEREAS section 23C of the Act provides that 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:

AND WHEREAS under subsection (1)(d) of section 23D of the Act, the registration of prospective contractors is a function of the Commission:

AND WHEREAS section 23D of the Act provides that 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 of the Act and to perform such other functions as may be conferred on the Commission under this Act or any other enactment, including registering prospective contractors:

AND WHEREAS section 23G of the Act requires applicants for registration and classification under the Act to apply in the prescribed manner and meet prescribed requirements:

AND WHEREAS subsection (3) (formerly subsection (2)) of section 23J of the Act provides that, subject to the approval of Cabinet, fees may be charged for services rendered by the Commission:

AND WHEREAS the Commission without the approval of Cabinet, purported to charge and collect fees for its services in respect of the registration and classification of prospective contractors:

AND WHEREAS pursuant to section 31 (repealed) of the former Act the Minister may make regulations providing for any matter required by the Act to be prescribed:

AND WHEREAS neither the manner of nor the requirements for registration, including the payment of fees, were prescribed by regulations pursuant to the former Act or the Act:

AND WHEREAS section 1 of the Public Procurement Act, 2015, provides that the Public Procurement Act, 2015, shall come into operation on a day to be appointed by the Minister by notice published in the Gazette:

AND WHEREAS section 65 of the Public Procurement Act, 2015, (as amended by section 24 of the Public Procurement (Amendment) Act, 2018) repeals the National Contracts Commission (Interim Provisions) Act, 2017:

AND WHEREAS during the period commencing on February 11, 1999, and

ending on the day appointed for the coming into operation of the Public Procurement Act, 2015 (referred to as the “validation period”), the Commission and other persons acting in support of the Commission, acted in good faith and inadvertent as to their being without statutory authority, in the purported exercise of the Commission’s statutory functions in relation to the registration and classification of prospective contractors under the Act:

AND WHEREAS it is desirable to validate and confirm as lawful the acts of the Commission and other persons acting in support of the Commission in relation to the registration and classification of prospective contractors, including the charging of fees in relation thereto:

NOW THEREFORE, 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:-

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| Short title. | 1. This Act may be cited as the National Contracts Commission (Validation and Indemnity) Act, 2019. |
| Interpretation. | 2. In this Act, “validation period” means the period commencing on February 11, 1999, and ending on the day appointed for the coming into operation of the Public Procurement Act, 2015. |
| Validation and indemnity. | 3. – (1) Notwithstanding sections 23E, 23G and 23J, and 31(repealed) of the Contractor-General Act, sections 23E, 23G and 23J of the National Contracts Commission (Interim Provisions) Act, 2017, and any provision to the contrary in any other enactment, all acts referred to in subsection (2) done in good faith and inadvertent as to their being without statutory authority during the validation period, by the National Contracts Commission, and other persons acting in support of the Commission are hereby declared to have been validly, properly and lawfully done to all intents and purposes |

and with effect as if done in accordance with the provisions of the Contractor-General Act and the National Contracts Commission (Interim Provisions) Act, 2017.

- (2) The acts referred to in subsection (1) are those done –
- (a) in the purported exercise of the functions conferred upon the Commission in relation to the registration and classification of prospective contractors under the Contractor-General Act and the National Contracts Commission (Interim Provisions) Act, 2017, including the manner and requirements thereof;
 - (b) in the purported charging and subsequent collection of fees for the services of the Commission in respect of the registration and classification of prospective contractors; and
 - (c) by all other persons acting in connection with or in support of those acts.

(3) Every person liable to be legally proceeded against on the ground that any act referred to in subsection (1) was unauthorized, unlawfully done, or otherwise illegal or improper, for any such reason is freed, acquitted, discharged and indemnified as well as against The Queen's Most Excellent Majesty, Her Heirs and Successors and as well as against all persons whatsoever, from liability.

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to validate and confirm the acts of the National Contracts Commission in relation to the registration and classification of prospective contractors, done contrary to the provisions of the Contractor-General Act and the National Contracts Commission (Interim Provisions) Act, 2017, including the form and requirements for

registration, the charging and collection of registration fees and acts done by all other persons acting in connection with or in support of the acts of the Commission done in good faith and inadvertent as to their being unauthorized, unlawful, illegal or improper, during the period commencing on February 11, 1999, and ending on the day appointed for the coming into operation of the Public Procurement Act, 2015, and to indemnify the National Contracts Commission and all other persons from liability in relation thereto.

Handwritten signature of Nigel Clarke in black ink.

Nigel Clarke
Minister of Finance and the Public Service

