JAMAICA

No. 12—2018

I assent,

[L.S.]

Sgd. L. Allen
Governor-General.

18th day of August 2018

AN ACT to Amend the Public Procurement Act.
[The date notified by the Minister bringing the Act into operation]

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

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

2. Section 2 of the principal Act is amended—

(a) in the definition of—

(i) “international competitive bidding”, by deleting the words “that is not limited to national bidders” and
substituting therefor the words “that does not restrict the participation of any supplier”;

(ii) “invitation to bid”, by deleting the words “or approved unregistered suppliers”;

(iii) “national competitive bidding”, by deleting the words “national bidders” and substituting therefor the words “approved registered suppliers”;

(iv) “open bidding”—

(A) in paragraph (a) by inserting immediately after the words “a bid,” the word “or”;

(B) by deleting paragraphs (b) and (c) and substituting therefor the following paragraph—

“(b) in the case of national competitive bidding, any approved registered supplier is entitled to submit a bid;

(v) “single-source procurement”, by deleting the words “specific supplier or specific approved unregistered supplier” and substituting therefor the word “supplier”;

(b) by deleting the definitions of “approved unregistered supplier”, “bidder”, “offsets” and “supplier”;

(c) by inserting in their correct alphabetical sequence the following definitions—

“approved annual procurement plan” means the procurement plan approved by the head of the procuring entity;

“approved registered supplier” means a person, firm or entity registered under section 16;
“approved unregistered supplier” means a person, firm or entity approved by the Commission under section 18;

“bidder” means a supplier who submits a bid;

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

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

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

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

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

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

(a) in relation to an individual, has the meaning assigned to it by the
Constitution of Jamaica and the Jamaican Nationality Act;

(b) in relation to a body, means a body—

(i) constituted or registered under the laws of Jamaica;

(ii) which has its registered office and central administration, and carries on substantial activity, within Jamaica; and

(iii) in which more than fifty percent of the equity interest is under the ultimate effective control of or ultimate ownership by a Jamaican;

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

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

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

“special and differential treatment measures” means measures, including domestic margins of
preference, offsets and set asides, applied to
give special consideration to a class of suppliers
and to provide incentives for the greater
participation of disadvantaged economic
actors;

“supplier” means—

(a) an approved registered supplier;

(b) an approved unregistered supplier;

and

(c) any other person, firm or entity that
is eligible to participate in
procurement proceedings under this
Act;

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

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

3. Section 5 of the principal Act is amended—

(a) in paragraph (g), by deleting the words “and approved
unregistered suppliers”;

(b) in paragraph (i), by inserting immediately after the words
“participation of” the words “micro,”.

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

(a) in paragraph (c), by inserting immediately after the words
“the conduct of public procurement” the words “, including
the application of special and differential treatment measures”; and

(b) by renumbering paragraph (n) as paragraph (o), and inserting
next after paragraph (m), the following—

“(n) review and make recommendations for the
establishment of framework agreements for
procuring entities, including any modification as
appropriate; and”.
5. (1) Section 11(1) of the principal Act is amended—
   (a) in paragraph (c), by deleting the words “as suppliers and” and substituting therefor the words “as approved registered suppliers and”;
   (b) in paragraph (d), by deleting the word “suppliers” and substituting therefor the words “approved registered suppliers”; and
   (c) by deleting paragraph (e) and substituting therefor the following—
   “(e) subject to subsection (3), establish and maintain a register of approved suppliers, differentiated according to classification.”.

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

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

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

7. Section 16 of the principal Act is amended by deleting—
   (a) the marginal note and substituting therefor the following—
   “Registration of approved registered suppliers.”; and
   (b) the words “as a supplier” wherever they appear and substituting therefor in each case, the words “as an approved registered supplier”.

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

Amendment of section 11 of principal Act.

Amendment of section 15 of principal Act.

Amendment of section 16 of principal Act.

Amendment of section 18 of principal Act.
9. Section 20 of the principal Act is amended in paragraph (a), by deleting the words “develop an” and substituting therefor the words “develop and provide to the Office a copy of the approved”.

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

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

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

(a) deleting the words “all known suppliers” and substituting therefor the words “as many suppliers as possible”; and

(b) inserting immediately after the word “supplying” the word “competitively”.

13. Section 25 of the principal Act is amended—

(a) in subsection (1)—

(i) in paragraph (a), by deleting the words “or approved unregistered supplier”;

(ii) in paragraph (c), by deleting the word “or”;

(iii) by renumbering paragraph (d) as paragraph (e) and inserting next after paragraph (c), the following paragraph—

“(d) the time and cost involved in considering a large number of bids would be disproportionate to the estimated value of the procurement; or”; and

(b) in subsections (3) and (4), by deleting the words “or approved unregistered supplier” wherever they appear.
14. The principal Act is amended by inserting next after section 25 the following sections—

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

(a) a single stage bidding;

(b) a two-stage bidding;

(c) a request for proposals, without negotiation;

(d) a request for proposals, with consecutive negotiation;

(e) a request for quotations; or

(f) a framework agreement.

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

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

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

(a) the procurement subject-matter is complex;

(b) the holding of negotiations is necessary in order to determine the commercial or financial aspects of the proposals due to
the need to consider multiple variables affecting the commercial or financial aspects of the proposals;

(c) the variables affecting the commercial or financial aspects of the procurement—

(i) cannot be precisely assessed;

(ii) are incapable of specification by the procuring entity at the outset of the procurement proceedings; and

(iii) can only be determined and agreed upon during negotiations; and

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

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

(a) that are specifically produced or provided to the particular description of the procuring entity; and

(b) for which there is an established market.

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

(a) limited to procurement by way of restricted bidding; and

(b) utilized in the case of a selection criteria based primarily on price.

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

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

(a) authorize a less competitive method of procurement than would otherwise have been applicable to a procurement by a splintering of a single procurement into separate procurements to—

(i) artificially reduce the estimated value of the procurement; or

(ii) to apply a procurement method to any splintered part of the procurement, which would not have been applicable, had it not been for the artificial splintering of the procurement; or

(b) to manage or administer a procurement by splintering a single procurement into separate procurements to avoid the proper application of the procurement method thresholds or the procurement contract approval limits under this Act.”.

15. Section 31 of the principal Act is amended—

(a) in subsection (1), by deleting the words “section 23(4)” and substituting therefor the words “sections 23(4), 24(1)(b) and 25(1)(d)”;

(b) in subsection (3), by deleting the words “in the matter referred to in subsection (1)” and substituting therefor the words “in the manner referred to in subsections (1) and (2)” and

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

“ (4) In accordance with subsection (2), a procuring entity may apply to a procurement proceeding any
special and differential treatment measures as may be prescribed.

16. Section 32 of the principal Act is amended by deleting—
   (a) the marginal note and substituting therefor the following—
       "Eligibility
       requirements.");
       and
   (b) the word “qualification” and substituting therefor the word
       “eligibility”.

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

18. Section 44 of the principal Act is amended—
   (a) in subsection (4)—
      (i) in paragraph (a), by inserting immediately after
          the words “process,” the word “or”;
      (ii) by deleting paragraph (b) and renumbering
          paragraph (c) as a paragraph (b); and
   (b) in subsection (5), by deleting the words “the the” and
       substituting therefor the word “the”.

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

20. Section 51 of the principal Act is amended—
   (a) by deleting subsection (2);
   (b) renumbering subsections (3), (4), (5), (6), (7) and (8), as
       subsections (2), (3), (4), (5), (6) and (7), respectively;
   (c) in subsection (4), as renumbered, by deleting the words
       “subsection (1), (2) or (3)” and substituting therefor the words
       “subsection (1) or (2)”;
(d) in subsection (5), as renumbered, by deleting the words “subsections (7) and (8)” and substituting therefor the words “subsections (6) and (7)”; 

(c) in subsection (6), as renumbered, by deleting the words “subsection (8)” and substituting therefor the words “subsection (7)”;

(f) in subsection (7), as renumbered, by deleting the words “subsection (7)” and substituting therefor the words “subsection (6)”.

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

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

(a) by deleting paragraph (e) and substituting therefor the following—

“(e) special and differential treatment measures;”;

(b) in paragraph (g), by inserting immediately after the words “decisions by” the word “the”.

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

(a) in paragraphs (a) and (d), respectively, by deleting the words “or approved unregistered supplier” wherever they appear; and

(b) in paragraph (b), by deleting the words “cancelled or approved under this Act may be” and substituting therefor the words “cancelled, approved or”.

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

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

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

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

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

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

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

“Savings and transitional provisions.”;

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

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

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

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

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

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

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

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

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

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

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

(a) in paragraph 8, by deleting the words “to act in that behalf” and substituting therefor the words “by the Chairman to signify the documents and decisions of the Review Board”;

(b) in paragraph 9(2), by deleting the words “section 57” and substituting therefor the words “section 51”.

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

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

FRANKLIN WITTER
Deputy Speaker

Passed in the Senate this 15th day of June, 2018 with three (3) amendments.

THOMAS TAVARES-FINSON, CD, QC, JP
President.
On the 3rd day of July, 2018 the House of Representatives agreed to the amendments made by the Senate.

PEARNEL CHARLES, CD, MP, JP
Speaker.

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

[Sgd. Valarie Curtis]
Clerk to the Houses of Parliament.