



MINISTRY OF FINANCE AND THE PUBLIC SERVICE

## OFFICE OF PUBLIC PROCUREMENT POLICY

# Procurement Under Alternate Systems

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This Guidance Note describes principles and practices related to the procurement of goods, services and works under systems of procurement other than Jamaica's country procurement system.

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## Introduction

### Scope:

This guidance note sets out practices for the procurement of goods, services and works under systems of procurement other than the system of procurement established by **The Public Procurement Act 2015** and associated regulations.

### Interpretation:

In this Guidance Note:-

- '*ex ante* review' refers to a system of prior approval of procurement actions that are to be taken by the procuring entity
- '*ex post* review' refers to a system of review of procurement actions that were taken by a procuring entity
- 'international partner' includes multilateral and bilateral parties howsoever designated, and may include a single entity or a group of entities.
- 'pooled fund' means a sum of money comprised of funds contributed by the GOJ and the international partner
- 'procurement rules' means the collection of laws, policies, and administrative guidance that touch and concern public procurement in Jamaica
- 'Variation' means a change in the deliverables under a contract, caused by an increase or decrease in the scope of the work to be performed, services to be provided, or amount/type of goods to be supplied, and are specific to the particular contract

All other words are given the meaning imputed by Section 2 of The Public Procurement Act 2015 (as amended) herein referred to as "The Act".

## Context:

The Government of Jamaica (GOJ) periodically enters into funding and co-operation agreements with international partners.

The Ministry with responsibility for finance, upon the conclusion of negotiations of each such agreement, and having considered the terms of the contemplated agreement, may stipulate- subject to any additional conditions it deems fit, that the procurement of goods, works and services should be undertaken in accordance with a system of procurement other than Jamaica's country procurement system. These alternate systems may vary in respect of the modalities of procurement planning, methods of procurement, processes for approval, use of standard procurement documents etc.

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## Law and Compliance

### The Law:

- a. Sub-paragraph (I) of The First Schedule, made pursuant to Section 4(1) of the Act exempts from the application of Parts III and V of the Act-

*goods, works and services under multilateral or bilateral agreements to which Jamaica is a party, or an agreement between Jamaica and an international organization, providing for an alternate system of procurement than that which his provided under this Act.*

Parts III and V of the Act touch and concern GOJ methods of procurement, and GOJ procurement processes- including the mechanism for *ex ante* review set out in Section 43 of the Act. Notwithstanding the exemption of these contracts from the application of Parts III and V, the GOJ requires that in the

execution of all procurement activities, procuring entities must adhere to customary standards of sound public procurement, and in particular must observe the principles of **transparency, competition, and equitable treatment etc. in the pursuit of value for money and connected objectives set out in Section 5 of the Act.**

- b. Section 4(3) provides that the Chief Public Procurement Policy Officer may issue guidelines in respect of the procurement of excluded subject matter specified in The First Schedule.
  - c. Section 21 of the Act requires the Head of Procuring Entity (HPE) to establish a procurement committee to review procurement proceedings for that entity.
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## How to Comply:

### Approval of Loan Agreement

Upon entry into force of an agreement between the GOJ and an international partner stipulating to the use of a system of procurement other than Jamaica's country procurement system, the Head of Procuring Entity (HPE) who is responsible for execution or implementation of the subject matter of the agreement, should in collaboration with a responsible officer in the procuring entity:

- i. Obtain from the international partner, a copy of all documents, policies and procedures related to or connected with procurement under the system of procurement specified in the agreement. In particular, the HPE should clarify with the international partner all applicable thresholds for *ex ante* and *ex post* review. Where such **current** policies and documents are

already within the possession of the HPE, the obligation in this sub-paragraph does not arise;

- ii. For all contracts to be subject to *ex post* evaluation, cause to be developed a procurement compliance review document **on the basis of the policies and procedures obtained in sub-paragraph i. above**
- iii. Ensure that the procurement compliance review document so prepared in fulfillment of sub-paragraph ii above, contains the following minimum considerations:
  - **Publications and timeframes**-What information must be published? By when? For how long? In what medium?
  - **Documentary requirements**- Are there particular template or standard documents that are mandated for use in the planning, solicitation, award and administration of the contract?
  - **Conditions for participation**- What conditions for eligibility and qualification have been set out? Where can the list of debarred contractors be located? In what situation(s) will a bidder be found in conflict of interest? What steps should the procuring entity take in respect of an offer submitted by such a participant?
  - **Formalities**- What contractual formalities (bid security, power of attorney etc.) are required in this system? Are there rules that allow for the submission of these formal documents after the close of tender?
  - **Responsiveness or compliance standards**- Can a procuring entity consider substantially responsive bids? What does substantial compliance mean under this system?

- **Evaluation or Contract Award mechanism-** What are the applicable or allowable mechanisms for the award of contract, and when does each apply?
- iv. Obtain from the international development partner its confirmation that the procurement compliance review plan is sufficient.

### Procurement proceedings

The procuring entity should plan, initiate and conduct procurement proceedings in accordance with the policies and procedures obtained in sub-paragraph i. above.

## Approval of contract award

The instructions in sub-paragraphs i-iv below apply only to contracts that are subject to *ex post* review.

Prior to the approval of the contract, the HPE:-

- i. Should cause the responsible officer in the procuring entity, to make a presentation to the procuring entity's Procurement Committee. Each such presentation should include *inter alia*:
  - Details of the subject matter of the procurement and whether the instant procurement contract was included on the procurement plan approved by the international partner;
  - A detailed description of all compliance requirements associated with the procurement, and a demonstration that all requirements arising in the procurement compliance review document have been met;
  - Where deviations from the requirements in the procurement compliance review document have occurred, a statement of reasons therefor;
  - That the recommendation for contract award promises value for money, and will achieve the aims pursued.
  
- ii. Should cause the Procurement Committee, having satisfied itself that the procurement proceedings were compliant with the requirements of the procurement compliance review document, to certify in writing that the Procurement Committee has reviewed the procurement proceedings and found them compliant.



- iii. May, where the value of the procurement contract does not exceed **J\$60,000,000.00**, if satisfied, award the procurement contract in accordance with normal practice.
- iv. May, where the value of the procurement contract exceeds **J\$60,000,000.00**, if satisfied, award the procurement contract **but only after first obtaining the approval of Cabinet.**
- v. Must, where the proposed procurement contract is subject to *ex ante* review by the international partner, and its value exceeds **J\$60,000,000.00**:
  - submit the proposed procurement contract for the no objection of the international partner; and
  - having received the no objection of the international partner, submit the proposed procurement contract for the approval of Cabinet.

Upon receipt of the approval of Cabinet, the HPE should award the procurement contract in accordance with normal practice.

**For the avoidance of doubt, no contract referred to herein is to be submitted for the review and approval of The Public Procurement Commission.**

### **Special Situations**

**The procedures below apply to all procurement contracts described herein, regardless of the method of review and approval.**

*Pooled fund*

- i. Where a single procurement contract is to be financed by a pooled fund, the procurement contract must be raised in accordance with the policies and procedures prescribed by the international partner subject to the guidance described herein- regardless of the relative proportion of GOJ's contribution.

*Variations*

- ii. Where before or during the execution of a procurement contract raised herein, the procuring entity determines that a contract variation is necessary to improve the effectiveness of the procurement, if the associated cost of such variations will result in an increase in the contract sum, then:-
  - In the case of contracts of a value not exceeding **J\$60,000,000.00** the HPE may give prior written approval of the variation once the need for the variation has been established, and the unit prices and rates associated with the variation are reasonable- having regard to the unit prices and rates charged in the original contract;
  - Once the cumulative value of variations immediately above exceeds **J\$60,000,000.00** the HPE, further to his/her approval, must report all variations to Cabinet, by a Cabinet Note that demonstrates the need for the variation, and that the unit prices and rates associated with the variation are reasonable- having regard to the unit prices and rates charged in the original contract.
  - In the case of contracts of a value exceeding **J\$60,000,000.00**, for variations with associated costs exceeding 15% of the original contract price, the HPE must submit the variation through the Permanent Secretary for the prior approval of Cabinet, and such

submission should provide details of the need for the variation, and that the unit prices and rates associated with the variation are reasonable- having regard to the unit prices and rates charged in the original contract.

*Lower level of competition*

- iii. Where the policies and procedures of the international partner allow the procuring entity's engagement of a restricted or limited number of bidders, a procuring entity may, if deemed fit, engage a higher level of competition, bearing in mind the need for efficiency in the public procurement process.

**Reporting:**

- i. All procurement contracts whether or not exempt by virtue of the Act, and with nominal value exceeding J\$500,000.00 entered into by the Government of Jamaica, must be reported to the Integrity Commission on the Quarterly Contract Award report.
- ii. A monthly report of **all** contracts whether or not exempt, and regardless of value, must be reported to the Ministry with responsibility for finance, in accordance with the prescribed report format existing.

**Further information and guidance:** For further information, procuring entities are encouraged to contact the Office of Public Procurement Policy in the Ministry of Finance and the Public Service by sending an e-mail to: [oppccustomer@care@mof.gov.jm](mailto:oppccustomer@care@mof.gov.jm) or by calling 876-932-5220.