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JAMAICA

mgw
14/3/2019

No. 12-2018

I assent,

[L.S.]

Sgt. P. L. Allen
Governor-General.

28th day of August 2018

ANACT 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").

Short title
and
construction.

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

Amendment
of section 2
of principal
Act.

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,”.

Amendment
of section 5
of principal
Act.

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

Amendment
of section 7
of principal
Act.

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

Amendment
of section 11
of principal
Act.

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

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

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

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

Amendment
of section 15
of principal
Act.

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

Amendment
of section 16
of principal
Act.

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

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

Amendment
of section 18
of principal
Act.

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

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

Amendment
of section 20
of principal
Act.

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

Amendment
of section 21
of principal
Act.

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

Amendment
of section 23
of principal
Act.

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

Amendment
of section 24
of principal
Act.

- (a) deleting the words “all known suppliers” and substituting therefor the words “as many suppliers as possible”; and
- (b) inserting immediately after the word “supplying” the word “competitively”.

13. Section 25 of the principal Act is amended—

Amendment
of section 25
of principal
Act.

(a) in subsection (1)—

- (i) in paragraph (a), by deleting the words “or approved unregistered supplier”;
- (ii) in paragraph (c), by deleting the word “or”;
- (iii) by renumbering paragraph (d) as paragraph (e) and inserting next after paragraph (c), the following paragraph—

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

- (b) in subsections (3) and (4), by deleting the words “or approved unregistered supplier” wherever they appear.

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

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

“ Manage-
ment of
procure-
ment
methods.

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

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

Bidding in stages.

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

Request for proposal without negotiation.

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

Request for proposal with consecutive negotiation.

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

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

the need to consider multiple variables affecting the commercial or financial aspects of the proposals;

- (c) the variables affecting the commercial or financial aspects of the procurement—
 - (i) cannot be precisely assessed;
 - (ii) are incapable of specification by the procuring entity at the outset of the procurement proceedings; and
 - (iii) can only be determined and agreed upon during negotiations; and
- (d) it is not necessary to negotiate any non-commercial or non-financial aspect of the procurement.

Request for quotations.

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

- (a) that are specifically produced or provided to the particular description of the procuring entity; and
- (b) for which there is an established market.

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

- (a) limited to procurement by way of restricted bidding; and
- (b) utilized in the case of a selection criteria based primarily on price.

Framework agreements.

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

framework agreement in accordance with prescribed procedures.

Splintering
procurement
to avoid
requirements
of Act
prohibited.

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

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

Amendment
of section 31
of principal
Act.

15. Section 31 of the principal Act is amended—

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

“ (4) In accordance with subsection (2), a procuring entity may apply to a procurement proceeding any

special and differential treatment measures as may be prescribed.”.

16. Section 32 of the principal Act is amended by deleting—

Amendment
of section 32
of principal
Act.

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

“Eligibility
requirements.”;
and

(b) the word “qualification” and substituting therefor the word “eligibility”.

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

Amendment
of section 38
of principal
Act.

18. Section 44 of the principal Act is amended—

Amendment
of section 44
of principal
Act.

(a) in subsection (4)—

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

(ii) by deleting paragraph (b) and renumbering paragraph (c) as a paragraph (b); and

(b) in subsection (5), by deleting the words “the the” and substituting therefor the word “the”.

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

Amendment
of Part VI of
principal
Act.

20. Section 51 of the principal Act is amended—

Amendment
of section 51
of principal
Act.

(a) by deleting subsection (2);

(b) renumbering subsections (3), (4), (5), (6), (7) and (8), as subsections (2), (3), (4), (5), (6) and (7), respectively;

(c) in subsection (4), as renumbered, by deleting the words “subsection (1), (2) or (3)” and substituting therefor the words “subsection (1) or (2)”;

- (d) in subsection (5), as renumbered, by deleting the words “subsections (7) and (8)” and substituting therefor the words “subsections (6) and (7)”;
- (e) in subsection (6), as renumbered, by deleting the words “subsection (8)” and substituting therefor the words “subsection (7)”;
- (f) in subsection (7), as renumbered, by deleting the words “subsection (7)” and substituting therefor the words “subsection (6)”.

Amendment
of section 53
of principal
Act.

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

Amendment
of section 60
of principal
Act.

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

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

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

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

Amendment
of section 61
of principal
Act.

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

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

Repeal and
replacement
of section 65
of principal
Act.

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

“Repeal of
*National
Contracts
Commis-
sion
(Interim
Provisions)
Act, 2017.*

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

Amendment
of enact-
ments of
principal.

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

“Acquisition
of goods,
etc.

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

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

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

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

Amendment
of section 67
of principal
Act.

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

“Savings and
transitional
provisions.”;

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

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

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

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

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

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

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

Amendment
of First
Schedule to
principal
Act.

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

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

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

Amendment
of Second
Schedule to
principal
Act.

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

Amendment
of Third
Schedule to
principal
Act.

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

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

Repeal of
Fourth
Schedule.

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

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

FRANKLIN WITTER
Deputy Speaker

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 Bill which has passed the House of Representatives and Senate, and has been found by me to be a true and correct printed copy of the said Bill.

Valne A. Cusick
for Clerk to the Houses of Parliament.