# GOVERNMENT OF JAMAICA

# HANDBOOK OF PUBLIC SECTOR PROCUREMENT PROCEDURES

November 2008

GOVERNMENT OF JAMAICA	
Handbook of Public Sector Procurement Procedures	
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ABBREVIATIONS AND ACRONYMS	
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#### **ABBREVIATIONS AND ACRONYMS**

CVCurriculum Vitae Cost and Freight **CFR** Cost, Insurance and Freight CIF

**CIP** Carriage and Insurance Paid to

**CPT** Carriage Paid to

DAF Delivered at Frontier Delivered Duty Paid DDP **DDU** Delivered Duty Unpaid Delivered Ex Ship DES Delivered Ex Quay DEQ

FAS Free alongside Ship **FCA** Free Carrier Free on Board FOB

Government of Jamaica GOJ

**ICC** International Chamber of Commerce

Invitation for Bids **IFBs International Shopping** IS ITB Invitation to Bid

Information To Consultants **ITC** 

LCS **Least Cost Selection** LOI Letter of Invitation

**LCT Local Competitive Tendering** 

OT Open Tendering

QBS **Quality Based Selection** 

Quality and Cost Based Selection QCBS

REI Request for Expressions of Interest

RFP Request for Proposal **RFP** Request for Proposal

STSelective Tendering

Selection Based on Consultant's Qualifications SBCQ

**SFB** Selection under a Fixed Budget

SSS Single Source Selection

**TOR** Terms of Reference

**UNDP United Nations Development Program** 

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# HANDBOOK OF PUBLIC SECTOR PROCUREMENT PROCEDURES

# I. <u>PURPOSE</u>

This Handbook of Public Sector Procurement Procedures (Handbook) provides the procedures and methods to Procuring Entity public officials engaged in planning and managing procurement of goods, works and services on behalf of the Government of Jamaica (GOJ), in accordance with its policy on Public Sector Procurement.

The statements and procedures contained in this Handbook reflect the basic intentions and goals of GOJ's Policy on Public Sector Procurement. They represent the permanent foundation upon which GOJ operates and are expected to be relatively independent of changing technologies.

#### II. SCOPE

This manual is applicable to all Government of Jamaica procurement of goods, works and services.

#### III. EXCLUSIONS

The following procurements are not subject to the procedures contained in this manual:

- 1. Acquisition or rental of land, existing buildings, or other immovable property or the rights thereon:
- 2. Artistic and cultural products and services works of art, performance services and other cultural and creative products/services;
- 3. Contracts of employment;
- 4. Legal services for non-routine assignments and litigation. This provision is applicable to all procuring entities except for central government entities which are provided with legal services by the Attorney General's Department;
- 5. Procurement for the production of national honours, medallions and insignias;
- 6. Procurement of a "sensitive" nature for national defense and/or security purposes;
- 7. Procurement of fiscal agency or depository services, liquidation and management services for regulated financial institutions, or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities;
- 8. Procurement of goods, services and works between Government Entities However, the following conditions must be met:
  - a. The procuring entity should ensure that the rates being charged are competitive and within existing market prices and provides value for money. In this regard, a minimum of three (3) quotations should be sought from firms in the market that provide the same good, service and or work. and

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- b. For record keeping purposes the National Contracts Commission and Cabinet should be notified of these agreements within the relevant thresholds and copies of related documents submitted:
- 9. Procurement of items on the commodities market;
- 10. Procurement of media related services;
- 11. Procurement of motor vehicles for assignment to public officers;
- 12. Procurement of travel services and hotel accommodation;
- 13. Procurements under government bilateral and other agreements; and
- 14. Any other exceptions as instructed, from time to time, through the Ministry of Finance circulars.

# IV. SPECIAL CONDITIONS FOR COMMERCIAL ENTITIES

#### **Air Jamaica Limited**

The Head of Air Jamaica may approve contracts up to **US\$150,000**. Above this value will require the prior approval of the National Contracts Commission.

Air Jamaica's internal regime will apply to the following procurements:

- (i) Procurement of goods, services and works to Air Jamaica's overseas stations;
- (ii) Procurement of goods, services and works for which the standards and suppliers are regulated by the Jamaica Civil Aviation Authority (JCAA), Federal Aviation Authority (FAA), other regulatory bodies or manufacturers;
- (iii) Lease of aircraft or procurement of repair services in a situation of Aircraft on Ground (AOG);
- (iv) Procurement of goods, services or works in security restricted areas;
- (v) Procurement of Aircraft Fuel;
- (vi) Accommodations for Crew Layover;
- (vii) Interline Agreements and Code Share Agreements;
- (viii) Purchase and maintenance of support equipment for aircraft handling e.g. Paymovers, Passenger steps, baggage carts etc.;
- (ix) Products for use onboard aircraft e.g. pillows and blankets; and
- (x) Purchases from unregistered small suppliers.

# **Petrojam Limited**

Petrojam's internal procurement regime will apply to the following:

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- (i) Spot Procurement of Petroleum Products, Crude Oil, LPG, and Freight
- (ii) Procurement of LPG, MTBE and Freight
- (iii) Tank Cleaning and Repairs
- (iv) **Use of Pre–Approved Contractors List** Petrojam may use its pre-approved contractors list for the selection of contractors by limited tender for specific work on the Refinery, provided that: the list is large enough to allow for competition; these contractors also become registered with the NCC; and Petrojam will advertise annually for additional contractors to be pre-approved.

# Port Authority of Jamaica

The Head of Port Authority may approve sole source/direct contracting up to **J\$5,000,000.00**. Above this value will require the prior approval of the National Contracts Commission. Cabinet's prior approval is required for values above **J\$50,000,000.00**.

### Jamaica Tourist Board (JTB) & Jamaica Vacations Ltd.

The following activities are exempt from coverage under the procurement rules and guidelines and these activities will be undertaken according to standard industry practice.

- i. Co-sponsorship arrangements;
- ii. Trade and travel road shows;
- iii. Supplies of goods and services to overseas offices of the JTB; and
- iv. Co-operative advertising.

All other procurements conducted by the above-named entities will be subject to standard tender rules and procedures as contained herein.

The exemptions do not discharge the entities from their responsibility to advise their portfolio Ministers of developments taking place within these entities.

Notwithstanding any internal approval, the NCC must be advised of all contract awards within the NCC thresholds on a quarterly basis.

# V. <u>UPDATING OF THIS MANUAL</u>

This Handbook is issued under the authority of the Ministry of Finance pursuant to Section 19B of the Financial Administration and Audit Act and the National Contracts Commission in accordance with the Amended Contractor General Act (1999).

This Handbook shall be updated from time to time as necessary, to reflect GOJ requirements.

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NCC, on an on-going basis, encourages observations and comments on this Handbook, through implementation experiences from procuring entities, suppliers, contractors and service providers for the continued development of best practice in public procurement in Jamaica.

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PROCUREMENT PROCEDURES

# I. <u>PURPOSE</u>

To establish uniform procurement procedures in accordance with GOJ Policy on Public Procurement.

#### II. SCOPE

These procurement procedures are applicable to all GOJ procurement of goods, works and services carried out by procuring entities as defined below

#### III. WHAT IS PROCUREMENT?

Procurement is the broader function of acquiring goods, works and services. Thus, procurement embraces not only purchasing (*buying goods*) and the hiring of contractors and consultants to carry out services, but also the complete process from planning to contract management.

For GOJ purposes, *Public Sector Procurement* is the acquisition of goods, services and works, by any method, using public funds, and executed by the procuring entity or on its behalf," where "procuring entity" means any Ministry, Department, Local Government Authority, Statutory Body, Executive Agency, Public Company or any other agency of government, in which the government owns controlling interest, that is at least 51%, and/or in which the Government is in a position to direct the policy of the entity. This definition also applies to government-approved authorities acting on behalf of the procuring entity.

# IV. WHAT IS THE PROCUREMENT HANDBOOK?

This Handbook provides procedures and methods for planning and managing procurement by GOJ Procuring Entity staff.

The application of the procedures set herein foster effectiveness and efficiency of GOJ management and administration of procurement, by clarifying institutional roles, responsibilities, and accountabilities, as well as streamlining related procedures and interactions between and among the institutions and officers/staff involved.

The Handbook also guides suppliers, contractors and consultants to better understand GOJ procurement policies and assist them to submit better bids and proposals, thus meeting the objectives set by GOJ.

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#### V. PROCUREMENT POLICY

The Government of Jamaica (GOJ), under the authority of the Cabinet, hereby promulgates public sector procurement policy in the acquisition of goods, works and services, with the objectives of:

- a. maximizing economy and efficiency in procurement;
- b. fairness, integrity and public confidence in the procurement process;
- c. sustainable development through minimizing negative impact on the environment; and
- d. fostering national growth and development.

In pursuit of these objectives, GOJ shall ensure that:

- 1. public sector procurement policy applies to all procurement by public sector entities including Central Government Ministries and Departments, Local Government Authorities, Statutory Bodies, Executive Agencies, public enterprises and any other Government entity in which GOJ owns majority share and/or otherwise exercises control over the operations of the entity, including an entity acting on behalf of the Government.
- 2. Value for Money is primary, with particular attention to efficiency, effectiveness, quality and sustainable development for the long term.
- 3. systems are transparent, coordinated and uniform service-wide.
- 4. procurement decisions reflect a commitment to minimization of the negative impact on the environment, disaster preparedness and emergency management as contained in the Government of Jamaica Environmental Guide to Green Procurement.
- 5. with due regard to international and/or regional obligations, public sector procurement shall as far as practicable provide opportunity for capable domestic contractors to participate in the provision of goods, services and works on a sustainable and efficient basis as an integral part of the process of national development.
- 6. as far as consistent with the objectives of this policy, public sector procurement activities shall be conducted fairly, allowing for equal treatment of suppliers.
- 7. recognizing the need for flexibility in the application of procurement modalities, although competitive tender is the primary mode, the use of limited tender (shopping) and direct contracting through negotiation or sole-source processes, with due consideration to the nature and circumstance of the procurement is permitted.

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The GOJ procurement policy is governed by the following key principles:

- a. Value for Money;
- b. Economy;
- c. Efficiency;
- d. Equity;
- e. Fairness;
- f. Transparency/Accountability;
- g. Reliability

**Value for Money:** Value for Money (VFM) is a measure of economy and efficiency with which the financial resources of the Government are converted. Value for Money is represented by a number of factors and not only the price paid for the goods. Typically these factors are:

- The suitability of the goods/equipment/services purchased;
- The useful life of the goods/equipment/services;
- Operating, maintenance and servicing costs;
- The administrative cost of the selected purchasing method;
- The delivery/construction period;
- Onwards transportation costs;
- Storage costs;
- The time taken to complete the procurement;
- Any other factor that is related to the procurement.

**Economy**: Procurement is a purchasing activity whose purpose is to give the purchaser best value for money. For complex purchases, value may imply more than just price since quality issues also need to be addressed. Moreover, lowest initial price may not equate to lowest cost over the operating life of the item procured. But the basic point is the same: the ultimate purpose of sound procurement is to obtain maximum value for money.

**Efficiency**: The best procurement is simple and swift, producing positive results without protracted delays. In addition, efficiency implies practicality, especially in terms of compatibility with the GOJ administrative resources and professional capabilities.

**Fairness**: Good procurement is impartial, consistent, and therefore reliable. It offers all interested suppliers, contractors and consultants a level playing field on which to compete and thereby, directly expands GOJ's options and opportunities.

**Reliability**: Good procurement establishes and then maintains rules and procedures that are accessible and unambiguous. It is not only fair, but should also be seen to be fair.

Transparency & Accountability (Ethical Standards): Good procurement holds its practitioners responsible for enforcing and obeying the rules. It makes them subject to challenge and to sanction, if appropriate, for neglecting or bending those rules.

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Accountability is at once a key inducement to individual and institutional probity, a key deterrent to collusion and corruption, and a key pre-requisite for procurement credibility.

A sound procurement system is one that combines all the above elements. The desired impact is to inspire the confidence and willingness-to-compete of well-qualified vendors. This directly and concretely benefits GOJ and its constituents, responsive contractors and suppliers.

#### VI. EXTERNAL FUNDING AGENCIES

A significant percentage of the larger GOJ contracts are often funded by external agencies (Caribbean Development Banks, Inter-American Development Bank, World Bank, etc). The Ministry of Finance is encouraged to negotiate with these agencies for the application of domestic content requirement in these contract actions, on the basis of the relative smallness of the economy and the need to encourage domestic growth and development.

The applicability of the procurement procedures to be employed by procuring entities under these circumstances will depend on the agency's rules that will meet all relevant approval authorities.

#### VII. THE LEASE OR PURCHASE DECISION

Procuring entities should address this issue on a case-by-case basis evaluating the comparative life-cycle costs, the nature of the procurement and other relevant factors. At a minimum, the procuring entity should consider:

- i. Estimated period of time for usage and the extent of use within that period;
- ii. Financial and operating advantages of alternative types and makes of equipment;
- iii. Cumulative rental or lease payments for the estimated period;
- iv. Net purchase price;
- v. Opportunities for re-deployment of equipment after completion of intended use;
- vi. Transportation and installation cost;
- vii. Maintenance and other service costs: and
- viii. Potential obsolescence due, for example, to imminent technological improvement(s),etc. The lease method is appropriate if it is to GOJ's advantage under the circumstances of the particular procurement. The lease method may also serve as an interim measure when the circumstances require immediate use of the good or service to meet objectives or do not currently support acquisition by purchase.

As a general rule, the purchase method is appropriate if the good or service will be used beyond the point in time when cumulative leasing costs exceed the purchase costs.

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# **Sub-Section №: S-1020 PROCUREMENT RESPONSIBILITIES**

# I. <u>PURPOSE</u>

To achieve the overall objective, the responsibilities, authorities and controls set forth herein, must be adhered to by all GOJ Procuring Entities.

# II. <u>RESPONSIBILITIES</u>

#### A. Oversight Responsibilities

#### 1. Ministry of Finance

The Ministry of Finance has the overall responsibility for the public sector procurement system including direct responsibilities for informing public sector procurement policy, monitoring the implementation of those policies particularly with regard to public expenditure, and facilitating a proper understanding of the governing documentation service-wide. In carrying out these functions and in accordance with the FAA Act, the Ministry of Finance shall effect routine investigations of the procurement activities/operations of any procuring entity and shall maintain a Public Sector Procurement Reporting System containing information relative to governing documentation and contract awards.

#### 2. Office of the Contractor General (OCG)

In accordance with the Contractor General Act, the Contractor General shall monitor and, as necessary, investigate, at its own discretion, the award and implementation of any government contract, in order to ensure that such contract is awarded impartially and on the basis of merit, that the circumstances under which it is awarded or terminated do not involve impropriety or irregularity, and that the contract is implemented in conformity with its terms and conditions.

The Contractor General, inter alia, shall be entitled to be advised of the award and, where applicable, the variation of any government contract by the public body responsible for such contract; have access to all books, records, documents, stores or other property belonging to the Government, whether in the possession of any officer of a public body or a contractor or any other person; and have access to any premises or location where work on a Government contract has been, is being or is to be carried out.

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# **B.** Functional Responsibilities

# 1. National Contracts Commission (NCC)

The NCC shall promote efficiency, transparency and equity in the process of awarding government contracts. It shall also review procuring entity contract award recommendations for the procurement of goods, services and works within the values set from time to time. The NCC is responsible for the maintenance of the Register of Approved Contractors. Additional functions of the NCC are as stated in Section 23 of the Contractor General Act.

Except for procurements of a "sensitive" nature, e.g., weaponry, passports, etc., all procurements above the specified threshold must be referred to the NCC for endorsement of award recommendation.

#### 2. National Contracts Commission Sector Committees

The NCC's review of procuring entities' contract award recommendations is facilitated through the operation of a number of Sector Committees established in various procuring entities service-wide. A listing of the sector committees and the entities assigned is attached in Appendix 1.

#### 3. Procurement Committees

Each procuring entity shall establish a Procurement Committee consisting of not less than five (5) persons appropriate to the needs of the entity. The structure of the Procurement Committee shall be as follows:

- Chairman
- Senior Financial Management Personnel;
- Recording Secretary (non-voting member);
- Procurement Personnel (non-voting member); and
- Any other appropriately qualified Officer.

Internal Audit personnel may not sit on the Procurement Committee.

Technical personnel must be co-opted as necessary, pursuant to the nature of the procurement.

The Procurement Committee should not be chaired by anyone who by virtue of their functional position in the entity, would approve or sign-off on procurements.

With respect to Parish Councils and Municipalities, an elected Councilor may sit on the Procurement Committee subject to the provisions above and provided that he/she

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is not in a conflict position pursuant to the Conflict of Interest provisions contained in this Handbook and the Parish Council Act.

The Accounting Officer shall set the monetary threshold for procurements to be reviewed by the Procurement Committee.

The Procurement Committee is mandated to:

- Review recommendations for award within the threshold set by the Head of the Entity
- Ensure compliance with relevant policies, guidelines and procedures;
- Review evaluations done by evaluation committees;
- Facilitate response to contractor inquiries;
- Maintain proper record of Committee meetings, including records of the procurement; and
- Ensure compliance with reporting obligations.

Procurement Committee meetings should be convened pursuant to the needs of the entity. Proper minutes must be recorded and maintained for each meeting. The quorum of the meeting should be pre-determined by the Chairman and no meeting shall be properly convened in the absence of this quorum.

#### 4. Procurement and Asset Policy Unit in the Ministry of Finance

The Procurement and Asset Policy Unit in the Ministry of Finance is the national contact point for public sector procurement in the Government of Jamaica. The Unit develops and informs policy, legislation, and procedure and is leading the modernization of the procurement system. It is also the designated feedback and reporting mechanism for the public sector procurement system. Public and private sector users are encouraged to communicate experiences through this facility in an effort to improve the system.

# 5. Accounting Officers

Pursuant to the Financial Administration and Audit Act, Accounting Officers are accountable to the Minister of Finance for the propriety of procurement expenditure affected by their portfolio entities. Accounting Officers are advised that unless prior written permission is received from the Ministry of Finance, strict compliance with the procedures contained in this Handbook shall be enforced. Non-adherence will be

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addressed in accordance with the Financial Administration and Audit Act, the Public Bodies Management and Accountability Act and the Public Service Regulations.

#### III. COMPLAINTS AND APPEALS

Any contractor that claims to have suffered loss or injury due to a breach of these procedures by the procuring entity may seek review.

Notwithstanding the foregoing the following are not subject to review: the selection of a method of procurement and a decision by the procuring entity to reject all tenders, proposals, offers or quotations.

It should be noted that complaints and appeals will not stop the contract award process.

#### A. REVIEW BY THE PROCURING ENTITY

On receipt of a complaint, the Head of the procuring entity shall ensure that the complaint is copied to the Sector and Procurement Committee, as applicable, with responsibility for approval of the award recommendation and shall deal with the complaint in accordance with the procedures set out below.

The complaint shall be received by the procuring entity within twenty (20) days of the date the complainants became aware or the date upon which the complainants should have become aware, whichever is earliest, that the circumstances giving rise to the complaint had occurred.

Unless the procuring entity and the complainant have reached an agreement on the resolution of the complaint the Head of the procuring entity shall, within fourteen (14) days of receipt of the complaint, issue a written decision to the complainant stating the reasons for the decision and indicating that any appeal of said decision shall be lodged with the NCC within fourteen days of the contractor's receipt of the procuring entity's decision. Appeals shall be addressed to the NCC and copied to the head of the procuring entity. The decision of the procuring entity shall be final unless an appeal has been lodged within the fourteen-day period.

A copy of all complaints and the resolution decisions therefore shall be maintained in the record of the procurement.

#### B. REVIEW BY THE NATIONAL CONTRACTS COMMISSION (NCC)

A contractor may seek appeal of a decision made by the Head of the Procuring Entity. The contractor's appeal must be directed to and received, in writing, by the National

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Contracts Commission (NCC) within fourteen (14) days of the contractor's receipt of the procuring entity's decision. The appeal shall contain the complaint addressed to the procuring entity, the procuring entity's decision and the rationale upon which the contractor has relied in determining the validity of the decision to appeal. The NCC shall, within fourteen (14) days of receipt of the appeal request, recommend an appropriate resolution, a copy of which shall be communicated to Head of the procuring entity, the contractor and any other person deemed appropriate. Should the procuring entity fail to comply with the recommendation of the NCC, the contractor may institute proceedings for review by the Procurement Appeals Board.

A copy of all appeals and the resolution recommendations therefore shall be maintained in the record of the procurement.

#### C. REVIEW BY THE PROCUREMENT APPEALS BOARD

A contractor may seek appeal of a decision made by the National Contracts Commission (NCC). The contractor's appeal must be directed and received in writing by the Procurement Appeals Board within fourteen (14) days of the contractor's receipt of the National Contracts Commission's (NCC's) decision. The appeal shall contain the complaint addressed to the NCC, the NCC's decision and the rationale upon which the contractor has relied in determining the validity of the decision to appeal. The Procurement Appeals Board shall, within fourteen (14) days of receipt of the appeal request, recommend an appropriate resolution, a copy of which should be communicated to the Head of the Procuring Entity, the NCC, the contractor and any other persons deemed appropriate. Should the NCC and the Procuring Entity fail to comply with the recommendations of the Procurement Appeals Board, the contractor may institute proceedings for judicial review.

A copy of all appeals and the resolution recommendations therefore shall be maintained in the record of the procurement.

#### D. REVIEW BY THE FINANCIAL SERVICES COMMISSION (FSC)

The Financial Services Commission becomes involved in the adjudication process only with respect to complaints regarding the following:

- i. If a Broker has a genuine complaint regarding the conduct of an Insurer who is deemed to have acted prejudicial to the Broker's proposal, a formal complaint should be submitted to the FSC Insurance Division.
- ii. A copy of the complaint should be forwarded to the Ministry of Finance, Procurement and Asset Policy Unit and a copy to the entity associated with the tender in question.

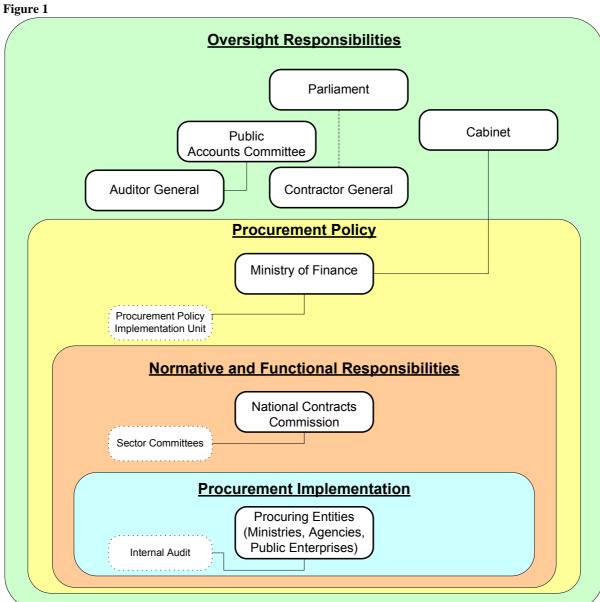
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# E. JUDICIAL REVIEW

The Courts have jurisdiction over actions pursuant to the Handbook and petitions for judicial review of decisions made by review bodies, or of the failure of those bodies to make a decision within the prescribed time limits.

Figure 1 illustrates the institutional framework for public sector procurement in Jamaica

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# **Sub-Section №: S-1030 CONFIDENTIALITY**

# I. PURPOSE

To emphasize the confidential nature of procurement and procurement related activities.

# II. SCOPE

This policy applies to all GOJ Procuring Entity employees.

#### III. GENERAL

It is recognized that all of the transactions relating to procurement are confidential, especially in regard to the bidding process.

It is considered unethical and illegal, as well as damaging to GOJ reputation and to the legal standing of any Procuring Entity, to allow proprietary information to be leaked to any other Ministry/Department and/or Agency, outside entities and authorities, other than prescribed by the Laws of GOJ.

Passage of proprietary or strategic information from an employee to unauthorized sources by an employee will render to application of sanctions against both the GOJ and particularly the employee(s) in question.

All files within a Procurement Entity are to be maintained in an up-to-date and confidential manner. Access to these files and any other related documentation is restricted to those authorized by the Head of Procuring Entity.

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**Sub-Section №: S-1040** 

# CONFLICT OF INTEREST AND UNETHICAL CONDUCT

# I. PURPOSE

To provide guidance to all personnel of GOJ engaged in any aspect of the procurement function concerning the avoidance of conflict of interest and unethical conduct.

#### II. SCOPE

This policy applies to all personnel handling GOJ procurement and who participate in any phase of the procurement process.

#### III. CONFLICT OF INTEREST

All personnel involved in handling a procurement process are expected to observe the GOJ Code of Conduct for Civil Servants outlined in the Staff Orders and to be free of interests or relationships that are actually or potentially detrimental to the best interests of GOJ and shall not engage or participate in any transaction involving a company, its affiliates, divisions or subsidiaries in which they have even minor interests.

Any GOJ personnel involved in a procurement process that has assumed, or is about to assume, a financial or other outside business relationship that might involve a conflict of interest, must immediately inform their supervisors in writing of the circumstances involved. This information is to be reviewed at an appropriate level for a decision whether a conflict of interest is present, and if so, what course of action will be taken.

A conflict of interest exists when a GOJ personnel involved in a procurement process:

- 1. Has an outside interest that materially encroaches on time or attention that should be devoted to the affairs of GOJ;
- 2. Has a direct or indirect interest in or relationship with an outsider that is inherently unethical or that might be implied or construed to be, or make possible personal gain due to the personnel's ability to influence dealings, render the personnel partial toward the outsider for personal reasons or otherwise inhibit the impartiality of the personnel's judgment;
- 3. It is the duty of all staff and any other public employee directly or indirectly involved with the procurement process, especially in the preparation of bidding documents, evaluation, contract negotiations, contract management and payments to declare any potential conflicts of interest. A conflict of interest will arise when the individual has a direct or indirect relationship with a bidder, consultant, contractor or supplier;

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- 4. Takes personal advantage of an opportunity that properly belongs to GOJ;
- 5. Uses GOJ property without approval;
- 6. Discloses GOJ trade secrets or any other proprietary information to unauthorized persons.

All personnel involved in GOJ procurement process, found to be in violation of this policy will be subject to sanctions in accordance with the Laws of Jamaica.

Furthermore, bidders and consultants with potential conflicts of interest will also be considered ineligible to bid or submit a proposal. A conflict of interest will exist when a firm has been previously hired to provide services for the project design, preparation and implementation. This firm and all of its affiliates will not be eligible to provide goods, works or services for any contract that relate in whole or in part to earlier services provided by it.

# IV. <u>UNETHICAL CONDUCT</u>

All involved in GOJ procurement process must comply with the GOJ Code of Conduct for Civil Servants outlined in the Staff Orders.

No individual shall use his authority or office for personal gain. Personal gain includes accepting or requesting anything of material value from bidders, prospective bidders or suppliers for the individual, his or her spouse, parents, children or other close relatives, or for other persons from whom the individual might gain direct or indirect benefit of the gift.

An individual shall seek to maintain and enhance the reputation of the GOJ by:

- Maintaining the highest standards of honesty and integrity in all relationships both inside and outside the Procuring Entity in which he works;
- Developing the highest possible standards of professional competence;
- Using funds and other resources for which he is responsible to provide the maximum benefit to GOJ;
- Complying both with the letter and the spirit of the Laws of the GOJ, accepted professional ethics and Contractual obligations;
- Conflict of interest An individual shall declare any personal interest that may affect or might reasonably be deemed by others to affect impartiality in any matter relevant to their duties;

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- Disclosure of personal relationships an individual shall declare any relationship with a bidder, supplier, contractor or consultant and shall take no part in either the decision making process or the implementation of any contract where such a relationship exists. A personal relationship is defined as consanguinity or affinity. Disclosure may be made in writing or, in the context of a meeting, verbally. However, having made the disclosure the individual shall not sit in the meeting while deliberations on the subject matter are being conducted.
- Confidentiality and accuracy of information An individual shall respect the confidentiality of information gained in the course of duty and shall not use such information for personal gain or for the unfair benefit of any bidder, supplier, contractor or consultant;
- Information given by an individual in the course of their duty shall be true, fair and not designed to mislead;
- Competition All bidders, suppliers, contractors and consultants shall be treated with fairness and impartiality, and avoid any business arrangement that might prevent the effective operation of fair competition;
- Business gifts No business gifts will be accepted from current or potential GOJ suppliers;
- Hospitality An individual shall avoid any business hospitality that would be viewed
  by others as having an influence in making a government business decision as a result
  of accepting that hospitality;
- Reporting All individuals have a moral and ethical responsibility to report any unethical conduct by a colleague, a bidder or a supplier to their superiors, oversight agencies, CG or to the auditors.
- Examples of Unethical Conduct The following are examples of the type of conduct prohibited by this Code of Ethics:
  - Revealing confidential or "inside information" either directly or indirectly to any bidder or prospective bidder;
  - Discussing a procurement with any bidder or prospective bidder outside the official rules and procedures for conducting procurements;
  - Favouring or discriminating against any bidder, prospective bidder or consultant in the preparing of technical specifications, terms of reference or standards or the evaluation of bids and proposals;
  - Destroying, damaging, hiding, removing, or improperly changing any formal procurement document;
  - Accepting or requesting money, travel, meals, entertainment, gifts, favours, discounts or anything of material value from bidders or prospective bidders, suppliers, contractors or consultants;

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- Discussing or accepting future employment with a bidder or prospective bidder, suppliers, contractors or consultants;
- Requesting any other person to violate the public procurement rules or procedures;
- Ignoring evidence that the Code of Ethics has been violated;
- Ignoring illegal or unethical activity by bidders or prospective bidders, suppliers, contractors or consultants including any offer of personal inducements or rewards

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# Sub-Section №: S-1050 FRAUD AND CORRUPTION

# I. PURPOSE

To provide guidance to all personnel engaged in any aspect of GOJ procurement functions concerning Fraud and Corruption.

#### II. SCOPE

This policy applies to all personnel who participate in any phase of GOJ procurement process.

### III. GENERAL

GOJ requires that all its employees and individuals engaged in any GOJ procurement process, as well as bidders/suppliers/contractors/consultants under GOJ financed contracts observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, GOJ:

- a. Defines, for the purposes of this provision, the terms set forth below as follows:
  - i. "Corrupt Practice" means the offering, giving, receiving or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution; and
  - ii. "Fraudulent Practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of GOJ, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive GOJ of the benefits of free and open competition;
  - iii. "Collusive practices" means a scheme or arrangement between two or more bidders, designed to establish bid prices at artificial, non-competitive levels or to influence the action of any party in the procurement process or the execution of a contract;
  - iv. "Coercive practices" means harming or threatening to harm, directly or indirectly, persons, or their property to influence their participation in a procurement process, or affect the execution of a contract.
  - v. "Obstructive practice" is:
    - Deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede an investigation by the GOJ into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening,

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harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or

- Acts intended to materially impede the exercise of the GOJ's inspection and audit rights.
- b. Shall sanction all such personnel involved in proven fraudulent and/or corrupt practices in accordance to the laws of GOJ;
- c. Will reject a bid/proposal for award if it determines that the bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;
- d. Will declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded a GOJ financed contract if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for or in executing a contract.

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Sub-Section №: S-1060 LEGAL CONTEXT

# I. PURPOSE

To provide a background to the legal context governing public procurement in Jamaica.

#### II. SCOPE

Applicable to all procurement activities carried out by GOJ.

#### III. THE LEGAL FRAMEWORK

The foundations of the legal framework for public financial management and procurement are provided by the Constitution of Jamaica, which sets forth the basic principles for efficient management of public resources. Key aspects of public sector procurement are covered by the 1959 Financial Administration and Audit Act (FAA), and the 1983 Contractor-General Act, as amended, and further developed in other acts and regulations. Jamaica is also party to a number of international treaties with implications for public procurement, including the Caribbean Community (CARICOM) and the Association of Caribbean States (ACS). This framework is summarized in Figure 1 below.

The Ministry of Finance (MOF) has the overall responsibility for the public sector procurement in accordance with the FAA Act, and thus issues relevant Circulars in relation to public procurement.

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Figure 2

#### **Legislative and Policy Environment**

Constitution Order 1962
Amended Financial Administration and Audit Act 2002
Loan Act 1964
Amended Contractor-General Act 1983, 1985, 1999
Corruption (Prevention) Act, 2002
Access to Information Act, 2002
Public Bodies Management & Accountability Act 2001
Executive Agencies Act 2001

**International Obligations** 

- CARICOM;
- Common External Tariff (CET of CARICOM);
- Caribbean Single Market Economy (CSME);
- Association of Caribbean States (ACS);

Non-Binding/Under Negotiation

- Free Trade Area of the Americas (FTAA);
- CARICOM-Canada Enhanced Trade Arrangement;
- CARIFORUM EC Economic Partnership Agreement

#### **Financial Management Framework**

Financial Administration and Audit Act, 1959
Ministry of Finance Circulars

#### **Procurement Framework**

Government of Jamaica, Policy on Public Sector Procurement, 2001
Financial Administration and Audit Act, Part III, sections 19B, 19C, 20
Financial Administration and Audit (Public Sector Procurement Procedures) Regulations 2008
Contract-General Act, Part IIIA
The Contractors Levy Act 1985
Ministry of Finance Circulars
Handbook of Public Sector Procurement Procedures, 2008

#### Ministry/Agency/Public Enterprise Framework

Annual Corporate Plans Internal guidelines, procedures, etc.

The full texts of all the Acts governing the public sector procurement in Jamaica is appended at Appendix II.

Related legislation includes:

- Executive Agencies Act in 2002;
- Public Bodies Management and Accountability Act in 2001;
- Access to Information Act 2002, (amended 2003;
- Corruption (Prevention) Act 2001, amended 2002;
- Staff Orders, issued by the MOF (which contain a Code of Conduct for Civil Servants and provisions concerning disciplinary action).

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PROCUREMENT OF GOODS, WORKS	
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# SECTION №: S-2000 PROCUREMENT OF GOODS, WORKS AND GENERAL SERVICES

# I. <u>PURPOSE</u>

To establish uniform procedures for the procurement of goods, works and general services consistent with the policies of GOJ.

# II. <u>SCOPE</u>

These policies apply to all goods, works and general services procurement and related activities.

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# **Sub-Section №: S-2010 PROCUREMENT CYCLE FOR GOODS, WORKS AND GENERAL SERVICES**

#### I. <u>PURPOSE</u>

To provide guidance to GOJ personnel of the procurement cycle for goods, works and general services.

#### II. SCOPE

Applicable to all GOJ procurement of general services, goods and works.

# III. PROCUREMENT CYCLE

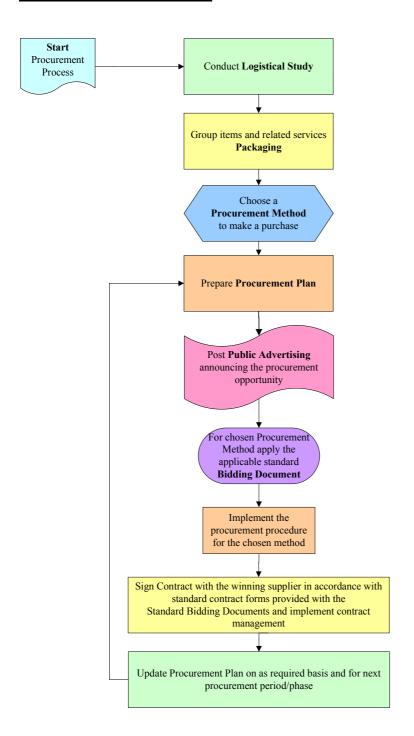
The key elements of the procurement cycle are:

- Logistical Study;
- Procurement plan;
- Procurement Methods;
- Preparation of bidding documents;
- Management of bidding process from advertisement to bid opening;
- Bid Evaluation;
- Contract award;
- Preparation and signing of contract;
- Contract management during implementation, including dispute resolution;
- General handling of procurement cycle (duration, actors, reviews, etc.)

The attached flow-chart depicts the overall procurement process for goods and works.

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# Goods and Works Overall Procurement Process



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**Sub-Section №: S-2020** 

# LOGISTICAL STUDY FOR GOODS, WORKS AND GENERAL SERVICES

#### I. <u>PURPOSE</u>

To provide guidance to GOJ personnel in the preparation of a Logistical Study, where applicable, in preparation for the procurement of general services, goods and works.

#### II. SCOPE

This procedure applies to all GOJ procurement of all general services, goods and works, where warranted.

#### III. CONTENTS OF A LOGISTICAL STUDY

The purpose of the logistics study is to ensure that all procurement related activities for a project are fully considered in a controlled and systematic manner prior to execution. Logistical Study might not be required for regular on-going purchases.

Check list for logistics study may include:

#### **Procurement Factors**

- 1. Detailed list of items to be supplied;
- 2. Brief technical specification, literature/material;
- 3. Substitution of items;
- 4. Indication of use and purpose of material;
- 5. Special requirements, instructions or notes;
- 6. Other factors to be considered.

# Packaging and warehousing

- 1. Specific instructions or information, re: type or standard of packaging;
- 2. Marking instructions;
- 3. Level of packaging;
- 4. Comments on storage environment;
- 5. Information on special environment protection requirements;
- 6. Inspection requirements;
- 7. Consolidation;
- 8. Other factors to be considered.

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#### **Transportation Factors**

1. For domestic suppliers, transport modes available re: rail, road, etc;

# 2. For foreign suppliers:

- Size and weight limitations;
- Inspection requirements;
- Marine survey;
- Shipping documentation;
- Preferences of carriers;
- Information, re: routes Port of Entry / Port of destination;
- Chartering operations;

#### 3. Port of Entry/Destination

- Description of the Port area;
- Harbour and Port are facilities;
- Required documentation;
- Cargo receiving and inspection;
- Demurrage charges and other port costs;
- Duties and taxes
- Assessment of cargo handling facilities;
- Discharge of heavy cargo;
- Shore handling (moving to storage, to inland carrier);
- Storage (availability, conditions, costs, size, duration);
- Local regulations/restrictions;
- Incoterms.

#### 4. Inland Transportation

- Information on routes after discharge (Air, rail, road, other)
- Freight Forwarding requirements;
- Required documentation (permits);
- Forwarding agents;
- Provision of special equipment for heavy transport;
- Size and weight limitations;
- Other transit operations;
- Identification of hazards (geography, climate heat, humidity, environment, other;
- Seasonal restrictions
- Security/Surveillance provisions;
- Local regulations;
- Costs and Schedules;
- Incoterms.

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#### **On-Site Operation Factors**

- 1. Site description/information;
- 2. Information on warehouse and storage areas for incoming freight for receiving, sorting, verifying prior to delivery to job site;
- 3. Arrangement for loading /unloading;
- 4. Material moving and handling;
- 5. Storage;
- 6. Unpacking/uncrating;
- 7. Distribution of material/assembly/installation;
- 8. Real potential hazards in on-site operations;
- 9. Other factors.

Attachment 1 represents a summary form of a Logistical Study.

# Attachment 1 SUMMARY FORM OF A LOGISTICAL STUDY<sup>1</sup>

Critical Factors	Description	Comments
Description		
Project Description		
Number:		
Project		
Project:		
Name of		

Cr	itical Factors	<u>Description</u>	<u>Comments</u>	
Pr	Procurement Factors			
1.	Detailed list of items to be supplied;			
2.	Brief technical specification, literature/material;			
3.	Substitution of items;			
4.	Indication of use and purpose of material;			
5.	Special requirements, instructions or notes;			
6.	Other factors to be considered.			
Pa	ckaging and warehousing			
1.	Specific instructions or information, re: type or standard of packaging;			
2.	Marking instructions;			
3.	Level of packaging;			
4.	Comments on storage environment;			
5.	Information on special environment protection requirements;			
6.	Inspection requirements;			

It is important to record all critical factors for project procurement in this form. If additional pages are required, please add, referring in the proper box "please see attached". Where a factor is not applicable, enter "Not applicable".

\_

7.	Consolidation;		
8.	Other factors to be considered.		
Tr	<u>Transportation Factors</u>		
1.	For domestic suppliers, transport modes available:		
	- rail: describe details		
	- road: describe details		
2.	For foreign suppliers:		
	- Size and weight limitations;		
	- Inspection requirements;		
	- Marine survey;		
	- Shipping documentation;		
	- Preferences of carriers;		
	- Information, re: routes – Port of Entry / Port of destination;		
	- Chartering operations;		
3.	Port of Entry/Destination		
	- Description of the Port area;		
	- Harbour and Port are facilities;		
	- Required documentation;		
	- Cargo receiving and inspection;		
	- Demurrage charges and other port costs;		
	- Duties and taxes		
	- Assessment of cargo handling facilities;		
	- Discharge of heavy cargo;		
	- Shore handling (moving to storage, to inland carrier);		
	- Storage (availability, conditions, costs, size,		

	duration);	
	- Local regulations/restrictions;	
	- Incoterms.	
4.	Inland Transportation	
	- Information on routes after discharge (Air, rail, road, other)	
	- Freight Forwarding requirements;	
	- Required documentation (permits);	
	- Forwarding agents;	
	<ul> <li>Provision of special equipment for heavy transport;</li> </ul>	
	- Size and weight limitations;	
	- Other transit operations;	
	- Identification of hazards (geography, climate – heat, humidity, - environment, other;	
	- Seasonal restrictions	
	- Security/Surveillance provisions;	
	- Local regulations;	
	- Costs and Schedules;	
	- Incoterms.	
<u>On</u>	a-Site Operation Factors	
1.	Site description/information;	
2.	Information on warehouse and storage areas for incoming freight for receiving, sorting, verifying prior to delivery to job site;	
3.	Arrangement for loading /unloading;	
4.	Material moving and handling;	

Storage;	
Unpacking/uncrating;	
Distribution of material/assembly/installation;	
Real potential hazards in on-site operations;	
Other factors.	

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**Sub-Section №: P-2030** 

# PROCUREMENT PLANNING FOR GOODS, WORKS AND GENERAL SERVICES

### I. <u>PURPOSE</u>

To establish uniform procedures for Procurement Planning for general services, goods and works.

### II. SCOPE

This procedure applies to all GOJ procurement of all goods, works and general services.

#### III. WHAT IS A PROCUREMENT PLAN?

A Procurement Plan is the identifying and scheduling of all the steps involved in a procurement process. Through procurement plans, Procurement Entities should are provided with answers to:

- What to buy?
- When to buy?
- How much/many to buy?
- From where to buy?
- How much to allocate for payments?

Procurement planning may follow a certain fundamental approach, regardless whether it is for a specific investment project or one of the more on-going supply type operations. Regardless of which type of project, however, it is essential to develop a plan that clearly sets out the framework in which procurement will be done.

The conventional approach for both types of procurement, i.e. specific investment projects (finite projects of known design and content) and for on-going supply type operations, is to start by compiling a list of all known goods, works and services needed to complete the project. This list then becomes the basis for deciding how these items should be combined or divided into contract packages, what method of procurement should be used for each, and the scheduling for procurement activities. Even this seemingly straightforward preparation of the list of needs already implies a strategic decision about how procurement and contracting will be done.

#### IV. PACKAGING

To get the best price for goods, works or services, similar items should be grouped into **packages**. Procurement packaging has several advantages:

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- It offers a better business chance to the sellers to supply in bulk;
- Items purchased in packages often result in lower unit cost therefore cost savings;
- It simplifies actual purchase. All similar items are purchased in one go for a period of time. This reduces the hassle involved in buying similar things intermittently;
- It reduces overhead costs such as frequent advertising, bookkeeping and logistics.

The ability of local suppliers of goods and services to meet project needs and the likely interests of foreign bidders to participate in a project are some of the factors to be considered when making contract packaging decisions. If there are well established local civil works contracting and goods supply capabilities, the scope and sizes of contract packages should be set in such a way that permits local firms to compete effectively. If foreign interest in bidding for contracts is low, for example, because they are not established in the country or because of the known competitiveness of local firms, package sizes can generally be set to match those local capabilities. However, if there are reasons of economy or efficiency in choosing larger contract packages or if it is known or believed that foreign bidders will be interested in bidding, these should be the determining factors in contract packaging and sizing.

If there are local and foreign interests and capabilities to supply project procurement needs, it may be possible to meet both of these by appropriate sizing and timing of contract awards. Works contracts may be divided into individual packages that can be handled by local bidders and then calling for bids for 5 or 10 of these packages at the same time ("slicing and packaging"). A small local contractor can bid for one or however many slices it can handle, and a large foreign bidder can bid for all slices in the entire package, offering a discount if all or a specified number are awarded to it. A similar approach and results can be achieved in goods contracts by making the basic bid "lots" conform to local bidding capacities and then awarding contracts for a number of lots in the same bidding process, thereby allowing larger suppliers to offer discounts in the case of multiple contract lot awards.

Exceptions to the packaging approach are, when; (a) the project is to be awarded on a turn-key basis, and (b) the project is on a "supply and install" basis where goods delivery and related installation services are combined in a single contract.

#### V. THE BASICS OF PROCUREMENT PLANNING

The first stage in preparing any procurement plan is to identify each step in the procurement process that can be identified in advance. Procurement can be broken down into four main stages as follows.

- Preparation;
- Bidding;

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- Evaluation, and
- Contracting

The specific procurement plan template contained in Attachment 2 is a generic form. Users should take care that these templates could be expanded to suit their own project. Each project is unique and may have additional tasks that are not included in the template.

The time periods quoted shown in the templates are simple estimates of how long a task might take. When preparing a specific plan the user should consider the complexity of what is being purchased, the value and the method. For example for a large telecommunication and/or turnkey civil engineering procurement the time allowed for preparing technical specifications should be much longer than a simple school and/or road rehabilitation. Consequently longer time should be allocated higher value procurement for review by NCC and/or other GOJ authorities as each procurement method may prescribe.

Experience will provide solid data on which to base estimates, therefore users should update the estimates and their own templates for each of the tasks identified to reflect the actual time taken at their location.

#### VI. PROCUREMENT SCHEDULING

One of the considerations in choosing contract packaging is the timing when goods or services are needed. After preliminary packaging plans have been formulated and, by implication, the method of procurement to be used for each is tentatively determined by the nature and size of the packages, it is necessary to verify that these combinations will permit the goods or services to be delivered at the times they are needed for the project. The best way to check this is to work backwards from the desired date of delivery to determine whether sufficient time is available to carry out the necessary procurement steps for each element.

Planning should be done in accordance with the requirements of the inputs. As an example when planning for school textbooks, the school year start date should be the ultimate target milestone date by which all textbooks should have been delivered to all schools. Taking this date and working backwards by integrating the required lead times for each step, the procurement plan is designed.

#### VII. PROCUREMENT PLAN PREPARATION

Once packaging is done, the remaining individual items and packages should be recorded in the tables presented in Attachment 2. This brings forward a consolidated list of resources required for the entire procurement. For convenience, all goods, services and civil works are grouped under the different tables. Once the tables are completed, a procurement plan is ready.

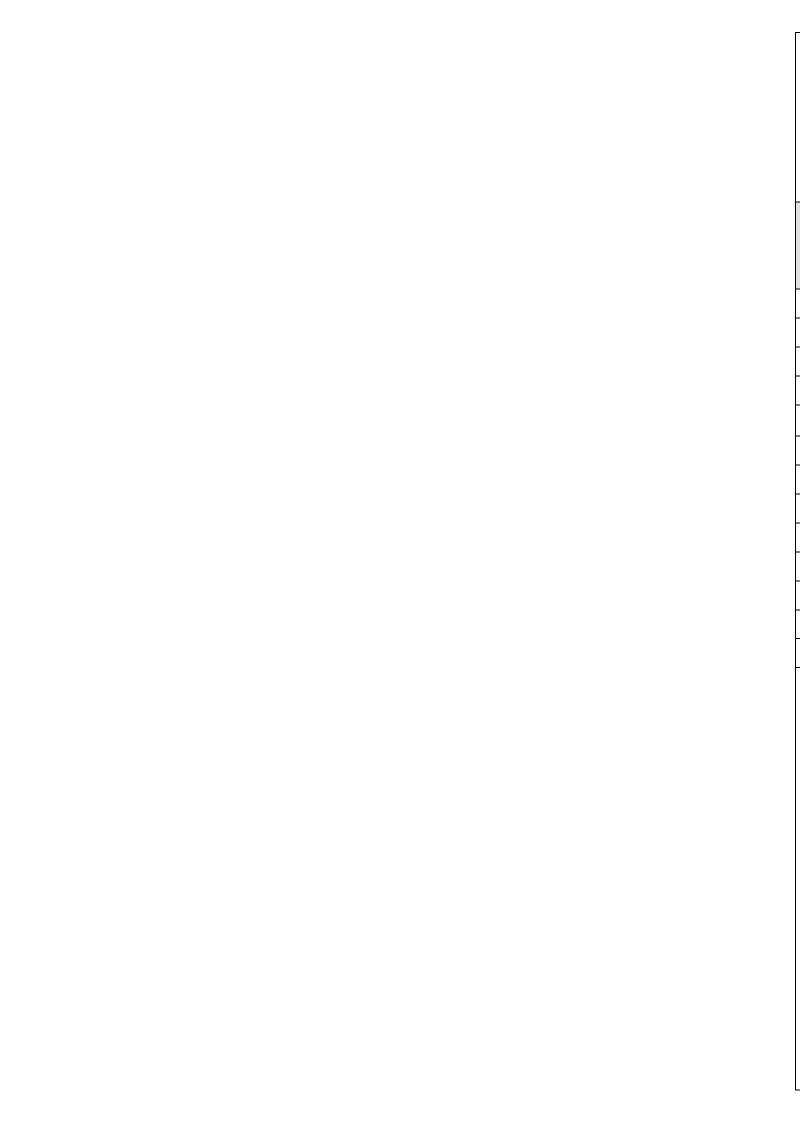
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#### VIII. <u>UPDATING A PROCUREMENT PLAN</u>

Once the planning process has been undertaken actual performance should be monitored against the plan. Below the line for planned procurement another line should be shown showing actual and revised procurement activity showing the revised or actual start date through to the revised or actual date of contract completion. This will assist the Procuring Entity to better understand the constraints of a project and to replicate these constraints or to overcome them in the following year procurement exercises, thus, achieving more realistic procurement plans.

#### IX. MANDATORY PROCUREMENT PLANS

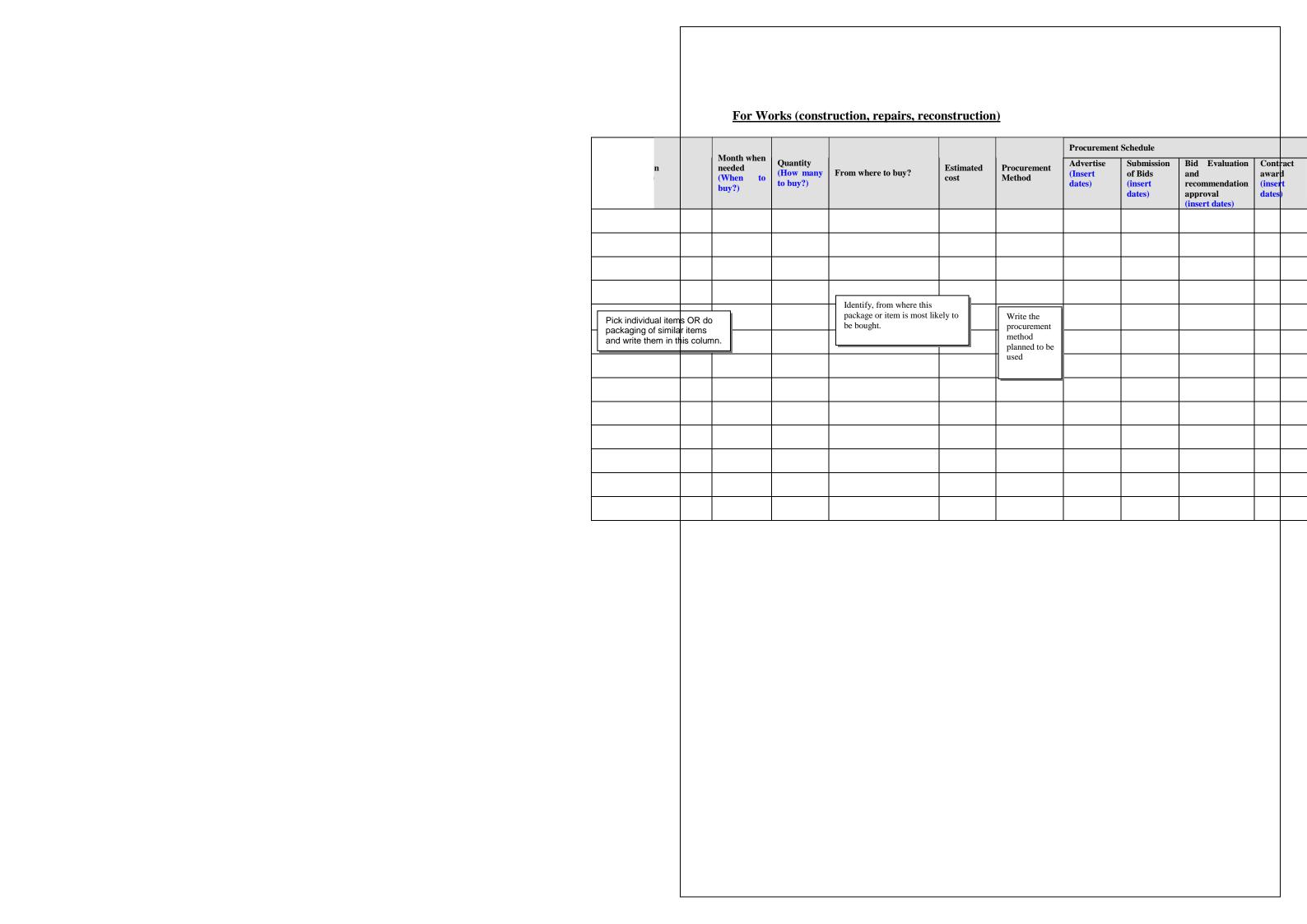
It is required by MOF that each Procuring Entity submits with their annual Corporate Plan a Procurement Plan, supporting the projected expenditures of their Ministries. An updated Procurement Plan of the previous year should also be included.



# Attachment 2 Procurement Plan Format

# For goods (materials, equipment and supplies)

	Month					Procuremen	nt Schedule			
Item description (What to buy?)	when needed (When to buy?)	Quantity (How many to buy?)	From where to buy?	Estimated cost	Procurement Method	Advertise (Insert dates)	Submission of Bids (insert dates)	Bid Evaluation and recommendation approval (insert dates)	Contract award (insert dates)	Delvery (insert dates)
-										
Pick individual packaging of s	imilar items	;	Identify, from where this package or item is most like be bought.		Write the procurement method					
and write them	in this colu	ımn.			planned to be used					
					useu	<u></u>				



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**Sub-Section №: S-2040** 

# PROCUREMENT METHODS FOR GOODS, WORKS AND GENERAL SERVICES

# I. <u>PURPOSE</u>

To establish uniform procurement methods for the procurement of general services, goods and works.

### II. SCOPE

This procedure applies to the procurement of all general services, goods and works.

#### III. PROCUREMENT METHODS

Contract packaging and scheduling are interlinked with the choice of procurement methods. In most cases, arriving at the procurement plan requires iterative adjustments in all three of these aspects. It is impossible, for example, to think about what contract packaging would be appropriate, without having in mind how this affects the choice of procurement method and the time that will be needed to carry it out.

The choice of procurement method depends on:

- The nature of the goods, services and works to be procured;
- The value of the procurement;
- The likelihood of interest by foreign bidders, which is a function of the local availability, capacity and costs;
- Critical dates for delivery; and
- Transparency of procedures proposed.

#### A. OPEN TENDER

Open tender means the procurement opportunity is open to any interested local or foreign contractor. Contractors should be registered with the National Contracts Commission (NCC) prior to contract award. Procurement offered through open tender must be advertised at least twice in a national, daily circulated newspaper.

#### **B. SELECTIVE TENDER**

Selective tender means procurement opportunities are opened to all appropriately registered and qualified contractors. Contractors should be registered with the National Contracts Commission (NCC) prior to contract award. Where no Contractor is registered,

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procuring entities may seek bids/proposals from unregistered contractors. Procurement offered through selective tender must be advertised at least twice in a national, daily circulated newspaper.

#### C. <u>LIMITED TENDER</u>

Limited tender means a specific number of contractors/suppliers are invited to bid. Procuring entities may contact appropriately qualified contractors/suppliers on the NCC register and invite them to participate. Where no contractor is registered, procuring entities may seek bids/proposals from unregistered contractors/suppliers. Criteria for selecting contractors should include:

- i. Nature of the good/service/work required;
- ii. Contractor's relevant experience;
- iii. Contractor's past performance record; and
- iv. Contractor's current financial and technical capacities.

The prepared lists of contractors shall be submitted to the Procurement Committee or such other person(s) as may be nominated by the Procurement Committee for approval prior to any contractor/supplier being invited to tender.

Procurement offered through limited tender is not advertised. Procuring entities may award their contracts by limited tendering procedure, in the following cases:

- (a) when no suitable tenders have been submitted in response to an open or selective tendering procedure, on condition that the requirements of the initial tender are not substantially modified;
- (b) when, for technical reasons or for reasons connected with protection of exclusive rights, the contract may be performed only by a particular supplier(s) and no reasonable alternative or substitute exists;
- (c) for reasons of extreme urgency brought about by events unforeseen by the procuring entity, the products or services could not be obtained in time by means of open or selective tendering procedures;
- (d) For purchases made under exceptionally advantageous conditions which only arise in the very short term in the case of unusual disposals such as arising from liquidation, receivership or bankruptcy and not for routine purchases from regular suppliers.

The Head of the Procuring Entity may approve the use of the limited tender for contract up to J\$10M. Contract values above this threshold will require the pre-approval of the NCC.

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#### D. SOLE SOURCE

Sole Source means there is only one provider of the particular good, service or work. Use of this method may be justified when:

- i. The procurement is of a "sensitive" nature.
- ii. A procuring entity receives an unsolicited proposal that it considers meritorious.
- iii. A particular supplier or contractor has exclusive rights in respect of goods, services or work.
- iv. Standardizing equipment available only from a single proprietary source; i.e. the procuring entity has procured goods, equipment or technology from a supplier or contractor and additional supply must be procured from that supplier or contractor for reason of standardization (follow-on procurement).
- v. For the purposes of research, experiment, study or development.

#### E. DIRECT CONTRACTING

Direct contracting means only one contractor is invited to participate. Use of this method may be justified when:

- i. In response to a catastrophic event, making it impractical to use other methods of procurement because of the time involved in using those methods.
- ii. For the purposes of research, experiment, study or development.
- iii. In emergency circumstances.

The Head of the Procuring Entity may approve sole source/direct contracting up to J\$3M. Contract values above this threshold will require the pre-approval of the NCC.

Procurement by sole source or direct contracting methods must be justified according to the terms above. The justification must form part of the record of the procurement.

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#### F. CONTRACTING UNDER EMERGENCY CIRCUMSTANCES

An emergency contract is one awarded:

- i) for the repairs or remedial action necessary to preserve health, safety, property;
- ii) to avoid significant public inconvenience;
- iii) in cases of sudden, unexpected or pressing necessity or exigency.

Where an emergency situation exists as defined above, the Procuring Entity shall utilize the Direct Contracting provisions. The Head of the Procuring Entity must give approval for the issuing of emergency contracts.

Contracts awarded under emergency circumstances above J\$5M must be reported to the National Contracts Commission and also to the Contractor General in the QCA Report within the month in which the award was made, along with full justification for the procurement.

#### IV. EXPENDITURE AUTHORITIES

The expenditure authorities required before a Procuring Entity may enter into a contract are currently as follows:

<b>Threshold</b>	<u>Authority</u>
<b>J\$10,000,000</b> and below	The Accounting Officer/Head of Entity shall approve subject to procedures included herein.
Above <b>J\$10,000,000</b> - <b>J\$30,000,000</b>	The Accounting Officer/Head of Entity shall endorse on the recommendation of the NCC.
Above <b>J\$30,000,000</b>	Cabinet, on the recommendation of the NCC and the Accounting Officer/Head of Entity shall approve.

The threshold values above relate to gross amount payable to contractors. These figures will be revised from time to time as approved by Cabinet.

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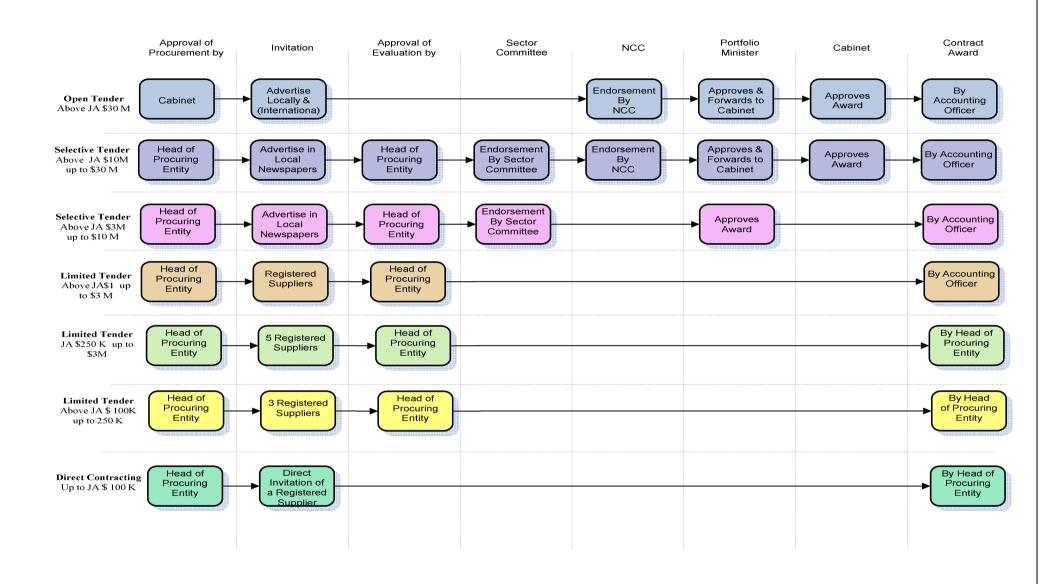
# V. PROCUREMENT METHODS FOR GENERAL SERVICES AND GOODS

Threshold	<b>Procurement</b>	<u>Procedures</u>
	Method	
Contracts above J\$30 million	Open Tender	<ul> <li>Invite tenders from registered contractors, through general advertisement in a nationally circulated newspaper;</li> <li>Tender security/bid bond is required;</li> <li>Evaluation is carried out by an Evaluation Committee;</li> <li>The Procurement Committee makes recommendation for award;</li> <li>The award recommendation is approved by the Accounting Officer/Head of the procuring entity;</li> <li>Award recommendation is endorsed by Sector Committee and NCC;</li> <li>Award recommendation is approved by Cabinet.</li> </ul>
Contracts above J\$10 million to J\$30 million	Selective Tender	<ul> <li>Invite tenders from registered contractors, through general advertisement in a nationally circulated newspaper;</li> <li>Tender security/bid bond is required;</li> <li>Evaluation is carried out by an Evaluation Committee;</li> <li>The Procurement Committee makes recommendation for award;</li> <li>The award recommendation is approved by the Accounting Officer/Head of the procuring entity;</li> <li>Award recommendation is endorsed by Sector Committee and NCC.</li> </ul>
Contracts above J\$3 million to J\$10 million	Selective Tender	<ul> <li>Invite tenders from registered contractors, through general advertisement in a nationally circulated newspaper;</li> <li>Evaluation is carried out by an Evaluation Committee;</li> <li>Award recommendation is endorsed by the Procurement Committee;</li> <li>The award recommendation is approved by the Accounting Officer/Head of the procuring entity;</li> <li>There is no requirement for provision of a tender security/bid bond in this contract value range.</li> </ul>
Contracts above J\$1 million to J\$3 million	Limited Tender	<ul> <li>Invite a minimum of five registered contractors to quote;</li> <li>Evaluation is carried out by an Evaluation Committee;</li> <li>Award recommendation is endorsed by the Procurement Committee;</li> <li>The award recommendation is approved by the Accounting Officer/Head of the procuring entity;</li> <li>There is no requirement for provision of a tender security/bid bond in this contract value range.</li> </ul>

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Contracts above J\$275,000 to J\$1 million	Limited Tender	<ul> <li>Invite three registered contractors to quote;</li> <li>Evaluation is carried out by an Evaluation Committee;</li> <li>The award recommendation is approved by the Accounting Officer/Head of the procuring entity;</li> <li>There is no requirement for provision of a tender security/bid bond in this contract value range.</li> </ul>
Contracts above J\$100,000 to J\$275,000	Limited Tender	<ul> <li>Invite three contractors to quote;</li> <li>Contractors are not required to be registered with the NCC;</li> <li>The contract is approved by the Accounting Officer/Head of the procuring entity;</li> <li>There is no requirement for provision of a tender security/bid bond in this contract value range.</li> </ul>
Contracts up to J\$100,000	Direct Contracting	<ul><li>Any supplier;</li><li>No need for NCC registration;</li><li>Only one quotation required.</li></ul>

The stages of the procurement process for general services and goods are diagrammed in Figure 3.



# VI. PROCUREMENT METHODS FOR WORKS

Threshold	Procurement Method	Procedures
Contracts above J\$30 million	Open Tender	<ul> <li>Invite tenders through general advertisement in a national daily circulated newspaper from registered contractors;</li> <li>Tender security/bid bond is required;</li> <li>Evaluation is carried out by an Evaluation Committee;</li> <li>The Procurement Committee makes recommendation for award;</li> <li>The award recommendation is approved by the Accounting Officer;</li> <li>Award recommendation is endorsed by Sector Committee and NCC;</li> <li>Award recommendation is approved by Cabinet.</li> </ul>
Contracts above J\$10 million to J\$30 million	Selective Tender	<ul> <li>Invite tenders through general advertisement in a nationally circulated newspaper from registered contractors;</li> <li>Tender security/bid bond is required;</li> <li>Evaluation is carried out by an Evaluation Committee;</li> <li>The Procurement Committee makes recommendation for award;</li> <li>The award recommendation is approved by the Accounting Officer;</li> <li>Award recommendation is endorsed by Sector Committee and NCC.</li> </ul>
Contracts above J\$3 million to J\$10 million	Selective tender	<ul> <li>Invite tenders through posting opportunity on procuring entity's website, the electronic notice board and at a National Works Agency Parish Office/Parish Council Office where the work will be undertaken from registered contractors;</li> <li>Evaluation is carried out by an Evaluation Committee;</li> <li>Award recommendation is endorsed by the Procurement Committee;</li> <li>The award recommendation is approved by the Accounting Officer/Head of the procuring entity;</li> <li>There is no requirement for provision of a tender security/bid bond in this contract value range.</li> </ul>
Contracts above J\$1 million to J\$3 million	Limited Tender	<ul> <li>Invite a minimum of five registered contractors to quote;</li> <li>Evaluation is carried out by an Evaluation Committee;</li> <li>Award recommendation is endorsed by the Procurement Committee;</li> <li>The award recommendation is approved by the Accounting Officer/Head of the procuring entity;</li> <li>There is no requirement for provision of a tender security/bid bond in this contract value range.</li> </ul>

Contracts above J\$275,000 to J\$1 million	Limited Tender	<ul> <li>Invite three registered contractors to quote;</li> <li>Evaluation is carried out by an Evaluation Committee;</li> <li>The award recommendation is approved by the Accounting Officer/Head of the procuring entity;</li> <li>There is no requirement for provision of a tender security/bid bond in this contract value range.</li> </ul>
Contracts above J\$100,000 to J\$275,000	Limited Tender	<ul> <li>Invite three contractors to quote;</li> <li>Contractors are not required to be registered with the NCC;</li> <li>The contract is approved by the Accounting Officer/Head of the procuring entity;</li> <li>There is no requirement for provision of a tender security/bid bond in this contract value range.</li> </ul>
Contracts up to J\$100,000.00	Direct Contracting	<ul><li>Any supplier;</li><li>No need for NCC registration;</li><li>Only one quotation required.</li></ul>

Where the Approved List of NCC Contractors has less than the required number of contractors as stated by the above procedures, no other quotations are required.

There is no requirement to advertise where all the contractors on the Approved List of NCC Contractors are invited to participate in the tender opportunity, except for open tender situations.

#### VII. CONTRACT VARIATIONS

#### **Definitions: Variation**

A variation is a change to the deliverable(s) under a contract (e.g., an increase or decrease in the scope of works to be performed, amount/type of goods to be supplied, etc.), and must be specific to the relevant contract.

#### **Cost Overrun**

A cost overrun is deemed to be an increase to be an increase to the contract sum resulting from escalation in the price of labour and/or material.

#### **Fluctuation**

For the purpose of this policy, a fluctuation is deemed to be an increase to the contract sum resulting from escalation in the price of labour and/or material.

#### General

Variations must relate to the subject of the specific deliverables contained in the original contract i.e. the said project site, road, etc. In exceptional cases new deliverables of a similar nature, but not related to the subject of the existing contract, may be treated as a variation, subject to the approval requirements set out below.

Variations resulting in an **increase** in contract sum may be allowed for the following reasons:

#### (a) Technical

- i. Where there is need for additional goods, services or works to address unforeseen, unavoidable difficulties encountered during contract implementation that, in the judgment of the relevant Accounting Officer, could not conceivably have been foreseen during the planning and pre-contract phase(s).
- ii. Where the total conditions are not known, e.g., site or structure conditions in renovation and/or restoration works.

#### (b) Functional

- i. Where changes that, in the opinion of the Accounting Officer and/or relevant consultant (provided same is agreed by the Accounting Officer) would enhance the achievement of project/contract objectives and overall effectiveness.
- (c) New Works
- i. Where, in the determination of the Accounting Officer, the incorporation of new, **but related**, work in the existing contract would enhance the achievement of over-arching value for money objectives.

#### **Approval Requirements**

#### General

- a) The Accounting Officer/Head of Entity must give initial written approval for the issuance of all contract variations. No other public officer or project consultant shall approve a variation of a contract unless so authorized by the Accounting Officer/Head of Entity. This authorization must be in writing.
  - Notwithstanding any delegation of authority, accountability for variations remains with the Accounting Officer/Head of Entity.
- b) The Accounting Officer/Head of Entity must at all times keep the Portfolio Ministers informed of all changes in the value of the contract due to changes in the scope of works or otherwise.

#### **Debt Implications**

- a) Any variation of a contract which will have implications for the national debt (e.g., extension of a Deferred Financing Facility) irrespective of value will require in addition to the approval requirements stated above, prior approval from the Ministry of Finance and the Cabinet.
- b) In such cases a submission should be made to Cabinet and routed through the Ministry of Finance for comments.

#### **Budgetary Implications**

a) In the case of treasury funded entities, where a variation will require financing in excess of amounts identified in the approved budget, the prior approval of the Ministry of Finance is required.

b) The Accounting Officer/Head of Entity must make request in writing to the Public Expenditure Division (PEX) of the Ministry of Finance.

#### **Reporting Requirements for Procuring Entities**

- a) Increases/decreases to contract sums resulting from variations shall be reported to the Contractor General pursuant to Section 4(2) of the Contractor General's Act 1983.
- b) Cost overruns (increases to contract sums resulting from fluctuations in the price of labour and materials or other factors) must be duly substantiated, documented and reported to the Contractor General and the NCC, where the NCC was involved in the initial approval of the contract.
- c) Cost overruns in excess of 15% on contracts of a value J\$30 million and above must also be reported to the Cabinet.
- d) The Accounting Officer/Head of Entity shall implement systems to ensure that the above reports are made and shall advise the Portfolio Minister(s) within seven (7) days of any change in contract values whether resulting from variations, price fluctuations or other factors.
- e) Reported increases to contract sums as a result of variations, price changes or other factors will be documented in the Contractor General's annual report to Parliament, which will be examined by a Committee of the House of Representatives.
- f) All reports made to the Cabinet, NCC and Contractor General as per items  $(\mathbf{a}) (\mathbf{c})$  above must include as relevant:
  - i. Description of and justification for the variation including the root cause(s).
  - ii. Details of price adjustments necessitating increase in contract sum.
  - iii. Description of any other factors responsible for cost overruns.
- g) Reports to the Cabinet, Contractor General and NCC shall be made on a quarterly basis and within fourteen (14) working days of the end of the quarter.

#### **Amendment to Contract Forms**

- a. In keeping with Section 4.0, whenever the standard **Joint Consultative Committee for the Building and Construction Industry (JCC)** construction contract is used, it should be modified (as shown below) to reflect the authority of the Accounting Officer/Head of Entity. Where other forms of construction contracts are used, the appropriate clause in those contracts should be amended in a similar manner.
- b) The following paragraph is to be substituted for **Paragraph 1** under **Clause 11** of the **JCC contract**.

Clause 11 Variations,	Notwithstanding anything contained in this clause or	
<b>Provisional And Prime</b>	elsewhere in these conditions of contract the Engineer or	
Cost Sums	Architect shall have no authority to issue any variation (s) to	
	the contract without first obtaining the approval of the	
	Employer in writing.	

All civil, mechanical and electrical engineering services contracts should include provisions reflecting the authority of the Accounting Officer/Head of Entity as indicated in (a) above.

# VIII. CONTRACT VARIATION METHOD – RELATED WORKS

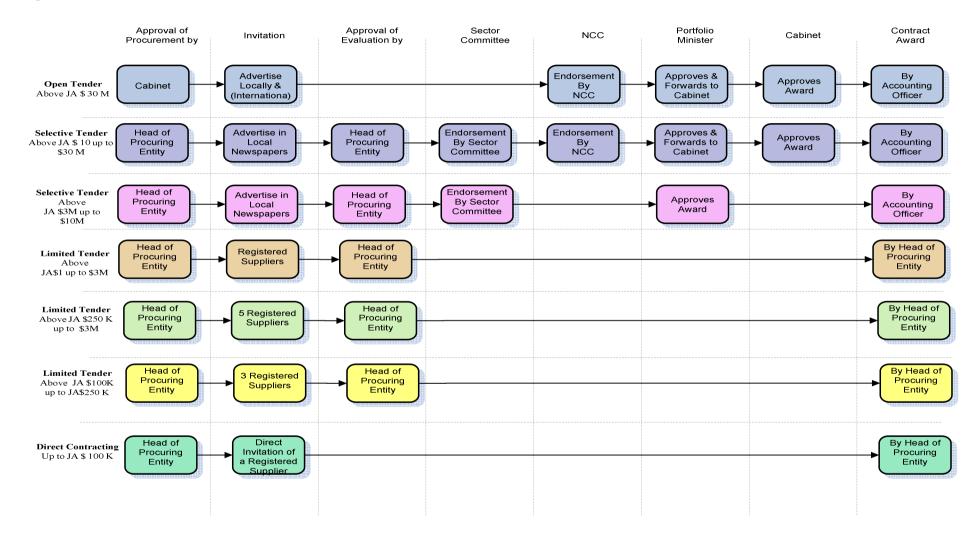
Threshold	<u>Procedures</u>
Contracts exceeding J\$300 million	<ul> <li>The Accounting Officer/Head of Entity may approve variations for related works up to the value of 10% or \$ 30 M.</li> <li>NCC endorsement required.</li> <li>Cabinet approval required.</li> </ul>
Contracts above J\$150 million up to J\$300 million	<ul> <li>The Accounting Officer/Head of Entity may approve variations for related works of up to a cumulative value of 10%.</li> <li>Variations in excess of the 10% threshold will require the approval of the Portfolio Ministry.</li> <li>NCC endorsement required.</li> <li>Cabinet approval is required</li> </ul>
Contracts above J\$30 million to J\$150 million	<ul> <li>The Accounting Officer/Head of Entity may approve variations for related works of up to a cumulative value of 15%.</li> <li>Variations in excess of the 15% threshold will require the approval of the Portfolio Ministry.</li> <li>NCC endorsement required.</li> <li>Cabinet approval is required.</li> </ul>
Contracts above J\$10 million to J\$30 million	<ul> <li>The Accounting Officer/Head of Entity may approve variations for related works up to a cumulative value of 25%.</li> <li>Variations in excess of the 25% threshold will require the approval of the Portfolio Ministry.</li> <li>NCC endorsement required.</li> </ul>
Contracts up to J\$10 million	- The variation is approved by the Accounting Officer/Head of Entity.

#### IX. CONTRACT VARIATION METHOD – UNRELATED WORKS

Threshold	<u>Procedures</u>
Contracts above J\$30	<ul><li>The Portfolio Ministry shall approve the variation.</li><li>NCC endorsement required.</li><li>Cabinet approval is required.</li></ul>
Contracts above J\$10 million to J\$30 million	<ul><li>The Portfolio Ministry shall approve the variation.</li><li>NCC endorsement required.</li></ul>
Contracts up to J\$10 million	- The Portfolio Ministry shall approve the variation.

The stages of the procurement process for works are diagrammed below.

Figure 4



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**Sub-Section №: S-2050** 

# PREPARING BID DOCUMENTS FOR GOODS, WORKS AND GENERAL SERVICES

# I. <u>PURPOSE</u>

To establish policy for use of Standard Bidding Documents for general services, goods and works.

### II. SCOPE

This procedure applies to the preparation of Bidding Documents for all procurement involving goods and works.

#### III. PURPOSE OF STANDARD BIDDING DOCUMENTS

Bidding documents inform and instruct potential bidders, suppliers and contractors of the requirements expected during a particular procurement opportunity. Thus, the bidding documents should be drafted in such a manner, so as to permit bidders to submit responsive bids. Bidding documents should clearly define the scope of works, goods or services to be supplied, the rights and obligations of Procuring Entity and of suppliers and contractors, and the conditions to be met in order for a bid to be declared valid and responsive. Bidding documents should also set out fair and non-discriminatory criteria for selecting the winning bid. Thus, bidding documents should:

- Encourage eligible potentially qualified firms to bid, by making reasonable demands for information and form-filling;
- Not discriminate against any potential bidder; and
- Provide a clear, objective means of evaluating the bidders.

#### IV. CONTENT OF BIDDING DOCUMENTS

Bidding documents include the following sections:

- *Invitation to Bid* is normally used to invite potential bidders to present their bids for the project at hand, and it provides a brief description of the goods or works to be procured.
- *Instructions to Bidders* provide information to bidders regarding the form, procedure and timing of bidding.
- The Bid Data Sheet specifies the parameters of the Instructions to Bidders for the
  particular procurement including source of funds, eligibility requirements, procedure
  for clarification, bid preparation form, number of copies to be submitted, language of
  the bids, pricing and currencies and currency conversion mechanism, instructions on
  modification and withdrawal of bids, bid submission procedures, closing date, bid

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validity period, opening, evaluation and award of contract procedures, procedure for correction of mathematical discrepancies in bids, purchaser's right to accept any bid and reject any or all bids; award criteria; notification of award and procedures for signing of contract.

- *Evaluation and Qualification Criteria* specifies the criteria that the Procuring Entity will use to evaluate the Bids and to qualify the lowest evaluated bidder.
- *General Conditions of Contract* sets out the general provisions of the contract between the Procuring Entity and the bidder that will be awarded the contract.
- *Special Conditions of Contract* modifies the General Conditions of Contract for the particular procurement.
- *Schedule of Supply/Works* specifies the quantities, delivery locations and dates for the items/works required by the Procuring Entity.
- *Technical Specifications and drawings* detail the characteristics of the technologies and technical services required.
- *Bidding Forms* include Bid Submission Sheet and Price Schedules, Bid Security Forms, Contract Form, Performance Security Form, Bank Guarantee Form for Advanced Payment and Manufacturer's Authorization Form.

#### V. STANDARD BIDDING DOCUMENTS

GOJ has prepared a set of Standard Bidding Documents for each type of Procurement Method and expects that all Procuring Entities, without exception, must utilize these Standard Documents according to their applicability to a particular Procurement Method.

#### A. Procurement of Goods

Annex 1 - Open Tendering - International Competitive Bidding (ICB) - Procurement of Goods

Annex 1a - Open Tendering - Standard Tender Evaluation Form - International Competitive Bidding (ICB) - Procurement of Goods

Annex 2 - Open Tendering - Local Competitive Bidding (LCB) - Procurement of Goods

Annex 2a - Selective Tendering - Local Competitive Bidding (LCB) - Procurement of Goods

Annex 2a - Open Tendering - Standard Tender Evaluation Form - Local Competitive Bidding (LCB) - Procurement of Goods

Annex 3 - Limited Tendering - Request for Quotations (RFQ) - Procurement of Goods

#### **B.** Procurement of Works

Annex 6 - Open Tendering - International Competitive Bidding (ICB) - Pre-Qualification Documents - Procurement of Works

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Annex 6a - Open Tendering - International Competitive Bidding (ICB) - Pre-Qualification Documents - Procurement of Works - User Guide

Annex 7 - Open Tendering - International Competitive Bidding (ICB) - Procurement of Works - Supply and Installation of Plant and Equipment

Annex 8 - Open Tendering - International Competitive Bidding (ICB) - Procurement of Large Works

Annex 8a, 9a - Open Bidding - Standard Bid Evaluation Form - International Competitive Bidding (ICB) - Procurement of Works

Annex 8b - Open Tendering - International Competitive Bidding (ICB) - Procurement of large works

Annex 9 - Open Tendering - Local Competitive Bidding (ICB) - Procurement of Works

Annex 10 - Selective Tendering - Procurement of Works

Annex 11 - Limited Tendering - Procurement of Minor Works

Annex 11a - Procurement of Minor Works – Evaluation Form

Annex 14 - Open tendering - Procurement of Non-Consultant Services

Annex 14A - Open Tendering - Procurement of Non-Consultant Services - User's Guide

Annex 15 - Open Tendering - Procurement of Management Services

ANNEX 15A - Open Tendering - Procurement of management services - Prequalification document

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**Sub-Section №: S-2060** 

# TECHNICAL SPECIFICATIONS FOR GOODS, WORKS AND GENERAL SERVICES

# I. <u>PURPOSE</u>

To provide guidance in preparation of technical specification for the procurement of general services, goods and works.

### II. SCOPE

This procedure applies to the preparation of Bid Documents for all procurement involving goods and works.

#### III. PROCEDURE

- 1. Specifications should be clear-cut and unambiguous to ensure that bidders respond to the precise requirements of the Procuring Entity without qualifying or conditioning their bids. In the context of Open Tenders, the specification must be drafted to permit the widest possible competition, and at the same time make a clear statement of the required standards of workmanship to be provided, standards of plant and other supplies and performance of the goods and services to be procured. Only if this is done, will the objectives of value for money, economy, efficiency and fairness in procurement be realized, responsiveness of bids be ensured and the subsequent task of bid evaluation be facilitated.
- 2. A procuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in the procurement.
- 3. In prescribing technical specifications for the goods or works being procured, a procuring entity shall, where appropriate:
  - (a) specify standards for materials, equipment, plant, workmanship and other supplies.
  - (b) specify the technical specifications, in terms of performance and functional requirements, rather than design or descriptive standards; and
  - (c) base the technical specification on international standards, where such exist; otherwise, on national technical regulation, recognized national standards or building codes. The specifications should state that other

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authoritative standards which ensure substantially equal quality to the standards mentioned will also be acceptable.

- 4. Where design or descriptive characteristics are used in the technical specifications, a procuring entity shall, where appropriate, include words such as "or equivalent" in the technical specifications and consider tenders that demonstrably meet the required design or descriptive characteristics and are fit for the purposes intended.
- 5. In the case of Procurement of Goods or the Supply and Installation of Plant and Equipment, reference to brand names, catalogue numbers or other details that limit any materials or items to a specific manufacturer should be avoided as far as possible. Where unavoidable, such item description should always be followed by the words "substantially equivalent". Technical specifications in this instance should be descriptive and give the full requirements in respect of, but not limited to, the following:
  - Standards of materials and workmanship required;
  - Details of all factory tests required (type and number);
  - Details of all work required to achieve completion;
  - Details of all pre-commissioning and commissioning activities to be performed by the Contractor; and
  - Details of all functional guarantees required and liquidated damages to be applied in the event that such guarantees are not met.
- 6. For the goods, plant and other supplies to be incorporated in the works, the specification should require that they be new, unused, and of the most recent or current models and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. For works contracts, a clause setting out the scope of works is often included at the beginning of the Specifications, and it is customary to give a list of the Drawings. Where the contractor is responsible for the design of any part of permanent works the extent of his obligations must be stated.

It is recommended that essential technical and performance characteristics and requirements, including maximum or minimum acceptable values, as appropriate, be summarized in a specific section, to be completed by the bidder and submitted as an Attachment to the bid form.

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Sub-Section №: S-2070 CONTRACT PROVISIONS IN STANDARD BID DOCUMENTS FOR GOODS, WORKS AND GENERAL SERVICES

#### I. PURPOSE

To provide guidance in preparation of contractual provisions in Standard Bid Documents for the procurement of general services, goods and works.

#### II. SCOPE

This procedure applies to the preparation of Bid Documents for all procurement involving goods and works.

#### III. CONTRACT PROVISIONS IN STANDARD BID DOCUMENTS

#### A. General Conditions of Contract (GCC)

The GCC in the bidding documents establish an accepted basis for similar procurement contracts. The GCC should not be changed by the Procurement personnel. The GCC contains:

**Operational Clauses:** These establish the relationship between the Procuring Entity and the suppliers/contractors and contain information regarding:

- Definitions;
- Rights and obligations of both parties;
- Procedures for shipment and documentation;
- Delivery and transfer of risk;
- Terms and currencies of payment;
- Mode and form of dispute settlement;
- Governing language;
- Applicable law.

**Protective Clauses:** These establish protection against various risks and allocate them between the parties. They include instructions on:

- Performance security;
- Retention of payments;
- Insurance;
- Inspection and tests;
- Warranty;
- Protection against third party infringement suits;

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- Force Majeure;
- Tax Compliance Certificates the bidder is required to provide a valid Tax Compliance Certificate, upon tendering;
- Contractor's Levy: A contractor's levy in the amount of 2% is to be deducted from the gross value of contracts in sum above \$1,000.00 for construction, haulage and tillage, in accordance with the Contractor's Levy Act. Procuring Entities should refer to the Schedules to the Act in Section 2 for detailed list of activities subject to levy.

Amounts deducted must be remitted to the Inland Revenue Department within (14) fourteen days of the end of the month in which collected.

**Variations:** Unforeseen or planned changes during the life of the contract are identified and provided for under these parts of the GCC. They cover the following:

- Quantity changes;
- Adverse physical conditions;
- Price adjustments;
- Changes in delivery requirements.

**Remedies:** These clauses deal with the breach of contract by one of the parties. They include provisions on:

- Forfeiture of performance security;
- Procedure for damages, penalties for delay;
- Procedure for suspension and termination;
- Non-payment or failure to provide required approvals and information.

#### **B.** Special Conditions of Contract

The Special Conditions of Contract are meant to assist the Procuring Entity in providing contract specific information relating to corresponding clauses in the General Conditions of Contract. The provisions of the Special Conditions of Contract complement the General Conditions of Contract, specifying contractual requirements linked to the special circumstances of the particular procurement of the goods, works or services to be purchased. In preparing the Special Conditions of Contract, the procurement personnel should take into consideration the following aspects:

- Information that complements provisions of the General Conditions of Contract must be incorporated; and
- Amendments and/or supplements to the provisions of the General Conditions of Contract, as necessitated by the specific circumstances of the purchase must also be incorporated.

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Where there is a conflict between the provisions of the General Conditions of Contract and those of the Special Conditions of Contract, the provisions of the latter prevail.

# C. <u>Contract Securities</u>

Contract securities are used to ensure that suppliers/contractors will perform their contractual obligations when an award is made after the procurement process is carried out. Securities include: bid and performance securities and advance payment securities. These may be provided in the form of a bank guarantee or irrevocable Letter of Credit, manager's check or certified check or an insurance certificate.

# **Bid Security**

Bid securities are required as a condition of contract for the bid. It assures compensation to the Procuring Entity for the time and money lost if the successful bidder fails to honour his bid and enter into contract. Bid securities up to 2% of the contract price are acceptable. The procuring entity may set the bid security at a fixed sum to encourage participation if this range is likely to be prohibitive. The bid security should remain valid beyond the bid validity period, as prescribed in the respective bid documents. A sample form establishing the acceptable wording is included in the bidding documents. The bid security should be released upon:

- The end of the bid validity period, unless extended;
- Notice to the successful bidder of contract award; and
- Receipt of the successful bidder's signed contract and performance security.

#### Performance Security

Performance securities are required as a condition of contract validity. They guarantee the contractor's obligations under the contract and should always be required where the contract value follows within the specified range. The amount of the security should be 10% of the contract price. The contract should define clearly the kind of defaults that would lead to the surrender of the performance security. Where there is no default, the performance security must be discharged after completion of the contract and expiration of the warranty period.

#### **Advance Payment**

Advance payment security guarantees advance payment made by the Procuring Entity against the contractor's default. They are in the form of a bank guarantee or irrevocable letter of credit for an amount equal to the advance payment and are normally redeemable on demand.

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Where advance payments are to be made, these will only be allowed upon presentation of an advance payment security. No advance payment shall be made without provision of a surety in the full value of the advance.

All Ministries, Government Agencies and Public Enterprises in respect of contracts awarded by competitive tender will undertake the payment of mobilization of ten percent (10%) of contract sum. In cases where nominated sub-contractors are engaged on the project, the overall limit will be fifteen percent (15%). These limits may be adjusted in special cases but must have the prior approval of the Cabinet. In no event shall the main contractor retain mobilization payments in excess of the amount calculated as he would if he were the sole contractor, unless by special arrangements between himself and the nominated sub-contractor.

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**Sub-Section №: S-2080** 

# OVERVIEW OF PROCUREMENT METHODS FOR GOODS, WORKS AND GENERAL SERVICES

# I. PURPOSE

To provide guidance to Procuring Entities on procurement methods for general services, goods and works.

# II. SCOPE

This procedure applies to all procurement of goods and works.

# III. PROCEDURE

The choice of the procurement method depends on its nature and size with which the goods or works to be procured are required.

The purpose of Open Tendering is to give all eligible and qualified prospective bidders, adequate and timely notification of the Procuring Entity's requirements and to give them equal access and a fair opportunity to compete for contracts for required goods and works.

Open Tendering requires formal bid documents that are fair, non-restrictive, clear and comprehensive. The bid documents and technical specifications relating to the project should clearly describe the criteria and methodology for evaluation of bids and selection of the successful bidder. Registration of foreign bidders should not be a requirement for bidding from the onset under Open Tendering procedures. However, the successful bidder will have to be registered before the award of contract. Consequently the winning supplier shall not be denied registration on grounds unrelated to the bidder's ability to perform the contract. Likewise, this approach shall also be applicable where the subject of procurement requires a successful bidder to establish a local agency or representation. For instance, the supplier of a large fleet of equipment may have to establish service or spare parts facilities needed to maintain the procured equipment.

Bids should be opened at a time and place specified in the bid documents and data sheets, in the presence of the bidders or their representatives who wish to be present. The name of the bidder and total amount of each bid, and of any alternative bids if they have been requested or permitted, should be read aloud and recorded when opened.

Under Open Tendering procedures The Procuring Entity should award the contract within the period of validity of the bids to the bidder whose bid has been determined to be the lowest evaluated responsive bid. Such a bidder must also meet the appropriate standards of capability and financial resources. A bidder should not be required, as a condition of

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award, to undertake responsibilities for work not stipulated in the specifications or to modify his/her bid.

Open Tendering covers both International Competitive Bidding and Local Competitive Bidding as per the requirements of contract value thresholds.

#### A. Types of Open Tenders

## Single Stage Tender

Procurement using Open tendering methods can follow either a one-stage or two-stage bidding process. In a one-stage process, the Procuring Entity prepares a bid document with, among other things, detailed functional and technical requirements. In response, suppliers submit bids containing their technical and financial proposals at the same time. The Procuring Entity then evaluates each bid and awards the contract to the lowest evaluated bidder, according to the method and criteria specified in the bidding documents.

# Two Stage Tender

In a two-stage process, the Procuring Entity prepares a first stage-bidding document with functional performance specifications, rather than detailed technical specifications. In response, bidders offer un-priced technical proposals (i.e., no financial proposal is submitted at this time). The Procuring Entity then:

- Assesses the suppliers' qualifications;
- Evaluates the technical proposals;
- Indicates to the suppliers precisely what must be done to make their bid technically responsive.

Following the first stage evaluation, the Procuring Entity prepares the memoranda of changes for each bidder and may prepare addenda to the bidding documents, including revisions to the technical requirements made in the light of the first stage technical evaluation, and initiates the second stage bidding process. During the second stage bidding process, bidders offer amended bids containing their final technical proposal and a financial proposal. The Procuring Entity then evaluates the combined proposals (technical and financial) according to the method specified in the bidding documents.

The two-stage process provides the Procuring Entity the ability, during the technical offer submission stage, to interact extensively on technical matters with bidders than is permissible in a one-stage process. In this way, the Procuring Entity can learn from the market and adapt its requirements. In addition, a two-stage process allows the Procuring Entity (in the technical offer stage) to state its requirements in more general functional terms than the detailed technical requirements necessary to carry out a one-stage process.

One-stage processes are most appropriate for relatively straightforward procurement of

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fairly standard technologies and ancillary services. In contrast, the additional capacity to review technical proposals, revise technical requirements and interact directly with the suppliers during the first stage make the two stage process much more suitable for the procurement of goods such as complex information systems and procurements which involve extensive technical services.

## **Two-envelope Bidding System**

This involves the bidder submitting both pre-qualification documents and tender documents at the same time. The two-envelope bidding system is used when time does not allow a separate pre-qualification exercise before tendering. The pre-qualification document and the tender document should be in individually sealed and labelled envelopes and submitted in a sealed package. The first envelope should contain pre-qualification information and the second envelope should contain the tender.

When the tenders are received, one envelope should contain the pre-qualification documents. This envelope should be opened and the pre-qualification exercise carried out before opening the other envelope that will contain the tender. Where bidders are pre-qualified, the second envelope containing the tenders will be opened and evaluated.

Since this method requires contractors to compile tenders without any guarantee that their tenders will be considered it should only be used when absolutely necessary because of insufficient time.

#### B. Framework Agreements (FAs)

Under FAs a supplier commits to provide a purchaser a supply of goods and related services "as and when" required and on a pricing basis and under terms and conditions stated in the FA. A Framework Agreement is not a contract. Any call-up made against a FA is an acceptance by a purchaser of the terms and conditions of the FA. It is therefore the call-up, which forms the contract.

Framework Agreements can be made between:

- 1. Single supplier and single purchaser.
- 2. Single supplier and multiple purchasers.
- 3. Multiple suppliers and single purchaser.
- 4. Multiple suppliers and multiple purchasers.

FAs should be used when the overall requirements are known, but the specific quantity and delivery date of any particular good may not be known. In this situation, bids may be

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solicited to select a supplier to provide the necessary goods as and when they are required.

The bid documents must state that the Procuring Entity does not necessarily intend to immediately or ever enter into a contract. Rather, the intention is merely to establish the best source of a future supply, based upon firm prices and predetermined conditions over a specified validity period.

Note that care must be taken when providing the supplier(s) with an estimated quantity of goods and related services. In general, suppliers will quote lower prices if there is a reasonable possibility that a firm amount will be ordered. Ideally, the bid documents should provide suppliers with the minimum estimated quantity, which may be ordered. Until an actual call-up document is issued, no guarantee should be given that any amount will be ordered. Should a FA be so worded, the supplier may remain free to withdraw from the FA under certain predetermined conditions. The supplier would then have no further obligation to fill orders, which are issued after the agreed withdrawal date.

The following criteria should be satisfied to establish a Framework Agreement with a supplier:

- The repetitive requisitioning technique will result in reduced administrative costs;
- The goods and related services are clearly identified;
- The goods and related services are commercially available;
- The use of existing industry distribution facilities will eliminate the need to warehouse large inventories;
- The prices can be predetermined and are firm.

FAs should have the following characteristics:

- FAs should be used to supply off-the-shelf, readily available products. Only quantities and delivery dates cannot be determined in advance;
- Unit prices should be established as a result of a competitive bidding process;
- Delivery dates should be stipulated in terms of a time period from the date of the callup;
- The total value of a FA need not be funded. Only individual call-ups must be funded;
- A limit on total expenditure should be stipulated in the FA;
- Limits on individual call-up expenditures should be stipulated in the FA;
- The FA validity period must be stipulated. Usually, FAs are valid for at least twelve (12) months. The period of validity should be the expiry date or when the limit on total expenditures is reached, whichever comes first;
- For multi-year FAs, there may be a clause allowing for a price increase due to inflation;

When a call-up against a FA is done, it should be ensured that the call-up shows the exact quantity and description of the required goods and related services, the packing and

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routing instructions, the delivery points and dates, and confirm the unit price and total price of the call-up, including freight.

The supplier should be requested to acknowledge receipt of the call-up.

GOJ may enter into framework agreements on an annual basis for the supply of commonly used disposable goods and services e.g. GOJ Framework Agreement for the Supply of Fuel. These agreements may be entered into by the Ministry of Finance on behalf of GOJ and reflected in an annual GOJ Schedule of Framework Agreements ("Schedule"). Contracts awarded will be in respect of goods and services for the following entities:

- Central Government Ministries;
- Central Government Departments; and
- Any other procuring entity, at its option.

Applicable procedures are contained within the Schedule, which is disseminated to procuring entities one month prior to the start of each fiscal year.

# C. <u>Pre-qualification of Bidders under Open Tendering</u>

Pre-qualification is common for large works, civil works, turnkey plants, Build-Own-Transfer (BOT), some special goods and complex information technology systems. However, pre-qualification is not generally needed for vehicles, PC supply and ordinary goods.

Pre-qualification is aimed at ensuring that only contractors and suppliers who have the required experience, technical and financial resources bid for a contract.

Pre-qualification screens potential bidders and is designed to provide the following benefits:

- Unqualified bidders save the cost of bid preparation which results in lower overhead costs to them and presumably lower bid prices in the long run, to the benefit of the Procuring Entity;
- Leading contractors and suppliers, particularly the international ones, are more likely to bid knowing that competition is confined to only those qualified. This is also to the benefit of the Procuring Entity;
- The scale of interest by potential bidders can be measured, affording the opportunity to revise bidding conditions as necessary to develop adequate competition;
- The evaluation of only bids from qualified bidders may result in time and cost savings to the Procuring Entity, as well as a reduction (or elimination) of the threat of pressure being applied by marginally or unqualified bidders for their low prices to be considered:
- An early indication of the Procuring Entity's procurement capability is provided, allowing necessary improvements to be made at the initial stages of procurement;
- The creation of appropriate joint ventures is encouraged;

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• Providing assistance in locating financing.

However, pre-qualification has some potential disadvantages:

- It may increase procurement lead time, although this can be minimized by good procurement scheduling, e.g. undertaking the process while bid documents are in preparation;
- Names of all pre-qualified bidders are known in advance of bid submission, making it
  easier for bidder collusion and price fixing to occur. (To counter this situation, bid
  documents could restrict the pre-qualified bidders from submitting joint bids).

Pre-qualification should not be used to limit competition to a predetermined number of potential bidders. All applicants who have the qualifications to perform the proposed contract should be pre-qualified and bidding documents made available to all those who pre-qualified. No upper limit should be imposed on the number of pre-qualified potential bidders, but, if the pre-qualified applicants are too few to ensure competition, a reassessment of the situation can be carried out. This includes:

- Further advertising for pre-qualification submission;
- Extension of the deadline for applications;
- Review of the proposed contract conditions to reduce contractors' risks:

Pre-qualified bidders are invited to submit bids, which are eventually evaluated. The Procuring Entity is required to award the contract to the bidder offering the lowest evaluated responsive bid. The Procuring Entity should ask bidders to confirm and update essential pre-qualification information at the time of bid submission. The lowest apparent evaluated responsive bidder may be denied the contract if evaluation of the updated information indicates that the bidder no longer possesses the necessary capabilities. This could occur because of changed financial situation, loss of equipment or key personnel or lack of capacity because of new contract commitments on the bidder's part.

# D. <u>Contractor Registration and Classification</u>

Contractors desiring participation in public sector procurement opportunities must be registered with the NCC. Qualification requirements for government-approved status include documented proof that applicants are capable of satisfactory performance in the categories and grades within which they apply to be registered, i.e., carrying out the work, delivering the goods, providing the services or installing equipment. Contractors interested in providing goods and services, including construction works, to the government may contact the NCC for further information.

Evaluation criteria for registration shall include the following:

Experience;

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- Professional qualification(s);
- Performance record;
- Legal capacity to enter into contract;
- Tax compliance
- Capacity (managerial, technical and financial, as necessary).

Registration with the NCC does not automatically guarantee participation in public sector procurement opportunities. Pursuant to the terms and conditions for participation in particular procurement opportunities, procuring entities may require that contractors demonstrate eligibility in accordance with stated criteria, which shall relate only to performance, experience, professional qualification, technical, managerial and financial competence, and tax compliance. All government entities that engage in procurement activities are required to utilize the GOJ registers, except in the following circumstances:

- No qualified firm in the particular discipline desired has been registered; or
- No response to tender or proposal invitation is received
- Where open tendering is utilized

The GOJ registers of approved contractors shall be the sole such documentation for use by procuring entities in verifying a contractor's "GOJ-approved status." However, contracts with an estimated value of over **J\$150M**, shall require a pre-qualification process.

## E. Debarment, Suspension and Ineligibility

A contractor may be disqualified and/or stricken from the registers of approved contractors, without liability to GOJ, if it is found, at any time, that the information submitted concerning the qualifications of the contractor was deliberately false. Procuring entities should promptly report any such findings, along with any evidence and the reason(s) for its findings of falsification, to the NCC.

A contractor may be disqualified, suspended or stricken from the registers of approved contractors, without liability to GOJ, for reasons of poor performance, pursuant to the contract documents. Procuring entities shall promptly report any such findings, along with any evidence and the reason(s) for its findings to the NCC.

#### F. Overseas Procurement or Foreign Purchases

Procuring Entities should ensure that the Customs Entry document (C78) is imprinted with an official GOJ stamp, said activity to be performed by the Accounting Officer/Head of Entity or by a senior officer to whom the Accounting Officer/Head of Entity has delegated this authority, and countersigned and stamped by the designated officer(s) in the Ministry of Finance– Asset Management Unit (AMU).

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The Commissioner of Customs and the Ministry of Finance (AMU) should be informed of the names / addresses of the Customs Broker(s) authorized to effect port of entry clearances on Procuring Entities' behalf.

# G. <u>Tax Compliance Requirement for Foreign Contractors</u>

Where the contract will require the performance of any part of the works or service in Jamaica, the foreign contractor will be required to obtain a valid Tax Compliance Certificate to be eligible for award.

The application requirement may be obtained from the Inland Revenue Department.

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**Sub-Section №: S-2090** 

# BID OPPORTUNITY ADVERTISING FOR GOODS, WORKS AND GENERAL SERVICES

# I. PURPOSE

To establish the procedures for Bid Opportunity advertising for the procurement of general services, goods and works.

# II. SCOPE

This procedure applies to all procurement of goods works and general services.

# III. PROCEDURE

Timely appropriate notification of procurement opportunities for general services, goods and works is essential for economic and efficient project execution and is the basis for eliciting maximum competition with fair opportunities for all eligible bidders.

Advertising and other publication guidelines are contained in the procedures at the various contract value threshold levels.

Contract award data is available in print from the NCC and the website at <a href="https://www.ocg.gov.jm">www.ocg.gov.jm</a>

## IV. TIME LIMITS

Threshold	Procurement Method	Advertising Requirement	Minimum Time Allotted to Bid Submission
Contracts in excess of JA \$150 million	Open Tender	Yes – local and international magazines	Minimum 45 days. For large complex projects might be a long as three months.
Contracts above JA \$30 million to JA \$150 million	<b>Selective Tender</b>	Yes - through a general advertisement in daily newspapers	Minimum 30 days
Contracts above JA \$10 million to JA \$30 million	Selective tender	Yes - through a general advertisement in daily newspapers	Minimum 21 days
Contracts above JA \$3 million to JA \$10 million	Selective tender	Yes - through a general advertisement in daily newspapers –	Minimum 14 days

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Contracts above JA\$275,000 to JA\$3 million	Limited Tender	No – invitation of 5 local suppliers	N/A
Contracts up to JA \$ 275,000	Limited tender	No – invitation of 3 local suppliers	N/A

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**Sub-Section №: S-2100** 

# PROCUREMENT NOTICES FOR GOODS, WORKS AND GENERAL SERVICES

# I. <u>PURPOSE</u>

To establish the procedures for the content of Procurement Notices for the procurement of general services, goods and works.

# II. SCOPE

This procedure applies to all procurement of general services, goods and works.

# III. PROCEDURE

A Procurement Notice for each procurement package requiring advertising should be issued. Procurement Notices are issued either as a public Invitation for Pre-qualification, or in the absence of pre-qualification, as an Invitation for Bids. Procurement Notices should provide adequate notification of specific contract opportunities or Invitation for Bids (IFB).

If there has been pre-qualification, the Procuring Entity shall send the Invitation for Bid (IFB) and bidding documents only to the pre-qualified potential bidders, with notification of their successful pre-qualification. No additional notices or any advertising for bidding are required or should be issued under these circumstances.

An Invitation for Bids (IFB) contains information concerning:

- The name of the project and/or the title of the contract;
- The name of the Procuring Entity responsible for the particular procurement;
- Items/works to be procured;
- Contact information for obtaining bidding documents;
- Cost of the bidding documents;
- Place and deadline for bid delivery;
- Required bid security amount and form;
- The place, date and time of bid opening;
- For complex procurement, the minimum qualifications that bidders must meet. An invitation for pre-qualification includes similar information including the place and deadline for submission of the Application to Pre-qualify.

A sample of a Procurement Notice for General Services, Goods and Works follows.

# PROCUREMENT NOTICE SAMPLE FORMAT FOR INVITATION FOR BIDS (GOODS & WORKS)

The [insert name of Procuring Entity] intends to apply a budgetary allocation to payments under a contract for [insert name/no. of contract]. The [insert name of Procuring Entity] now invites sealed bids from eligible bidders for [insert description of goods or works to be procured].<sup>2</sup> The delivery/construction period is [insert No. of days/months/years or dates].<sup>3</sup>

Bidding will be conducted through the International/National (as applicable) Competitive Bidding procedures as per GOJ Procurement Guidelines as specified in the Handbook for Public Sector procurement (insert date of NCC issuance), and is open to all eligible NCC registered bidders (or from eligible source countries<sup>4</sup>).

Interested eligible bidders may obtain further information from and inspect the bidding documents at the [insert name of Procuring Entity] at the address below [state address at end of document] from [insert office hours].<sup>5</sup> A complete set of bidding documents in may be purchased by interested bidders on the submission of a written application to the address below and upon payment of a nonrefundable fee<sup>6</sup> of [insert amount in local currency] or in [insert amount in specified convertible currency]. The method of payment will be [insert method of payment].<sup>7</sup> The document will be sent by [insert delivery procedure].8

Bids must be delivered to the address below by [insert time and date]. All bids must be accompanied by a bid security of [insert amount in local currency or minimum percentage of bid price] or an equivalent amount in a freely convertible currency. Late bids will be rejected. Bids will be opened in the presence of bidders' representatives who choose to attend at the address below<sup>10</sup> at [insert time and date].

[Insert name of office], [Insert name of officer], [Insert postal address and/or street address] Tel: [Indicate country and city code], Fax: [Indicate country and city code], E-mail:

A brief description of the type(s) of goods or works should be provided, including quantities, location of project, and other information necessary to enable potential bidders to decide whether or not to respond to the invitation. Bidding documents may require bidders to have specific experience or capabilities; such restrictions should also be included in this paragraph.

Insert this sentence if applicable.

If ICB.

For example, 0900 to 1200 hours.

The fee, to defray printing and mailing/shipping costs, should be nominal.

For example, cashier's check, direct deposit to specified account number with Bank specifics, etc.

The delivery procedure is usually courier dispatch.

The amount of bid security should be stated as a fixed amount or as a minimum percentage of the bid price. Alternatively, if a bid security is not required (often the case in supply contracts), the paragraph should so state.

The office for bid opening may not necessarily be the same as that for inspection or issuance of documents or for bid submission. If they differ, each address must appear at the end of the notice and be numbered; as, for example, (1), (2), (3). The text in the paragraph would then refer to address (1), (2), etc. Only one office and its address may be specified for submission, and it should be near the place where bids will be opened.

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**Sub-Section №: S-2110** 

# BID OPENING PROCESS FOR GOODS, WORKS AND GENERAL SERVICES

# I. PURPOSE

To establish the procedures for Bid Opening for the procurement of general services, goods and works.

#### II. <u>SCOPE</u>

This procedure applies to all procurement of general services, goods and works.

## III. PROCEDURE

All Procuring Entities must make adequate provision for receiving bids as follows:

- 1. Specify a clear address for submission of bids including a contact name and room number;
- 2. Bidders submitting bids prior to the submission deadline must sign the Bid Receipt Record, indicating the date and time the bid was received, the number of packages received and a tender number must be written on the outside of the bid envelope; and
- 3. Bids received prior to the submission deadline must be deposited in a Tender Box and access must be restricted to the Tender Officer only. However, bids may be secured in a safe or vault temporary in the event the Tender Box was not placed in the area for bid deposit when the tender was received. In this case only the Tender Officer should handle the bid and circumstances appropriately documented.

Adequate procedures should be in place to allow the bidders' representatives who wish to attend the opening of bids at the allotted place and time.

The opening of bids should take place within fifteen (15) minutes after the deadline for submission or as soon as possible thereafter and the following must be addressed:

- 1. An accessible room of suitable size, specified in the bid documents, must be reserved for the opening of bids;
- 2. The bid opening exercise should be chaired by the Tender Officer and at least two (2) other representatives from the Procuring Entity;
- 3. All bidders' representatives present at the opening must sign a register of attendance (Bid Opening Record);

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- 4. All bids received should be placed on a table and the number of bid envelopes must be consistent with the Bid Receipt Record. If there is a discrepancy NO bids must be opened until the discrepancy is resolved and all bids received are in the room;
- 5. The envelopes received should be grouped into the following categories:
  - Bids received prior to the submission deadline;
  - Modifications received prior to the deadline;
  - Withdrawals received prior to the deadline;
  - Bids, modifications and withdrawals received after the deadline.

A checklist of the items to be inspected and recorded for each bid as it is opened is included in the Bid Opening Record.

## IV. OPENING PROCESS

- 1. Bids, modifications and withdrawals received after the deadline must not be opened. The outer envelope of these late bids and modifications should be opened and the names of the bidders submitting late bids or modifications read out and recorded. The inner envelopes of all late submissions must be returned unopened to the respective bidders; Bids should be opened within fifteen (15) minutes after the close of tender or as soon as possible thereafter.
- 2. Withdrawal notices received prior to the deadline should be opened next and read out and recorded. Bids subject to a withdrawal notice must not be opened and must be returned unopened to the respective bidders;
- 3. All bids and modifications received prior to the deadline must be opened next. For each bid opened the items on the Checklist for Opening of Bids should be checked and read out aloud;
- 4. The bidders' names, bid withdrawal or modification, bid price, discounts, alternatives, the presence or absence of requisite bid security, should be announced and recorded at the opening;
- 5. The comparative estimate should be made public at the tender opening and figure recorded on the Bid Receipt Record.
- 6. It is important for all discounts and alternatives to be read out. Bid prices and discounts which are not read out at bid openings cannot be considered in the subsequent evaluation;
- 7. No bid shall be rejected or an opinion/judgement voiced as to its responsiveness, at the bid opening, except for late bids;

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- 8. The Procuring Entity must prepare a report of the bid opening exercise, as per the Bid Opening Report format provided. This report should be completed as soon as possible after the bid opening; and
- 9. All bids that were opened must immediately be stored safely and confidentially and be made available only to those directly involved in the evaluation process or the Procurement Committee as the procurement method thresholds so dictate.

# **Bid Receipt Record** Procurement of: Bid Submission date and time: Bid Opening date: Bid Opening Location: Number Time **Date** Bidder **Signature** of **Packages** Name of Tender Officer

# **Bid Opening Record**

Project	
Project Number	
Location	
Tender Closing Date	
Tender Opening Date	
Comparable Estimate	

# Tenders Received

			Responsiveness to Tenders				
Tend No.	ler	Name of Bidder	Amount of Tender (s)	NCC Registration	TCC	(Any Other Requirements)	Remarks

# Persons Present at Tender Opening

Name	Signature	Representing

Tender Officer (Signature)

(Make a statement to all Bidders that the evaluation process is confidential and any attempt by a Bidder or its agents to influence the Client's evaluation of bids or award decisions, including the offering or giving of bribes, gifts or other inducement, could result in the invalidation of its bid. All contact with Bidders will be for the purpose of clarification and will be initiated by the Purchaser in writing.)

# Project: Contract Name: Bidder's Name: Number of tender [specify receipt number] Time received [specify date and time] Withdrawal notice: Yes No [If "yes", specify date and time] Modification notice: Yes No [If "yes", specify date and time] Tender amount [in currency/currencies tendered]: Discounts [if yes, specify] Alternatives [if yes, specify] Tender Security [if yes, state amount] **REMARKS**:

**Checklist for Opening of Bids** 

<u> </u>

# **Bid Opening Report**

- 1. Time and place for Bid opening:
- 2. Client's representatives present: (names and titles)
- 3. Bidder's representatives present (attach attendance sheet):
- 4. Number of bid receipts and number of bids on the table:
- 5. Any bids received late:
- 6. Withdrawal notices:
- 7. Modification notices:
- 8. Bid details for each bid as opened: As per attached Table A.
- 9. Comments from the floor (provide brief description)

(A copy of the Bid Opening Report should be forwarded to the Ministry of Finance and the Office of the Contractor General.)

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**Sub-Section №: S-2120** 

# EVALUATION PROCESS FOR GOODS, WORKS AND GENERAL SERVICES

# I. PURPOSE

To establish the procedures for Bid Evaluation for the procurement of general services, goods and works.

#### II. <u>SCOPE</u>

This procedure applies to all procurement of general services, goods and works.

## III. PROCEDURE

# A. General

Bid Evaluation is a critical step in the procurement cycle. Bid evaluation is the step that is most easily manipulated if one wants to favour a particular bidder. Thus, all Procuring Entities' Bid Evaluation Committees and Procurement Personnel are advised to strictly adhere to the procedures provided in this Handbook.

The basic sequence for bid evaluation is the same for all general services, goods and works, and consists of the following steps:

- Preliminary examination;
- Determination of bid responsiveness;
- Correction of arithmetic errors;
- Conversion to common currency:
- Quantification of omissions and deviations;
- Application of evaluation criteria;
- Comparison of bids; and
- Preparation of evaluation report.

#### **B.** Evaluation Committees

Each Procuring Entity is responsible for establishing Evaluation Committees which will be appointed in accordance with the procurement methods and thresholds and/or procurement personnel for contracts. Committees should be constituted based on the type of procurement and the relevant expertise required for undertaking the assignment.

Evaluation Committees are responsible for the evaluation and comparison of the bids received and for the preparation of the Bid Evaluation Report. Evaluation Committees are required to follow the steps outlined below.

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#### a. Preliminary Examination

The bid examination phase begins during the public bid opening with a preliminary examination of the bids. After the bid opening has been completed, as its first step in the evaluation, the committee should make a thorough examination of all responsive bids received.

The preliminary examination of bids determines whether the bids meet the general procedural requirements of the bidding documents. In particular, the Committee should examine bids for compliance with the following requirements, using the bidding documents as the reference point:

- The Bid should be signed properly by an authorized party, including the Power of Attorney if stipulated and are generally in order;
- Bid securities should be in acceptable format as required by the Bidding Documents and should be for a suitable amount and duration;
- Bid packages should contain all required documents including supporting evidence of bidder eligibility and qualifications;
- Changes should be initialled;
- The mathematical calculations should be properly computed if not, corrections should be made; and
- Bids should be complete and the quoted prices should be for all items in a Lot or a Package if so stipulated in the bidding document.

The purpose of this examination is to eliminate any bids from further and more complicated consideration if they do not meet the minimum standards of acceptability as set out in the bidding documents and are therefore not substantially responsive. However, all Committees should exercise reasonable judgment in applying these tests and should avoid rejecting bids on trivial procedural grounds. For example, if the bidding documents stipulate that each page of the bid should be signed or initialled and a bidder failed to initial one or more pages of supporting information, this should not be a ground for bid disqualification. Furnishing one extra or one less copy of bids, than the required number of bid copies, or not using the form supplied in the bid document, but providing bid prices on a similar form on the bidder's own letterhead would also be minor discrepancies. These can be rectified through the clarification process without giving any benefit to the bidder and without prejudice to the interests of other bidders and need not be causes for rejection. Such discrepancies should be noted, however, and decisions about their acceptance or rejection should be recorded in the bid evaluation report.

The following checks should be applied during the Preliminary Examination:

i. <u>Verification</u>: Attention should be directed toward deficiencies that, if accepted, would provide unfair advantages to the bidder. Sound judgement must be used: for example, simple omissions or mistakes arguably occasioned by human error should not be grounds for rejection of the bid. Rarely is a bid perfect in all respects. However, the validity of the bid itself, for example, its signatures, must not be in

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question. If the bidder is a joint venture, the joint venture agreement must be submitted; if the bidder is an agent, an authorization from the supplier or manufacturer must be provided in addition to any documentation required of the supplier or manufacturer itself. All copies of the bid should be compared with the original and corrected accordingly, if necessary. Thereafter, the original should be kept in a safe location, and only copies should be used in evaluation.

- ii. <u>Eligibility</u>: The bidder, (including all partners of a joint venture and sub-contractors), must be a legal (juridic) entity. The bidder (including all members of a joint venture and subcontractors) may be disqualified if affiliated with a firm that has provided related consulting services on the project.
- iii. <u>Bid Security</u>: The bidding document may require submission of a bid security. If so, the bid security must conform to the requirements of the Bidding Documents, and it must accompany the bid. If the bid security is issued as a bank guarantee, it must be consistent with the wording of the bid security form provided in the bidding document. Furthermore, securities for an amount smaller or for a period shorter than the one specified in the Bidding Documents are not acceptable. The security for a bid submitted by a joint venture should be in the name of all of the partners of the joint venture.
- iv. Completeness of Bid: Unless the bidding documents have specifically allowed partial bids, i.e. permitting bidders to quote for only select items or for only partial quantities of a particular item, bids not offering all of the required items should be considered non-responsive. However, under works contracts, missing prices for occasional work items are considered to be included in prices for closely related items elsewhere. If any erasures, interlineations, additions, or other changes have been made, they should be initialled by the bidder. They may be acceptable if they are corrective, editorial, or explanatory. If they are not, they should be treated as deviations and should be analyzed as per paragraph (e) below. Missing pages in the original copy of the bid may be cause for rejection of the bid, as may contradictions in model numbers or other designations of critical supply items.
- v. <u>Substantial Responsiveness</u>: Major deviations to the commercial requirements and technical specifications are a basis for the rejection of bids. As a general rule, major deviations are those that, if accepted, would not fulfil the purposes for which the bid is requested, or would prevent a fair comparison with bids that are properly compliant with the bidding documents. Examples of major deviations include:
  - Stipulating price adjustment when fixed price bids are required;
  - Failing to respond to specifications by offering instead a different design or product that does not offer substantial equivalence in critical performance parameters or in other requirements;

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- Phasing of contract start-up, delivery, installation, or construction not conforming to required critical dates or progress milestones;
- Sub-contracting in a substantially different amount or manner than permitted;
- Refusing to bear important responsibilities and liabilities allocated in the bidding documents, such as performance guarantees and insurance coverage;
- Taking exception to critical provisions such as applicable law, taxes and duties, and dispute resolution procedures;
- Those deviations that are specified in the Bidding Documents as requiring rejection of the bid (such as, in the case of works, participating in the submission of another's bid other than as a sub-contractor).

Bids that offer deviations may be considered substantially responsive, at least as to the issue of fairness, if the deviations can be assigned a monetary value that would be added as a penalty during the detailed evaluation process and if such deviations would be acceptable in the eventual contract.

The results of preliminary examination should be presented in the Bid Evaluation Report. If the bid fails preliminary acceptance, the reasons must be clearly explained as necessary. Evaluation Committees may find it useful to include additional tables for itemization of responsiveness to a list of technical or commercial specifications.

The following examples are considered to be non-material deviations and would be permissible in a "substantially-responsive" bid:

- A bid offering delivery at a date slightly different from that indicated in the Bid Documents, unless it is later than an absolute cut-off date that is clearly stated as such in the bidding documents;
- A bid with a fixed price in response to bidding documents calling for bidders to submit prices subject to price adjustment (the reverse situation, i.e. a submitted price subject to adjustment when a fixed price is called for, would normally not be permissible);
- A bid requesting changes in the coefficient of the price adjustment formula specified in the bidding document or seeking a ceiling for the price adjustment;
- A bid having minor deviations in payment terms;
- A bid offering alternative goods that are equal or superior in specifications and performance, unless the bid documents explicitly prohibit consideration of any alternatives:

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- A bid which meets all performance criteria of a works plant, but not dimensional provisions that do not affect performance or the utility for the purpose intended;
- A bid which offers goods with minor deviations from the technical specifications which do not affect the suitability of the goods for the intended use (deviations which affect the efficiency or performance should be evaluated for purposes of comparison);
- A bid which offers the equipment specified but has omitted minor attachments and components, e.g. a tool kit. However, the Evaluation Committee must quantify this deviation in monetary terms during the detailed evaluation process prior to comparing such bid with the other bids.

# b. **Detailed Examination of Bids**

The preliminary examination stage of bid evaluation described above is aimed at making sure that the bids received are substantially responsive. A substantially responsive bid is one that conforms to all the terms, conditions and specifications in the bidding documents without material deviations, reservation or omission. After the preliminary bid evaluation stage, the bids are taken through a detailed evaluation in order to select the bidder whose bid not only complies with the technical requirements in bidding documents, but also offers the lowest price. During the bid evaluation period GOJ require that all Evaluation Committees strictly adhere to the following principles:

- Ensure that the bid evaluation process is strictly confidential;
- Reject any attempt or pressure to distort the outcome of the evaluation;
- Reject any proposed action likely to lead to fraud and corruption; and
- Strictly apply only the evaluation and qualification criteria specified in the bidding documents.

Only those bids meeting the preliminary examination requirement need to be examined in this phase.

i. Corrections for Errors: The methodology for correction of computational errors is described in the Bidding Documents. Bids should be checked carefully by the Procurement Committee for arithmetic errors in the bid form to ensure that stated quantities and prices are consistent. The quantities should be the same as stated in the bidding document. The total bid price for each item should be the product of the quantity and the quoted unit price. If there is a discrepancy, the quoted unit price shall govern in the recalculation. Prices spelled out in words shall take precedence over numeric quotations in case of differences. The read-out bid prices and their corrections should be noted. The corrections are considered binding on the bidder. Unusual or large corrections that could affect the comparative ranking of bids should be explained. The Procurement Committee should correct all arithmetic errors and notify each bidder of the detailed changes. The Bidder must accept such arithmetic corrections or its bid will be rejected.

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- ii. <u>Corrections for Provisional Sums</u>: Bids may contain provisional sums set by the Procuring Entity for contingencies. As these sums are the same for all bids, they should be subtracted to allow for a proper comparison of bids in subsequent steps.
- iii. Modifications and Discounts: In accordance with the Bidding Documents, bidders are allowed to submit, prior to bid opening, modifications to their original bid. The impact of modifications should be fully reflected in the examination and evaluation of the bids. These modifications may include either increases or discounts to the bid amounts that reflect last-minute business decisions. Accordingly, the original bid prices should be modified at this point in the evaluation. Discounts that are conditional on the simultaneous award of other contracts or lots of the contract package (cross-discounts) shall not be incorporated until the completion of all other evaluation steps. The effect of unconditional discounts (or alternatively, increases) should be reflected in the Evaluation Report. Any discount expressed in percent must be applied to the appropriate base specified in the bid, i.e. to be verified if it applies to any provisional sums.
- iv. Evaluation Currency (for ICBs): The remaining bids as corrected for computational errors and as adjusted for discounts should be converted to a common evaluation currency, which is specified in the Bidding Documents. In the cases of OT and in order to minimize the foreign exchange risk for bidders, the Bidding Documents allow every bidder to express its bid price in an internationally convertible currency or currencies. This provision effectively causes GOJ to carry the exchange risk rather than bidders and eliminates disadvantages some bidders would otherwise experience because of differences in strengths of bidders' currencies. However, it results in bids being presented in a wide variety of currencies which must be converted to a single common currency before they can be compared.

In order to compare bids, the practice is to convert all bid prices at the prevailing selling rate established by the Central Bank of Jamaica on the date of bid submission.

- v. <u>Additions</u>: Omissions (for minor items, like tool kits as mentioned previously) to the bid should be compensated for by adding the estimated costs for remedying the deficiency. Where items missing in some bids are present in others, an average of quoted prices could be used to compare competitors' bids.
- vi. Adjustments: The Bid Documents specify which, if any, performance or service factors will be taken into account in the bid evaluation. The methodology used in the evaluation of these factors should be precisely described in the bid evaluation report and should be fully consistent with the Bid Document provisions. Bonuses or additional credits that reduce the evaluated bid price will not be given in the bid evaluation for features that exceed the requirements stated in the bidding documents, unless specifically provided for in the Bid Documents. The value of adjustments will be expressed in terms of cost, for all works and most goods contracts, and should be expressed in the evaluation currency.

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- vii. <u>Priced Deviations</u>: As discussed above in paragraph (e), bids with minor deviations may be considered substantially responsive if their further consideration assigns a monetary cost or penalty to the bid for the purpose of bid comparison:
  - Requests for deviations that are expressed by the bidder in vague terms, such as "we would like an increase in the amount of mobilization advance" or "we wish to discuss changes in the completion schedule" should ordinarily be ignored in bid evaluation. However, a categorical statement by the bidders taking exception to a requirement in the bidding documents should be treated as a deviation.
  - If a bid requires a faster payment stream than specified in the bidding documents, the penalty is based on the prospective benefit to the bidder. This situation assumes use of a discounted cash flow using the prevailing commercial interest rates for the currencies of the bid, unless the Bid Documents foresee the eventuality and specifies a rate.
  - If a bid provides for a delivery or completion that is beyond the date specified in the bidding documents but that is nonetheless technically acceptable, the time advantage given should be assessed as a penalty as specified in the Bid Documents or, if one is not provided, based on the rate of liquidated damages specified in the bid documents. Whenever possible, the Procuring Entity should initiate procurement sufficiently early so that delivery schedules normally available in the market are acceptable and no premium has to be paid for urgent deliveries. The bid documents should indicate the latest delivery schedule acceptable and a bid offering delivery beyond this time would be clearly non-responsive. No advantage should be given for early delivery unless this will produce real benefits to the Procuring Entity.
  - In the procurement of durable goods such as engines, vehicles, equipment, etc., the cost of initial and subsequent spare parts is very important as it adds up to a substantial part of the maintenance costs. Bidders should be required to include in the bid the price of spare parts over a specified period of time. These prices are added to the bid price when evaluating the bids. Bidders should also be asked to include the costs of maintenance and the supply of spare-parts. After the lowest evaluated bidder is determined, the Procuring Entity and such bidder could enter into an appropriate arrangement for both the supply of spare parts and maintenance as may be required in the specific circumstances.

#### c. Determination of Award

In the comparison of bids for goods and works, the corrected and discounted bid prices, together with adjustments for omissions, deviations, and specified evaluation factors, will eventually lead to determination of award. Nonetheless, the bidder with the lowest total is the lowest evaluated cost bidder at this stage, subject to:

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- Application of any discounts, contingent on the simultaneous award of multiple contracts or lots; and
- Post-qualification evaluation, or, if pre-qualification has occurred, confirmation of pre-qualification information.

#### d. Cross-Discounts

These are conditional discounts offered in the event that more than one Lot (if required by the Bidding Documents) will be awarded to the same bidder. Bid evaluation in such cases can be quite complicated, particularly for goods contracts. The sizes of cross-discounts offered by each bidder may vary with the potential number of contracts awarded. The Bid Documents may also limit the number or total value of awards to a bidder on the basis of its financial and technical capacity. Thus, a bidder offering the lowest evaluated bid on a particular contract may be denied award because of such a restriction. Procurement Evaluation Committees shall select the optimum combination of awards on the basis of least overall cost of the total contract package, consistent with the qualification criteria. Presentations of the calculations should be recorded the Evaluation Report, which should include the bid evaluation(s) for the other contracts, if they have been evaluated separately.

#### e. Pre/Post Qualifications

- i. <u>Pre-Qualification</u>: If pre-qualification was conducted, the bidder whose bid is the lowest evaluated should receive the award, unless the bidder's qualifications have since materially deteriorated or the bidder has since received additional work that overstresses its capacity. The Evaluation Committees should fully satisfy themselves on both accounts.
- ii. <u>Post-Qualification</u>: Where pre-qualification has not occurred, the potential winning supplier could be subject to post-qualification, the procedures for which are described in the Bidding Documents.

If the lowest evaluated bidder fails post qualification, its bid should be rejected, and the next ranked bidder should then be subject to post qualification examination. If successful, this bidder should receive the award. If not, the process continues.

The rejection of a bid for reasons of Post Qualification requires substantial justification, which should be clearly documented in the Evaluation Report. A history of proven poor performance, for example, is a justification.

#### f. Alternative Bids

The Bid Documents may request or allow the bidders to submit alternative bids. Alternative bids should be considered only from the lowest evaluated bidder and

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conforming to the bidding documents. Calculations for the evaluation of alternatives should be provided in the Evaluation Report.

# g. Evaluation on the Basis of Life Cycle Cost

Life cycle cost is the assessment of the initial acquisition cost plus the follow-on ownership cost to determine the total cost during the life of a works plant or equipment. In the procurement of works or equipment in which the follow-on cost of operation and maintenance are substantial, a minor difference in the initial purchase price between two competing bids can easily be overcome by the difference in follow-on cost. In these cases, it is most appropriate to evaluate bids on the basis of life cycle cost.

As a general example, in the procurement of heavy equipment, the following elements would comprise a typical life cycle assessment:

- Initial purchase price;
- Adjustment for extras, options, delivery, variations in payment terms, etc.;
- Estimated costs of an overhaul and the number of overhauls required during the life of the equipment;
- Estimated fuel/electricity cost during the life (in years) of the equipment;
- Estimated cost of spare parts and labour for maintenance during the life of the equipment.

The follow-on costs such as fuel, spare parts, maintenance (scheduled and unscheduled) and overhaul costs should be discounted to net present value to make the proper comparison.

# h. Additional Considerations for Evaluation of Bids for Works

Evaluation of bids for works contracts is more complex than the evaluation of bids for goods. To make the evaluation process easier and transparent, it is essential for the Procuring Entity to set out in bid documents, well defined evaluation criteria and carry out the evaluation process in a transparent manner. If the evaluation criteria are not well defined, Bidders may be reluctant to submit bids. The evaluation of works contracts involves price and non-price factors. The selection of bids in for a works contract involves two steps after the preliminary examination to determine responsiveness.

The first being the selection to determine whether bidders demonstrate relevant experience for undertaking the works being procured and the second step is based on price.

As in the case of evaluation of bids for procurement of goods, evaluation of works contracts begins with a determination of the following basic issues:

- If the bid was received by the due date required in the bidding documents;
- Is the bid accompanied by the prescribed bid security;

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- Is it submitted in the required form, where necessary;
- Does it comply with all the specific mandatory requirements of the bidding documents.

Once a bid has been determined as responsive, the Bid Evaluation Committee should assess the technical feasibility of the bids and compliance of such bids with specifications required in bidding documents. Evaluation also involves the examination of the bidder's key staff in order to make a determination of whether they possess the qualifications and experience to undertake the works contract. The procuring Entity should also take into consideration similar works procurements that the bidder has been engaged in within the last three to five or so years, and whether they have been successful. Apart from these the Bid Evaluation Committee should also evaluate the bidder's financial capabilities using the documentary evidence of the Bidder's financial viability to carry out the contract. Bidders should submit with their bids financial statements for the number of years specified in the bidding documents. These fall under the non-price factors that need to be evaluated.

As a second step and after evaluating the non-price factors, the Bid Evaluation Committee, should proceed to evaluate the prices offered for the contract. Depending on the kind of works being procured, the lowest evaluated bidder is determined and is awarded the contract. In a contract for the construction of major works, the lowest evaluated bidder is the one offering the lowest price. On the other hand where the works is in the form of a concession, then the lowest bidder should be the bidder charging the lowest tariff for the services to be provided by the works, this is usually the case where the bidder undertakes the construction and operates it for a while before handing it over to GOJ.

#### i. Evaluation of Deviations in Bids for Works

Bidders for works contracts often qualify or condition their bids in some way, creating problems for the Procuring Entity staff who must decide whether a bid is substantially responsive to the bidding documents and, if so, how deviations from the bidding conditions should be handled in the evaluation of bids. Clear and unambiguous bidding documents usually result in fewer qualifications by bidders. Pre-bid conferences during the bidding period should also be convened to clarify any serious ambiguities and discrepancies in the documents.

Deviations may include exceptions, exclusions, qualifications, conditions, stated assumptions, alternative proposals (when not specifically solicited) and other changes to the requirements of bidding documents. Their degree of acceptability and impact on bid comparison will vary; some may be clearly unacceptable; some that are acceptable may be quantifiable in monetary terms; others may not be quantifiable but may still affect the competitive position of other bidders.

The first stage in evaluation is to decide whether the deviations in a bid are so material as to be unacceptable, and therefore are grounds for rejecting the bid. Fairness to the other

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bidders is a prime consideration. A bidder's deviation which, in itself or by its withdrawal or rectification, would seriously affect the competitive position of other bidders unless they were given the same opportunity, would normally constitute grounds for rejection of the entire bid. The following deviations (or some combination thereof) may result in rejection of bids:

- In the case where there was a pre-qualification process, bid submission by a legal entity or joint venture different from that which was pre-qualified, excepting when all members of the new joint venture were pre-qualified initially;
- The submission of a base bid subject to price adjustment when fixed price bids were called for;
- The submission of a bid based on an entirely different design where such had not been requested nor expressly permitted;
- An inflexible time phasing of contract construction or performance not conforming to prescribed critical key dates or "milestones" in a broader construction program; and
- Sub-contracting in a substantially different amount and manner than specified.

Deviations from the bidding requirements, which do not appear at first sight to provide immediate grounds for bid rejection, may be considered further in the evaluation process. The following are examples of such deviations:

- An amount of advance payment and other payment terms (including retention money, guarantees, the details of price adjustment provision) differing from the prescribed conditions;
- Non-compliance with local regulations relating to labour, import taxes, duties, notarization, etc.;
- Changes in specified methods of construction or execution (temporary works, shift work by labour, etc.);
- Sub-contractors not meeting pre-specified requirements;
- Omission (deliberate or unintentional) of minor works or items included in the scope of work;
- Non-acceptance of full liabilities (e.g. risks to third parties, nearby structures, etc.);
- Modification of, or a limit to the amount specified for liquidated damages; and
- Proposed changes in standards or codes relating to materials, workmanship or design.

The details and implications of any deviations which are not explicit should be clarified by the Procuring Entity in discussion with respective bidders without changing the substance or price of the bids. (After clarification the implication of a deviation may be such as to justify rejection of the bid as non-responsive.) Each deviation having financial or economic implications should be quantified independently by the Procuring Entity and expressed in its expected monetary cost to the Procuring Entity. In this respect, the submissions by bidders during clarification and pricing of similar items from the next lowest (and other) responsive bidders may prove useful. The current monetary costs of

To facilitate evaluation (and partly to discourage bidders from making frivolous or ambiguous deviations), the bidding documents include a requirement that any deviation must be presented as an alternative offer and carry a price tag with breakdown if it is to be considered in the evaluation process; otherwise the bid may be rejected as non-responsive.

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deviations with timing implications (e.g., modification payment terms, amortization of advances, limits on liquidated damages, varied construction or delivery periods, etc.) should be discounted to present values for evaluation purposes.<sup>12</sup>

Deviations or offers which are better than the requirements of the bid specifications (e.g. higher quality materials and workmanship, modified designs, shorter construction periods, etc.) should only be regarded as a benefit to the Procuring Entity and included in the evaluation if specifically solicited in the bidding documents.

Deviations which are minor or non-quantifiable (e.g., changes in subcontractors, access to site, land acquisition, sources of materials, etc.) should be assessed in terms of their reasonableness for acceptance or rejection taking into account fairness to other bidders and their impact on the implementation of the contract.

The ranking order of bids should be determined using the most probable monetary costs (or benefits) to the Procuring Entity of all quantifiable deviations. The contract should be proposed for award to the bidder submitting the lowest ranked/priced evaluated bid.

After selecting the lowest ranked/priced evaluated bidder in the manner described above, the Procuring Entity may accept the qualified bid and shall negotiate with the bidder for the complete or partial withdrawal of individual deviations, using the respective quantified monetary values assessed as upper limits for any negotiated adjustments to the original bid price. Non-quantifiable deviations may be accepted or rejected according to their reasonableness.

If the majority of low bids are heavily qualified, the reasons for the deviations should be determined in discussions with bidders, and consideration should be given to re-bidding amongst the same group of bidders with conditions and specifications amended to remove the probable causes. A series of addenda to the original bidding documents may suffice for this purpose and a relatively short period (30-45 days) may be sufficient for re-bidding under such circumstances.

#### j. Application of Domestic Preference for Goods

GOJ policy is to encourage the development of Jamaica's manufacturing industry. Thus, it is permitted to apply a margin of preference in bid evaluation in favour of domestically manufactured goods, when competing with bids offering imported goods.

A domestic preference margin is applied by first classifying bids according to whether the goods offered are locally manufactured or imported. After a determination of the lowest priced bid in all the classes of bids is made, an amount of 15% is then added to the CIF or CIP prices of bids offering imported goods. The Procuring Entity Procurement Staff

For the purposes of discounting, the current monetary costs of deviations should be expressed in a common currency using exchange rates prevailing at the date stated in the bidding documents for bid comparison. A uniform discount rate should be used for calculating present values as of that date.

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should be guided by the following general principles when applying domestic preference margins in the evaluation for goods:

- The goods being procured are "manufactured goods" involving assembly, fabrication, processing etc., where a commercially-recognized final product is substantially different in basic characteristics of its components and raw materials.
- The goods offered by foreign and domestic bidders are identical or compatible in respect of quality, size, capacity and performance.
- There is a qualified domestic bid which, irrespective of the nationality of the bidder, has offered goods assembled or manufactured in Jamaica, which has domestic value in the manufacturing cost not less than 30 percent of the ex-factory price of the product offered.
- The margin of preference is added to the CIF price of foreign bids and not subtracted from the domestic bid.

The nationality of the bidder is immaterial, but the domestic manufactured goods offered in the bid must meet the minimum domestic value added criterion. Domestic value added comprises domestic labour, the domestic content of material, domestic overheads and profits, from mining until final assembly.

#### k. Application of Domestic Preference in Works Contracts

GOJ policy is also to encourage the development of Jamaica's construction industry. Thus, it is permitted to apply a margin of preference in bid evaluation in favour of domestic firms, when competing with bids offering imported goods.

To determine eligibility of this preference, domestic firms include purely local firms in Jamaica, or joint ventures of domestic firms with no more than 10% sub-contracting to foreign firms. Joint ventures between foreign and domestic firms do not qualify for the application of preference.

The Procuring Entity may apply preference margins in the procurement of works such as civil engineering and building construction, land clearing and levelling, site clearing projects and similar activities. The preference is applied by adding 15% to the price quoted by a foreign bidder for comparison with a qualified domestic bid.

# 1. Extension of Bid Validity

Bidders are required to keep their offers valid for a specified period to allow the Procuring Entity to examine and evaluate offers, select the lowest evaluated bid and to obtain the necessary approvals from the competent authorities for the proposed award of the contract. Bids should thus remain valid for the period stated in bidding documents (minimum 90 days), usually until the final award of the contract to the lowest evaluated bidder is made. A bid that is valid for a shorter period than required by the bidding documents should be rejected as non-responsive.

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Where there is a delay in bid evaluation, the Procuring Entity may request bidders to extend the period of validity of their bids for a logical period (usually not more than 30 to 45 days).

In the case of an extension, bidders have to choose between:

- Refusing to grant any extension of validity of their bids; and
- Absorbing any cost increases that might occur during such extensions (bidders are not allowed to increase their prices as a condition of extending the validity of their bids).

# m. Confidentiality

The Evaluation Process must be confidential. No communication with suppliers and/or contractors must be carried out by the procuring Entity staff, except if these are for bid clarification purposes, which should be done in writing.

#### n. Rejection of All Bids

The Procuring Entity may reject all bids under the following circumstances:

- Where the price in the lowest evaluated bid exceeds the Procuring Entity's bid cost estimates by a substantial margin;
- When all the bids received are not responsive to the requirements in the bid documents; and
- Where the Procuring Entity after receiving bids reasonably concludes that there is lack of competition.

Where all the bids are rejected, the Procuring Entity should review the bidding documents and make any appropriate revisions. If substantial changes are made to the bid documents, the Procuring Entity should then invite new bids on the basis of the new bidding documents.

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**Sub-Section №: S-2130** 

# AWARD AND SIGNING OF CONTRACT FOR GOODS, WORKS AND GENERAL SERVICES

# I. <u>PURPOSE</u>

To establish the structure and content of contracts for the procurement of general services, goods and works.

# II. SCOPE

This procedure applies to all procurement of general services, goods and works.

# III. PROCEDURE

Once the bids have been evaluated and a determination has been made on the lowest evaluated responsive bid, and a decision has been made about the award, the Procuring Entity should:

- Obtain the necessary approvals to award the contract;
- Except in the case of Sole Source or Direct Contracting, it is NOT permitted to
  negotiate the award with the successful bidder, since bids were received on
  competitive basis;
- It is **NOT** permitted to require the selected bidder to provide performance security in excess of that specified in the Bid Documents;
- To send the notification of the award, a contract form, and a performance security form (indicating the amount of security) to the successful Bidder in a manner and within the time specified in the bidding documents;
- Request the supplier to return the signed contract together with the required performance security within the time specified in the bidding documents; and
- To notify the unsuccessful Bidders as soon as possible after receiving the signed contract and the performance security.

If the successful Bidder fails to return the signed contract or provide the required performance security, the Procuring Entity may:

- Forfeit the Bid Security of the successful Bidder; and
- Proceed to offer the contract to the second lowest evaluated Bidder, provided that he is capable of performing satisfactorily.

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# **EVALUATION OF CONTRACTOR PERFORMANCE**

# I. <u>PURPOSE</u>

To establish the evaluation procedures of contractor performance for the procurement of goods, works and general services

# II. SCOPE

This procedure applies to all procurement of goods, works and general services.

# III. PROCEDURE

Evaluation procedures of contractor performance for the procurement of goods, works and general services will be disseminated as soon as they are finalized by the National Contracts Commission (NCC).

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# PROCUREMENT RECORD KEEPING FOR GOODS, WORKS AND GENERAL SERVICES

#### I. PURPOSE

To establish the structure and content of record keeping for the procurement of general services, goods and works.

# II. SCOPE

This procedure applies to all procurement of general services, goods and works.

# III. PROCEDURE

Without prejudice to the method of storage and in accordance with the Financial Administration and Audit Act - Instructions, the procuring entity shall maintain records of each contract action for a minimum period of ten (10) years. Procurement process and expenditure records, although entrusted to the safeguard of accounting officers, are the property of the Ministry of Finance and shall promptly be made available to the Ministry upon request in its carrying out of expenditure and/or compliance monitoring mandates. The minimum standards of recorded information are as follows:

- Brief description of the works, goods or services procured;
- Names and addresses of contractors;
- Procurement procedure used and authorization reference;
- Name of successful contractor;
- Date of approval;
- Contract price and actual completion cost;
- Contract duration;
- Information relative to the qualifications of contractors;
- Summary of the evaluation and comparison of quotations and/or tenders;
- Any offsets applied and the corresponding authorization reference pursuant to the Handbook;
- Reason(s) for rejection of any or all quotations/tenders;
- Summary of requests for clarification/verification of bid documents and any modifications thereof;
- Information relative to the successful contractor's performance on the contract; and
- Information relative to complaints, resolution decisions and appeals.

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# IV. <u>LIMITATIONS OF LIABILITY</u>

GOJ shall incur no external or third party liabilities solely by failure to maintain a record of the procurement proceedings. However, in accordance with the FAA Act, accountable officers may face disciplinary action internal to GOJ if procurement records do not justify procurement expenditure and the Financial Secretary deems proffered explanation(s) to be unsatisfactory.

# V. <u>REPORTING REQUIREMENTS</u>

#### National Contracts Commission (NCC)

All contracts with a value within the range of J\$10M and above must be reported to the NCC.

# Ministry of Finance (MOF)

The Ministry of Finance (MOF) monitors procurement expenditure through the maintenance of a Public Sector Procurement Reporting System (PRS). Procuring entities are required, without exception, to report all procurements on a monthly basis using the GOJ standard form PRS-1. This information is necessary for effective planning and budgeting processes and facilitates fulfilment of reporting obligations under international trade agreements. The completed PRS-1 shall be sent directly by the procuring entity to MOF, Procurement and Asset Policy Unit, no later than the seven (7) days after the end of the reference period, e.g., MOF shall receive information pertaining to 2000 April 01-30 no later than 2000 May 07. Accounting Officers/Heads of Procuring Entities are accountable for the timely receipt of required information by the MOF.

#### Portfolio Ministry

The Portfolio Ministry, i.e., the Ministry with portfolio responsibility for the procuring entity, shall be apprised of procurements effected by that entity. A copy of the completed PRS-1 should also be sent by the procuring entity to the attention of the Accounting Officer/Permanent Secretary in the portfolio Ministry. The portfolio Ministry shall maintain these records in accordance with the FAA Act.

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# SECTION №: P-3000 PROCUREMENT OF SERVICES

# I. PURPOSE

To establish uniform procedures for the procurement of services.

# II. SCOPE

This procedure applies to the procurement of all services.

## III. GENERAL

The process of consultant selection is based on obtaining a limited number of proposals from a shortlist of consultants expressing interest that possess the relevant qualifications. It is too time-consuming and expensive to invite and evaluate proposals from all consultants who want to compete; therefore selection is based on limited competition among qualified firms that, in the Procuring Entity's view, are capable of delivering the required services at the desired quality level.

From the consultants' point of view, the use of a shortlist reduces the number of proposals to be prepared, raises proposal quality, and increases the chances for the consultant of winning the competition. For GOJ, it is an effective way of attracting the best candidates for the assignment.

In keeping with the principles of the Procurement Policy, Procuring Entities are required to ensure the following considerations guide the selection process for the engagement of consultants:

- (a) high quality services;
- (b) economy and efficiency;
- (c) fairness and equity;
- (d) transparency in the selection process; and
- (e) equal opportunity for qualified consultants.

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# **Sub-Section №: P-3010 PROCUREMENT METHODS FOR SERVICES**

# I. <u>PURPOSE</u>

To establish uniform methods for the procurement of services.

# II. SCOPE

This procedure applies to the procurement of all services.

# III. CONTRACT VALUE THRESHOLDS FOR SERVICES

The following procedures apply to consulting services.

Threshold	Procurement Method	Procedures
Contracts in excess of JA\$150 Million	Open Tender	- Participation opportunities within this contract value range are open to both domestic and foreign contractors. Procuring entities advertise the procurement opportunity in nationally and internationally. Authority to enter into contract is obtained from the Cabinet, after reference to the NCC and the portfolio Ministry for approval of award recommendation.
Contracts above J\$30 million	Selective Tender	<ul> <li>The procuring entity issues a general advertisement in daily newspapers inviting appropriately qualified consultants registered with the NCC;</li> <li>Evaluation is carried on by the Evaluation Committee;</li> <li>The contract is subsequently approved by the Head of the procuring entity;</li> <li>Award Recommendations are endorsed by NCC Sector Committee;</li> <li>Award Recommendations is further endorsed by the National Contracts Commission;</li> <li>The Minister with portfolio responsibility seeks Cabinet approval;</li> <li>Contract is awarded by the Head of the procuring entity</li> </ul>
Contracts above J\$10 up toJ\$30 million	Selective Tender	<ul> <li>The procuring entity issues a general advertisement in daily newspapers inviting appropriately qualified consultants registered with the NCC;</li> <li>Evaluation is carried on by the Evaluation Committee;</li> <li>The contract is subsequently approved by the Head of the procuring entity;</li> <li>Award Recommendations are endorsed by NCC Sector Committee;</li> </ul>

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		<ul> <li>Award Recommendations is further endorsed by the National Contracts Commission;</li> <li>Contract is awarded by the Head of the procuring entity.</li> </ul>
Contracts above J\$ 4million up to J\$ 10 million	Selective Tender	<ul> <li>The procuring entity issues a general advertisement in daily newspapers inviting appropriately qualified consultants registered with the NCC;</li> <li>Evaluation is carried on by the Evaluation Committee;</li> <li>The contract is subsequently approved by the Head of the procuring entity;</li> <li>Contract is awarded by the Head of the procuring entity</li> </ul>
Contracts up to J\$4 million	Limited Tender	<ul> <li>The procuring entity invites a minimum (5) five consultants registered with the NCC;</li> <li>Evaluation is carried on by the Evaluation Committee;</li> <li>The contract is approved and signed by the Head of the procuring entity;</li> <li>There is no requirement for provision of a tender security in this contract value range.</li> </ul>

# IV. PROCUREMENT METHODS FOR CONSULTING SERVICES

# A. Quality-Cost Based Selection (QCBS)

Procurement Method	Suitable Applications
Quality and Cost Based Selection (QCBS)	<ul> <li>QCBS is a competitive process among short listed firms that are considered on both the quality of the proposals and the cost of the services to be provided. This method is appropriate when:</li> <li>a. The scope of work of the assignment can be precisely defined and the Terms of reference (TOR) are well specified and clear;</li> <li>b. The Procuring Entity and the consultants can estimate with reasonable precision the staff time as well as the other inputs and costs required of the consultants.</li> <li>QCBS is appropriate for assignments like:</li> <li>Feasibility studies and designs where the nature of the investment is clear and well defined, known technical solutions are being considered, and the evaluation of the impacts from the project are not</li> </ul>
	<ul> <li>uncertain or too difficult to estimate;</li> <li>Preparation of detailed designs;</li> <li>Supervision of construction of works and installation of equipment;</li> <li>Technical assistance services and institutional development.</li> </ul>

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# B. Quality Based Selection (QBS)

Procurement Method	Suitable Applications
Quality Based Selection (QBS)	<ul> <li>QBS is based on an evaluation of the quality of the proposals and the subsequent negotiation of the financial proposal and the contract with the consultant who submitted the highest ranked technical proposal. QBS is appropriate if:</li> <li>a. The downstream impact of the assignment is so large that the quality of the services becomes of overriding importance for the outcome of the project;</li> <li>b. The scope of work of the assignment and TOR are difficult to define because of the novelty or complexity of the assignment, or the need to select among innovative solutions, or due to particular physical conditions;</li> <li>c. The assignment can be carried out in substantially different ways, such that cost proposals may not easily be comparable; and</li> <li>d. The introduction of cost as a factor of selection renders competition unfair.</li> </ul>

# C. Selection under a Fixed Budget (SFB)

Procurement Method	Suitable Applications
Selection under a Fixed Budget (SFB)	SFB is based on disclosing the available budget to invited consultants in the Request for Proposals (RFP) and selecting the consultant with the highest-ranking technical proposal within the budget. Because consultants are subject to a cost constraint, they will adapt the scope and quality of their services to that budget. The Procuring Entity must therefore ensure that the budget is compatible with the TOR and that consultants will be able to perform the tasks within the budget. SBF is appropriate only when:  The budget is fixed and cannot be exceeded;  The TOR are precisely defined; and  The time and staff-month effort required from the consultants can be assessed with precision.
	<ul> <li>Typical assignments for SFB are:</li> <li>Sector studies, market studies, and surveys of limited scope;</li> <li>Simple pre-feasibility studies and review of existing feasibility studies;</li> <li>Review of existing technical designs and bidding documents; and</li> <li>Project identification for which the level of detail can be matched with the available funds.</li> </ul>

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# D. <u>Least Cost Selection (LCS)</u>

Procurement Method	Suitable Applications
Least Cost	The LCS method is more appropriate for small assignments of a standard
Selection (LCS)	or routine nature where well-established practices and standards exist and
	from which a specific and well-defined outcome is expected, which can
	be executed at different costs, for example:
	Standard accounting audits;
	• Engineering designs and/or supervision of simple projects;
	• Repetitive operations and maintenance work and routine inspections;
	and
	Simple surveys.

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# E. Individual Consultants (IC)

Procurement Method	Suitable Applications
Individual	Individual consultants could be hired for small assignments of relatively
Consultants	short-term duration for specialized consulting services related to specific
(IC)	mandates.
	Assignments for IC may include:
	Technical assistance in specialized services like IT and related fields, expert technical advice in engineering and/or technical related fields, etc.
	• To support Procuring Entity personnel in short terms assignments, like bid/proposal evaluation, etc.

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PROCUREMENT CYCLE	
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# PROCUREMENT CYCLE FOR SERVICES

# I. PURPOSE

To provide guidance to GOJ personnel of the procurement cycle for services.

# II. SCOPE

Applicable to all GOJ procurement of services.

# III. KEY ELEMENTS OF PROCUREMENT CYCLE FOR SERVICES

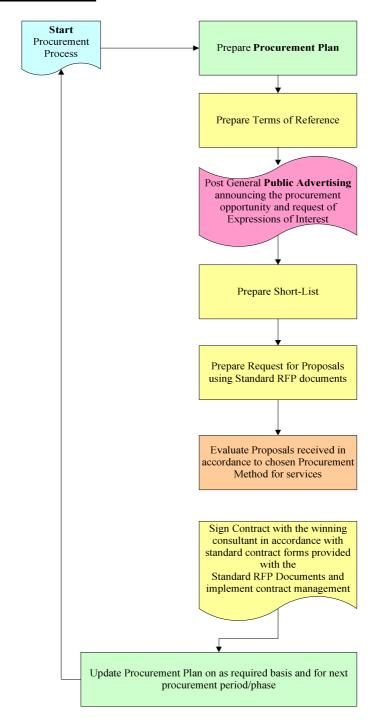
The key elements of the procurement cycle for services are:

- Procurement plan;
- Procurement Methods;
- Preparation of Request for Proposals;
- Request of Expressions of Interest;
- Preparation of Short-list;
- Management of Request of Proposals process from advertisement to opening;
- Proposal Evaluation;
- Contract award;
- Preparation and signing of contract;
- Contract management during implementation, including dispute resolution;
- General handling of procurement cycle (duration, actors, reviews, etc.)

The attached flow-chart depicts the overall procurement process for services.

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# **Procurement Cycle for Services**



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## PROCUREMENT PLANNING FOR SERVICES

# I. <u>PURPOSE</u>

To establish uniform procedures for Procurement Planning for services.

# II. SCOPE

This procedure applies to all GOJ procurement of services.

## III. PROCUREMENT PLANNING PROCESS

Procurement planning is scheduling steps involved to purchase resources. The Procurement Departments should provide answers to:

- What services are required?
- When these services are required?
- What is the scope of these services?
- Are these services available locally or internationally?
- How much to allocate for payments?

Procurement planning may follow a certain fundamental approach, regardless whether it is for a specific investment project or one of the more on-going operations. Regardless of which type of project, however, it is essential to develop a plan that clearly sets out the framework in which procurement will be done.

The conventional approach for both types of procurement, i.e. specific investment projects (finite projects of known design and content) and for on-going supply type operations, is to start by listing the required services and identifying their scope. This list then becomes the basis for deciding how and when these services will be required, which will lead to a scheduling activities. Even this seemingly straightforward preparation of the list of needs already implies a strategic decision about how procurement and contracting will be done.

## IV. PROCUREMENT PLAN PREPARATION

Once the services packages and their scope have been identified and scheduled, these should be recorded in the tables presented in Attachment 7. This brings forward a consolidated list of resources required for the entire procurement of services. Once the table is completed, a procurement plan is ready.

# **Procurement Plan Format for Consulting Services**

What type of service is needed?	Month	Needed	Is this an Individual or	Total	Procurement	Procuremen	t Schedule			
needed?	when needed	for how many days?	Consulting Firm?	Estimated cost	Method	Advertise (Insert dates)	Submission of Proposals (insert dates)	Proposal Evaluation and recommendation approval (insert dates)	Contract award (insert dates)	Completion (insert dates)

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## OVERVIEW OF PROCUREMENT METHODS FOR SERVICES

# I. PURPOSE

To provide guidance on procurement methods for services.

# II. SCOPE

This procedure applies to all procurement of services.

## III. OVERVIEW OF METHODS

The choice of the appropriate method of selection for procurement of services is related to the nature, size, complexity, likely impact of the assignment, technical and financial considerations. It is therefore necessary to carefully define the assignment, in particular the objective and the scope of the services, before deciding on the selection method.

# A. Quality and Cost Based Selection (QCBS)

QCBS is a method based on the quality of the proposals and the cost of the services to be provided. It is the method most frequently used to select consultants. Since under QCBS the cost of the proposed services is a factor of selection, this method is appropriate when:

- The scope of work of the assignment can be precisely defined and the Terms of Reference (TOR) are well specified and clear;
- Both the Procuring Entity and the consultants can estimate with reasonable precision the staff time as well as the other inputs and costs required.

QCBS is appropriate for assignments such as:

- Feasibility studies and designs where the nature of the investment is clear and well defined, known technical solutions are being considered, and the evaluation of the impacts from the project are not uncertain or too difficult to estimate;
- Preparation of detailed designs;
- Supervision of construction of works and installation of equipment;
- Technical assistance services and institutional development;
- Procurement and inspection services.

To increase the likelihood of receiving responsive and comparable proposals, the Request for Proposals (RFP) under QCBS indicates the expected staff time estimated by the Procuring Entity to carry out the assignment. However, this estimate does not bind the consultants and they should propose the level of inputs that they consider appropriate.

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Under QCBS the technical and financial proposals are submitted at the same time in separate sealed envelopes (two-envelope system). Proposals received after the submission deadline should be rejected. Evaluation of proposals is carried out in two stages: first quality, and then cost. The technical envelopes are opened by the Procurement Committee of the Procuring Entity immediately after the closing time for submission of proposals; the financial proposals remain sealed and shall be deposited with The Committee until the technical evaluation and the evaluation report are completed, and the technical scores are disclosed publicly to all Firms that have submitted Proposals. The financial envelopes of those consultants who submitted responsive technical proposals meeting the minimum qualifying mark are opened in the presence of the consultants or their representatives. The proposals are then evaluated. Once the financial proposals are evaluated, a combined evaluation of the technical and financial proposals is carried out by weighting and adding the quality and the cost scores, and the consultant obtaining the highest combined score is invited for negotiations. Since price is a factor of selection, staff rates and other unit rates shall not be negotiated.

QCBS permits the Procuring Entity to select a preferred trade-off between cost and quality and to benefit from price competition, even if only to a limited extent. Transparency is increased under QCBS with public opening of the financial proposals. Another advantage is the possibility that contract negotiations will be easier because of the limited scope for financial negotiations.

The main disadvantage of QCBS is its rigidity. Since with QCBS consultants are required to compete on the basis of price besides quality, discussion of the proposed remuneration rates for staff-months and for reimbursable expenses during contract negotiations will not be permitted.

## **B.** Quality Based Selection (QBS)

QBS is based on an evaluation of the quality of the proposals and the subsequent negotiation of the financial proposal and the contract with the consultant who submitted the highest ranked technical proposal. QBS is appropriate if:

- The downstream impact of the assignment is so large that the quality of the services becomes of overriding importance for the outcome of the project;
- The scope of work of the assignment and the Terms of reference (TOR) are difficult to define because of the novelty or complexity of the assignment, or the need to select among innovative solutions, or due to particular physical conditions;
- The assignment can be carried out in substantially different ways, such that cost proposals may not easily be comparable;
- The introduction of cost as a factor of selection renders competition unfair.

In some cases the choice between QBS and QCBS may be difficult. In situations of strong uncertainty and/or risk for the project, QBS should be adopted because quality is the key element.

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A possibility under QBS is for the Procuring Entity to request submission of the technical proposals only. After technical evaluation, the consultant with the highest-ranking technical proposal is invited to present its financial proposal. However, the Procuring Entity may request that the financial proposals be submitted at the same time as the technical proposals but in separate envelopes (two-envelope system). In that case, the financial proposals should be kept safely with the Procurement Committee until the technical evaluation is finalized. Only the financial proposal of the winning consultant is opened; the others are returned unopened after negotiations with the winning firm are successfully concluded. The Request for Proposals (RFP) generally provides the staffmonths only as an estimate by the Procuring Entity. The staff effort indicated by the consultants may differ considerably from such estimate, depending on the particular methodology adopted by the consultant.

# C. Selection under a Fixed Budget (SFB)

SFB is based on disclosing the available budget to invited consultants in the Request for Proposals (RFP) and selecting the consultant with the highest-ranking technical proposal within the budget. Because consultants are subject to a cost constraint, they will adapt the scope and quality of their services to that budget. The Procuring Entity must therefore ensure that the budget is compatible with the Terms of reference (TOR) and that consultants will be able to perform the tasks within the budget. SBF is appropriate only when:

- The budget is fixed and cannot be exceeded;
- The TORs are precisely defined;
- The time and staff-month effort required from the consultants can be assessed with precision.

To reduce the financial risk for consultants and to avoid receiving unacceptable technical proposals or no technical proposals at all, SFB must only be used for well-defined and simple assignments with a low financial risk for the consultants. Typical assignments awarded under SFB are:

- Sector studies, market studies, and surveys of limited scope;
- Simple pre-feasibility studies and review of existing feasibility studies;
- Review of existing technical designs and bidding documents; and
- Project identification for which the level of detail can be matched with the available funds.

Under SFB, consultants are requested to submit their technical and financial proposals in separate envelopes. Technical proposals are evaluated first, using the same procedure followed for QCBS and QBS, then the financial envelopes are opened in the presence of representatives of firms that submitted proposals. In case a proposal does not cover minor technical aspects included in the TORs, the Procuring Entity shall calculate the evaluated price of that proposal by adding to the offered price, the estimated cost of the

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missing activities or items. Proposals that exceed the indicated budget after adjustments and corrections are discarded. The consultant who has submitted the highest ranked technical proposal among the remaining proposals is selected.

Since the budget is predetermined, the consultant's TOR cannot change substantially, and technical negotiations shall cover minor aspects. Financial negotiations will not include discussion of remuneration rates and of other unit rates but only minor re-arrangements of activities and staff for compatibility with the work-plan and clarification of any tax liability.

SFB allows the Procuring Entity to plan a budget early on, rather than wait for the uncertain outcome of negotiations. Furthermore, it further allows the Procuring Entity to receive better quality proposals than under QCBS because it is easier for consultants to maximize quality under a fixed budget. SFB also requires a shorter time for negotiations than QBS. SFB is also convenient for consultants because the pre-established budget allows them to determine in advance whether they are interested in competing for the proposed assignment, and to develop the best proposal consistent with that budget.

More than with QBS and QCBS, the SFB method requires the TORs to be consistent with the established budget and to contain a well-specified scope of work in order for consultants to present clear and responsive proposals. One risk of using the SFB is underbudgeting the TORs and by doing so discourage good consultants from participating, and receive poor performances from the awarded consultants.

## D. Least Cost Selection (LCS)

Under this method a minimum qualifying mark for quality is established and indicated in the RFP. Short-listed consultants have to submit their proposals in two envelopes. The technical proposals are opened first and evaluated. Proposals scoring less than the minimum technical qualifying mark are rejected, and the financial envelopes of the rest are opened in the presence of representatives of proposal submitting firms (in public). The consultant with the lowest evaluated price is selected.

The LCS method is more appropriate for small assignments of a standard or routine nature where well-established practices and standards exist and from which a specific and well-defined outcome is expected, which can be executed at different costs, for example:

- Standard accounting audits;
- Engineering designs and/or supervision of simple projects;
- Repetitive operations and maintenance work and routine inspections; and
- Simple surveys.

The Procuring Entity shall adopt this selection method when they wish to capture cost benefits from mature technologies or new methods for which quality risks for the final output are considered negligible.

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Since quality is set as minimum qualifying mark, the Procuring Entity procurement departments should set such a mark at around 75 or 80 %, to ensure quality and avoid the risk of selecting low-cost proposals of poor or marginally acceptable quality. This method may be abused by tampering with the technical evaluation to select a specific consultant by pushing all proposals above the minimum mark and by actually selecting on the basis of the cost only.

## E. Individual Consultants (IC)

Individual consultants can be engaged on assignments for which:

- The experience and qualifications of the individual must be dominant;
- No support from a home office is needed for the individual;
- Teamwork or a multidisciplinary approach is not necessary.

Individual consultants can be considered for advisory services assignments or technical opinions on specific matters in which specialist individual knowledge is the key issue. For the hiring of Individual Consultants, the Procuring Entity should first prepare a brief TOR of the assignment, including the scope of work and its estimated budget. Subsequently, the Procuring Entity shall request expressions of interest from suitable consultants, or advertise if necessary, requesting them to submit their Curriculum Vitae. Individual consultants having expressed interest in the assignment, shall then be selected on the basis of comparison of their qualifications for the assignment. Suitability of the candidates should be evaluated on the basis of their academic background, experience, and, when needed, knowledge of local conditions.

From time to time, permanent staff or associates of a consulting firm may be available as individual consultants. In such cases, the conflict of interest provisions will apply to the parent firm.

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PROPOSAL OPPORTUNITY	
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## PROPOSAL OPPORTUNITY ADVERTISING FOR SERVICES

# I. PURPOSE

To establish the procedures for Proposal Opportunity advertising for the procurement of services.

## II. SCOPE

This procedure applies to all procurement of services.

## III. PROCEDURE

Timely appropriate notification of procurement opportunities for goods and works is essential for economic and efficient project execution, and is the basis for eliciting maximum competition with fair opportunities for all eligible potential bidders.

Advertising and other publication guidelines are contained in the procedures at the various contract value threshold levels. As a general rule and pursuant to Cabinet Directive, public sector advertising shall be coordinated through the Jamaica Information Service (JIS). As such, all advertisements to be placed in national media shall be forwarded to the JIS for facilitation of publication. Procuring entities are responsible for effecting payment to the JIS, in accordance with the terms and conditions of the GOJ/JIS Framework Agreement.

Contract award data is available in print from the National Contracts Commission and the National Contracts Commission website at <a href="https://www.ncc.gov.jm">www.ncc.gov.jm</a>

The advertising of the procurement opportunities is necessary for the following services procurement methods:

Threshold	Procurement Method	Advertising Requirement	Minimum Time Allotted to Bid Submission
Contracts in excess of JA\$150 million	Open Tender	Yes – local and international magazines	Minimum 60 days.
Contracts above J\$30 million	Selective Tender	Yes - through a general advertisement in daily newspapers	Minimum 45 days

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Contracts above J\$10 million up to J\$ 30 million	Selective Tender	Yes - through a general advertisement in daily newspapers	Minimum 30 days
Contracts above J\$4 million up to J\$10 million	Selective Tender	Yes - through general advertisement in daily newspapers	Minimum 30 days
Contracts up to J\$4 million	Limited Tender	Direct invitation of 5 consultants	Minimum 21 days

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PROCUREMENT NOTICES	
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#### PROCUREMENT NOTICES FOR SERVICES

# I. PURPOSE

To establish the procedures for the content of Procurement Notices for the procurement of services.

## II. SCOPE

This procedure applies to all procurement of services.

## III. PROCEDURE

To engage consultants, first, consultant opportunities are advertised. Then, on the basis of those consultants who submitted expressions of interest in response to the advertisement, the Procuring Entity's Evaluation Committee shall prepare a short-list of consultants who will be invited to present full proposals.

The main objective of the advertising is to inform all eligible consultants about the consulting opportunity. Advertising promotes transparency, enhances competition and facilitates the participation of smaller firms which otherwise might not have easy access to information or to local contacts.

The Procurement Notice (PN) for services must include a brief description of the consulting services needed and shall invite consultants to submit expressions of interest. The Request for Expressions of Interest (EOI) should request sufficient information to enable the Procuring Entity to judge the consultants' capabilities in the field of the assignment. The response might include, for example, descriptions of similar assignments conducted, experience in similar conditions, and availability of appropriate staff. Given the large number of such submissions, the advertisement should stress the importance of brevity.

Attachment 8 provides a sample of a Procurement Notice for consulting services.

## **Attachment 8**

# **PROCUREMENT NOTICE (SERVICES)**Sample Format for Request for Expressions of Interest

The [insert the name of Procuring Entity] intends to apply a budgetary allocation to payments under the contract for [insert name of project/the services<sup>13</sup>].

The services include [brief description, organization, implementation period...]<sup>14</sup>.

The [insert name of Procuring Entity] now invites eligible consultants to indicate their interest in providing the services. Interested consultants must provide information indicating that they are qualified to perform the services (brochures, description of similar assignments, experience in similar conditions, availability of appropriate skills among staff, etc.). Consultants may associate to enhance their qualifications.

A consultant will be selected in accordance with the GOJ Procurement Guidelines as set in the Handbook for Public Sector Procurement (*insert NCC issue date*) and is open to all consultants from registered with NCC and/or eligible source countries. <sup>15</sup>

Interested consultants may obtain further information at the address below [state address at the end of document] from [insert office hours]<sup>16</sup>.

Expressions of interest must be delivered to the address below by [insert date].

[Insert name of office]
[Insert name of officer]
[Insert postal address and/or street address]
Tel: [Indicate country and city code]

Fax: [Indicate country and city code]

E-mail:

<sup>13</sup> Insert title of services.

The intent is to enable potentially interested consultants to decide whether or not to prepare an expression of interest.

<sup>15</sup> If International.

<sup>&</sup>lt;sup>16</sup> For example, 0900 to 1200 hours.

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CONFLICT OF INTEREST SITUATIONS	
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## CONFLICT OF INTEREST SITUATIONS FOR SERVICES

## I. PURPOSE

To provide guidance on conflict of interest situations in the procurement of services.

# II. SCOPE

This procedure applies to all procurement of services.

## III. OVERVIEW

A consultant conflict of interest is a situation in which a consultant could provide biased professional advice to a Procuring Entity in order to obtain an undue benefit for himself or his affiliates. Although conflict of interest is an easily understood concept, to identify it and to address its consequences, i.e. the potential or actual prejudice to the Procuring Entity interests, requires in practice particular attention and expertise. Conflict of interest is a concern when the consultant is in a situation in which his own, or his affiliates' interests could prevail, or prevail over the interest of his client and impair his/her objectivity.

## IV. CATEGORIES OF CONFLICTS OF INTEREST

There are several categories of conflicts of interest, which may lead to the consultants' disqualification:

- 1. Downstream procurement of goods and works related to the consultants' work. For example: While under contract on a specific assignment, consultants attempt or are perceived to influence the Procuring Entity decisions for their own benefit or that of their affiliates by specifying, designing, or suggesting that works or equipment be obtained from their affiliates.
- 2. Downstream provision of consulting services related to the procurement of works, supply of equipment and installation by an affiliate of the consultants. For example: (a) The consultants supervise the contract implementation of works executed by a firm with which they are affiliated, (b) The consultants are called to certify the financial statements of an affiliated firm or parent company.
- 3. Downstream conflicting activities closely related to the consultants' work. For example: an investment bank in a consulting capacity funds the Procuring Entity in a sale transaction after advising a seller, again in a consulting capacity, on the same transaction.
- 4. Conflicting assignments by nature, in which the consultants could bias their advice to be consistent with findings of another of their assignments or that of their affiliates.

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For example: (a) Consultants carry out the environmental audit of a project designed by them or their affiliates, (b) Accountants set up its accounting and/or financial information system and then audit the Procuring Entity financial statements.

5. Conflicting downstream assignments where the incumbent consultants create conditions under which they attain, or are perceived to attain an undue advantage over other consultants who may apply for consideration in the downstream assignment, thus depriving the client of the full benefits of competition. For example: (a) Consultants propose themselves for, or accept an assignment for which they have prepared the TOR or the RFP under a prior assignment, (b) Consultants slant the initial study so that the next phase assignment demands skills only they can provide, and deprive the Procuring Entity of the benefits of a fair competition, (c) While conducting an assignment, the consultants create for themselves favorable conditions for getting either an extension or a related assignment that is unnecessary for the client (feather bedding).

## V. PREVENTION OF CONFLICTS OF INTEREST

Independence is the main means by which consultants demonstrate that they can perform their assignment in an objective manner. The potential effects of consultants conflict of interests has to be addressed early and re-examined at every stage of the consultant selection process. If not in a position of making a fully informed evaluation of a conflict of interest situation, Procurement Committees should seek advice from the MOF Procurement and Asset Policy Unit (PAPU).

To determine its materiality, a conflict of interest situation has to be reviewed taking into consideration the timing, the relatedness of the assignments as well as the source, nature, potential impact of the conflict and the circumstances under which it arises.

The risk of a conflict of interest deriving from the consultant's assignment under consideration must be identified in the Request for Proposals (RFP) and the related provisions for its avoidance or mitigation (e.g. disqualification, cooling off periods, corporate separations), must be clearly stipulated in the Information to Consultants (ITC) and in the Contract.

# VI. <u>SHORT-LIST</u>

When preparing the short-list, and to prevent potential and perceived conflict of interests from affecting the quality of the consultant's work and of downstream competition, the consultant under contract should not be asked to prepare the TOR for the downstream assignment if the Procuring Entity wishes to include this consultant in the short list. Additionally and specifically for large and complex downstream assignments the Procuring Entity may appoint an independent advisor to review the incumbent's work. The Procuring Entity should also ensure that every invited consultant is provided with all the information necessary to prepare a responsive proposal.

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## VII. EVALUATION OF TECHNICAL PROPOSALS

During the evaluation of technical proposals, the Procuring Entity Procurement Committees should ascertain that no new conflict of interest situations have arisen since the consultant was short-listed. For example that the staff proposed by the consultant does not include the Procuring Entity personnel or contractors already under contract with the Procuring Entity for related services, works or supplies.

If Procurement Committees identify a conflict of interest at this stage, it should determine whether the specific conflict is substantive and take action: for example, by reducing the scope of work of the assignment or excluding the consultants from the assignment. If unable to make a fully informed decision, the Committee should seek the advice of the Head of Procurement.

If a consultant or its affiliate is found to be in a substantive conflict of interest during the technical evaluation, the Committee should review the case and either disqualify the consultant or ask the consultant to remove the conflict and its causes while maintaining the transparency of the selection process, failing which the consultant should be excluded from the competition.

If a consultant has misled the Procuring Entity by neglecting to provide information or by denying the existence of a major conflict of interest situation, the consultant's proposal should be rejected.

## VIII. CONTRACT NEGOTIATIONS

Before completing the contract negotiation, the Procuring Entity should review the draft contract to identify conflict of interest situations that may have not been disclosed, or may have arisen after the proposal was submitted. For example: in a change of ownership the winning financial consultants may have been absorbed by a financial institution interested in participating in the project. In such a case the Procurement Committee should disregard the financial proposal from that institution and should disqualify the consultants.

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# IX. <u>IMPLEMENTATION OF THE ASSIGNMENT</u>

During implementation of the assignment, while monitoring or reviewing consultants' work, the Procuring Entity should check for any new circumstances that could create downstream substantive conflict of interests. The most common conflict of interest during this phase of a project stems from affiliates of the consultant showing an interest in offering goods, work, or services to the Procuring Entity, related to the services rendered by the consultant.

When a substantive conflict of interest situation emerges (or is discovered) during execution of an assignment, the matter should be referred to PAPU for a possible corrective action.

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DEVELOPING TERMS OF REFERENCE	
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## DEVELOPING TERMS OF REFERENCE FOR SERVICES

# I. PURPOSE

To establish the structure of Terms of Reference (TOR) for procurement of services.

# II. SCOPE

This procedure applies to all procurement of services.

## III. OVERVIEW

The Terms of Reference (TOR) is the key document in the RFP package. It explains the objectives, scope of work, activities and/or tasks to be performed, the respective responsibilities of the Procuring Entity and the consultant, and expected results and deliverables of the assignment. Adequate and clear TOR are important for the understanding of the assignment and its correct execution. They help reduce the risk of unnecessary extra work, delays, and additional expenses. In addition, they help reduce the risk of ambiguities during the preparation of consultant proposals, contract negotiation, and execution of services.

Drafting the TOR requires expertise with the type of assignment and the needed resources, as well as familiarity with the project background. If the needed qualifications to produce the TOR are not available in-house, the Procuring Entity should hire a specialized independent consultant. TOR have to be written by experts who have only the interest of the Procuring Entity in mind.

# IV. DRAFTING TERMS OF REFERENCE

The following considerations must guide the preparation of the TOR:

- TOR should contain sufficient background information on the project to enable consultants to present responsive proposals;
- TOR, in particular the scope of work, should be consistent with the available budget;
- TOR should take into account the organization of the Procuring Entity, its level of technical expertise and institutional strength.

The level of detail and quality of information which can be contained in the TOR influence the selection method to be adopted. For example, if the TOR cannot be defined with adequate precision and detail, QBS may be more appropriate than QCBS, whereas the latter is preferable when a defined scope of work and a reliable cost estimate are available.

The authors of the TOR should be familiar with local natural and social conditions such as climate, topography, institutions, people, customs, holidays, remuneration levels, and

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transportation systems. Seasonal variations, together with the peculiarities of the region where the assignment will take place, should be considered if they can affect the execution of fieldwork. Both project and logistic related aspects of the project should be researched.

If transfer of knowledge and training are required as part of the assignment, TOR should include a training program. If a training program is included, additional time and budget should be allocated.

The TOR should clearly define the output and deliverables required of the consultants, e.g., reports, maps, drawings, or software, and should list information that the Procuring Entity will furnish to the consultants. This information may include past studies, aerial photographs, maps, or records of surveys carried out in the assignment area. The TOR also should identify the Procuring Entity responsible Department for the project and shall clarify institutional arrangements for the supervision of consulting work. Additionally, the TOR should specify the facilities and counterpart staff to be provided by the Procuring Entity.

Attachment 9 provides a general outline of Terms of reference as a guide.

#### **Attachment 9**

## **General Outline of the Terms of Reference**

The TOR normally consists of the following sections:

- Background of the project;
- Objectives of the assignment;
- Scope of work;
- Transfer of knowledge;
- List of reports, schedule of deliveries, period of performance;
- Data, local services, personnel, and facilities to be provided by the Procuring Entity; and
- Institutional arrangements.

#### **Background of the Project**

The background summarizes the main features of the project and describes the objectives and general purpose of the assignment. In particular, it should include:

- Name of the Procuring Entity Department;
- Project location;
- Rationale of the project;
- Project history (what has been done so far and by whom);
- List of relevant studies and basic data;
- Need for consultants in the project and issues to be resolved;
- Activities to be carried out by the consultants;
- Source of financing for the assignment; and
- Supervision arrangements.

# **Objectives of the Consulting Assignment**

The TOR should precisely describe the objectives and expected results of the assignment to avoid misleading consultants. Typical objectives of the Procuring Entity assignments include:

- Preparation of development programs;
- Determination of project feasibility before an investment is made;
- Design of projects;
- Preparation of bidding documents;
- Supervision of works;
- Provision of training;
- Collection and analysis of data; and
- Evaluation of assets for sale, such as in privatization projects.

## **Scope of Work**

This section of the TOR describes in detail all main activities or tasks<sup>17</sup> to be conducted by consultants and the expected results. The TOR should describe only the activities and not the approach or the methodology by which the results are to be achieved since these would be the task of the proponents. Nevertheless, the TOR may provide suggestions on the approach or the methodology that consultants could or should use to execute the assignment and, under certain selection methods, can indicate the estimated staff-months required.

Often the project may require phased consultant assignments. In such cases, the TOR should be more detailed for the first phase and less detailed for the following ones. The TOR details for the subsequent phases will be refined as needed on the basis of the outcomes of earlier phases.

In a TOR, the scope of work of the assignment is usually defined by addressing the following issues:

- Definition, scope, limits and criteria of acceptance of the assignment;
- Desired level of detail (level of design, accuracy, and composition of cost estimates, etc.);
- Span of projections (time horizon, life span of project components, etc.);
- Need to compare the assignment with similar projects;
- Main issues to be addressed;
- Alternatives to be considered;
- Need for surveys, special analyses, and models;
- Need for special equipment;
- Institutional and legal framework of the project;
- Transfer of knowledge, objectives, and scope;
- Language requirements;
- Need for continuity, e.g., data gathering, and
- Quality Management requirements (if needed).

Phased assignments are likely to require that the scope of work be modified depending on intermediate results. For instance, the scope of work for a feasibility study originally covering a number of alternatives will be reduced if, during execution of the assignment, some alternatives prove unviable. Similarly, the scope of work can be expanded if more accurate studies than initially anticipated become necessary. In such cases, the TOR should clearly indicate the circumstances under which a decision will be made by the Procuring Entity to modify the scope of work.

In TORs covering self contained assignments such as feasibility studies, project designs, consultants are generally required to describe the "activities" that they propose to carry out. In TORs of assignments consisting mainly of the provision of specialized staff to assist the Procuring Entity in certain functions, consultants are required to describe the "tasks" of which they will be responsible.

## **Reports and Schedule of Deliveries**

The TOR should indicate the estimated duration of the assignment, from the date of commencement<sup>18</sup> to the date the Procuring Entity receives and accepts the consultant's final report or a specified completion date. Other dates may be considered, e.g., the date of effectiveness of the contract. The assignment's reporting requirements should be clearly specified. In particular, for inception and progress reports, there should be a balance between keeping the responsible the Procuring Entity Department well informed, and not forcing consultants to spend an excessive amount of time preparing minor reports. The TOR should indicate the format, frequency, and content of reports as well as number of copies, the language, and the names of the prospective recipients of the reports. For all major reports, an executive summary is recommended as a separate volume.

Depending on the assignment, the following reports are usually required:

- a) Inception Report: This report should be submitted about six weeks after the commencement date. Any major inconsistency in the TOR, staffing problems, or deficiency in the Procuring Entity assistance that have become apparent during this period should be included. The inception report is designed to give the Procuring Entity the confidence that the assignment can be carried out as planned and as agreed in the contract, and bring to its attention major problems that might affect the direction and progress of the work.
- b) Progress Reports: These reports keep the Procuring Entity regularly informed about the progress of the assignment. They may also provide warnings of anticipated problems or serve as a reminder for payment of invoices due. Depending on the assignment, progress reports may be delivered monthly or bi-monthly. For feasibility studies and design assignments, delivery of progress reports at two-month intervals is satisfactory. For technical assistance and implementation supervision (e.g., construction), progress reports are best made monthly. Progress reports may include a bar chart showing details of progress and any changes in the assignment schedule. Photographs are a quick and easy way of conveying the status of a project, and their use in progress reports is encouraged. For technical assistance services, progress reports also serve as a means of setting out the work program for following months. Each team member usually contributes to the preparation of the monthly report.
- c) Interim Reports: If the assignment is phased, interim reports are required to inform the Procuring Entity of preliminary results, alternative solutions, and major decisions that need to be made. Since the recommendations of an interim report may affect later phases of the assignment and even influence the results of the project, the Procuring Entity responsible Department should discuss the draft interim reports with consultants in the field. The Department responsible should not take more than 15 days to review and approve draft interim reports.
- d) Final Report: The final report is due at the completion of the assignment. The Procuring Entity and the consultants should discuss the report while it is still in draft final report form. The consultants alone are responsible for their findings; although changes may be suggested in the course of the discussions, consultants should not be forced to make such changes. If the consultants do not accept comments or recommendations from the Procuring Entity, these should be noted in the report. The consultants should include in the report the reasons for not accepting such changes.

## Data, Local Services, Personnel, and Facilities to be Provided by the Procuring Entity

Date on which the consultants are expected to start the services.

The RFP should indicate the inputs to be provided by the Procuring Entity to the consultants in Section Information to Consultants (ITC). The TOR should complement the ITC by listing in detail all the information and services that will be made available by the Procuring Entity. The TOR also should describe the Procuring Entity available software and computer models to be used by the consultants. Facilities to be provided by the Procuring Entity may include office space, vehicles, survey equipment, office and computer equipment, and telecommunication systems.

When needed the Procuring Entity may provide vehicles for use by consultants during the course of their assignment. Otherwise these should be provided for under the consultants' contract and turned over to the Procuring Entity at completion. The same can apply to items such as office and computer equipment. The Procuring Entity should request compatibility with its own equipment. To avoid difficulties caused by delays in allocating the Procuring Entity counterpart staff to the project, the TOR should provide for such staff to be assigned to the consultants before the assignment begins. During the initial drafting of the TOR, the Procuring Entity should determine which of its staff can act as counterpart. If the Procuring Entity provides support staff who will work under the consultants' responsibility, the TOR should clearly indicate that said staff will work the same hours as consultants, will be under the consultants' supervision and will be **not** remunerated under the consultants' contract.

If the Procuring Entity input is not well defined in advance, it is often a matter of contention for the duration of the assignment. Consultants tend to overestimate the Procuring Entity contribution to reduce their proposal price, particularly if the method of selection takes price into account. It is therefore important that the Procuring Entity inputs are defined in the TOR as precisely and realistically as possible.

# **Institutional Arrangements**

The TOR should define the institutional setup surrounding the assignment, indicate the role and responsibilities of everybody involved, and specify the type, timing, and relevance of everyone's participation, including the Procuring Entity. The TOR should define the hierarchy and level of authority of counterpart personnel as well as the requested level of experience of the Procuring Entity personnel who will be integrated into the consultants' team.

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# PREPARING REQUEST FOR PROPOSALS (RFP) FOR SERVICES

# I. PURPOSE

To provide guidance in preparation of Request for Proposals (RFP) for procurement of services.

#### II. SCOPE

This procedure applies to the preparation of Request for Proposals for all procurement of services.

## III. GENERAL

The RFP for a specific assignment provides all the information necessary for the short-listed consultants to prepare their proposals. It identifies the evaluation criteria, selection method, and procedures that will be used to evaluate them. The RFP also contains the TOR and the draft contract for the assignment. A standard RFP is annexed (Annex 12) which can be adapted for any of the selection methods described in the Procurement Methods for Services. An RFP includes the following sections:

Section 1: Letter of Invitation (LOI);

Section 2: Information to Consultants (ITC);

Section 3: Technical Proposal - Standard Forms;

Section 4: Financial Proposal - Standard Forms;

Section 5: Terms of Reference;

Section 6: Standard Form of Contract (including General Conditions of Contract, Special Conditions of Contract, and Appendices).

The RFP includes four standard forms of contract, for:

- 1. Complex time-based consulting assignments;
- 2. Complex assignments remunerated on a lump-sum basis;
- 3. Simple time-based consulting assignments;
- 4. Simple assignments remunerated on a lump-sum basis.

The RFP is a standard document and can be used under many different conditions. It has been designed in such a way that some of its parts are common and should not be modified, such as Information to Consultants and General Conditions of Contract. Other parts, such as the Data Sheet, Terms of Reference, and Special Conditions of Contract are assignment specific, and should be adapted to the specific project assignment conditions.

Consultants may request clarifications of the RFP up to certain number of days (indicated in the Data Sheet) before the deadline for submission of their proposals. At any time before the submission of proposals, the RFP could be amended, in which case the

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deadline for submission may need to be extended. The following paragraphs describe the different sections of the RFP.

# IV. <u>LETTER OF INVITATION (LOI)</u>

The LOI states the intention of the Procuring Entity to enter into a contract for a given assignment and informs the short-listed consultants that they are invited to submit a proposal for the assignment. It provides basic information regarding:

- a) The sources of funds to finance the consulting services;
- b) The names of the short-listed consultants;
- c) A brief description of the objectives and scope of the assignment;
- d) The method of selection, and
- e) The date, time and address for submission of proposals.

The LOI also instructs consultants to indicate whether they intend to submit a proposal. This information is necessary to allow the Procuring Entity to invite other consultants in case one or more short-listed consultants decline the invitation, thus reducing competition. In these cases, the deadline for submission of proposals may have to be extended.

#### V. <u>INFORMATION TO CONSULTANTS (ITC)</u>

#### A. Introduction

The ITC section contains all information consultants need to prepare responsive proposals. Among other things, it informs consultants about the evaluation process, including the evaluation criteria and sub-criteria, their respective weights and the minimum qualifying mark, in order to provide for fair and transparent selection process. The ITC should not be modified other than through the Data Sheet.

#### B. Data Sheet

The Data Sheet is the part of the ITC that contains specific information relating to the assignment. The column marked "Clause Reference" refers to the clauses of the ITC under which the Procuring Entity provides assignment-specific information to the consultants. The Data Sheet can be modified for specific project conditions that are not addressed by the ITC standard text, e.g., by adding new clauses not provided for in the ITC. The following are paragraphs that provide specific clarifications to some of the references to the clauses included in the Data Sheet.

- <u>Name</u>, <u>objectives</u>, <u>and description of the assignment:</u> This should briefly set out the most important features of the assignment.
- <u>Pre-proposal conference</u>: A pre-proposal conference is recommended for complex assignments, when the proposal preparation benefits from field visits and collection of

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documents. The conference should be convened after consultants have had sufficient time to examine the RFP. However, the conference should leave enough time for consultants to prepare their proposals taking into account the clarifications obtained during the conference. Minutes of the conference should be made available to ALL (present or not present) short-listed consultants. Attendance at the pre-proposal conference is optional.

- <u>Inputs provided by the Procuring Entity:</u> A detailed list of the Procuring Entity inputs is usually included in the TOR. Under this heading, the Procuring Entity should provide all additional information needed for consultants to comprehend the form and the extent of the Procuring Entity contribution. Consultants may seek clarifications as necessary on such inputs because any ambiguity in what the client will provide may become an issue during technical and financial evaluation of the proposals.
- <u>Clauses on fraud and corruption:</u> The clause dealing with fraud and corruption are indicated. It is desirable to indicate the list of the Procuring Entity anti-corruption Law references in this clause.
- Request for clarifications: The deadline for requesting clarifications should be such that the Procuring Entity has sufficient time to prepare responses, and the consultants have enough time to take them into account before submitting their proposals. Therefore, no less than 10 to 15 days should be provided.
- Associations among short-listed firms: To encourage competition, associations should not be allowed when only three consultants have been invited to submit proposals. Under this heading the consultant should provide the following information:
  - In case of joint ventures, one of the consultants should be designated as leading partner, a power of attorney for such leading partner should be provided by the associated consultants along with their proposal, and each of the partners should sign the proposal;
  - In case a consultant engages other consultants as sub-consultants for clearly identified tasks, the former prepares and signs the proposal, and remains liable for the execution of the services by the sub-consultants.
- <u>Estimated number of professional staff-months required for the assignment:</u> Only the estimated total of professional staff-months, not the individual staff months should be indicated. Staff-months should never be disclosed when the available budget is given.
- Minimum required experience of proposed professional staff: For the team leader and each member of the key staff responsible for the activities, the Procuring Entity should indicate the minimum required experience it considers necessary for the correct execution of the assignment. The Procuring Entity should not make unreasonable requirements that would unduly limit the consultants' autonomy and

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unnecessarily increase the cost of the services. Consultants are not allowed to propose more than one key staff for the same position.

- Additional information in the Technical Proposal: The Procuring Entity should indicate any additional information that consultants are required to provide in their technical proposals. In case the TOR includes a requirement for consultants to provide a Quality Plan and carry out the assignment according to its provisions, consultants should be asked to include an outline of the Quality Plan they intend to adopt.
- <u>Taxes:</u> Since consultants are required to estimate in their financial proposals all local taxes as a separate amount, they should be made aware of the GOJ tax regime.
- <u>Validity period of the proposal:</u> The validity period should allow for an adequate period for negotiation of the contract with the successful consultant. It should also allow for possible negotiations with the consultant ranked second in the event that the negotiations with the first are unsuccessful. However, excessive time for the proposal's validity poses a strain on consultants, who have to keep their staff available for the assignment for an indefinite period. If the period is too long, the risk of staff substitution increases considerably. Usually, a reasonable period is between 60 and 90 days after the proposal submission date.
- <u>Proposal submission date:</u> the Procuring Entity should allow consultants a reasonable time for the preparation of proposals. For small and simple assignments, four weeks between the invitation and submission should suffice. For large and complex assignments, however, where the consultants have to associate or visit the site, periods of up to three months are needed.
- <u>Evaluation sub-criteria and relevant points:</u> the Procuring Entity should indicate the sub-criteria selected for the following four criteria, together with their relevant points:
  - Specific experience;
  - Adequacy of proposed methodology and work plan;
  - Suitability of training program;
  - Local participation.

The Procuring Entity should also indicate the points it has allocated to the three sub-criteria specified under the criterion "Qualifications and competence of key staff". When interdisciplinary weighting of key staff is required, the relative weights assigned to the team leader and to each one of the experts responsible for the most significant activities should also be indicated here.

• Source of the official exchange rate (for international assignments): This should be an official source, e.g., the Central Bank or an internationally circulated publication. The date of exchange rate should not be earlier than four weeks prior to the deadline

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for submission of proposals, or later than the original date of expiration of the period of validity of the proposals.

- Formula for determining the financial score.:. The Data Sheet proposes the following inversely proportional formula: Sf = 100 x Fm/F, where:
  - S<sub>f</sub> means financial score;
  - F<sub>m</sub> means lowest price offered; and
  - F means the price of the proposal under consideration.
- Weights given to the technical and financial proposals (Applicable to QCBS): The best practice is to allow 75 to 80% weight for technical proposal and 20 to 25% for Financial proposal.

# VI. TECHNICAL AND FINANCIAL PROPOSAL STANDARD FORMS

The objective of these forms is to allow the requested information to be presented in a clear and readily comparable manner and to allow the Evaluation Committee to easily understand and evaluate proposals in accordance with the established criteria. These include:

- Comments and Suggestion of Consultants on the TOR and on Data, Services and Facilities to be Provided by the Client:

The objective when engaging consultants is to access or explore new approaches, methods, and solutions some of which it may not have been considered when drafting the TOR. In the RFP, consultants are invited to express their comments on the TOR and suggest improvements. However, consultants tend to limit their comments on the TOR because they assume the TOR are prepared by experts and also for fear of their proposal being rejected as "non-responsive".

Consultants willing to propose modifications or improvements to the TOR, such as deleting some activity they consider unnecessary, or adding another, or proposing a different phasing of the activities, should present and justify such suggestions in this Form and shall incorporate them in their proposal. This will allow the Evaluation Committee to correctly evaluate their technical proposals on their own merits. Consultants are also invited to comment on the data, services, and facilities to be provided by the Procuring Entity.

- Description of the Methodology and Work Plan for Performing the Assignment

It is strongly recommended to request consultants to provide a description of their methodology and work plan divided into the following three sections:

- Technical Approach and Methodology;
- Work Plan:

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• Organization and Staffing.

## VII. SAMPLE FORMS OF CONTRACT

The Form of Contract should be prepared on the basis of one of the Standard Forms of Contract annexed to the RFP. Although the General Conditions of Contract of the Standard Forms cannot be modified, the Special Conditions of Contract may be modified before issuing the RFP to adapt them to the specific requirements of the assignment.

## VIII. STANDARD REQUEST FOR PROPOSAL DOCUMENTS AND CONTRACTS

The standard RFPs (Request for Proposals) for the various services procurement are found in the following annexes:

Annex 12 - Procurement of Services - Open & Selective Tendering

STANDARD REQUEST FOR PROPOSALS

for

Quality-Cost Based Selection (QCBS) Quality Based Selection (QBS) Selection Based under a Fixed Budget (SFB) Least Cost Selection (LCS)

ANNEX 12A - STANDARD PROPOSAL EVALUATION REPORT - Procurement of Services - Open & Selective Tendering

for

Quality-Cost Based Selection (QCBS) Quality Based Selection (QBS) Selection Based under a Fixed Budget (SFB) Least Cost Selection (LCS)

Annex 13 – Procurement of Services – Consultant Qualification (CQ)

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**Sub-Section №: S-3100** 

# SETTING THE EVALUATION CRITERIA TO EVALUATE PROPOSALS FOR SERVICES

# I. <u>PURPOSE</u>

To establish the procedures for setting evaluation criteria for services.

# II. SCOPE

This procedure applies to all procurement of services.

# III. PROCEDURE

The project objectives and the underlying TOR determine the qualifications and experience required from the consultants who will carry out the assignment. In adopting evaluation criteria, the Procuring Entity seeks to ensure that the proposal selected will offer the best quality for the services required. The following criteria shall be used as a basis for evaluation of technical proposals:

- a) Specific experience of the consultants relevant to the assignment;
- b) Adequacy of the proposed methodology and work plan in responding to the TOR;
- c) Qualifications and competence of key staff for the assignment.

Depending on the particular objectives of the assignment, two additional criteria may be required:

- d) Suitability of the transfer of knowledge program (training), and
- e) Participation by Jamaican nationals among proposed key staff (for international assignments).

When the transfer of knowledge is important and the nature of the assignment allows criterion (d) should be included, and the desired characteristics of the transfer should be specified in the TOR. Criterion (e) is applicable for international assignments and should be included to encourage the participation of Jamaican nationals among key staff proposed by consultants if deemed appropriate.

The Data Sheet contained in the ITC of the RFP discloses the points allocated to each of the evaluation criteria and sub-criteria. Table 1 shows a range of points that may be allocated to each criterion on a scale from 1 to 100. The weights may be adjusted for specific circumstances. The actual distribution should depend on the type of assignment and the relative importance each criterion has for the success of the assignment. A good practice is to have those who prepared the TOR advise in the selection of sub-criteria and relative weights.

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#### Table 1

Evaluation criteria for technical proposals	Points (weights)
Specific experience of the consultants	5 to 10
Adequacy of the proposed methodology and work plan	20 to 50
Qualifications and competence of key staff	30 to 60
Suitability of the transfer of knowledge program (training) - optional	Normally not to exceed 10
National participation (nationals among key staff) - optional	Not to exceed 10
Total	100

The criterion "Qualifications and competence of key staff" is divided into the following three sub-criteria:

- General qualifications;
- Adequacy for the assignment;
- Experience in Region (for international assignments).

The other four evaluation criteria may also be divided into sub-criteria, although excessive detail should be avoided. However, given their relatively small assigned weight (in most cases maximum of 10 points out of 100), it may not be practical to adopt sub-criteria for the following three evaluation criteria:

- a) Specific experience of the consultants relevant to the assignment;
- d) Suitability of the transfer of knowledge program (training); and
- e) Participation by nationals among proposed key staff (for international assignments).

When transfer of knowledge is a particularly important component of the assignment, more than 10 points may be allocated to this criterion; in such a case, sub-criteria may be provided.

When sub-criteria are provided, which is always the case for "Adequacy of the proposed methodology and work plan" and "Qualifications and competence of key staff", for practical reasons the number of sub-criteria should be kept to a minimum (typically no more than three for each criterion).

Since sub-criteria and their weighting determine the outcome of the evaluation, they should be chosen considering the aspects that are critical to the success of the assignment. Evaluation criteria and sub-criteria associated points and the rating system form an

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arithmetic model to assess the technical merit of the proposals. The more reliable the model, the more accurate the evaluation shall be which shall increase the possibility that the Procuring Entity will select the proposal of the consultants who are best suitable for the assignment.

All adopted sub-criteria should be specified in the RFP. The points allocated to each of the sub-criteria under "Qualifications and competence of key staff" must be indicated. It is also recommended to disclose in the RFP the points allocated to the sub-criteria of "Adequacy of the proposed methodology and work plan" and "Suitability of the transfer of knowledge program" (when more than 10 points are allocated to the latter), since it increases the transparency of the evaluation. If points allocated to these sub-criteria are not disclosed in the RFP, the Evaluation Committee should allocate them before proposal submission, to reduce the risk of manipulations during the evaluation process. The weight of each sub-criterion will vary according to its relative importance to the specific assignment. To avoid over-detailed lists of sub-criteria, it is recommended that no fewer than 3 points be allocated to each sub-criterion. Allocation of fewer than 3 points would imply that the sub-criterion is only of minor importance to the overall evaluation.

In defining the weights there is an initial issue as to whether the methodology and work plan, or quality of staff, is more important. The answer depends on the nature of the assignment. Since methodology and work plan are usually less important in the final stages of the project (e.g., construction supervision) and deserve lower points, key staff weight may be higher. On the contrary, since methodology and work plan are more important in the initial stages (e.g., master plans, feasibility studies) and deserve more points, less point are left to key staff.

When cost is a factor of selection, the RFP has to indicate the relative weight assigned to the technical and financial proposals. For standard assignments, the weight for quality is normally of 75 to 80 percent with 20 to 25 percent given to cost. In no case these weights should exceed these limits. In special circumstances and for assignments in which quality considerations are relatively important, QBS method is preferable to QCBS.

It is not mandatory to apply a pass or fail threshold when evaluating technical proposals. However, if cost is a factor of selection, a minimum technical qualifying mark may be provided in the RFP to minimize the risk of accepting low-quality proposals at a very low cost. A qualifying mark in the range of 70 and 80 percent is typical. Any technical proposal with a score below this threshold is rejected, and the financial envelope is returned unopened. Setting the threshold too high increases the risk of rejection of a majority of proposals. A non-responsive technical proposal shall be rejected regardless of whether there is a pass or fail threshold.

The following paragraphs recommend "best" practices for selecting sub-criteria and allocating points (weights) to both criteria and sub-criteria for quality evaluation.

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## A. Specific Experience

A maximum of 10 points should be assigned to the specific experience of consultants in the field of the assignment because the Procuring Entity has already short-listed them on the basis of their capabilities, that is, relevant qualifications and experience in projects of similar nature. Ideally, there should be little difference in the level of quality between short-listed competitors from the point of view of their specific experience. However, the experience of short-listed consultants must be evaluated to identify more specific aspects of their qualifications that make them suitable candidates for the assignment.

## B. Methodology and Work Plan

The methodology and work plan is a key component of the technical proposal and should be evaluated carefully. Sub-criteria for evaluating this component of the proposal should include:

- a) Technical Approach and Methodology;
- b) Work Plan;
- c) Organization and Staffing.

<u>Technical Approach and Methodology</u>: Here consultants explain their understanding of the objectives of the assignment, highlight the issues being addressed and their importance, and then explain the technical approach they would adopt to address them. They should then explain the methodologies they propose to adopt, demonstrate the compatibility of those methodologies with the proposed approach (e.g., the methods of interpreting available data; carrying out investigations, analyses, and studies; and comparing alternative solutions), and address any modifications to the TOR proposed by the consultants. In case the TOR requires the consultant to provide a Quality Plan and carry out the assignment according to its provisions, an outline of the Quality Plan (e.g., its list of contents) should be included in this section of the proposal.

Work Plan: Here consultants propose the main activities of the assignment, their content and duration, phasing and interrelations, milestones (including interim approvals by the Procuring Entity), and delivery dates of the most important reports. The consistency of the technical approach and methodology with the proposed work plan is a good indication that consultants have understood the TOR and are able to translate them into a feasible working plan. A list of the final documents, including reports, drawings, and tables to be delivered as final output, should be included here. The work plan will enable the consultants to prepare the Activity Schedule.

Organization and Staffing: In this section the consultants propose the structure and composition of their team. It will list the main disciplines involved, the key expert responsible and proposed technical and support staff. The roles and responsibilities of key experts should be set out in job descriptions. In case of association, this section will indicate how the duties and responsibilities will be shared. Completion of the

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organization and staffing section will allow consultants to summarize the Team Composition and Task Assignments and to prepare the Time Schedule for Professional Personnel. An organization chart illustrating the structure of the work team and its links to the Procuring Entity should be provided. The importance of organization and staffing increases with the size of the team; in fact, larger teams, such as those required by multidisciplinary projects, are far more difficult to manage.

The methodology, work plan, and organization are all integrated. `The work plan depends on the technical approach and methodology adopted, and those in turn determine the required organization.

The total points that can be allocated to methodology and work plan (20 to 50) have to be split among the sub-criteria depending on their relative importance for the assignment. Even in these cases the number of sub-criteria should be kept to a minimum. Otherwise, the features being evaluated may become individually irrelevant and render the evaluation a mechanical exercise rather than an informed professional assessment of quality.

# C. Qualifications and Competence of Key Staff

Key staff refers to the consultant staff who have management responsibilities or have key qualifications needed for the assignment. Consultant key staff is evaluated based on the qualifications and experience shown in their curriculum vitae (CV). The evaluation is carried out using the three sub-criteria indicated in the ITC:

General Qualifications: This sub-criterion covers the general experience of the candidate (total duration of professional activity), level of education and training, positions held by the candidate, time spent with the consultant as staff, experience in the region where the assignment is to be carried out, etc.

Adequacy for the Assignment: This relates to the education, training, and experience of the candidate in the specific sector, field, subject, etc. directly relevant to the assignment and the proposed position. This factor is critical and should be given the highest weight among the three sub-criteria.

Experience in the Region and Language (for international assignments): This illustrates the candidate's knowledge of national or local conditions, including culture, administrative systems, and government organizations, and his or her ability to communicate in the national language.

The points allocated to the criterion "Qualifications and competence of key staff" are distributed among the above sub-criteria according to the percentages set out in Table below:

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Sub-criteria	Range of percentage
General qualifications	20 - 30
Adequacy for the project	50 - 60
Experience in region and language	10 - 20
Total	100%

The RFP should indicate the distribution of points and what fraction of the total refers to the team leader and to the remaining key staff. Since the success of the assignment depends to a large extent on the performance of the team leader, in no circumstances should he or she be given less weight than any other staff member.

The evaluation of key staff may require interdisciplinary weighting, particularly for assignments requiring large teams. In this case, the RFP should indicate not only the weight relevant to the team leader but also the weight given to each of the most relevant staff members. The proposal should group the experts by discipline (or activity), and the Evaluation Committee should evaluate them by applying the established weight to each group.

#### D. Transfer of Knowledge (Training)

When transfer of knowledge is an important component of the assignment, more than 10 points can be allocated to this area. This area could be divided into the following subcriteria:

<u>Relevance of Program:</u> Transfer of knowledge should cover in sufficient depth important developments in a given sector that will benefit the Procuring Entity.

<u>Training Approach and Methodology</u>: This refers to the methodology and work program proposed to achieve the objectives specified in the TOR and ensure lasting results for the Procuring Entity.

<u>Qualifications of Experts and Trainers</u>: This covers the pedagogical qualifications in training of the proposed specialists.

#### **E.** National Participation (for International Assignments)

GOJ encourages consultants to maximize the use and expertise of Jamaican nationals by factoring it into the evaluation of proposals with a specific criterion. Depending on the importance given to participation of Jamaican nationals and the characteristics of the assignment, a maximum of 10 points may be given to this criterion. National participation is assessed on the basis of the percentage share of national consultants covering key positions in terms of staff-months over the total staff-months of key staff proposed for the assignment. Foreign consultants may satisfy national participation requirements either by associating (joint venture or subcontract) with their national

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branch, if one exists, or with independent national firms, or incorporating national individual experts into the work team. In all cases, for national participation to be effective and rewarded in the evaluation of proposals, national experts should be part of the key staff.

# F. The Point System

The allocation of weights to the main evaluation criteria might fall within the ranges indicated in Table below, depending on the specifics of different assignment types.

Type of assignment	Specific experience	Methodology Work plan	Staff qualifications	Training (optional)	National participation (optional)	Total points
	5-10	20-50	30-60	0-10	0-10	100
Technical assistance/ training	5-10	20-35	50-60	0-10*	0-10	100
Pre-investment studies	5-10	35-50	40-50	0-10	0-10	100
Design	5-10	30-45	40-50	0-10	0-10	100
Implementation/ supervision	5-10	20-35	50-60	0-10	0-10	100

<sup>\*</sup> When training is an important component of the assignment, more points can be given to this criterion and points of the other criteria are reduced accordingly.

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# G. Evaluation Criteria and Sub-criteria

The following table summarizes the five evaluation criteria provided in the Standard Request for Proposals (SRFP) and gives examples of sub-criteria that could be adopted when preparing the RFP.

# Table 5

Evaluation criteria	Evaluation Sub-criteria
Specific experience of the consultants in the field of the assignment	Specify
Adequacy of the proposed methodology	- Technical approach and methodology;
and work plan in responding to the TOR	- Work plan;
	- Organization and staffing
	Note: the number of sub-criteria may be increased depending on the characteristics of the assignment
Qualification and competence of	- General qualifications
key staff proposed for the assignment	- Adequacy for the project
	- Experience in the region and language
	Note: these three sub-criteria are defined by the RFP and cannot be changed.
Suitability of the transfer of knowledge	- Relevance of program
program (training)	- Training methodology and program
	- Qualifications of training specialists
National participation (nationals among key staff)	Specify

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# **EVALUATION OF PROPOSALS FOR SERVICES**

# I. PURPOSE

To establish uniform procedures for Proposal Evaluation for services.

# II. SCOPE

This procedure applies to all procurement of services.

## III. PROCEDURE

Technical proposals for consulting services are an intellectual product; their evaluation cannot be reduced to a purely mathematical exercise but instead must be based on the professional judgment of competent evaluators. The difficulty is to ensure that this judgment is not exercised in an unreasonable or arbitrary manner. Evaluators may, either consciously or unconsciously, manipulate the points awarded to specific factors in the evaluation for a number of reasons, including inadequate experience in the field of the assignment or in evaluating proposals of this nature. Therefore, it is important that subjectivity be mitigated to achieve the transparency, consistency, and fairness that should inform the exercise. One way of doing this is by adopting a suitable rating system for the evaluation of technical proposals under the criteria and sub-criteria established in the Request for Proposals (RFP).

Unlike for the procurement of goods and works, and the procurement of services, depending on the selection method adopted, includes the following steps:

- a) Preparation of the TORs of the assignment;
- b) Preparation of the cost estimate to determine the budget of the assignment;
- c) Advertising to invite expressions of interest from consultants;
- d) Short-listing to identify consultants qualified for the assignment;
- e) Preparation and issuance of the RFP;
- f) Preparation and submission of proposals by the consultants;
- g) Evaluation of technical proposals, i.e., quality evaluation;
- h) Evaluation of financial proposals, i.e., cost evaluation;
- i) Final combined quality and cost evaluation to select the winning proposal (for QCBS method); and
- j) Negotiations and signing of contract.

#### A. Rating System

The Standard Request for Proposals (RFP) specifies the five general criteria used to evaluate technical proposals and the points (or weights) given to each of them. The responsiveness of a proposal to the Terms of Reference (TOR) is determined by its

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responsiveness to the criteria and sub-criteria adopted for the evaluation indicated in the RFP. These criteria include:

- Specific experience of the consultants in the field of the assignment;
- Adequacy of the proposed methodology and work plan in responding to the TOR;
- Qualifications and competence of key staff proposed for the assignment;
- Suitability of the transfer of knowledge program; and
- Local participation (For large and complex international assignments).

The transfer of knowledge criterion is included wherever it forms an explicit aspect of the assignment. The local participation criterion is optional when deemed necessary and for international assignments.

The RFP should specify the sub-criteria for the proposed key staff as indicated in the Standard RFP, as well as other adopted sub-criteria, together with the points to be allocated to each of them for evaluation.

In the RFP the points assigned to a particular criterion (or sub-criterion) indicate the maximum score (maximum number of points) that can be allocated to it when evaluating a proposal. The actual score given represents the degree to which the proposal being evaluated under that particular criterion (or sub-criterion) meets the requirements, that is, its level of responsiveness. The level of responsiveness for each criterion (and sub-criterion) is rated on a scale of 1 to 100.

Each committee member scores the technical proposals in two steps:

- 1. The level of responsiveness of the proposals to each of the criteria or sub-criteria is rated on a percentage scale.
- 2. Each percentage rating is multiplied by the maximum number of points assigned to the relevant criterion (or sub-criterion) in the RFP to obtain the score (% rating x maximum number of points = score). For example, the criterion "Specific experience of the consultant in the field of the assignment" may have been allocated a maximum of 10 points in the RFP. A proposal with a good level of responsiveness to this criterion is given a 90 percent rating and therefore receives a score of 9 points.

To make the scoring easier and transparent, the rating scale of the level of responsiveness is usually divided into a number of discrete grades. It is a good practice to give scores based on the following grades: poor, satisfactory, good, very good. Prior to receiving the technical proposals, the Evaluation Committee should agree on the definition of each grade for each criterion (or sub-criterion). That is, the committee should establish what will be considered poor, satisfactory, good, and very good. Since each of the criteria (or sub-criteria) refers to a different aspect of the proposal, the definition of grades will differ from one criterion to another.

Scoring technical proposals by this method offers the following advantages:

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- It provides the Evaluation Committee with a shared definition of the grades, thus making the evaluation easier and comparable (this is particularly helpful for less experienced evaluators);
- It minimizes the risk of scoring inconsistencies and discretion;
- It binds each committee member to justify his or her evaluation on the basis of a common definition of grades, thus discouraging intentionally biased evaluations;
- It adds transparency and fairness to the evaluation process.

Defining the grades is a difficult exercise that requires a thorough knowledge of the terms of reference, the main technical issues to be covered by the consultant assignment, and the qualifications expected from the consultants. However, it is worth going to such trouble because it may substantially improve the quality of the evaluation. Rating proposals without using agreed upon predefined grades of responsiveness leaves the definition of the grades to each evaluator, very likely making the scoring subjective and difficult to compare.

# B. Specific Experience of Consultants that Relates to the Assignment

#### Rating Scale

A maximum of 10 points should be allocated to the specific experience of the firm. The grades indicated in Table below are recommended for percentage ratings related to the evaluation of this criterion.

Typical percentage rating for Specific Experience	
Grade (level of responsiveness)	Rating
Satisfactory	70%
Good	90%
Very good	100%

Since all consultants have been short-listed based on experience, ideally their experience should not be rated normally less than satisfactory, that is, not less than 70 percent.

#### Aspects to Consider for the Evaluation

The committee should consider following aspects in evaluating the relevant experience of the consultants:

• Experience in Similar Projects: Evidence of having successfully carried out similar assignments;

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- Experience in Similar Areas and Conditions: The consultants have worked in regions or countries with physical, cultural, social, and institutional characteristics comparable to those of the country of the assignment;
- Size, Organization, and Management: The consultants have the capacity, e.g., staff, organization, and managerial skills, to carry out the assignment. For some assignments, consider how long the consultants have been established;
- Specialization: For some assignments it may be important to evaluate the consultants' specialized skills and access to particular technologies related to the assignment;
- Experience in Transfer of Knowledge and Training: The consultants' experience in transfer of knowledge and training of client's personnel (if relevant);
- Quality Management: The availability of a well-established QM system may be taken into account for large and complex assignments.

#### Defining the Grades

Since sub-criteria are usually not provided for the specific experience of the consultants, the specific experience shall be evaluated as a whole using the grades set out in Table 1. An example of the definition of these grades is given below (definitions may differ from case to case depending on the characteristics of the assignment):

- Satisfactory: The consultants have relevant experience in the field of the assignment but have not dealt with critical issues specific to the assignment. The consultants are fully experienced in the use of standard approaches and methodologies required for the assignment. The consultants' permanent staff is adequate.
- Good: The consultants have extensive experience in the field of the assignment and have worked in countries with similar physical and institutional conditions, including similar critical issues. Permanent staff is adequate and highly specialized to cover the needs of the assignment, and the firm has additional resources at its command to cope with unexpected requirements. The consultants have experience with advanced approaches and methodologies for dealing with the specific requirements of the assignment.
- Very Good: The consultants have outstanding, state-of-the-art expertise in assignments similar to the one being considered. Quality and composition of the consultants' staff easily cover the needs of the assignment and ensure an excellent level of backstopping, and consultants' staff includes top experts in the field of the assignment. The consultants are considered world class specialists in the approaches and methodologies dealing with specific issues of the assignment. The consultants operate according to well-established QM procedures.

Ratings should not be too rigid. In the likely event that a firm does not satisfy all the conditions set forth in one of the grade definitions, but that particular grade appears to reflect the overall specific experience of the firm better than the lower grade, the upper grade may be assigned.

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Under exceptional circumstances the Evaluation Committee may desire to take into account the possibility that a firm with less than satisfactory specific experience is short listed, it may decide to include in Table 1 an additional grade ("poor") with a rating of or about 40%. Such decision should be made at the time of definition of the rating system and in any case before the opening of the proposals.

# C. Adequacy of Proposed Methodology and Work Plan

# **Rating Scale**

A range of 20 to 50 points should be allocated to Adequacy of Methodology and Work Plan criterion. The grades indicated in Table below are recommended for percentage ratings related to the evaluation of this criterion.

Typical percentage rating for Methodology and Work Plan	
Grade (level of responsiveness)	Rating
Poor	40%
Satisfactory	70%
Good	90%
Very Good	100%

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The lowest grade is 40% instead of zero because:

- A zero rating is not realistic, since it would imply that the consultant has not responded at all to the proposal under this criterion;
- A zero rating given to a poor methodology may hardly be compensated even by high scores of remaining criteria. This could lead to reject a proposal that is attractive under all its other aspects.

In case a proposal appears to be unacceptable under this criterion, i.e., it doesn't deserve to be rated "poor", it may be considered non responsive.

# Aspects to Consider for the Evaluation

The Committee should evaluate the quality and the adequacy of the proposed methodology and work plan by considering such aspects as:

- Understanding of the Objectives of the Assignment: The extent to which the consultants' technical approach and work plan respond to the objectives indicated in the TORs;
- Completeness and Responsiveness: Does the proposal respond exhaustively to all the requirements of the TOR?
- Creativity and Innovation: Does the proposal suggest any new approaches to the assignment or new methodologies that help achieve better outcomes?
- Clarity: Are the various elements coherent and decision points well defined?
- Efficiency and Resource Utilization: Is the staffing schedule appropriate, with neither too many short-term experts nor too many generalists? Is the proposed staff permanent or formed by external consultants? In the latter case, check whether the external consultants have worked on previous assignments with the consultants' permanent staff. This aspect should always be considered.
- Flexibility and Adaptability: Are the methodology and work plan flexible and easy to adapt to changes that might occur during implementation of the assignment? This aspect is especially relevant when the assignment takes place in potentially changing environments.
- Technology: Does the methodology propose the use of appropriate technologies and the adoption of innovative solutions?
- Timeliness of Output: Does the proposed activity schedule provide the requested outputs in a timely manner?
- Logistics: If the consultants have to work at remote sites, the consultants' approach to logistics could also be considered.
- Quality Management: Especially for large and complex assignments, the TOR may include a requirement to provide a Quality Plan, or its detailed list of contents.

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#### Evaluation when Sub-criteria are Provided

With the exception of small or simple assignments, the quality and adequacy of the proposed methodology and work plan are evaluated by means of the following three subcriteria. Additional sub-criteria may be specified in the RFP when there is a need to focus on particularly important aspects of the assignment.

- a) Technical Approach and Methodology;
- b) Work Plan;
- c) Organization and Staffing.

First of all, the Evaluation Committee shall define, for each of the three sub-criteria above, the definition of the grades indicated in Table 2.

An example of the definition of the four grades in Table 2 for the three sub-criteria listed above may include the following (definitions may differ from case to case depending on the characteristics of the assignment).

- a) Technical Approach and Methodology
- Poor: The technical approach and or the methodology to carry out important activities indicated in the TOR are inappropriate or very poorly presented, indicating that the consultant has misunderstood important aspects of the scope of work. The list of contents of the Quality Plan (required in the TOR) is missing.
- Satisfactory: The way to carry out the different activities of the TOR is discussed generically. The approach is standard and not specifically tailored to the assignment. Although the approach and methodology are suitable, they don't include a discussion on how the consultant proposes to deal with critical characteristics of the assignment. The list of contents of the Quality Plan (if required in the TOR) is provided, but it is generic and does not reflect the specific features of the assignment.
- Good: The proposed approach is discussed in full detail, and the methodology is specifically tailored to the characteristics of the assignment and flexible enough to allow its adaptation to changes that may occur during execution of the services. The list of contents of the Quality Plan (if required in the TOR) is tailored to the specific characteristics of the assignment.
- Very Good: In addition to the definition given above in "good", important issues are approached in an innovative and efficient way, indicating that the consultants have understood the main issues of the project and have outstanding knowledge of new solutions. The proposal discusses in detail ways to improve the results and the quality of the assignment by using state-of-the-art approaches, methodologies, and knowledge. A detailed description of the Quality Plan is provided in addition to its list of contents (if required).

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#### b) Work Plan

- Poor: The activity schedule omits important tasks; the timing of activities and correlation among them is inconsistent with the approach and/or methodology proposed. There is lack of clarity and logic in the sequencing.
- Satisfactory: All key activities are included in the activity schedule, but they are not detailed. There are minor inconsistencies between timing, assignment outputs, and proposed approach.
- Good: The work plan fits the TOR well; all important activities are indicated in the activity schedule, their timing is appropriate and consistent with the assignment outputs; and the interrelation between the various activities is realistic and consistent with the proposed approach. There is a fair degree of detail that facilitates understanding of the proposed work plan.
- Very Good: In addition to the definition given above in "good," decision points are well-defined, and the sequence and timing of activities are very well-defined, indicating that the consultants have optimized the use of resources. A specific chapter of the proposal explains the work plan in relation to the proposed approach. The work plan permits flexibility to accommodate contingencies.

## c) Organization and Staffing

- Poor: The organization chart is sketchy; the staffing plan is weak in important areas; and the staffing schedule is inconsistent with the timing of the most important outputs of the assignment. There is no clarity in allocation of tasks and responsibilities. The proposed specialists have never worked together as a team.
- Satisfactory: The organization chart is complete and detailed; the technical level and composition of the staffing arrangements are adequate; and staffing is consistent with both timing and assignment outputs.
- Good: In addition to the definition above in "satisfactory", staff is very well balanced, that is, showing good coordination, clear and detailed definition of duties and responsibilities, not too many short-term experts, not too many generalists, precise matching of staff skills and needs, and efficient logistic support. Some members of the project team have worked together before to some extent.
- Very Good: Besides meeting all the features for a "good" rating, the proposed team is integrated and several members have worked together extensively in the past; a detailed explanation of the Procuring Entity role and integration in the assignment is provided. The proposal contains a detailed discussion demonstrating that the consultants have optimized the use and deployment of staff from the point of view of efficiency and economy, based on the proposed logistics.

# **Evaluation For Small And Simple Assignments**

For small and simple assignments, the Procuring Entity may choose not to identify subcriteria under the methodology and work plan. Instead, the proposed methodology and

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work plan are evaluated as a whole using the four grades in Table 2. An example of how these grades could be defined, is given below (definitions may obviously differ from case to case depending on the characteristics of the assignment).

- Poor: The methodology for important activities in the TOR is inadequate, indicating that the consultants may have misunderstood relevant aspects of the scope of work; the schedule of activities is incomplete; staffing is inadequate; and the staffing schedule is not fully consistent with the timing of the outputs. The proposed specialists have never worked together as a team.
- Satisfactory: Proposed methodologies are standard and generally suitable for the assignment, but no detailed discussion of the specific aspects of the assignment is provided; the activity schedule is complete and clear; composition of the staff is adequate; and staff levels are consistent with timing and outputs.
- Good: Approach and methodology are well defined and respond to the assignment.
  The work plan is detailed and addresses the TOR well; all important activities are
  indicated in the activity schedule, their timing is correct and consistent with the
  assignment outputs; and staffing is well-balanced (good coordination, clear and
  detailed definition of duties and responsibilities). Some members of proposed team
  have worked together on limited occasions.
- Very Good: Besides meeting the criteria under "good," the proposal includes important innovations in approach relevant to the Procuring Entity and makes practical suggestions on how to improve the overall quality and efficiency of the assignment, indicating clearly how they would be implemented. The implementation of key activities is explained in detail. The proposed team is well integrated and several of its members have previously worked together.

In the event that the consultants' approach and methodology do not fully satisfy all the conditions set forth by one of the grade definitions, but that particular grade appears to reflect the overall adequacy of approach and methodology better than the lower grade, the upper grade may be assigned.

## D. Qualifications and Competence of Proposed Key Staff

#### Rating Scale

A range of 30 to 60 points should be allocated to Qualifications and Competence of Key Staff. The grades indicated in Table below are recommended for percentage ratings related to the evaluation of the proposed Key Staff.

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Typical percentage rating for Qualifications and Competence of Key Staff	
Grade (level of responsiveness)	Rating
Poor	40%
Satisfactory	70%
Good	90%
Very Good	100%

The lowest grade is 40 % instead of zero for the following reasons:

- A zero rating is not realistic, since it would imply that the consultant has not responded at all to the proposal under this criterion;
- A zero rating given to a poor methodology may hardly be compensated even by high scores of remaining criteria. This could lead to reject a proposal that is attractive under all its other aspects.

Grades in Table 3 apply to both individual staff members and to members grouped by discipline (or activity) when interdisciplinary weighting is required. When evaluating staff, it is recommended that only those proposed for key positions should be considered. Junior or clerical staff shall not be evaluated.

#### Aspects to Consider for the Evaluation

The committee should evaluate key staff by considering the following aspects:

- General Qualifications. It is important to consider the number of years of professional experience of the consultants in the field to which they are assigned. For evaluation purposes, the value of previous university education diminishes with age. Experts with more than 10 years' experience should be evaluated on their current position and the level of responsibility entrusted to them in previous projects, rather than on their acquired university degrees. Since experience accumulates with age, staff members who are 60 years or older are often satisfactorily employed on complex or sensitive assignments. Long-term experience in consulting assignments may be advantageous but evaluators should not give points to older candidates when age is not especially relevant for the assignment. When knowledge of recent approaches, methodologies, and technologies is critical, younger experts may be preferable.
- Adequacy for the Assignment. Is the expert suitable for the job and has he or she recently held similar positions? Has the proposed team leader been a successful team leader before, and has the team leader been proposed mainly because of leadership or professional skills? How well do the knowledge and skills of the staff offered meet the needs of the assignment? Appropriate capabilities, adequate professional skills, and experience should always be the key evaluation aspects.

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• Experience in the Region and Language: When evaluating experience in the region, consider factors such as the number of assignments carried out in the country and/or in countries with similar cultures, administrative systems, and government organizations.

Evaluate key staff in terms of their skill and suitability for the job. The qualifications of the team leader should be carefully evaluated because that position plays a crucial role in the success of the assignment. If the team leader is acting as both project manager and expert, evaluate his or her qualifications for each function and assign the scores to each function proportional to the time effort dedicated to each of them if the two function overlap. Full marks to each function are assigned only if the functions can be clearly separated without affecting the quality of the services.

# Evaluation Using the Three Sub-criteria Specified in the RFP

The qualifications and competence of key staff shall be evaluated using the following three sub-criteria specified in the RFP:

- a) General Qualifications;
- b) Adequacy for the Assignment;
- c) Experience in the Region and Language.

Under each of these sub-criteria, individual staff members are evaluated using the grades in Table 3. The Evaluation Committee shall determine for each of the three sub-criteria the definition of each of the grades indicated.

An example of the definition of the four grades in Table 3 for each of the three sub-criteria listed above may include the following:

- a) General Qualifications
- Poor: The proposed expert has less experience than that specified in the RFP or less than 10 years of relevant experience.
- Satisfactory: The proposed expert has 10 years or more of overall working experience relevant to the assignment, with relevant academic education and training.
- Good: The proposed expert has more than 15 years of overall working experience; a substantial part of that experience relates to consulting assignments similar to the one in question; the expert's professional achievements, e.g., position within the firm and level of responsibility, have steadily increased over time.
- Very Good: The proposed specialist has more than 20 years of specialized experience in the field of the assignment and is recognized as a top expert in his/her specialty. He/she is fully up to date in the state of the art of the concerned discipline.

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#### b) Adequacy for the Assignment

- Poor: The proposed expert has never or only occasionally worked in a position similar to the one required under the assignment. His/her qualifications do not match closely the assigned position, e.g., the position requires a highly experienced project manager, whereas a relatively junior professional with brief experience is proposed.
- Satisfactory: The experience of the proposed expert fits the assigned position; in the past 10 years or more he/she has successfully held positions similar to the one proposed for the assignment in at least one project of a similar nature. His/her skills (either professional or managerial as the proposed position may require) are adequate for the job.
- Good: The qualifications of the expert are suitable for the proposed position; over the past 10 years he/she has held several similar positions in similar assignments; his/her skills (either professional or managerial) are fully consistent with the position and characteristics of the assignment.
- Very Good: In addition to the definition under "good," the expert has qualifications
  and experience that exceed substantially the requirements for positions similar to the
  one being considered.
- c) Experience in the Region (for International Consultants)
- Poor: The proposed expert has never or only occasionally worked in countries similar to the one of the assignment.
- Satisfactory: The expert has worked in countries with cultural, administrative, and governmental organizations similar to Jamaica;
- Good: In recent years the expert has worked in the region of the assignment for at least one year;
- Very Good: In addition to the above definition of "good," the expert has detailed direct knowledge of Jamaica through years of professional work.

If the key staff proposed by the consultants do not fully satisfy all the conditions set forth by one of the grade definitions, but that particular grade appears to reflect the overall adequacy of the key staff better than the lower grade, the upper grade may be assigned.

#### E. Transfer of Knowledge (Training)

#### Rating Scale

A maximum of 10 points should be allocated to Transfer of Knowledge, except when training is an important component of the assignment. The grades indicated in Table below are recommended for percentage ratings related to the evaluation of transfer of knowledge.

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Typical percentage rating for Transfer of Knowledge (training)	
Grade (level of responsiveness)	Rating
Poor	40%
Satisfactory	70%
Good	90%
Very good	100%

The lowest grade is 40 % instead of zero for the following reasons:

- A zero rating is not realistic, since it would imply that the consultant has not responded at all to the proposal under this criterion;
- A zero rating given to a poor methodology may hardly be compensated even by high scores of remaining criteria. This could lead to reject a proposal that is attractive under all its other aspects.

In cases in which training is a particularly important component of the assignment, more than 10 points may be given to this criterion.

# Aspects to Consider for the Evaluation

The committee should evaluate the proposed transfer of knowledge program by considering the following or similar qualifications:

- Methodology and Expected Outcome of the Program: Definition of outcome and results in agreement with the requirements of the TOR; type and approach to the transfer of knowledge (e.g., program based on on-the-job training, or stand-alone training, or a combination) and methodology proposed to attain the objectives are clearly explained and appropriate for the target audience. Quality of learning materials proposed.
- Organization of the Program: Degree of definition of the program, that is, the
  activities that will be carried out under the assignment; definition of roles, duties,
  output, and organizational arrangements of the Procuring Entity personnel; level of
  skill and effort required of such personnel; consultant personnel involved and the
  expected level of effort; and allocation of responsibilities between the consultants and
  the Procuring Entity.
- Experience in Transfer of Knowledge and Training: The level of previous training experience of the consultant experts involved.
- Supervision and Evaluation: Arrangements for supervision, implementation of the assignment, and impact of transfer of knowledge program, e.g., progress reports, progress evaluation, and evaluation of knowledge gained by the trainees.

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#### Evaluation when no sub-criteria are provided

When no sub-criteria are provided for transfer of knowledge, the program for transfer of knowledge proposed by the consultants should be evaluated as a whole. An example is given below (definitions may differ from case to case depending on the characteristics of the program).

- Poor: Approach and methodology of the training program respond only partially to the objectives indicated in the TOR, and resources allocated are insufficient.
- Satisfactory: Program objectives and approach are generally consistent with the
  requirements of the TOR; proposed methodology seems suitable but there is no
  discussion of its important aspects; training program is complete and well defined;
  allocated resources are commensurate with the objectives; functions and
  responsibilities are only broadly defined; and measures to supervise the program are
  only generally indicated.
- Good: The methodology is specifically tailored to the objectives of the program and is discussed exhaustively. Timing of training activities is well defined and fully consistent with the time schedule of the activities on which the training is based. Quality and composition of consultant personnel involved are very well thought out and balanced. Duties and responsibilities of consultant and the Procuring Entity personnel involved are clear and defined in detail. Measures to supervise the program and minimize risks of abuses are clearly indicated.
- Very Good: In addition to the definition under "good," approaches and methods proposed represent new best practices.

In the event that the training program does not fully satisfy all the conditions set forth by one of the grade definitions, but that particular grade appears to reflect the overall adequacy of the training program better than the lower grade, the upper grade may be assigned.

#### Evaluation when Sub-Criteria are Provided

There may be cases where training is an important component of the assignment, and the RFP has allocated to Transfer of Knowledge more than 10 points. In these cases subcriteria may be established and points allocated in the RFP to each of them.

# F. <u>Local Participation As Reflected By Jamaican Nationals Among Key Staff</u> (International Consultants)

For assignments involving international consultants, a maximum of 10 points should be allocated to this criterion. In the evaluation these points will be allocated to each proposal in a proportion equal to the percentage share of national key staff in the total key staff time effort proposed. If, for example, 8 points are attributed to the criterion, and 50 percent of total staff-months or staff-hours of key staff is allocated by the consultants to national experts, the proposal will receive 5 points. This criterion covers only the

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quantitative aspect of participation by nationals; qualitative aspects such as experience of national key staff are captured by the criterion "Qualification and competence of the key staff proposed". The participation of national consultants as domestic consultants, or as local branches of foreign consultants, or as individual experts equally satisfies this criterion.

# G. Evaluation Report

Upon completion of the evaluation of proposals, The Evaluation Committee shall prepare its Report in accordance with the sample provided in the Annex. All members of the Evaluation Committee need to sign the report.

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**Sub-Section №: S-3120** 

# NEGOTIATION AND AWARD OF CONTRACT FOR SERVICES

## I. PURPOSE

To establish the structure of negotiations with successful consultants and to establish the content of contracts for the procurement of services.

# II. <u>SCOP</u>E

This procedure applies to all procurement of services.

## III. PROCEDURE

Unlike for the procurement of goods and works, where negotiations are not permitted with winning bidders due to the competitive nature of the procurement (except for SSS), the objective of negotiations for services contract, is to arrive at a mutually satisfactory contract between the Procuring Entity and the selected consultants. The parties will discuss the technical proposal submitted, agree on the detailed scope of work, negotiate financial terms, and discuss and finalize contract conditions. A good contract should protect the interests of both parties adequately.

## A. Preparations for Negotiation

Subsequent to the approval of the Evaluation Report and recommendations made therein, the Procuring Entity shall notify the winning consultant in writing to invite the firm for negotiations. The Procuring Entity shall indicate in the notification the date and time set for negotiations, and any issues or comments on the consultants' proposal to enable them to prepare a response and make any necessary arrangements. At this stage, the Procuring Entity shall also inform consultants whose proposals were not chosen, which firm was selected and that negotiations with that firm will begin.

To negotiate with the consultant, the Procuring Entity shall appoint a negotiating team whose members should be fully familiar with the TOR, the consultant's proposal, the comments and suggestions of the Evaluation Committee relating to the technical and financial evaluation reports, and recommendations of the Evaluation Committee. At least one member of the Evaluation Committee shall take part in the negotiations. Both parties should appoint a chief negotiator and, if so required, the consultants' representative should submit a power of attorney.

Negotiations are based on a mutually agreed upon agenda composed of the main items to be negotiated, that is, methodology, work plan, proposed staff, inputs, financial terms, and special conditions of the contract.

## **B.** Items Subject to Negotiation

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Depending on the selection method and proposed type of contract, technical and financial items that may be negotiated, include:

- Scope of work;
- Technical approach and methodology;
- Work plan and activity schedule;
- Organization and staffing, and time schedule for key staff;
- Deliverables;
- Counterpart staff;
- Counterpart facilities and equipment;
- Contract special conditions;
- Staff unit rates:
- Reimbursable expenses; and
- Proposed contract price.

Under QCBS, SFB, and LCS, unit rates such as staff remuneration or unit rates proposed for reimbursable expenses and proposal price cannot be negotiated unless there are exceptional reasons, since these methods are based on a competitive process.

# **C.** Outline of Negotiation Procedures

Contract negotiations for small assignments are usually completed within one or two days (usually these could also be done through electronic, fax and/or telephone communications); however, for large assignments at least one full week should be allowed. Negotiations may even be carried out in phases when decisions are needed from other authorities.

The financial proposal is negotiated on the basis of the list of deliverables, scope and plan of work, and staff-months effort proposed by the consultant, including the agreed upon modifications.

The Procuring Entity Negotiating Team should keep the minutes of the negotiations. If the issues to be negotiated are many and complex, significant points can be initialled by the counterparts as negotiations progress. When cost is not a factor of selection and the Procuring Entity Team has reason to believe that the staff rates proposed by the consultants are higher than market rates, they may request the consultants to provide financial records that justify such rates (For example, rates of similar contracts).

For some reason or another, if a consultant disagrees on some important issues the Procuring Entity should invite the second-ranked consultant for negotiations. Caution must be exercised for such a decision and every effort must be made to clear out such contentious issues.

If the validity period of the proposals is about to come to an end, the Procuring Entity should ask all consultants for an extension. In that case, the consultants may propose

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staff modifications without changing their price, or may withdraw their proposal. However, consultants' staff can only be replaced with staff that are equally qualified or better, that is, the new staff should be evaluated using the criteria and points specified in the RFP and must receive equal or better scores. Thus, it is imperative that the procurement process be finalized with the validity period indicated.

# **D.** Limits of Negotiations

Negotiations should begin by considering the requests, comments and suggestions made by the Evaluation Committee on both the technical and financial evaluation reports and their recommendations.

The technical aspects e.g. approach and methodology may be discussed to reconcile the consultant's proposal and the views or needs of the Procuring Entity. Technical negotiations impact the quality and the cost of services. The financial proposal (including remuneration rates when price has not been factor of selection) may also be negotiated, thus impacting the financial score of the proposal.

Since the quality of the technical proposal is the main factor in ranking the consultants, the discussion shall not substantially alter such quality to reduce the proposed price because doing so may affect the basis of the technical evaluation on which the ranking was determined.

During negotiations the consultants could propose to trim the scope of work of their proposal if the offered price exceeds the budget. This practice should not be accepted, and may require calling for new proposals.

There are also limits to financial negotiations. They should be used by the Procuring Entity Team to achieve consistency between the quality and the price of the offered services, and not just a price reduction at all costs.

Under Selection under a Fixed Budget (SFB), the cost of the services is indirectly taken into account, since the best technical proposal within the given budget is selected. Therefore, negotiations should include only technical aspects.

Similarly, under Least-Cost Selection (LCS), negotiations also should include only technical aspects. However, a price increase related to technical improvements can be negotiated on condition that the proposal remains the least costly.

## E. Negotiation of Technical Aspects

Technical negotiations can, within the limits imposed by the selection method, attempt to reduce the proposal price without affecting the quality or the scope of the services by seeking a more efficient use of proposed staff to reduce the staff-months effort (e.g., a better allocation of tasks to key experts in the work plan, or a more efficient schedule of activities) or simplifying the proposed methodology, or a combination of both.

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When the offered price exceeds the available budget and negotiations fail to bring the price within the budget, the Procuring Entity may negotiate a reduction in the scope of work of the services. In some cases, reductions in the scope of work may not be possible without affecting the outcome or quality of the services. In such cases, the Procuring Entity may have increase the budget or as a last resort new proposals may be invited, after revision of the TOR.

# Technical Approach, Methodology, and Work Plan

The technical approach, methodology, and work plan proposed by the consultant should be discussed, taking into consideration observations of the Evaluation Committee on the technical evaluation report and the consultants' comments on the TOR. Any differences between the consultants' understanding of the TOR and the position of the Procuring Entity should be examined in detail with a view toward reconciliation.

The consultant's technical proposal is not part of the contract. Therefore, once discussions are completed, the TOR should be revised to include any modification of the scope of work agreed upon between the Procuring Entity and the consultant. The final TOR is included in the contract with the "Description of the Services," and shall supersede both the original TOR and the RFP. The methodology and work plan agreed upon, including the activity schedule with the list of documents to be delivered by the consultants and the staffing schedule, are annexed to the final TOR and also form part of the contract. If needed, the Procuring Entity may suggest improvements of the work plan on the basis of ideas developed by competitors. It is not permitted, however, to disclose the proposals of competitors to the selected consultants.

When a training program is a specific component of the assignment, it should also be discussed in all the necessary detail as any other component of the technical proposal.

## Organization and Staffing

In the discussion of organization and staffing, clarifications should be obtained on the role of each key member of the consultant's team. Substitutions should not be allowed except where justified by circumstances beyond the control of the consultant, including, for example, undue delay in the selection process. If substitutions are unavoidable (e.g., an expert resigned from the firm or became sick), each replacement should be evaluated to ensure that the qualifications of the proposed candidate are equal to or better than those of the staff being replaced. The remuneration rate charged by the consultant for the replacement shall not exceed the rate set forth in the proposal.

The composition of the consultants' team, the assignment of tasks, and the time schedule should be reviewed and agreement reached on the period of time each key member is expected to work in the field and at the home office.

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# Counterpart Staff, Facilities, and Equipment

The extent and timing of provision of counterpart staff and of facilities should be agreed upon. All equipment and supplies required for carrying out the services and all necessary surveys should be identified, agreed upon, and included in the contract.

# F. Negotiation of Financial Conditions

Items to discuss during financial negotiations will vary according to the selection method adopted (i.e., whether or not cost is a factor in selection) and the payment provisions provided for in the contract (whether the contract is time-based or lump-sum). When price is a factor of selection (QCBS, SFB, LCS), negotiation of unit rates is not allowed. When price is not a factor of selection (QBS), negotiation of all financial conditions is allowed.

#### **Time-Based Contracts**

Under a time-based contract the assignment must be completed within the time and the budget ceiling specified in the contract. These amounts are based on schedules that form part of the contract and give details on the inputs (staff, vehicles, etc.) and the cost of these inputs. A list of such schedules is given in the Appendices to the Form of Contract attached to the RFP. With some limited flexibility, the contract requires consultants to adhere to these schedules. Fieldwork is billed at monthly, daily, or hourly staff rates, which need to be clearly indicated in the contract to avoid any misunderstanding during implementation. Home office work is billed at staff hour or staff daily rates calculated on the basis of hours worked. If the selection methods did not include price as a factor of selection, financial negotiations include unit rates and reimbursable expenses and begin with a discussion of the billing rates in foreign currency for expatriate staff and in national currency for local staff.

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#### **Lump-Sum Contracts**

Under a lump-sum contract, the consultant is paid an agreed lump-sum price based on a schedule payments linked to delivery of outputs. The unit rates for personnel and reimbursable expenses used by the consultant to arrive at the lump-sum amount are included in Appendix D and E of the contract, solely in order to determine the remuneration due for any additional services beyond the agreed scope of work, e.g., an extension. Consultants are paid according to the schedule specified in the contract, which shows the assignment's specific outputs.

Since lump-sum contracts are frequently adopted with selection methods in which price is a factor of selection, financial negotiations are usually not allowed. The Procuring Entity can negotiate only the unit rates for personnel and reimbursables to be used for additional services.

# **Staff Billing Rates**

When price is a factor of selection (QCBS, SFB, LCS), negotiation of staff rates is not permitted. Billing rates offered by consultants typically depend on three factors: the internal structure of the rates, the ongoing market rates in the country of the consultants and the level of the technical, institutional.

A breakdown of staff rates includes the following elements:

Basic Salary: Basic salary is the gross monthly salary paid to staff. Any overseas allowances should be identified separately, and not included in the basic salary. It shall not contain any premium or bonus, except where required by law regulation, or where it can be demonstrated that the bonus is part of the regular salary. The salaries of permanent staff are usually not negotiable.

Social Charges: Social charges are the costs to the firm of non-monetary benefits paid to staff under legislation in the consultant's home country or under the consultant's own policies. They include such items as vacation, official holidays, sick leave, pension, social security, and medical and life insurance. These costs vary from country to country and, to a lesser extent, from consultant to consultant within the same country. Because most of the payments are required by law or by the consultants' personnel policies, they are not negotiable.

Overhead: Overhead expenses are the firm's costs due to general expenses that are not directly related to the execution of the assignment and can not be reimbursed as separate items under the contract. Overhead includes such items as home office costs, the cost of staff not currently employed on revenue-earning projects, rent, support staff, marketing, and business development costs, including the preparation of proposals. Overhead varies from firm to firm and depends on the size, type of organization, and core business of the

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firm. Some consultants charge different overhead for home office and for fieldwork, and distinguish between short or long term assignments.

Profit: This is the consultant's fee expressed as a percentage of the sum of salary, social costs, and overhead.

Away from Headquarters and Overseas Allowance: This amount is added to the salary paid to staff on overseas assignments or assigned to projects away from the home office. The allowance is normally calculated as a percentage of the basic salary and depends on the location of the assignment.

#### **Billing Time**

Time spent in the country of the assignment is generally billed monthly or as fraction of a month, while home office time is generally measured and billed in working days or hours. For billing purposes, a day worked is usually equal to  $1/22^{nd}$  of a month and an hour is equal to  $1/176^{th}$  of a month, but it can vary between countries depending on labor regulations. The "unit of account" (month, day, or hour) used for payment purposes should be clearly mentioned for each key staff in the contract. Overtime for professional staff is not billed, whereas overtime of support staff at the home office and in the field is generally billable.

#### Reimbursable Expenses

A list of reimbursable expenses payable in foreign and local currencies is provided in the Special Conditions of Contract. The Procuring Entity should reimburse expenses at cost upon presentation of receipts, invoices, etc. In certain cases, e.g., for the acquisition and import of equipment needed for the execution of services and where the consultants incur additional administrative costs, the consultants may be paid a fee or "handling charge" of 5 to 10 percent over the invoice.

For short-term assignments (usually less than six months) the daily allowance for board and lodging may be based on the UNDP Daily Subsistence Allowances, or estimated on the basis of reasonable cost for hotels, meals, and local transportation.

#### **Payment Provisions**

The Procuring Entity should avoid delaying payments without due cause, to ensure that the consultants do not delay their assignment for lack of funds.

In general terms advance payments (for example, for mobilization costs) normally do not exceed 20 percent of the contract value. If the advance exceeds 10 percent of the contract amount, it must normally be backed by an advance payment security, generally a commercial bank guarantee or other suitable guarantee issued by a reputed financial institution acceptable to the Procuring Entity. When payment is on a lump-sum basis, payment against progress targets can be made when the consultants' output is produced at

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reasonable intervals and is easy to identify. The bank guarantee should be released when total payments reach 50% of the lump-sum amount.

For smaller projects the last payment may take place upon the delivery of final documents.

# **G.** Negotiation of Contract Conditions

After discussing the financial proposal, the parties should discuss the clauses of the draft contract. The General and Special Conditions of Contract should be reviewed to ensure that both parties understand the contract terms and conditions and that they faithfully and clearly reflect the parties' agreement. The General Conditions of Contract cannot be changed. Special conditions are subject to negotiation. However, since they have already been adapted to the assignment before issuing the RFP, negotiations should be limited to specific and justified requirements of the consultants.

Contract negotiations should end with both parties initialling a draft contract and its annexes.

The draft contract should include all appendices required by the applicable standard contract form (as annexed), providing the following information:

- Negotiated TOR, including the scope of work of the services, agreed methodology, organization chart, and program of activities indicating dates for completion of the various tasks;
- List of reports indicating format, frequency and content, submission dates, and approval procedures;
- Job descriptions of key personnel and the staffing schedule;
- List of services, facilities, and counterpart personnel to be made available by the Procuring Entity;
- Estimated contract amounts in foreign and/or local currency, indicating monthly rates for foreign and local staff and reimbursable expenses; and
- Detailed training program if training is a specific requirement of the TOR.

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**Sub-Section №: S-3130** 

# RECORD KEEPING FOR THE PROCUREMENT OF SERVICES

# I. PURPOSE

To establish the structure and content of record keeping for the procurement of services.

# II. SCOPE

This procedure applies to all procurement of services.

## III. PROCEDURE

Without prejudice to the method of storage and in accordance with the Financial Administration and Audit Act (FAA Act), the procuring entity shall maintain records of each contract action for a minimum period of ten (10) years. Procurement process and expenditure records, although entrusted to the safeguard of accounting officers, are the property of the Ministry of Finance and shall promptly be made available to the Ministry upon request in its carrying out of expenditure and/or compliance monitoring mandates. The minimum standards of recorded information are as follows:

- Brief description of the services procured;
- Names and addresses of consultants;
- Procurement procedure used and authorization reference;
- Name of successful contractor;
- Date of approval;
- Contract price and actual completion cost;
- Contract duration;
- Information relative to the qualifications of consultants;
- Summary of the evaluation and comparison of proposals;
- Any offsets applied and the corresponding authorization reference pursuant to the Handbook:
- Reason(s) for rejection of any or all proposals;
- Summary of requests for clarification/verification of RFP and any modifications thereof;
- Information relative to the successful consultant's performance on the contract; and
- Information relative to complaints, resolution decisions and appeals.

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## IV. LIMITATIONS OF LIABILITY

GOJ shall incur no external or third party liabilities solely by failure to maintain a record of the procurement proceedings. However, in accordance with the FAA Act, accountable officers may face disciplinary action internal to GOJ if procurement records do not justify procurement expenditure and the Financial Secretary deems proffered explanation(s) to be unsatisfactory.

# VI. REPORTING REQUIREMENTS

National Contracts Commission (NCC)

All contracts with a value in excess of **J\$10M** must be reported to the NCC.

# Ministry of Finance (MOF)

The Ministry of Finance (MOF) monitors procurement expenditure through the maintenance of a Public Sector Procurement Reporting System (PRS). Procuring entities are required, without exception, to report all procurements on a monthly basis using the GOJ standard form PRS-1. This information is necessary for effective planning and budgeting processes and facilitates fulfilment of reporting obligations under international trade agreements. The completed PRS-1 shall be sent directly by the procuring entity to MOF, Procurement and Asset Policy Unit, no later than the seven (7) days after the end of the reference period, e.g., MOF shall receive information pertaining to 2000 April 01-30 no later than 2000 May 07. Accounting Officers/Heads of Procuring Entities are accountable for the timely receipt of required information by the MOF.

#### Portfolio Ministry

The Portfolio Ministry, i.e., the Ministry with portfolio responsibility for the procuring entity, shall be apprised of procurements effected by that entity. A copy of the completed PRS-1 should also be sent by the procuring entity to the attention of the Accounting Officer/Permanent Secretary in the portfolio Ministry. The portfolio Ministry shall maintain these records in accordance with the FAA Act.

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**Sub-Section №: S-4000** 

#### PROCUREMENT OF GENERAL INSURANCE SERVICES

#### I. PURPOSE

To establish uniform procedures for the procurement of general insurance placement services.

# II. SCOPE

This procedure applies to all procurement of general insurance placement services.

#### III. GENERAL

The Ministry of Finance is responsible for all policy matters relating to the procurement of insurances for public sector entities.

Invitation to registered and pre-qualified Brokers/Insurers for tenders is usually advertised in a daily newspaper. Notwithstanding the Ministry of Finance prepares biannually lists of Government entities which will be going to tender. These lists are circulated to all registered and pre-qualified Brokers/Insurers, approved Actuarial Consultants, the Brokers Association and the General Insurance Association.

For the assessment of tenders for Government entities the following Consulting Actuaries have been approved:

- 1. Eckler
- 2. Duggan Consulting Services
- 3. GFRAM Consulting (Actuaries & Risk Managers)

The Agency must contract the services of an Actuary from the approved list.

There is no obligation to accept the lowest financial proposal for the following reasons:

- 1. The compatibility of the bid with Government's policy pertaining to modernization of the local insurance market and the requirement of the Insurance Act by registered insurers and general conformity with the Insurance Act and Regulations and conditionality imposed thereunder by the insurers involved with whom placement is proposed.
- 2. The acceptability of the broker in relation to:
  - financial viability;
  - meeting the conditionalities imposed through the registration; process under the Insurance Act and Regulations; and

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- professional competence and capability of the broker and the staff attached thereto.
- 3. The practicability or otherwise of effecting placement among registered insurers and/or the need to effect such placement among unregistered insurers.
- 4. Adequacy and appropriateness of proposed coverage having regard to the nature of the risk, the experience of the portfolio and the availability of more suitable cost effective coverage.

### IV. BROKERS/INSURERS INSTRUCTIONS

#### A. Brokers

1. Applications for permission regarding overseas facultative placement with unregistered reinsurers must be submitted in writing to the Financial Services Commission (FSC) by the Insurer/Broker not later than seven (7) clear working days before the closing date and accompanied by the required supporting documentation. (See Attachment #1).

Placement with Lloyds of London does not require FSC approval.

- 2. Brokers, which will be seeking to place facultative insurance business overseas, must be registered with the FSC as Facultative Brokers.
- 3. The tender proposals must be complete coverage should be proposed for the entire portfolio as requested by the entity in its specification and not only for some risks.
- 4. Each tender must contain a summary of the risks. (See Attachment #2)
- 5. Pre-qualified brokers/insurers will be required to submit **with their** tenders valid Tax Compliance Certificates (TCCs) indicating that they are tax compliant at the time of submission of tenders
- 6. Alternative proposals with Coverage and terms varying from the Specified (Like- for -Like) will be considered. Brokers may re-enter the market and use their knowledge to obtain better terms and try to negotiate more cost effective premium rates than the early market response on the like- for- like basis.
- 7. Recommendation for award will not necessarily be made to the lowest tender but in respect of the best overall proposal.

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- 8. All tenders must contain Brokers Slips, which are signed, stamped and dated as evidence, substantiating Insurers' quotations. In the case of overseas placement all local brokers are required to obtain from their overseas correspondence brokers, supporting brokers' slips signed by **at least** the lead underwriter.
- 9. On presentation of tender package(s), the Bearer is to sign the tender register.
- 10. Late tenders will not be accepted.
- 11. No documentation will be accepted by the entity, form the Broker after the close of tender.
- 12. Each Broker/Insurer is required to submit **two identical** copies of the proposals in the tender packages.
- 13) In respect of sharing of the risks between two (2) or more proposals (Split policies) Brokers are required to provide documentary evidence indicating that each insurer is aware of and is in agreement with the rates and terms that may be quoted.

#### **B.** Insurers

- (14) Insurers should make every effort to ensure that their proposals are clear and do not give rise to queries, for example:
- 14a) Providing different rates, discounts, or loading to Brokers for the identical risk, or failing to justify special arrangements offered exclusively to a particular broker.
- 14b) Varying the conditions indicated to different brokers in respect of minimum/maximum participation in a risk, and of tied risks.
- 14c) Failing to state clearly or consistently the policies to be included in a Package arrangement.
- 15) Insurers should clearly state whether premiums are subject to a minimum value, and if so, whether they are adjustable (e.g. on subsequent declarations of insured values, stock levels, etc.)
- 16) Also it should be explicitly indicated how rates are to be applied, to which values, etc.
- 17) Insurers should comply with proper market conduct as failure can result in disqualification of a tender.

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## C. "No Quotes" by Insurers

18) Where an insurer "No Quote" unconditionally to Brokers, but later decides that he is open to proposals, he must advise all Brokers that he is now opened to proposals. In order to facilitate the monitoring of this aspect of the tender, Brokers are requested to submit their unconditional "No Quote" brokers slips from the insurance companies with their tenders so that the Consulting Actuaries will be in a position to know which companies "No Quoted" unconditionally.

## V. GROUNDS FOR REJECTION OF PROPOSALS

- 1. Unspecified limits of cover (particularly for Motor Third Party, Employers Liability, Public Liability, & Fidelity Guarantee risks). If however the cover obtained is "unlimited" then this should be clearly indicated.
- 2. Ambiguous quotations/rates i.e. would give rise to doubt in the interpretation of the proposal. For example: (1) In a tender proposal a Broker/Insurer may stipulate a Rate of 10% and it is not clear as to whether it is applicable to the Sum Insured or Declared Value. (2) At the request of the Broker the Insurer gives a number of different types of discounts but there is no explanation as to how these discount should be applied- i.e. aggregated or step-wise).
- 3. Multi-options for some of the risks are presented but without the Broker putting together complete sets of proposals.
- 4. Lack of signed, stamped and dated brokers' slips.
- 5. Lack of supporting documentation for special arrangements (such as Package Discount etc.)
- 6. Varying the rates, terms and conditions as quoted by the insurer.
- 7. Failing to meet the Agency's specified requirements on cover (particularly on important limits of cover, extensions etc.)
- 8. Failing to meet insurers' conditions regarding minimum/maximum levels of participation, or quotations tied to acceptance of other risks.
- 9. Failing to provide satisfactory evidence that 100% cover has been secured for a risk, or that all participants in a co-insurance or multi-policy arrangement have agreed to the rates and terms.
- 10. Omission of risks, premium or proposed insurer.
- 11. Arithmetic errors e.g. Adding US\$ to J\$ without converting to a common currency.

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- 12. Failure to include valid Tax Compliance Certificates (TCCs) for the participating Broker/Insurer.
- 13. Failure to submit two (2) copies of the tender that are **identical** in every respect.
- 14. Failure to submit proof from the Financial Services Commission (FSC) that permission had been granted for facultative placement where relevant.
- 15. Failure to include commission for overseas proposals, stating the local as well as the overseas commission.
- 16. Where an insurer "No Quote" unconditionally to Brokers, but later decides that he is open to proposals, he must advise all Brokers that he is now opened to proposals. However, if later the insurers decides to give quotation to a broker, but fails to advise other brokers that he is now open to proposals, this will result in the disqualification of the affected broker's tender(s).

## VI. ROLE OF THE ACTUARY

The role of the Consulting Actuaries is to assess the proposals presented (in response to Tender Notices for insurance services in the press extending invitations to pre-qualified registered insurance companies and brokers by the Financial Services Commission) and to make recommendations to the agency for the award. In doing the assessment the actuary would have regard to the following:

#### 1. Check

- To ascertain if Tax Compliance Certificates are submitted and if they are valid. If not submitted or submitted but expired the affected proposal will be automatically disqualified.
- To determine if proposal is complete. That is, whether coverage is proposed for all risks/items outlined in the specification.
- If insurers show preferential treatment to any particular Broker(s)
- 2. Verify if premium rates and the terms of coverage proposed by the Broker are authentic (i.e. if brokers slips are signed, stamped and dated by the insurer whose rates and terms are being proposed).
- 3. Ascertain whether insurer's terms were modified in the proposals and if so whether the insurer agreed to the modification and had informed the market where required e.g. Untying of risks previously tied by the insurer.

### 4. Determine if:

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- Premiums quoted by the Brokers are consistent with the sums insured stated in the specification and the premiums/premium rates applicable to the respective risks, as quoted by the insurer
- The insurers quotations and terms to Brokers are equitable in comparison to the current market
- 5. Analyze the terms of coverage under each proposal with reference to the specification in order to identify the advantages and disadvantages to the entity.
- 6. Compare proposals with each other to determine which offers the best and/or most appropriate coverage at the most economical premiums

### VII. TREATMENT OF DISCOUNT

1. Prompt Payment Discounts:

Prompt payment discount should not be included in the summary of quoted availability of these discounts should be indicated in the recommendations.

2. Discount(s) Offered by an Insurer to One Broker:

Discounts offered by an insurer to one broker - Efforts should be made to ensure that equal discounts are given to all brokers where they satisfy the required conditions. If this is not done, the consultants should make the necessary adjustment(s). For example, eight (8) brokers asked JIM Insurance Company for a discount in respect of the Like-for-like proposal for Xeri Department Insurance Tender. JIM quoted 12.5% package discount and one 12%. On the grounds of equity the Actuary imputed 12.5% for the one Broker that was left behind.

3. Stock Declaration Deposit Premium:

Stock declaration deposit premium - The expected annual premium should be used in computing the total premium. Its highly likely that the actual premium that would become payable would be higher than the discounted premium proposed which in effect would place that proposal (i.e. with the discounted premium) in a relatively more favourable position than one in which the discount was not used

4. Administrative Discount:

Administrative discount are not taken into account except where the insurer agrees to transfer a particular administrative function to the broker and therefore grants the discount on these terms.

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## Requirement of 100% Confirmation of Overseas Quote

The Broker's Slip should be signed by the lead underwriter. Confirmation of participating insurers could be accepted after the closing date of tender but the Consultants should ensure that there is no change in the terms of what was in the tender.

# Inclusion or Exclusion of Commission in Overseas Quotations

- (a) The Brokers are required to indicate their commission, and should be disqualified if they do not comply.
- (b) Of the total commission indicated, brokers should be asked to state the local commission as well as the overseas commission.

## **Split Policies**

Split Policies – Brokers are required to provide documentary evidence of arrangement to indicate that the insurer is aware of and is in agreement with different rates and terms that may be quoted.

### VIII. BRIEFING SESSION

The purpose of the tender briefing/site inspection is to allow prospective brokers to query any aspect of the portfolio be insured and for the entity to answer any general question about the scope of the portfolio.

Tender Briefing/site inspection may be required for portfolios that are complex, high risk or high value. Briefing session should be scheduled to allow sufficient time for prospective respondents to familiarize themselves with the tender document and make arrangement to attend the session. Adequate time should be allowed following the briefing session to provide respondents with the opportunity to clarify any issues with the procuring entity prior to the close of tender.

All questions and answers from the briefing session are to be recorded and distributed to all bidders. Any amendment or clarification of an issue should be circulated to all the bidders via a formal written addendum without making any reference to who sought the clarification.

# **OVERSEAS COMPANY**

For the purposes of insurance procurement, quotations from overseas insurance companies/brokers should be submitted through a locally registered and pre-qualified broker/insurer with the Financial Services Commission.

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### PLACEMENT PERIOD

Once a tender exercise has been conducted, placement will be with the successful broker for three (3) years. It is incumbent on the Holding Broker to go to the market annually to obtain the best coverage for the entity. The procuring entity should ensure that this is done.

### FEE: INSURANCE TENDER

Fees are not allowed under the insurance tender system, as this would defeat one of the primary principles of transparency on which the tender system hinges.

The standard practice is for insurers to compute commission as part of the regular premium. This leaves no room for manipulation and all brokers would be entitled to the same commission.

Fee is allowed under the circumstance where a broker has provided additional services (example risk management, hazard management, etc.) to which there should be full disclosure of fees prior to the service being rendered.

Reference is made to **Section 144 (7)** of the **Insurance Regulations, 2001**, which indicates that a fee can be charged for services in the form of 'advice, counsel or opinion' but does not indicate for 'solicitation' or 'negotiation'. By implication, it is expected that 'solicitation' and 'negotiation' of insurance contracts will be paid for on a commission basis.

Section 144 (7) This regulation shall not apply to a person, registered as an agent or broker in Jamaica, who for a fee and pursuant to a written agreement, is engaged solely to offer to the policyholder advice, counsel or opinion, or service with respect to the benefits, advantages or disadvantages promised under any proposed or in-force policy of insurance if the person does not directly or indirectly participate in solicitation, negotiation or procurement of insurance on behalf of the policyholder.

### VALUATION OF ASSETS

Prior to tender, entities should ensure that valuation is done for the insurable assets. Failure to have correct value will result in the application of the *average clause* in the event of a claim.

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Throabald	Dwoonware	Duocadunas
<u>Threshold</u>	Procurement Method	<u>Procedures</u>
	Method	
<b>Contracts</b> above	Selective	CATEGORY E
\$30 Million and	Tender	(1) Ministries/Departments and agencies should conduct selective tenders, the
beyond		results of which are to be assessed by an approved Consulting Actuarial firm
		and recommendations made to (A) The Board of Directors (B) the NCC (C) the
		MOF and the final award by Cabinet.
		<u>Procedure</u>
		(2) An advertisement should be placed at least twice in a Daily newspaper at
		least fourteen (14) weeks before the closing date of the tender (See format at
		ATTACHMENT 3).
		(3) Specifications of the insurance covers required should be prepared in
		consultation with the Holding Broker and the entity's insurance adviser (if any)
		(See format at ATTACHMENT 4). The claims experience (for the expiring
		triennium) should be prepared by the Insurer. Where appropriate a briefing session for prospective bidders should be held.
		session for prospective bidders should be field.
		(4) Arrangements should be made prior to the advertisement to have the assets
		assessed by an appropriate valuator/assessor to ensure that those assets' values are current. Failure to have correct value of the insured items will in the event
		of a claim, result in the application of the average clause.
		of a stand, result in the appreciation of the average states.
		(5) A letter outlining the performance of the Holding Broker should be
		forwarded to the Permanent Secretary and the appointed consulting actuary.
		(6) Letters inviting tenders/proposals as well as guidelines for assessment and
		grounds for disqualification, standard bidding documents, claim experience
		and copies of the specifications should be included in the tender package and
		distributed to the following: -  (a) All interested pre-qualified brokers/insurers;
		(a) An interested pre-quantied brokers/historers,  (b) The Consulting Actuary selected; and
		(c) The Procurement and Asset Policy Unit of the Ministry of Finance.
		(7) On the closing data (at least ten weeks before the avnive data) at the
		(7) On the closing date (at least ten weeks before the <b>expiry date</b> ) at the specified time (3:00 p.m.) arrangements for the receival of tenders should be
		effected. After the opening (3:15 p.m. on the closing day), tenders should be
		forwarded IMMEDIATELY under CONFIDENTIAL cover to the appointed
		consulting actuary for assessment and recommendation.
		(8) Review of the assessment (actuarial report) should be carried out and
		further recommendations made to the Permanent Secretary of the relevant
		Ministry. Reason for the choice of the recommended broker and rejection of
		the other tenders should be fully provided. This is to be effected at least six (6)
		weeks before the expiry date.

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	<ul> <li>(9) The Ministry/Agency should prepare the Permanent Secretary's comments/endorsement as well as the NCC Transmittal form at least five (5) weeks before expiry date, giving details and reasons for choice and attach a summary of the Consulting Actuary assessment and recommendations and forward to the relevant Sector Committee</li> <li>(10) The Ministry should prepare the Draft Cabinet Submission at least five (5) weeks before the expiry date, giving details and reasons for choice and attach a copy of the Consultants' assessment and recommendations.</li> <li>(11) Copy of the Draft Cabinet Submission should be forwarded to Procurement and Asset Policy Unit, MOF five (5) weeks before expiry date for appropriate comments to be incorporated therein.</li> <li>(12) The Ministry should prepare final Cabinet Submission and deposit same at the Cabinet Secretariat at least three (3) weeks before expiry/renewal date of insurance covers.</li> <li>(13) Decision of Cabinet should be made available at least two (2) weeks before renewal date and communicated to: -</li> <li>(d) The Ministry concerned for advice to be transmitted to he relevant Agency; and</li> </ul>
Selective Tender	(d) The Ministry concerned for advice to be transmitted to he relevant
	consultation with the Holding Broker and the entity's insurance adviser (if any). (See format at ATTACHMENT 4). The claims experience (for the

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expiring triennium) should be prepared by the Insurer. Where appropriate a briefing session for prospective tenderers should be held.

- (4) Arrangements should be made prior to the advertisement to have the assets assessed by an appropriate valuator/assessor to ensure that those assets' values or current. Failure to have correct value of the insured items will in the event of a claim, result in the application of the average clause.
- (5) A letter outlining the performance of the Holding Broker should be forwarded to the Permanent Secretary and copied to the appointed consulting actuary.
- (6) Letters inviting tenders/proposals as well as guidelines for assessment, grounds for disqualification of tenders, the standard bidding document, the claims experience and copies of the specification should be included in the tender package and distributed to:-
  - (a) All interested pre-qualified brokers/insurers;
  - (b) The Insurance Consultant selected; and
  - (c) The Procurement and Asset Policy Unit of the Ministry of Finance.
- (7) On closing date of tender (at least <u>eight (8) weeks</u> before expiry date) at the specified time (3:00 p.m.) arrangements for receival of tenders should be effected. After the opening (3:15 p.m. on the closing day), tenders should be forwarded <u>IMMEDIATELY</u> under CONFIDENTIAL cover to the appointed Consulting Actuary for assessment and recommendation.
- (8) Review of Assessment/Recommendation of the consultant's report should be carried out and further recommendations made to the Permanent Secretary of the relevant Ministry. Reason(s) for choice of recommended tenderer and rejection of other tenderer(s) should be fully provided. This is to be effected at least six (6) weeks before expiry date.
- (9) The Ministry should prepare the Permanent Secretary's comments/endorsement as well as the NCC Transmittal form at least five (5) weeks before expiry date, giving details and reasons for choice and attach a summary of the Insurance Consultant assessment and recommendations.
- (10)Ministries/Department and Agencies should issue letter of appointment to the successful tenderer and advise the other tenderers in writing of the results of their tender.
- (NB) The following are to be submitted to the PAPU within twenty-one days of renewal date: -
- (a) Copies of letters of appointment/rejection of broker/insurer.
- (b) Details of the insurances placed using the format at ATTACHMENT# 2.

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C4	C-14:	CATECODY C
Contracts above	Selective	CATEGORY C
\$3 million up to \$10 million	Tender	(1) Ministries/Departments and Agencies shall conduct selective tender. The Proposals/Tenders are to be assessed by an approved consulting actuary who should submit recommendations for consideration to the Permanent Secretary (Central Government) or the Board of Directors (Agencies.)
		Procedure (2) An advertisement should be placed at least once in a Daily newspaper Brokers/Insurers at least ten (10) weeks before the closing date of the tender (see format at ATTACHMENT 3).
		(3) Specifications of the insurance covers required should be prepared in consultation with the Holding Broker (see format at ATTACHMENT 4). The claims experience (for the expiring triennium) should be prepared by the Insurer. Where appropriate a briefing session for prospective tenders/proposers should be held.
		<ul> <li>(4) Letters inviting proposals/tenders as well as guidelines for assessment, grounds for disqualification of tenders, standard bidding document and specification should be included in the tender package and distributed to: <ul> <li>(a) All interested pre-qualified brokers/insurers</li> <li>(b) The Insurance Consultants selected.</li> <li>(c) The Procurement and Asset Policy Unit of the Ministry of Finance.</li> </ul> </li> </ul>
		(5) A letter outlining the performance of the Holding Broker should be forwarded to the Permanent Secretary and copied to the selected Insurance Consultant.
		(6) On closing date of tenders/ proposals (at least <u>six (6) weeks</u> before expiry date) at specified time (3:00 p.m.) arrangements for receival of proposals/tenders should be effected.
		(7) After the opening (3:15 p.m. on the closing day) proposals /tenders should be forwarded IMMEDIATELY under 'CONFIDENTIAL' cover to the Consulting Actuary for assessment and recommendation.
		(8) The appropriate committee will make a recommendation to the Permanent Secretary (for Ministries) Board of Directors (Agencies) as to the placement of the insurances after a review of the Consultants' assessment/recommendation.
		(9) Ministries/ Departments and Agencies should issue letter of appointment to the successful tenderers and advise the other tenderers in writing of the result of their tenders.
		<u>NB</u> The following are to be submitted to the PAPU within <u>twenty-one (21) days</u> of renewal date: - a) Copies of letters of appointment/rejection of broker/insurer.
		b) Details of the insurance placed using the format at ATTACHMENT# 2

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Contracts above \$1	Limited	CATEGORY B
million below \$3 million	Tender	(1) Ministries/Departments and Agencies shall conduct a limited tender. The proposals are to be assessed by an approved actuary who should submit recommendations for consideration to the Permanent Secretary (Central Government) or the Board of Directors (Agencies)
		Procedures (2) Proposals\Quotations should be sought from seven (7) to nine (9) registered and prequalified insurance brokers/companies and placement made with the chosen broker/insurer.
		(3) Specification of insurance covers required should be prepared in consultation with the Holding Broker. (See format at ATTACHMENT 4). Claims experience (for the expiring triennium) is to be provided by the Insurer.
		(4) Where appropriate a Briefing session for prospective tenderers should be held.
		<ul> <li>(5) Letters inviting proposals/tenders as well as the guidelines, grounds for disqualification, claims experience, standard bidding document etc. (See Attachment 1A and 1B)should be sent to: <ul> <li>(a) The selected Pre-qualified Brokers</li> <li>(b) The Consulting Actuary selected</li> <li>(c) The Procurement and Asset Policy Unit of the Ministry of Finance.</li> </ul> </li> <li>(6) A letter outlining the performance of the Holding Broker should be forwarded to the Permanent Secretary and copied to the appointed consulting actuary.</li> </ul>
		(7) On the closing date (at least six (6) weeks before the expiry date) at the specified time (3:00 p.m.) arrangements for the receival of tenders should be effected. After the opening (3:15 p.m. on the closing day), tenders should be forwarded IMMEDIATELY under CONFIDENTIAL cover to the appointed consulting actuary for assessment and recommendation.
		(8) The appropriate committee will make a recommendation to the Permanent Secretary (for Ministries) Board of Directors (Agencies) as to the placement of the insurances after a review of the Consultants' assessment/recommendation
		<u>NB</u> The following are to be submitted to the Ministry of Finance, Procurement and Asset Policy Unit within <u>twenty-one (21) days</u> of renewal date: -  (a) Copies of letters of appointment/rejection of broker/insurer
		(b) Details of the insurance placed using the format at ATTACHMENT#2.

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<b>Contracts below</b>	Limited	CATEGORY A
JA \$1 million	Tender	
		(1) Proposals\Quotations should be sought from three (3) to five (5) registered pre-qualified insurance brokers/companies and placement made with the chosen broker/insurer.
		Procedure (2) Specification of insurance covers required should be prepared in consultation with the Holding Broker (See format at ATTACHMENT 4).
		<ul> <li>(3) Letters inviting proposals/tenders should be sent to:</li> <li>(a) Chosen Pre-qualified brokers/insurers</li> <li>(b) The Procurement and Asset Policy Unit of the Ministry of Finance.</li> <li>(4) All tenders should be received on the same date at the specified time</li> <li>(3:00 p.m.)</li> </ul>
		NB The following are to be submitted to the Ministry of Finance, Procurement and Asset Policy Unit within twenty-one (21) days of renewal date: -  1. Copies of letters of appointment/rejection of broker/insurer  2. Details of the insurance placed using the format at ATTACHMENT#2.

## **GLOSSARY**

Accountable Officer Any public officer, including an accounting officer, concerned in or

responsible for the collection, receipt, custody, issue or payment of

public moneys or other public property.

Accounting Officer Responsible for the propriety of procurement expenditure affected by

their portfolio entities.

Consultant: A service provider whose services are primarily intellectual in nature.

Contract Thresholds:

- Internal: Internal contract value thresholds are contract values above or below

which specific procedures apply.

- International: International contract value thresholds are contract values above

which participation in procurement opportunities are open to both

domestic and foreign contractors.

Currency: Monetary unit of account

Day: Calendar day, unless otherwise specified

Domestic Supplier: A supplier having his principal place of business in Jamaica

Force Majeure An event which is beyond the reasonable control of a Party, and

which makes a Party's performance of its obligations impossible, or so impractical as to be reasonably considered impossible in the circumstances. Force Majeure includes but is not limited to war, riot, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such, strike, lockout or industrial action are within the power of the Party invoking Force Majeure to prevent),

confiscation or any other action by government agencies.

Goods Objects of every kind and description (except land or interest in

land), including raw materials, products and equipment and objects in solid, liquid or gaseous form, and electricity. Could include services incidental to the supply of the goods if the value of those incidental

services does not exceed that of the goods themselves.

Government Asset Any item of economic value, owned by the Government

(tangible and intangible property) that can be converted into

cash.

Life cycle cost: The total cost to GOJ of procuring, operating supporting and (if

applicable) disposing of the items being procured.

Margin of A measure by which a set percentage is added to bids from foreign

Preference: suppliers.

Misprocurement: Where the procurement of a good/service was not consistent with the

established rules/laws.

NCC Register of Public Sector Contractors A register of public sector contractors who have satisfied prescribed criteria for placement in specified categories and grades of work.

Offsets: Measures used to encourage local growth and development or

improve balance of payments accounts by means of domestic

content, licensing of technology, investment requirements, or similar arrangements.

Policies: Policies, as referred to in this manual are made by GOJ for the

purpose of giving information and direction. Policies establish basic philosophies and climate, and determine the major values upon which

GOJ Procurement functions must operate.

Procedures: Procedures are prescribed means of accomplishing policy. Their

intent is to provide GOJ personnel with the guidelines and, where appropriate, the specific action sequences to ensure uniformity,

compliance and control of all policy-related activities.

Procurement Contract: A contract between the procuring entity and a supplier resulting from

procurement proceedings.

Procurement Officer: A person with the authority to conduct procurement activities on

behalf of the procuring entity, as delegated by the Accounting

Officer

Procurement Plan: A plan that aligns a Procuring Entity policies with its resources

through an annual and projected multi-year operational schedule, taking into account all lead times of the procurement process. There are two levels of procurement plans: (a) annual procurement plans

and (b) project specific procurement plans.

Procurement Planning: The process by which the efforts of all personnel responsible for

procurement are coordinated and integrated to produce a procurement plan for fulfilling the procuring entity's need in a timely manner and

at a reasonable cost.

Procuring Entity: Any government Ministry, Department, Statutory Organization,

Executive Agency, Local Government Authority, Public Company or any other Agency in which the government owns controlling interest, that is at least 51%, or in which the Government is in a position to influence the policy of the entity. This definition also applies to government-approved authorities acting on

behalf of the procuring entity.

Public Sector Acquisition of goods, works and services, by any method, by or on

Procurement: behalf of procuring entities for their use.

Services Any object of procurement other than goods or works.

Supplier: A provider of goods (under a goods contract), works (a contractor

under a works contract) or services (a consultant – under a services

contract).

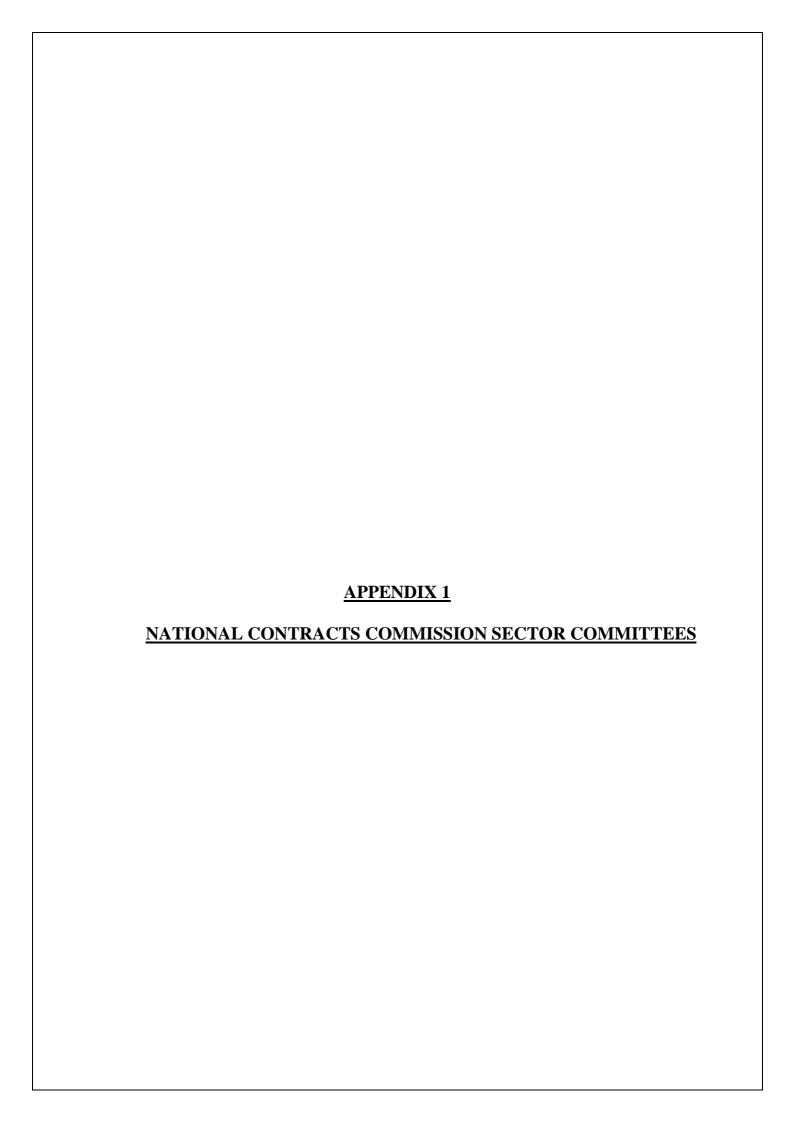
Turn-key A product or service that is designed, supplied, built, or installed

fully complete and ready to operate.

Works Means all work associated with construction, reconstruction,

demolition, repair or renovation, which include civil, electrical, mechanical and other related engineering works. Could include supply and installation of equipment and specialized engineering

incidental services that are related to the works.



# 1. Urban Development Commission (UDC)

**Urban Development Commission and Subsidiaries** 

Urban Maintenance Limited

Runaway Bay Water Company

St. Ann Development Company

Ocho Rios Commercial Centre

Jamaica Racing Commission

Development Bank of Jamaica

Planning Institute of Jamaica

**Securities Commission** 

Statistical Institute of Jamaica

Ministry of Foreign Affairs and Foreign Trade

Jamaica Trade and Invest (JAMPRO)

National Investment Bank

Jamaica Mortgage Bank

# 2. Jamaica Social Investment Fund (JSIF)

Jamaica Social Investment Fund

Social Development Commission

Jamaica Cultural Development Commission

Jamaica Tourist Board

Tourism Product Development Company

**Bureau of Standards** 

Scientific Research Council

## 3. Port Authority of Jamaica (PAJ)

Port Authority of Jamaica

Airports Authority

Factories Corporation of Jamaica

Jamaica Customs Department

Tax Administration Services Department

Tax Audit and Assessment Department

Meteorological Department

Aeronautical Telecommunications Limited

Post and Telecommunications Department

## 4. Ministry of Education

Ministry of Education

College of Agriculture, Science and Education

Human Employment and Resource Training (HEART)

Jamaica Nutrition Products

University of Technology

University of the West Indies

Institute of Jamaica

Jamaica National Heritage Trust

**JAMAL** Foundation

**Institute of Sports** 

Ministry of Labour and Social Security

Ministry of Tourism

**Broadcasting Commission** 

Creative Production and Training Centre

Jamaica Information Service

Social, Economic and Support Programme Management Institute of National Development (MIND)

## 5. National Works Agency (NWA)

National Works Agency

Ministry of Transport and Works

Ministry of Finance and the Public Service

Office of the Prime Minister

Ministry of National Security

Ministry of Justice

Ministry of Commerce and Industry

Jamaica Railway Corporation

Jamaica Urban Transit Company

Bank of Jamaica

Kingston and St. Andrew Corporation (KSAC)

Parish Councils

Parks and Markets

Office of Disaster Preparedness and Emergency Management (ODPEM)

## 6. Ministry of Water and Housing

Ministry of Water and Housing

**National Water Commission** 

Caribbean Engineering Corporation

**National Irrigation Commission** 

**National Housing Trust** 

National Housing Development Corporation

Caribbean Housing Finance Corporation

National Land Agency

**Sugar Industry Housing** 

## 7. Ministry of Health

Ministry of Health

Health Corporation of Jamaica

Regional Health Authorities

University Hospital of the West Indies

Administrator General's Department

Ministry of Agriculture

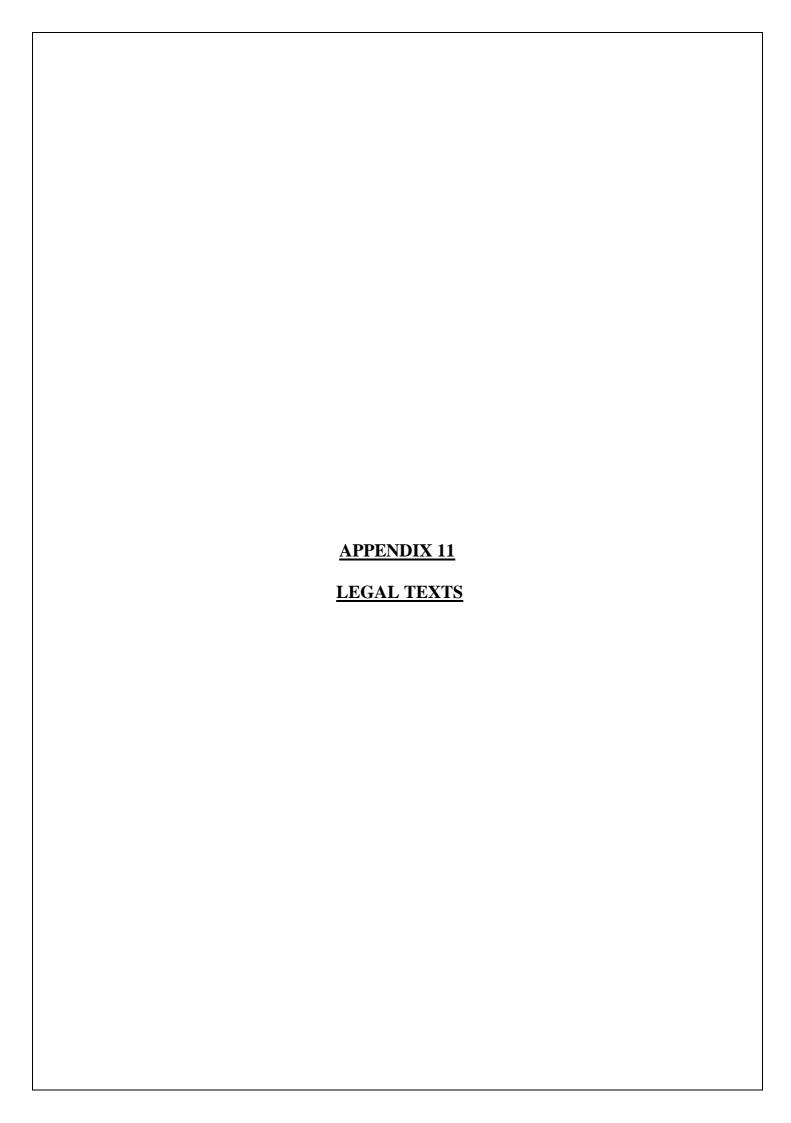
Agricultural Credit Board

Agricultural Development Corporation

Agricultural Marketing Corporation

Forest Industry Development Company

Rural Agricultural Development Authority



# THE FINANCIAL ADMINISTRATION & AUDIT ACT

(15<sup>th</sup> June, 1959)

## 19B. Regulations Governing Contracts.

- 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.

### 19C. Authorization of payments.

- 19C. (1) No payment shall be made from any Consolidated Fund Bank Account or any other official bank account unless the voucher for that payment is certified and the payment is approved and the accountable officer-
  - (a) who gives such certification or approval, as the case may be, is properly authorized to do so and acts within the limits of that authority;
  - (b) has taken the necessary steps to ensure that the payment may properly be made in respect of goods and services delivered or rendered in conformity with a valid agreement
  - (2) An accountable officer who approves or certifies any payment in contravention of subsection (1) shall be personally liable for any impropriety in relation to such payment.

### THE CONTRACTORS LEVY ACT

(23<sup>rd</sup> December, 1985)

#### ARRANGEMENT OF SECTIONS

Act 21 of 1985.

- 1. Short title.
- 2. Interpretation.
- 3. Imposition of levy on contractors.
- 4. Collection of levy.
- 5. Treatment of levy for the purposes of income tax.
- 6. Collector of Taxes may authorize payment without deduction.
- 7. Assessment of levy.
- 8. Objection to assessment.
- 9. Appeal against assessment.
- 10. Proper records to be kept.
- 11. Exemption from payment of levy.
- 12. Power to amend Schedules.
- 13. Penalties.
- 14. Regulations.

First Schedule - (Section 2)

Second Schedule - Tillage Operations (Section 2)

Third Schedule - Haulage Operations (Section 2)

Fourth Schedule - Institutions or Persons Exempt from the Levy (Section 11)

#### 1. Short title.

1. This Act may be cited as the Contractors Levy Act.

### 2. Interpretation.

2. In this Act-

"Commissioner of Taxpayer Appeals" means the Commissioner of Taxpayer Appeals appointed under section 11B of the Revenue Administration Act;

"construction operations" means such operations as are specified in Part I of the First Schedule but does not include the operations specified in Part II of that Schedule; and references to construction operations shall be taken-

- (a) except where the context otherwise requires, as including references to the work of individuals engaged in carrying out such operations; and
- (b) as not including references to operations carried out or to be carried out otherwise than in Jamaica;

"haulage operations" means operations of any description specified in the Third Schedule;

"levy" means the levy imposed under this Act;

"principal contractor" means a person who, being a party to a contract (not being a contract of service) is responsible for the carrying out in Jamaica of construction operations or tillage

operations or haulage operations under that contract, whether or not he performs all or any of those operations;

"sub-contractor" means a person who is a party to a contract (not being a contract of service) with a principal contractor relating to construction operations or tillage operations or haulage operations and under that contract

- (a) he is under a duty to the principal contractor to carry out operations or to furnish his own labour or the labour of others in the carrying out of the operations or to arrange for the labour of others to be furnished in the carrying out of the operations; or
- (b) he is answerable to the principal contractor for the carrying out of the operations by other persons whether under a contract or under other arrangements made or to be made by him;

"tillage operations" means operations of any description specified in the Second Schedule but does not include operations performed manually or with non-mechanical equipment.

## 3. Imposition of levy on contractors.

3. Subject to any regulations made pursuant to section 14 (1) (d), any person who makes any payment either to or on account of a principal contractor or a sub-contractor pursuant to a contract entered into on or after the date of commencement of this Act in respect of construction operations, tillage operations or haulage operations performed, or required to be performed, by that principal contractor or sub-contractor shall deduct from the gross amount of the payment a levy equal to two *per centum* of that gross amount.

## 4. Collection of levy.

- 4. (1) Subject to section 13 (1), a person who deducts the levy from any payment shall be deemed to be collecting the levy on behalf of the Collector of Taxes for the parish in which the levy is deducted and shall, within fourteen days after the end of the calendar month in which the levy is deducted, pay to the Collector of Taxes the amount of the levy so deducted.
- (2) Subject to the provisions of this Act and except in so far as regulations otherwise provide, the provisions of the Tax Collection Act concerning payment, collection and recovery of tax and the enforcing of payment shall *mutatis mutandis* apply to the levy in the same way as they apply to tax.
- (3) A person who is required to make a deduction of levy pursuant to this Act and fails to do so shall nevertheless be liable to make payment to the Collector of Taxes in like manner and in like amount as if he had made the deduction aforesaid.
- (4) Every person who is required by this Act to deduct the levy from any payment shall, within fourteen days after making the payment, furnish the principal contractor or sub-contractor, as the case may be, with a certificate setting out the gross amount of the payment and the amount of the levy which has been deducted (or, as the case may be, ought to have been deducted) and such other particulars as may be prescribed.

# 5. Treatment of levy for the purposes of income tax.

5. For the purposes of the Income Tax Act the levy deducted from any payment to a principal contractor or subcontractor in any year shall not be treated as an expense under section 13 of the Income Tax Act but shall be regulated by the provisions of section 25E or section 32 (3), as the case may be, of that Act.

## 6. Collector of Taxes may authorize payment without deduction.

6. A Collector of Taxes may authorize payment to, or on account of, a principal contractor or subcontractor without deduction of the levy where he is satisfied that there is no liability to make a deduction of levy from that payment.

## 7. Assessment of levy.

- 7. (1) A Collector of Taxes may assess the amount payable as levy where
- (a) there is a dispute regarding the amount of the levy between the person liable to deduct the levy from any payment and either the person entitled to receipt of that payment or the principal contractor or sub-contractor, as the case may be; or
- (b) the amount (if any) deducted as levy from any payment is, in his opinion, either less or greater than the amount required to be deducted as levy under this Act; or
- (c) it appears to him that it is just in the circumstances of the case so to do.
- (2) A Collector of Taxes shall cause a notice of assessment to be served personally or sent by registered post to any person appearing to him to be affected by the assessment; and
- (a) where that person is, consequent on the assessment, required to make any payment to the Collector of Taxes, payment shall be made pursuant to section 4 (1) as if the date of receipt of the notice were the date on which levy was deducted from a payment; and
- (b) if any refund of levy is required, the Collector of Taxes shall make the refund or adjustment accordingly.

## 8. Objection to assessment.

- 8. (1) If any person who is liable to deduct the levy from any payment or who is entitled to receipt of that payment disputes the assessment contained in the notice referred to in section 7 (2), he may, by notice of objection in writing, apply to the Collector of Taxes to review and to revise the assessment.
- (2) A notice of objection under subsection (1) shall state precisely the grounds of objection to the assessment and shall be made within thirty days from the date of service of the notice of assessment.
- (3) Where the Collector of Taxes is satisfied that owing to absence from the Island, sickness or other reasonable cause, the person disputing the assessment was prevented from making the application within the period stated in subsection (2) he may extend the period as may be reasonable in the circumstances.
- (4) on receipt of the notice of objection by the Collector of Taxes, the Collector may require the person giving the notice of objection to furnish, within such period as the Collector may specify, such additional particulars relating to the payment as the Collector may deem necessary and to produce all books and other documents relating to the payment which are in the custody of or under the control of that person, and may, by notice, summon any person who he thinks is able to give evidence respecting the payment or the assessment to attend before him and may examine such person on oath or otherwise.
- (5) Where a person giving notice of objection refuses or neglects to furnish any particulars or to produce any books or documents, as the case may be, within the period specified by the Collector of Taxes under subsection (4), the notice of objection served upon the Collector by that person

shall cease to have effect and the assessment made shall be final and conclusive as regards that person, so, however, that nothing in this subsection shall prevent the Collector of Taxes from making any refund of amounts paid in excess and which do not involve the reopening of any matter determined by the assessment aforesaid.

- (6) Any person who without lawful excuse refuses or neglects to attend or to give evidence pursuant to a notice served upon him under subsection (4), or to produce any books or documents which he is required to produce, or who refuses to answer any questions concerning the matters under consideration, or who knowingly or willfully gives any false evidence to a Collector of Taxes commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.
- (7) A Collector of Taxes shall, in respect of every notice of objection referred to in subsection (1), give notice in writing of his decision in respect of that objection to the person disputing the assessment.
- (8) Notice under subsection (7) shall not be necessary where an objector and the Collector of Taxes-
- (a) agree as to the amount at which the assessment is made; or
- (b) agree as to the amount at which the assessment should be made and, in this event, the assessment shall be amended accordingly.
- (9) Where no valid objection against an assessment has been lodged within the time specified for such objections, or where the amount of assessment has been agreed under subsection (8) or where the amount of levy has been determined by the Collector of Taxes on objection the assessment as made, agreed or determined, as the case may be, shall be final and conclusive as regards the amount of levy payable.
- (10) Nothing in subsection (9) shall prevent a Collector of Taxes from making any refund of levy which he is satisfied is due.

### 9. Appeal against assessment.

- 9. (1) Any person who is dissatisfied with an assessment made under section 8, may appeal to the Commissioner of Taxpayer Appeals within thirty days of the date of receiving the decision of the Collector of Taxes or such longer period as may be permitted under subsection (2).
- (2) The Commissioner of Taxpayer Appeals may, upon being satisfied that owing to absence from the Island, sickness or other reasonable cause, the appellant under subsection (1) was prevented from making the appeal within the period specified thereunder, extend the period as may be reasonable in the circumstances.
- (3) Upon an appeal under subsection (l) the Commissioner of Taxpayer Appeals may confirm, reduce the amount under or vacate the decision complained of.
- (4) An appellant who is dissatisfied with the decision of the Commissioner of Taxpayer Appeals may appeal to the Revenue Court within thirty days of the date of receiving that decision or within such longer period of time as may be permitted by or pursuant to rules of court.
- (5) The onus of proving that the assessment complained of is erroneous shall be on the person appealing to the Revenue Court.

- (6) An appeal under subsection (4) shall be limited to the grounds stated in the notice of objection but the Revenue Court may, in its discretion, permit the grounds of appeal to be amended.
- (7 Where the Revenue Court determines the amount of levy which is payable on assessment, the levy shall be paid in accordance with that decision, until, in the event of an appeal being made to the Court of Appeal, the Court of Appeal having heard and determined that appeal, shall otherwise order.

## 10. Proper records to be kept.

- 10. Every person who under this Act deducts the levy shall, in relation to that levy-
- (a) keep proper books, records and accounts in relation to the contract, payment or levy;
- (b) permit any person authorized in writing by the Collector of Taxes at all reasonable times to inspect the books, records and accounts and to make copies of entries therein; or
- (c) produce if required by the Collector of Taxes or any person authorized by him in writing, at such time and place as the Collector of Taxes or other person may specify, any books, records, accounts or other documents relating to the contract, payment or levy.

## 11. Exemption from payment of levy.

11. Where any of the institutions or persons specified in the Fourth Schedule is a principal contractor or a subcontractor in relation to construction, tillage or haulage operations, that institution or person shall be exempt from the levy and accordingly payments to them shall be made without the deduction prescribed by section 3.

#### 12. Power to amend Schedules.

- 12. (1) The Minister may amend the Schedules by order published in the *Gazette*.
- (2) An order made under subsection (1) shall be subject to negative resolution of the House of Representatives.

#### 13. Penalties.

- 13. (1) Where any person fails to pay or account for the levy by the date required by section 4 (1), he shall be treated as if the levy were increased at the rate of twenty-five *per centum* per annum, or such other rate as the Minister may by order prescribe, in respect of each day during which the failure continues after the date on which the levy is due and payable.
- (2) Any person who knowingly makes or delivers any false certificate or who keeps or prepares any false accounts relating to any gross payment or deduction of levy under this Act commits an offence and is liable on conviction on indictment to a fine not exceeding ten thousand dollars and treble the amount of the levy which he ought to have deducted and in default of payment to imprisonment for a term not exceeding five years.
- (3) Any person who aids, abets, assists, counsels, incites or induces another person to
- (a) make or deliver any false certificate;
- (b) keep or prepare any false accounts relating to any payment or other transaction which may affect the amount of the levy, commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding five thousand dollars and in default of payment to imprisonment for a term not exceeding six months.

(4) A person who fails to comply with the provisions of section 10 commits an offence and is liable on summary conviction before a Resident Magistrate to a tine not exceeding five thousand dollars and in default of payment to imprisonment for a term not exceeding twelve months

## 14. Regulations.

- 14. (1) The Minister may make regulations generally for the proper carrying out of the provisions of this Act and in particular, but without prejudice to the generality of the foregoing, make regulations
- (a) for the assessment, charge, collection and recovery of the levy;
- (b) for the return of any amount of levy paid in error;
- (c) for the keeping of records, and books of account relating to the deduction and payment of the levy;
- (d) relieving from the provisions of section 3 certain payments by a principal contractor to a sub-contractor and by a sub-contractor to a principal contractor.
- (2) Regulations under subsection (1) shall be subject to negative resolution of the House of Representatives with any operation specified in paragraphs 1 to 3.

## **FIRST SCHEDULE (Section 2)**

#### PART I

# Construction Operations

- 1. Construction, alteration, repair, extension, demolition or dismantling of building and structures (whether permanent or not), including (without prejudice to the foregoing) offshore installations, that is to say, installations which are maintained or are intended to be established for underwater exploitation.
- 2. Construction, alteration, repair, extension or demolition of any works forming, or intended to form, part of the land, including (without prejudice to the foregoing) walls, road works, powerlines, telegraphic-lines, aircraft runways, docks and harbours, railways, inland waterways, pipelines, reservoirs, water-mains, wells, irrigation works sewers, industrial plant and installation for purposes of land drainage coast protection or defence.
- 3. Installation in any building or structure of systems of heating, lighting, air conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection.
- 4. Internal cleaning of building and structures so far as carried out in the course of their construction, alteration, extension, repair or restoration.
- 5. Operations which form an integral part of, or are preparatory to, or are for rendering complete, such operations as are previously described in this Schedule including site clearance, earthmoving, excavation, tunnelling or boring, laying of foundations, erection of scaffolding, site restoration, landscaping and the provision of roadways and other access works.
- 6. Painting or decorating the internal or external surface of any building or structure.

#### **PART II**

Operations not regarded as Construction Operations

- 1. Drilling for, or extraction of, oil or natural gas.
- 2. Mining or extraction (whether by underground or surface working) of minerals by any company in the ordinary course of its business.
- 3. The professional work of architects or surveyors, or of consultants in building, engineering, interior or exterior decoration or in the laying-out of landscape.
- 4. Haulage of any item mentioned in or connected with any operation specified in paragraphs 1 to 3.

## **SECOND SCHEDULE (Section 2)**

**Tillage Operations** 

Tillage.

## **THIRD SCHEDULE (Section 2)**

**Haulage Operations** 

- 1. Hauling goods or equipment for any construction operation, not being an operation described in Part II of the First Schedule.
- 2. Hauling equipment for any tillage operation.
- 3. Hauling soil, timber, shrubbery, grass or stone for any tillage operation.

## **FOURTH SCHEDULE (Section 11)**

Institutions or Persons Exempt from the Levy

- 1. A Ministry or Department of Government.
- 2. A Statutory Body or Authority.
- 3. A company registered under the Companies Act, being a company in which the Government or any agency of Government holds not less than fifty-one *per centum* of the ordinary shares.
- 4. A Parish Council.
- 5. The Kingston and St. Andrew Corporation.
- 6. As respects any particular transaction, a person who satisfies the Collector of Taxes that -
- (a) being in the business of construction operations, the transaction involved the construction of buildings for his own use or the use or occupation of that business or of persons employed by him;
- (b) being in the business of tillage operations, the transaction involved the tilling of land for his own use; or
- (c) being in the business of haulage operations, the transaction involved haulage for the purposes of construction or tillage operations undertaken by him for his benefit.

### THE CONTRACTOR-GENERAL ACT

(7<sup>th</sup> October, 1983)

### ARRANGEMENT OF SECTIONS

1. Short title.

## PART I. Preliminary

2. Interpretation.

### PART II. The Contractor-General

- 3. Contractor-General Commission.
- 4. Functions of the Contractor-General.
- 5. Independence of Contractor-General.
- 6. Tenure of office.
- 7. Removal from office.
- 8. Disqualifications for appointment, etc.
- 9. Restriction on employment.
- 10. Filling of vacancy.
- 11. Remuneration of Contractor-General.
- 12. Pensions and gratuities.
- 13. Appointment of officers, etc.
- 14. Oath of secrecy.

## PART III. Investigations by Contractor-General

- 15. Scope of investigations.
- 16. Initiation of investigations.
- 17. Procedure in respect of investigation.
- 18. Evidence.
- 19. Restriction on disclosure of certain matters.
- 20. Procedure after investigation.
- 21. Disciplinary action against officers.
- 22. Proceedings of Contractor-General not to be void for want of form.
- 23. Privileges

### PART IIIA National Contracts Commission

- 23A. Interpretation.
- 23B. Establishment of Commission.
- 23C. Principal objects of Commission.
- 23D. Functions of Commission.
- 23E. Commission may make regulations.
- 23F. Sector Committees.
- 23G. Registration and classification.
- 23H. Factors affecting classification.
- 23I. Fair Treatment.
- 23J. Funds and resources of Commission.

# PART IV General

- 24. Secrecy of information.
- 25. Performance of functions of Contractor-General by members of his staff.
- 26. Funding.
- 27. Accounts, etc.
- 28. Reports.
- 29. Offences.
- 30. Remedy under any other provision of law unaffected.
- 30A. Provisions applicable when there is no Leader of the Opposition.
- 31. Regulations.

First Schedule - (Section 12) Second Schedule - (Section 14) Third Schedule - (Section 23B)

#### 1. Short title.

1. This Act may be cited as the Contractor-General Act.

## 2. Interpretation.

2. In This Act -

"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;

"functions" includes powers and duties;

"government contract" includes any licence, permit or other concession or authority issued by a public body or 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;

"prescribed licence" means any licence, certificate, quota, permit or warrant issued or granted pursuant to any enactment by a public body or an officer thereof;

"public body" means -

- (a) Ministry, department or agency of government;
- (b) a statutory body or authority;
- (c) any company registered under the Companies Act, being a company in which the Government or an agency of Government, whether by the holding of shares or by other financial input, is in a position to influence the policy of the company;

"sector committee" means a committee established under section 23F;

"Security Forces" means -

(a) the Jamaica Constabulary Force;

<sup>&</sup>quot;Commission" means the National Contracts Commission established under section 23B;

- (b) the Jamaica Defence Force;
- (c) the Island Special Constabulary Force; and
- (d) the Rural Police.

#### 3. Contractor-General Commission.

- 3. (1) For the purposes of this Act there is hereby constituted a Commission of Parliament to be known as the Contractor-General.
- (2) The Commission shall consist of such person or persons as shall be appointed by the Governor-General by instrument under the Broad Seal, after consultation with the Prime Minister and the Leader of the Opposition, and any person so appointed shall be known as a Contractor-General.

### 4. Functions of the Contractor-General.

- 4. (1) Subject to the provisions of this Act, it shall be the function of a Contractor-General, on behalf of Parliament -
- (a) to monitor the award and the implementation of government contracts with a view to ensuring that -
- (i) such contracts are awarded impartially and on merit;
- (ii) the circumstances in which each contract is awarded or, as the case may be, terminated, do not involve impropriety or irregularity;
- (iii) without prejudice to the functions of any public body in relation to any contract, the implementation of each such contract conforms to the terms thereof; and
- (b) to monitor the grant, issue, suspension or revocation of any prescribed licence, with a view to ensuring that the circumstances of such grant, issue, suspension or revocation do not involve impropriety or irregularity and, where appropriate, to examine whether such licence is used in accordance with the terms and conditions thereof.
- (2) For the purpose of the discharge of his functions under this Act a Contractor-General shall be entitled -
- (a) to be advised of the award and, where applicable, the variation of any government contract by the public body responsible for such contract;
- (b) subject to section 19, to have access to all books, records, documents, stores or other property belonging to government, whether in the possession of any officer of a public body or a contractor or any other person;
- (c) to have access to any premises or location where work on a government contract has been, is being or is to be carried out;
- (d) to have access to all books, records, documents or other property used in connection with the grant, issue, suspension or revocation of any prescribed licence whether in the possession of any public officer or any other person;

- (e) to have access to any premises or location where he has reason to believe that any such books, records, documents or other property as are referred to in paragraph (d) or any property which is the subject of a prescribed licence, may be found;
- (f) to enter any premises occupied by any person in order to make such enquiries or to inspect such document, record or property as he considers necessary to any matter being investigated by him; and
- (g) without prejudice to the provisions of sections 18 and 19, to retain any such document, record or other property referred to in paragraph (f).
- (3) For the purposes of subsection (2) the Contractor-General shall have power to require any public body to furnish in such manner and at such times as may be specified by the Contractor-General, information with regard to the award of any contract and such other information in relation thereto as the Contractor-General considers desirable.
- (4) For the purposes of paragraphs (d) and (e) of subsection (2) the Contractor-General shall have power to require any public officer or any other person to furnish in such manner and at such times as may be specified by the Contractor-General, information with regard to the grant, issue, suspension or revocation of any prescribed licence and such other information in relation thereto as the Contractor-General considers desirable.

## 5. Independence of Contractor-General.

- 5. (1) In the exercise of the powers conferred upon him by this Act, a Contractor-General shall not be subject to the direction or control of any other person or authority.
- (2) Nothing in subsection (1) shall be construed as preventing the assignment to a Minister of responsibility for such aspects of the administration of this Act as are necessary or desirable to facilitate liaison between Parliament and a Contractor-General.

#### 6. Tenure of office.

- 6. (1) Subject to the provisions of this Act, any person appointed Contractor-General shall hold office for a period of seven years and may be re-appointed for periods not exceeding five years at a time.
- (2) A person appointed Contractor-General may at his own request be relieved of office by the Governor-General and shall in any case, subject to the provisions of subsections (3) and (4), vacate office on attaining the age of seventy years.
- (3) The Governor-General may, after consultation with the Prime Minister and the Leader of the Opposition, permit a Contractor-General to continue in office until he has attained such later age, not exceeding seventy-five years, as may (before the Contractor-General has attained the age of seventy years) have been agreed between the Governor-General and the Contractor-General.
- (4) Notwithstanding that he has attained the age at which he is required by or under the provisions of this section to vacate his office, a Contractor-General may continue in office for such period after attaining that age as the Governor-General, after consultation with the Prime Minister and the Leader of the Opposition, may specify, in order to enable the Contractor-General to give his decision or do any other thing in relation to any investigation he was conducting before he attained that age.
- (5) Nothing done by a Contractor-General shall be invalid by reason only that he has attained the age at which he is required by this section to vacate his office.

#### 7. Removal from office.

- 7. (1) A Contractor-General may be removed from office only for -
- (a) inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause); or
- (b) misbehaviour; or
- (c) trading with the Government of Jamaica without the prior approval, by resolution, of each House of Parliament.

and shall not be so removed except in accordance with the provisions of this section.

- (2) For the purposes of this section a Contractor-General trades with the Government of Jamaica if, while holding office as such, he becomes party to, or is a partner in a firm or a director or manager of a company which to his knowledge becomes a party to any contract with the Government of Jamaica for or on behalf of the public service.
- (3) If the question of the removal from office of a Contractor-General has been referred to a tribunal appointed under subsection (4) and the tribunal has recommended to the Governor-General that the Contractor-General ought to be removed from office, the Governor-General shall, by instrument under the Broad Seal, remove the Contractor-General from office.
- (4) If each House of Parliament by resolution decides that the question of removing a Contractor-General from office ought to be investigated then -
- (a) the Governor-General shall appoint a tribunal, which shall consist of a chairman and not less than two or more than five other members from among persons who hold or have held the office of a Judge of a court having unlimited jurisdiction in civil and criminal matters or a court having jurisdiction in appeals from any such court; and
- (b) that tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to the Governor-General whether the Contractor-General ought to be removed from

office for inability as aforesaid or for misbehavior or for trading as aforesaid.

- (5) The provisions of sections 8 to 16 (inclusive) of the Commissions of Enquiry Act shall apply *mutatis mutandis* in like manner in relation to tribunals appointed under subsection (4) or, as the context may require, to the members thereof, as they apply in relation to the Commissions or Commissioners appointed under that Act.
- (6) Where the question of removing a Contractor-General from office has been referred to a tribunal the Governor-General, after consultation with the Prime Minister and the Leader of the Opposition, may suspend the Contractor-General from performing the functions of his office and any such suspension may at any time be revoked by the Governor-General after consultation as aforesaid and shall in any case cease to have effect if the tribunal advises the Governor-General that the Contractor-General ought not to be removed from office.

### 8. Disqualifications for appointment, etc.

- 8. (1) No person shall be qualified to be appointed as Contractor-General who -
- (a) is a member of the Senate or of the House of Representatives;

- (b) is an undischarged bankrupt;
- (c) has been convicted of any offence involving dishonesty or moral turpitude; or
- (d) is a party to, or partner in a firm, or a director or manager of a company which to his knowledge is a party to any contract with the Government of Jamaica for or on behalf of the public service unless, prior to his appointment, he has disclosed to the Governor-General the nature of such contract and his interest or the interest of such firm or company therein.
- (2) A Contractor-General shall vacate his office if any circumstances arise that, if he were not Contractor-General, would, by virtue of subsection (1), cause him to be disqualified for appointment as such.

## 9. Restriction on employment.

9. A person appointed Contractor-General shall devote his full time to the appointment and shall not accept paid employment in any other capacity during any period in which he holds office as Contractor-General.

# 10. Filling of vacancy.

- 10. (1) Where a vacancy arises in the office of Contractor-General the Governor-General, after consulation with the Prime Minister and the Leader of the Opposition, may designate someone to act in that office during such vacancy, until an appointment is made.
- (2) Where, by reason of illness, absence from the Island or other sufficient cause a person appointed Contractor-General is unable to perform the functions of his office, he may appoint a member of his staff to perform those functions for a period not exceeding two months and shall forth with inform the Governor-General of the appointment, but if a Contractor-General is unable or fails to appoint such a person or if it is necessary that such a person be appointed for a period exceeding two months, the Governor-General after consultation with the Prime Minister and the Leader of the Opposition, may appoint such person as he thinks fit, being a person qualified under this Act, to perform those functions.

## 11. Remuneration of Contractor-General.

- 11. (1) Subject to subsection (2), a Contractor-General shall receive such emoluments and be subject to such other terms and conditions of service as may from time to time be prescribed by or under any law or by a resolution of the House of Representatives, such emoluments being not less than the emoluments which may, from time to time, be payable to a Puisne Judge.
- (2) The emoluments and terms and conditions of service of a Contractor-General, other than allowances that are not taken into account in computing pensions, shall not be altered to his disadvantage during the period of his appointment or reappointment, as the case may be.
- (3) The emoluments for the time being payable to a Contractor-General by virtue of this Act shall be charged on and paid out of the Consolidated Fund.

### 12. Pensions and gratuities.

12. The provisions of the First Schedule shall have effect with respect to the pension and other benefits to be paid to or in respect of a person who has held the office of Contractor-General.

### 13. Appointment of officers, etc.

13. (1) A Contractor-General may appoint and employ for the purposes of this Act, at such remuneration and on officers, such terms and conditions as may be approved by the Commission

constituted under subsection (2), such officers and agents as he considers necessary to assist him in the proper performance of his functions under this Act.

- (2) The Commission referred to in subsection (1) shall consist of -
- (a) the Speaker, as chairman;
- (b) the President of the Senate;
- (c) the person designated by the Prime Minister as Leader of Government business in the House of Representatives;
- (d) the person designated by the Leader of the Opposition as Leader of Opposition business in the House of Representatives; and
- (e) the Minister responsible for the public service.
- (3) The Governor-General may, subject to such conditions as he may impose, approve of the appointment to the staff of a Contractor-General, of any officer in the service of the Government, provided that in relation to pension, gratuity, allowances and other rights as a public officer, such officer shall be deemed to be in the service of the Government while so employed.
- (4) If more than one person is appointed Contractor-General, without prejudice to the independence of any other Contractor-General, the Governor-General may designate one of them to have supervision of the staff and administration of affairs.

## 14. Oath of secrecy.

14. Every person appointed to the staff of a Contractor-. General shall, before he performs any function assigned to him under or by virtue of this Act, take and subscribe an oath to be administered by the Contractor-General, in the form set out in the Second Schedule.

#### 15. Scope of investigations.

- 15. (l) Subject to subsection (2), a Contractor-General. may, if he considers it necessary or desirable, conduct an investigation into any or all of the following matters -
- (a) the registration of contractors;
- (b) tender procedures relating to contracts awarded by public bodies;
- (c) the award of any government contract;
- (d) the implementation of the terms of any government contract;
- (e) the circumstances of the grant, issue, use, suspension or revocation of any prescribed licence;
- (f) the practice and procedures relating to the grant, issue, suspension or revocation of prescribed licences.
- (2) A Contractor-General shall not, without the prior approval of the Secretary to the Cabinet acting at the direction of the Cabinet, investigate -
- (a) any government contract or any matters concerning any such contract entered into for purposes of defence or for the supply of equipment to the Security Forces; or

(b) the grant or issue of any prescribed licence for the purposes of defence or for the supply of equipment to the Security Forces,

and any report or comment thereon by the Contractor-General shall be made only to the Cabinet.

### 16. Initiation of investigations.

16. An investigation pursuant to section 15 may be undertaken by a Contractor-General on his own initiative or as a result of representations made to him, if in his opinion such investigation is warranted.

## 17. Procedure in respect of investigation.

- 17. (1) A Contractor-General may adopt whatever procedure he considers appropriate to the circumstances of a, particular case and, subject to the provisions of this Act, may obtain information from such person and in such manner and make such enquiries as he thinks fit.
- (2) Nothing in this Act shall be construed as requiring a Contractor-General to hold any hearing and, no person shall be entitled as of right to comment on any allegations or to be heard by a Contractor-General.
- (3) Regulations made under this Act may prescribe the practice and procedure to be adopted at any hearing.
- (4) Where, for the purposes of an investigation, a Contractor-General requires a person to attend before him, that person shall be entitled to be paid, according to the scale set out in the First Schedule to the Witnesses' Expenses Act, expenses incurred by him by reason of such attendance and by way of compensation for the trouble and loss of time suffered by him.

## 18. Evidence.

- 18. (1) Subject to the provisions of subsection (5) and section 19 (1), a Contractor-General may at any time require any officer or member of a public body or any other person who, in his opinion, is able to give any assistance in relation to the investigation of any matter pursuant to this Act, to furnish such information and produce any document or thing in connection with such matter as may be in the possession or under the control of that officer, member or other person.
- (2) Subject as aforesaid, a Contractor-General may summon before him and examine on oath -
- (a) any person who has made representations to him; or
- (b) any officer, member or employee of a public body or any other person who, in the opinion of the, Contractor-General is able to furnish information relating to the investigation,

and such examination shall be deemed to be a judicial proceeding within the meaning of section 4 of the Perjury Act.

- (3) For the purposes of an investigation under this Act, a Contractor-General shall have the same powers as a Judge of the Supreme Court in respect of the attendance and examination of witnesses and the production of documents.
- (4) Any obligation to maintain secrecy or any restriction on the disclosure of information or the production of any document or paper or thing imposed on any person and by or under the Official Secrets Act, 1911 to 1939 of the United Kingdom (or any Act of the Parliament of Jamaica replacing the same in its application to Jamaica) or, subject to the provisions of this Act, by any other law (including a rule of law) shall not apply in relation to the disclosure of information or the production of any document or thing by that person to a Contractor-General for the purpose of

an investigation; and accordingly, no person shall be liable to prosecution by reason only of his compliance with a requirement of the Contractor-General under this section.

(5) No person shall, for the purpose of an investigation, be compelled to give any evidence or produce any document or thing which he could not be compelled to give or produce in proceedings in any court of law.

#### 19. Restriction on disclosure of certain matters.

- 19. (1) Where the Secretary to the Cabinet at the direction of Cabinet -
- (a) gives notice that the disclosure by a Contractor-General of any document or information specified in the notice, or any class of document or information so specified, would -
- (i) involve the disclosure of the deliberations or proceedings of the Cabinet, or any committee thereof, relating to matters of a secret or confidential nature and is likely to be injurious to the public interest; or
- (ii) prejudice the relations of Jamaica with the government of any other country or with any international organization; or
- (iii) prejudice the detection of offences, a Contractor-General or any member of his staff shall not communicate to any person for any purpose any document or information specified in the notice or any document or information of a class so specified;
- (b) certifies that the giving of any information or the answering of any question or production of any document or thing would prejudice the security or defence of Jamaica, a Contractor-General shall not further require such information or answer to be given or such document or thing to be produced.
- (2) Except as provided in subsection (1), no law which authorizes or requires the refusal to answer any question or the withholding of any information or document or thing on the ground that the answering of the question or the disclosure of the information, document or thing would be injurious to the public interest, shall apply in respect of any investigation by or proceedings before a Contractor-General.

#### 20. Procedure after investigation.

- 20. (1) After conducting an investigation under this Act, a Contractor-General shall, in writing, inform the principal officer of the public body concerned and the Minister having responsibility therefor of the result of that investigation and make such recommendations as he considers necessary in respect of the matter which was investigated.
- (2) If any report of a Contractor-General reflects adversely upon any person the Contractor-General shall, so far as practicable, inform that person of the substance of the report.

#### 21. Disciplinary action against officers.

21. If a Contractor-General finds, during the course of his investigations or on the conclusion thereof that there is evidence of a breach of duty or misconduct or criminal offence on the part of an officer or member of a public body, he shall refer the matter to the person or persons competent to take such disciplinary or other proceeding as may be appropriate against that officer or member and in all such cases shall lay a special report before Parliament.

#### 22. Proceedings of Contractor-General not to be void for want of form.

22. The proceedings of a Contractor-General shall not be rendered void for want of form.

### 23. Privileges.

- 23. (1) Except in the case of proceedings for an offence under section 29 (c), no proceedings whatsoever shall lie against a Contractor-General or any person concerned with the administration of this Act, for anything he may do or report or say in the performance of his functions under this Act.
- (2) Anything said or information supplied or any document or thing produced by any person for the purpose or in the course of any investigation by or proceedings before a Contractor-General under this Act, shall be absolutely privileged in the same manner as if the investigation or proceedings were proceedings in a court of law.
- (3) For the purposes of the Defamation Act, any report made by a Contractor-General under this Act and any fair and accurate comment thereon shall be deemed to be privileged.

### 23A. Interpretation.

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

#### 23B. Establishment of Commission.

- 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. Principal objects of Commission.

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. Functions of Commission.

- 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 contracts;
- (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 procedures 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. Commission may make regulations.

- 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. Sector Committees.

- 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(2).
- (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 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.

### 23G. Registration and classification.

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. Factors affecting classification.

- 23H. 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;
- (e) equipment and other resources.

#### 23I. Fair Treatment

- 23I. The Commission shall ensure as far as possible that –
- (a) the tendering process for government contracts is conducted in an open manner;
- (b) reasonable notification is given of the proposed award of any government contract.

# 23J. Funds and resources of Commission.

- 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.

### 24. Secrecy of information.

- 24. (1) A Contractor-General and every person concerned with the administration of this Act shall regard as secret and confidential all documents, information and things disclosed to them in the execution of any of the provisions of this Act, except that no disclosure –
- (a) made by a Contractor-General or any person aforesaid in proceedings for an offence under section 29 of this Act or under the Perjury Act, by virtue of section 18 (2) of this Act; or
- (b) which a Contractor-General thinks necessary to make in the discharge of his functions or for the purpose of executing any of the provisions of sections 20, 21 and 28, shall be deemed inconsistent with any duty imposed by this subsection.
- (2) Neither a Contractor-General nor any such person aforesaid shall be called upon to give evidence in respect of, or produce, any document, information or thing, aforesaid in any proceedings other than proceedings mentioned in subsection (1).

(3) Nothing in this section shall prevent disclosure by any person of information furnished to him pursuant to section 20.

## 25. Performance of functions of Contractor-General by members of his staff.

- 25. (1) Without prejudice to the provisions of section 10 (2), the functions of a Contractor-General, except those under sections 20, 21, 27 (2) and 28, may be performed by any member of his staff authorized for that purpose by the Contractor-General.
- (2) Nothing in subsection (1) shall be construed as affecting the responsibility of a Contractor-General for functions performed on his behalf pursuant to subsection (1).

### 26. Funding.

- 26. The funds of the office of Contractor-General shall consist of -
- (a) such sums as may from time to time be appropriated by Parliament for the purposes of the office of Contractor-General; and
- (b) all other moneys which may in any manner become payable to or vested in a Contractor-General in respect of any matter incidental to his functions.

#### 27. Accounts, etc.

- 27. (1) The accounts and financial transactions of the office of Contractor-General 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 section 28.
- (2) A Contactor-General 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 subsection (1);
- (b) submit to the Minister for approval estimates of revenue and expenditure for the ensuing financial year.
- (3) In this section "Minister" means the Minister responsible for finance.

#### 28. Reports.

- 28. (1) A Contractor-General may at any time be required by Parliament to submit a report to Parliament in respect of any matter being investigated by him.
- (2) A Contractor-General shall submit to Parliament an annual report relating generally to the execution of his functions and may at any time submit a report relating to any particular matter or matters investigated, or being investigated, by him which, in his 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 possible, have them laid on the Table of the appropriate House.
- (4) A Contractor-General may, in the public interest, from time to time publish in such manner as he thinks fit, reports relating to such matters as are mentioned in subsection (2) and any case which is the subject of a special report under section 21, but no such report shall be published until after it has been laid pursuant to subsection (3).

#### 29. Offences.

- 29. Every person who -
- (a) wilfully makes any false statement to mislead or misleads or attempts to mislead a Contractor-General or any other person in the execution of his functions under this Act; or
- (b) without lawful justification or excuse -
- (i) obstructs, hinders or resists a Contractor-General or any other person in the execution of his functions under this Act; or
- (ii) fails to comply with any lawful requirement of a Contractor-General or any other person under this Act; or
- (c) deals with documents, information or things mentioned in section 24 (1) in a manner inconsistent with his duty under that subsection,

shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

### 30. Remedy under any other provision of law unaffected.

- 30. (1) A Contractor-General may initiate or continue any investigation and report thereon pursuant to this Act notwithstanding any legal proceedings relating to the subject matter of the investigation.
- (2) Nothing in subsection (1) shall be construed as preventing a court from ordering the Contractor-General not to publish a report or part thereof if the court is of opinion that such publication is likely to prejudice any proceedings pending before the court.

#### 30A. Provisions applicable when there is no Leader of the Opposition.

- 30A. Where pursuant to any provision of this Act, the Governor-General is directed to act after consultation with the Leader of the Opposition and -
- (a) there is no person holding the office of Leader of the Opposition; or
- (b) the holder of that office is unwilling or, by reason of his illness or absence from Jamaica, unable to perform his functions in that regard,
- the Governor-General shall act as if the reference in such provision to the Leader of the Opposition were a reference to such person as the Governor-General, in his discretion, considers appropriate.

### 31. Regulations.

- 31. The Minister may make regulations to provide for any matter in respect of which it may be necessary or desirable to make regulations for the better carrying into effect of the provisions of this Act, and, without prejudice to the generality of the foregoing, such regulations may provide for -
- (a) any matter required by this Act to be prescribed; and
- (b) the circumstances in which and the manner in which information relating to government contracts shall be furnished to the Contractor-General.

### **FIRST SCHEDULE (Section 12)**

#### Pensions and Gratuities

- 1. In this Schedule "pensionable emoluments" has the same meaning as in the Pensions Act and, in so far as the emoluments of a Contractor-General includes house allowance, the office of Contractor-General shall be deemed to be a specified office.
- 2. (1) Where a person holding the office of Contractor-General retires in pensionable circumstances he shall be paid pension and gratuity in accordance with this Schedule.
- (2) For the purposes of this paragraph and paragraph 4, a person retires in pensionable circumstances if he retires-
- (a) on or after the expiration of seven years from the date of his appointment to the office of Contractor-General;
- (b) by reason of ill health prior to such expiration; or
- (c) on his attaining the age at which he is required by or under the provisions of section 6 to vacate office.
- (3) For the purposes of this Act, a person retires from the office of Contractor-General on the ground of ill health if -
- (a) he retires on medical evidence, to the satisfaction of the Governor-General, that he is incapable by reason of any infirmity of mind or body of discharging the duties of his office and that such infirmity is likely to be permanent; or
- (b) he is removed from office, in accordance with section 7 (3), for inability, arising from infirmity of mind or body, to perform the functions of his office.
- (4) A person who, pursuant to section 7 (3), is removed from the office of Contractor-General for misbehaviour or for any cause other than inability arising from infirmity of mind or body or who retired otherwise than in pensionable circumstances may be granted by the Governor-General such pension and gratuity as the Governor-General thinks fit not exceeding the pension and gratuity to which he would have been entitled had he retired in pensionable circumstances from such office and, for the purposes of sub-paragraph (5), the date of such removal from office or retirement shall be deemed to be the date of retirement in pensionable circumstances.
- (5) Pension payable in accordance with this paragraph shall -
- (a) be charged on and payable out of the Consolidated Fund; and
- (b) be paid monthly in arrears with effect, subject to paragraph 4, from the date of retirement in pensionable circumstances and shall, subject to the provisions of this Act, continue to be paid during the lifetime of the person entitled thereto.
- 3. The rate of pension payable pursuant to paragraph 2 to any person shall -
- (a) if the person has retired after completing not less than seven years service as Contractor-General or, at any time, on the ground of ill-health, be at an annual rate equivalent to his pensionable emoluments at retirement; and

(b) in any other case, be an annual rate equivalent to the sum o£ one-half of his pensionable emoluments at the date of retirement and one-three hundred and sixtieth of such pensionable emoluments in respect of each month of service as a Contractor-General:

Provided that the rate of pension shall not exceed the annual rate of such pensionable emoluments.

- 4. Where in accordance with paragraph 2 (2) a person retires in pensionable circumstances before he has attained the age of fifty years -
- (a) the date with effect from which any pension due to him under this Act shall be payable shall be the date on which he attains that age, but, if he elects pursuant to paragraph 5 to take a reduced pension and commuted pension gratuity, nothing in this paragraph shall prevent payment of the commuted pension gratuity at any time prior to the attainment of that age; and
- (b) if he dies before attaining that age, and he has not made an election to receive a reduced pension and commuted pension gratuity as aforesaid, he shall for the purpose of paragraph 6 be deemed to have died while holding the office of Contractor-General.
- 5. (1) Any person to whom a pension (in this paragraph referred to as "the original pension") is payable pursuant to paragraph 2 may, at his option exercisable at his retirement in pensionable circumstances or within such period prior or subsequent to his retirement as the Governor-General may allow, be paid, in lieu of the original pension a reduced pension at the rate of three-fourths of the annual rate of the original pension together with a gratuity (in this Act referred to as a "commuted pension gratuity") equal to twelve and one-half times one-quarter of the annual rate of the original pension.
- (2) The option referred to in sub-paragraph (1) shall be irrevocable unless the Governor-General, on such terms as he considers reasonable otherwise permits.
- 6. (1) Where a person dies while holding the office of Contractor-General there shall be paid to his legal personal representatives, a on death gratuity of an amount equivalent to -
- (a) one year's pensionable emoluments; or
- (b) the commuted pension gratuity for which the person aforesaid had a right to opt pursuant to paragraph 5 on the assumption that he retired in pensionable circumstances at the date of his death, whichever is the greater.
- (2) Where a person dies while in receipt of a pension pursuant to paragraph 2, there shall be paid to his legal personal representatives a gratuity of an amount equivalent to one year's pensionable emoluments of that person at the date of his retirement or removal from office.
- 7. Where a person holding the office of Contractor-General dies as a result of injuries received -
- (a) in the actual discharge of his duties;
- (b) in circumstances in which the injury is not wholly or mainly due to or seriously aggravated by his own serious and culpable negligence or misconduct; and
- (c) on account of circumstances specially attributable to the nature of his duty, while serving in that office, it shall be lawful for the Governor-General. to grant to the deceased officer's widow, children, parents or other dependants such awards as would have been made

under the Pensions Act if the office of Contractor-General were a pensionable office for the purposes of that Act.

### 8. If a Contractor-General -

- (a) is permanently injured in the actual discharge of his duty by, some injury specifically attributable to the nature of his duty which is not wholly or mainly due to, or seriously aggravated by, his own serious and culpable negligence or misconduct; or
- (b) contracts a disease to which he is exposed specially by the nature of his duty, not being a disease wholly or mainly due to, or seriously aggravated by, his own serious and culpable negligence or misconduct; or
- (c) is permanently injured as a result of an accident or damage to the aircraft while travelling by air in pursuance of official instructions and the injury was not wholly or mainly due to, or seriously aggravated by, his own serious and culpable negligence or misconduct; or
- (d) while proceeding by a route approved by the Governor-General to or from this Island at the commencement or termination of his service therein, or of a period o£ secondment, duty leave, or leave therefrom, is permanently injured as the result of damage or any act of violence to the vessel, aircraft or vehicle in which he is travelling, if the Governor-General is satisfied that that damage or act is attributable to circumstances arising out o£ any war in which Her Majesty may be engaged,

then, for the purpose of calculating any pension under this Act any period of service as Contractor-General shall be deemed to be increased by twenty *per centum*.

- 9. A pension or gratuity payable under this Act shall not be assignable or transferable except for the purpose of satisfying -
- (a) a debt due, to the Government; or
- (b) an order of any court for the payment of periodical sums of money towards the maintenance of the wife or former wife or minor children, of the person to whom the pension or gratuity is payable, and shall not be liable to be attached, sequestered or levied upon, for or in respect of any debt due or claim whatever, except a debt due to the Government.
- 10. (1) Where a person dies while holding the office of Contractor-General or while entitled to a pension under paragraph 2, there shall be paid to his widow a pension at an annual rate equivalent to one-fifth of the pensionable emoluments of the person aforesaid at the date of his death or, if that date he was entitled to receive a pension under paragraph 2, at the date of his retirement or, as the case may be, removal from office in accordance with, this Act.
- (2) Pension payable to a widow pursuant to sub-paragraph (l) shall -
- (a) be charged on and paid out of the Consolidated Fund; and
- (b) be paid monthly in arrears with effect from the date of her husband's death and shall, subject to the provisions of this Act, continue to be paid during her lifetime.
- (3) In paragraph 7 and sub-paragraphs (1) and (2) of this paragraph, references to a widow shall, in the case of a female appointed Contractor-General, be deemed to include references to a widower and cognate expressions shall be construed accordingly, and similarly, references to a husband shall be deemed to include references to a wife.

### **SECOND SCHEDULE (Section 14)**

Oath to be taken by persons appointed to assist a Contractor-General				
I,,	do	swear	that I	wil
faithfully perform any functions assigned to me under the Contractor- on any account, at any time whatsoever, except in so far as provis directly or indirectly reveal any information or the nature or co- communicated to me in the performance of any functions assigned to re-	sions ontent	of the A	Act authory docur	orize. nents
So help me God.				

### **THIRD SCHEDULE (Section 23B)**

National Contracts Commission

Constitution of Commission.

- 1. The Commission shall consist of the following members, appointment 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.

#### Tenure of office

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 re-appointment.

# Temporary appointments

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.

#### Vacancy.

- 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.

# Gazetting of appointments.

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*.

### Resignation from office.

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.

### *Termination of appointment.*

- 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.

### Procedure and meetings.

- 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 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 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.

### Remuneration of members.

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.

### Seal and authentication of documents.

- 10. (1) The seal of the Commission shall be kept in the custody of the Chairman or of 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.
- (2) All documents, other than those required by law to be under seal, made by, and all decisions of, the Commission may be signified under the hand of the Chairman or any other member authorized in that behalf.

# Protection of members.

- 11. (1) No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member for any act done or omitted to be done in good faith in pursuance or execution or intended execution of this Act.
- (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 e extent that it would have been if that member were an employee or agent of the Commission.