

THE PUBLIC PROCUREMENT ACT

The Public Procurement Regulations, 2018

In exercise of the powers conferred on the Minister by section 60(1) (a), (c), (d), (e) and (j) of the *Public Procurement Act*, and every other power hereunto enabling, the following Regulations are hereby made:ó

PART I. *Preliminary*

- Citation.** 1. These Regulations may be cited as the Public Procurement Regulations, 2018.
- Time and cost disproportionality.** 2. For the purposes of these Regulations, time and cost disproportionality is deemed to exist in the following circumstances ó
- (a) the goods, works or services are ó
 - (i) readily available; and
 - (ii) not produced or supplied in accordance with the particular description or specification of the procuring entity;
 - (b) the market for the goods, works or services is established; and
 - (c) the estimated value of the procurement does not exceed the procurement method threshold.

PART II. *Administration*

- Functions of the specialist procurement unit.** 3. The specialist procurement unit established by the head of the procuring entity under section 20(b) of the Act shall be responsible for managing and executing procurement proceedings on behalf of a procuring entity and, without prejudice to the generality of the foregoing, shall ó
- (a) plan the public procurement activities of the procuring entity, taking into account the procurement needs and the budget of the entity in respect of each financial year;

- (b) submit the annual procurement plan developed in accordance with regulation 36 to the Financial Secretary;
- (c) make recommendations to the head of the procuring entity for the applicable procurement method to be utilized in respect of a particular public procurement;
- (d) prepare pre-qualification documents, bidding documents, standard forms of contracts and any other public procurement documents in accordance with the standard forms developed by the Office under section 7 of the Act;
- (e) be responsible for the preparation and giving of notices, the conduct of bidding and the preparation of submissions in accordance with the approval process for the award of a procurement contract;
- (f) as appropriate, monitor the implementation of the procurement contract;
- (g) prepare procurement reports or any other report required relating to a public procurement managed and conducted by the procuring entity.

Establishment of specialist procurement unit.

4. ó (1) The head of the procuring entity may establish a specialist procurement unit in the following manner ó
- (a) within the organization of the procuring entity;
 - (b) by obtaining the services of the specialist procurement unit of another procuring entity to manage or conduct public procurement on behalf of the procuring entity; or
 - (c) by procuring the services of an appropriate procurement specialist with the requisite technical competency, expertise, resources or capacity to manage or conduct public procurement on behalf of the procuring entity.
- (2) Where the head of a procuring entity establishes a specialist

procurement unit, the head of the procuring entity shall cause a report to be made to the Financial Secretary advising of the manner in which the unit has been established and in the case of paragraph (1)(b) or (c), identifying the specialist procurement unit or procurement specialist managing or conducting public procurement on behalf of the entity, and any subsequent change in relation to the establishment of the specialist procurement unit.

(3) The report referred to in paragraph (2) shall be made within such time-frame, in such form and contain such information as the Office may specify.

Determining manner of establishment of specialist procurement unit.

5. In determining the manner of establishment of the specialist procurement unit, the head of the procuring entity shall take into account ó
- (a) the size, location, organizational structure, financial resources and the procurement needs of the entity; and
 - (b) any administrative guidance issued or the code of conduct developed by the Office.

PART III. *Public Procurement Procedures*

Application of time and cost disproportionality.

6. A procuring entity shall not engage in single-source procurement and restricted bidding in the circumstances specified in sections 24(1)(b) and 25(1)(d) of the Act, respectively, unless it is satisfied that, in relation to the estimated value of the public procurement, time and cost disproportionality exists.

Matters relating to single-source procurement.

7. ó (1) For the purposes of section 25(1)(e) of the Act situations of emergency or extreme urgency are those that ó
- (a) arise as a result of events not attributable to or foreseeable by the procuring entity; and
 - (b) necessitate the award of a procurement contract to effect repairs or remedial action to safeguard the public interest or, to protect

infrastructure, property or public monies.

- (2) A procuring entity shall ó
- (a) engage in negotiations with the supplier from which a bid is requested, unless such negotiations are not feasible in the circumstances of the procurement concerned; and
 - (b) ensure that the objective of value for money is met before awarding a procurement contract by single-source procurement.

Procurement method threshold.

8. ó (1) A procuring entity may employ a procurement method in accordance with the First Schedule.

(2) Subject to paragraph (3), the procurement methods specified in the third column of the First Schedule shall apply to the procurement of goods, works and services falling within the value limit thresholds specified in relation thereto in the second column of that Schedule.

(3) The application of a procurement method in respect of a value limit threshold as specified in the First Schedule shall not apply in relation to the application of ó

- (a) restricted bidding in the circumstances specified under section 24(1)(a),(c) or (d) of the Act; or
- (b) single-source procurement in the circumstances specified in section 25(1)(a), (b), (c) or (e) and section 25(2) of the Act.

Open bidding.

9. ó (1) A procuring entity may conduct a procurement by means of open bidding ó

- (a) utilizing pre-qualification proceedings for a complex procurement of high value goods, works or services;
- (b) in a single stage, in accordance with the administrative guidance, if any, issued by the Office; or
- (c) in two-stages, in accordance with paragraph (2).

(2) Where a procuring entity engages in procurement by means of open bidding the procurement may be conducted in two stages ó

- (a) if the circumstances referred to in paragraph (3) exist; and
- (b) in accordance with the administrative guidance, if any, issued by the Office.

(3) The circumstances referred to in paragraph (2) for the conduct of two-stage bidding are that ó

- (a) it is not feasible to describe or identify in detail the technical specifications or contractual terms of the goods, works or services to be procured; or
- (b) the goods, works or services are of such a complex nature that the procuring entity is desirous of discussing with bidders the relative merits or applicable considerations of various technical specifications or contractual terms before finalizing the technical specifications or contractual terms for the goods, works or services to be procured.

Request for proposal without negotiation.

10. A procuring entity may conduct procurement by means of a request for proposal without negotiation by ranking the bids in accordance with the technical, financial and other criteria of each bid and awarding the highest-ranked bidder without negotiation.

Request for proposal with consecutive negotiation.

11. The procuring entity that engages in procurement by means of a request for proposals with consecutive negotiation in order to obtain fair and reasonable proposals shall ó

- (a) set a score on the basis of the technical, quality and performance characteristics of the proposals, and then rank the proposals that meet or exceed the score, ensuring that the bidders with which it will negotiate are capable of providing the required goods, works, or

services, of the procurement; and

(b) thereafter hold negotiations on the commercial or financial aspects of the proposals ó

(i) in the first instance, with the bidder that the procuring entity, on its evaluation of the proposals, ranked highest (that is, the bidder appearing to have the most responsive proposal);

(ii) in the event of the termination of negotiations with that bidder, the procuring entity shall hold negotiations with the second highest-ranked bidder; and

(iii) thereafter, in the event of the termination of negotiations with the second highest-ranked bidder, the procuring entity shall hold negotiations with the next ranked bidder,

and so on, until it is satisfied with the negotiations and closes the procurement proceedings.

Framework agreements.

12. ó (1) A procuring entity may establish a framework agreement if the procuring entity determines that ó

(a) the need for the goods, works and services, as the case may be, is expected to arise on a repeated basis during a given period of time; or

(b) by virtue of the nature of the goods, works or services concerned, the need for the goods, works or services, as the case may be, may arise on an urgent basis during a given period of time.

(2) A procuring entity may engage in procurement under an open framework agreement or a closed framework agreement.

(3) A framework agreement shall be conducted in two stages, as follows ó

(a) a first stage, during which a supplier is invited to be a party to a

framework agreement with a procuring entity; and

- (b) a second stage, during which a procurement contract is awarded under the framework agreement to a bidder that is a party to that agreement.

(4) A procuring entity shall apply or negotiate a framework agreement in accordance with the administrative guidance of the Office.

Procurement contract approval limit. Second Schedule.

13. For the purposes of section 43 of the Act, the procurement contract value for the procurement contract approval limit specified in the first column of the Second Schedule, is the value specified in relation thereto in the second column of the Second Schedule.

Content of invitation to bid.

14. (1) The invitation to bid shall include the following information
- (a) the name and address of the procuring entity;
 - (b) a summary of the principal terms and conditions of the procurement contract to be entered into as a result of the procurement proceedings, including, as applicable
 - (i) the nature, quantity and place of delivery of the goods to be supplied;
 - (ii) the nature and location of the works to be effected;
 - (iii) the nature of the services and the location where they are to be provided;
 - (iv) the desired or required time for the supply of the goods, the completion of the works or the provision of the services;
 - (c) a summary of the criteria and procedures to be used for ascertaining the qualifications of suppliers, and of any documentary evidence or other information that must be submitted by suppliers to demonstrate their eligibility, in conformity with regulation 18;
 - (d) if applicable, a declaration

- (i) as to whether participation in the procurement proceedings is limited to Jamaicans;
 - (ii) that the procurement proceedings is subject to a special and differential treatment measure, and the terms of the special and differential treatment measure;
- (e) the means of obtaining the bidding documents and the place where they may be obtained;
 - (f) the non-refundable price, method and currency of payment, if any, to be charged by the procuring entity for the bidding documents;
 - (g) a statement that the bidding documents and all other documents submitted in the procurement are to be made available in the English language;
 - (h) a reference to all other documents required pursuant to administrative guidance issued by the Office; and
 - (i) the manner, place and deadline for presenting bids.

(2) The declaration of special and differential treatment measure referred to in paragraph (1)(d)(ii) shall state ó

- (a) the criteria, terms or procedures, if any, relating thereto;
- (b) the effect of the application on participation in the procurement opportunity;
- (c) the objective of the special and differential treatment measure;
- (d) in the case of a domestic margin of preference applied in relation to the use of domestic content by a Jamaican supplier the eligible bidder to which it relates by identifying ó
 - (i) the geographic location of the bidder or the bidder's business office or the bidder's facilities for the delivery or production of the goods, services or works;

- (ii) the Jamaican origin of labour, raw materials, goods, products or origin of production components;
 - (iii) the extent of the use of Jamaican sub-contractors or Jamaican business partners, service providers or labour;
 - (iv) such other criteria for the domestic content which would provide for application of the domestic margin of preference;
- (e) state the documentation required in support of the application of a special and differential treatment measure; and
- (f) any other matter in relation to the special and differential treatment measure that the procuring entity deems necessary in the circumstances.

Fee for bidding documents.

15. A procuring entity providing bidding documents in accordance with section 34(1) of the Act may charge a non-refundable fee for providing those documents to participating suppliers, in accordance with administrative guidance issued by the Office.

Contents of bidding documents.

16. ó (1) In addition to the matters specified under section 34(3) of the Act, the bidding documents shall include, as appropriate, taking into account the subject-matter and complexity of the specific public procurement, the following information ó

- (a) instructions for preparing bids;
- (b) the criteria and procedures that will be applied to determine the eligibility and qualifications of suppliers to participate in the procurement opportunity;
- (c) the requirements as to documentary evidence or other information that must be presented by suppliers to establish their eligibility and qualifications;

- (d) in relation to the goods, works or services that are the subject of the procurement ó
 - (i) a detailed description of the goods, works or services;
 - (ii) the quantity of the goods or the duration of the services to be performed;
 - (iii) the location for delivery of the goods, the works to be effected or services to be provided;
 - (iv) dates and time-frames for the delivery of the goods, the works effected or services provided;
- (e) the terms and conditions of the procurement contract, to the extent that they are already known to the procuring entity, and the form of the contract, if any, to be signed by the parties;
- (f) if alternatives to the characteristics of the goods, works or services to be procured, or the contractual terms and conditions or other requirements set out in the bidding documents are permitted, a statement to that effect and a description of the manner in which alternative bids are to be evaluated;
- (g) if suppliers are permitted to present bids for only a portion of the goods, works or services to be procured, a description of the portion or portions for which bids may be presented;
- (h) the manner in which the bid price is to be formulated and expressed, including a statement as to whether the price is to cover elements other than the cost of the goods, works or services to be procured, such as any applicable transportation and insurance charges, customs duties and taxes;
- (i) the currency or currencies in which the bid price is to be formulated and expressed;

- (j) any terms and conditions with respect to bid security, performance security or any other security required in connection with the procurement proceeding or the execution of the procurement contract;
- (k) if a supplier may not modify or withdraw its tender prior to the deadline for presenting bids without forfeiting its bid security, a statement to that effect;
- (l) the manner, place and deadline for presenting bids, in conformity with these Regulations;
- (m) the means by which suppliers may seek clarification of the bidding documents and a statement as to whether the procuring entity intends to convene a meeting of suppliers at this stage;
- (n) the manner, place, date and time for the opening of bids;
- (o) the criteria and procedure for examining bids against the description of the goods, works or services to be procured;
- (p) the criteria and procedure for evaluating bids including, if applicable, any declared special and differential treatment measure and the requirements for the application of the measure;
- (q) the currency that will be used for the purpose of evaluating bids and either the exchange rate that will be used for the conversion of bid prices into that currency or a statement that the rate published by a specified financial institution and prevailing on a specified date will be used;
- (r) references to the Act and these Regulations;
- (s) the name, functional title and address of one or more officers or employees of the procuring entity who are authorized to communicate directly with and to receive communications directly from

suppliers, in connection with the procurement proceedings, without the intervention of an intermediary;

- (t) notice of the right to a reconsideration or review of an action or decision of a procuring entity or to lodge an appeal, together with information about the duration of the applicable standstill period and, if none will apply, a statement to that effect and the reasons therefor;
- (u) any formalities required, once a successful bid has been accepted, for formation or entry into force of a procurement contract including, where applicable, the execution of a written procurement contract;
- (v) following the dispatch of the notice of acceptance, the estimated period of time that will be required to complete formalities; and
- (w) any other information required by the procuring entity relating to the preparation and presentation of bids or other aspects of the procurement proceedings.

(2) Where a procuring entity engages in pre-qualification under section 33 of the Act, the bidding documents shall include the matters specified in paragraph (1) with necessary modification for the purposes of the pre-qualification proceedings.

PART IV. *The Procurement Process*

Eligibility of suppliers.

17. ó (1) Subject to paragraph (3), a supplier shall not be eligible to participate in procurement proceedings unless the supplier satisfies the procuring entity that the supplier is in compliance with ó

- (a) all of the supplier's statutory obligations in respect of the payment of taxes; and
- (b) section 15 of the Act.

(2) Subject to paragraph (4), a procuring entity may ascertain whether a supplier is eligible, as provided in paragraph (1), at the time of the

submission of bids.

(3) Where the performance of a procurement contract does not require the contractor to be physically located in Jamaica, the eligibility requirements specified in paragraph (1) shall not be a condition precedent for the award of a procurement contract through procurement proceedings by means of ó

- (a) international competitive bidding;
- (b) restricted bidding in the circumstances specified under section 24(1)(a), (c) or (d) of the Act; or
- (c) single-source procurement in the circumstances specified in section 25(1)(a),(b),(c) or (e), and (2) of the Act.

(4) In the case of procurement by way of international competitive bidding, a procuring entity may ascertain whether a supplier is eligible, as provided in paragraph (1), at the time of award of the procurement contract.

(5) All information required under paragraph (1) shall be set out in the pre-qualification documents, if any, and in the bidding documents and shall apply equally to all suppliers.

Qualification of bidders.

18. ó (1) Subject to the right of bidders to protect their intellectual property or trade secrets, the procuring entity may require bidders participating in a procurement proceeding to provide documentary evidence or other information to satisfy itself that the bidders are qualified in accordance with the ó

- (a) qualifications specified in any pre-qualification document or bidding documents; and
- (b) requirements of regulation 19, the provisions of the Act or any regulations made thereunder.

(2) The procuring entity shall evaluate the qualifications of bidders in accordance with the qualification criteria set out in the pre-qualification documents, if any, and in the bidding documents.

(3) Except as permitted under the Act, a procuring entity shall establish no qualification criterion, requirement or procedure that discriminates against or among bidders or against categories thereof, or that is not objectively justifiable.

(4) Subject to paragraph (5), a procuring entity shall disqualify a bidder if it finds at any time during the evaluation proceedings that the information submitted concerning the qualifications of the bidder was false or constituted a misrepresentation.

(5) A procuring entity may disqualify a bidder on the ground that the information it supplied about its qualifications was materially inaccurate or materially incomplete.

(6) Where information given by a bidder is inaccurate or incomplete in a non-material respect, the procuring entity may, without prejudice to paragraph (5), not disqualify the bidder unless the bidder fails to remedy a deficiency in the information promptly upon request by the procuring entity.

(7) A procuring entity may require a bidder that was pre-qualified in accordance with section 33 of the Act, to demonstrate its qualifications a second time in accordance with the same criteria used to pre-qualify that bidder, and the procuring entity shall disqualify any bidder that fails to demonstrate its qualifications again if requested to do so.

(8) A procuring entity shall promptly notify a bidder requested to prove its qualifications a second time, as to whether or not the bidder has done so to the satisfaction of the procuring entity.

**Disqualifi-
cation.**

19. ó (1) A supplier shall not be qualified to bid if ó

(a) the supplier whether in Jamaica or elsewhere ó

(i) has been convicted of an offence involving dishonesty,

within the five years immediately preceding the commence-

ment of the procurement proceedings;

- (ii) is an undischarged bankrupt; or
 - (iii) is not solvent or is the subject of winding-up proceedings;
- (b) in the case of the supplier that is a body corporate, any of its directors or general managers, or its secretary or any other similar officer has, whether in Jamaica or elsewhere, been convicted of an offence involving dishonesty, or have been the subject of legal or disciplinary proceedings for any breach of duty or professional misconduct, within five years immediately preceding the commencement of the procurement proceedings;
- (c) the supplier's record of participation in public procurement or the supplier's business practices gives the procuring entity reasonable cause to believe that the supplier carried out any act involving impropriety in the handling of moneys;
- (d) the supplier's affairs are being managed or administered by
- (i) a court; or
 - (ii) a trustee licensed or appointed as such under the *Insolvency Act, 2014*, or, where the context otherwise provides, the Government Trustee appointed under section 227 of that Act;
- (e) in the opinion of the procuring entity the supplier, is not a person
- (i) of sound probity; or
 - (ii) able to exercise competence, diligence and sound judgment in fulfilling the supplier's responsibilities in relation to a public procurement.

(2) For the purposes of determining if a person satisfies the criteria under paragraph (1), the procuring entity shall have regard to any evidence

that the supplier has ó

- (a) engaged in any public procurement or business practice appearing to the procuring entity to be deceitful or oppressive or otherwise improper, which reflects discredit to the supplier's method of doing business;
- (b) contravened any provision of any enactment designed for the protection of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of financial services or in the management of companies due to bankruptcy;
- (c) failed to meet any other qualification criteria specific to the requirements of the particular public procurement.

(3) All qualification criteria specific to the requirements of the particular public procurement shall ó

- (a) be applied equally to all bidders, subject to the application of any special and differential treatment measure;
- (b) be specified in any pre-qualification and bidding documents;
- (c) in relation to the capacity to perform the procurement contract, be limited to criteria designed to demonstrate that a bidder possesses the necessary capacity, including professional and technical qualifications and competence, financial resources, equipment and other physical facilities, managerial capability and experience;
- (d) not be unduly restrictive or designed to reduce competition; and
- (e) be determined, taking into account the subject, size, complexity and technical requirements of the goods, works or services that are the subject of the procurement contract.

Deadlines. 20. ó (1) A procuring entity shall ensure that ó

- (a) the manner, place and deadline for presenting applications to pre-qualify are set out in the invitation to pre-qualify and in the pre-qualification documents, as applicable;
- (b) the manner, place and deadline for presenting bids are set out in the bidding documents; and
- (c) subject to paragraph (2), if bids are not to be opened immediately after expiry of the deadline, the bidding documents specify the time or a maximum time period in which the bids are to be opened and such maximum period within the day the bid is received.

(2) Deadlines for presenting applications to pre-qualify or for presenting bids shall ó

- (a) be expressed as a specific date and time; and
- (b) allow sufficient time for suppliers to prepare and present their applications or bids, taking into account the reasonable needs of the procuring entity.

(3) If the procuring entity issues a clarification or modification of the pre-qualification or bidding documents, it may, prior to the applicable deadline for presenting applications to pre-qualify or for presenting bids, extend the deadline, if necessary under regulation 22(2), in order to afford suppliers sufficient time to take into account the clarification or modification in the preparation of their applications or bids.

(4) Prior to a deadline for presenting applications to pre-qualify or for submitting bids, a procuring entity may extend the applicable deadline.

(5) Notice of any extension of the deadline shall be given promptly to each supplier to which the procuring entity previously provided the pre-qualification or bidding documents.

Clarification of

21. ó (1) Subject to paragraph (2), a supplier may request a clarification of

pre-qualification or bidding documents.

the pre-qualification and bidding documents from the procuring entity, and the procuring entity shall ó

- (a) prior to the deadline for submitting bids and in a reasonable time as stated in the bidding documents, respond to any request received from a supplier for clarification of the bidding documents;
- (b) without identifying the requesting supplier, communicate the clarification to all suppliers to which the procuring entity has provided the pre-qualification and bidding documents; and
- (c) respond within a time period that will enable the supplier to take into account the clarification and to present its bid in a timely fashion.

(2) A request for clarification by a procuring entity, supplier or bidder shall be made, in writing, and form part of the record of the procurement proceedings in accordance with section 47 of the Act.

(3) If the procuring entity convenes a meeting of suppliers, it shall ó

- (a) without identifying the supplier who requested the clarification, prepare minutes of the meeting and the minutes shall include the requests made for clarification of the bidding documents and the procuring entity's clarification in response to those requests; and
- (b) promptly provide the minutes to all suppliers to which the procuring entity provided the bidding documents, so as to enable those suppliers to take into account the contents of the minutes in preparing their bids.

(4) If the procuring entity convenes a meeting of suppliers, it shall, if a clarification ó

- (a) necessitates modification of the bidding documents, issue an addendum in accordance with regulation 22;
- (b) results in the information published at the time of the first invitation

becoming materially inaccurate, publish the amended information in accordance with regulation 23.

Modification of pre-qualification or bidding documents.

22. ó (1) At any time prior to the deadline for submission of bids, a procuring entity may for any reason, whether on its own initiative or as a result of a request for clarification by a supplier, modify the pre-qualification or bidding documents by issuing an addendum, and the addendum shall be communicated promptly to all suppliers to which the procuring entity has provided the pre-qualification or bidding documents and those pre-qualification or bidding documents, as modified by the addendum, shall apply to the procurement.

(2) Where an addendum is issued, the procuring entity may extend the deadline for submission of bids in accordance with regulation 20(4).

Information made materially inaccurate on clarification.

23. Where a clarification under regulation 21 or a modification under regulation 22 results in an invitation to pre-qualify or to bid becoming materially inaccurate the procuring entity shall withdraw and re-issue the pre-qualification or bidding documents and permit the suppliers who had originally obtained these documents under the previous procurement proceedings to participate without penalty, subject to regulation 19(2)(c).

Submission.

24. ó (1) Subject to paragraph (2), an application to pre-qualify or bid shall be submitted by a supplier or bidder, as the case may be, to the procuring entity, in writing, duly signed and sealed.

(2) The procuring entity shall permit the submission of a pre-qualification application or a bid ó

(a) by any other manner as may be specified by the procuring entity in the pre-qualification documents and bidding documents; and

(b) in accordance with any administrative guidance issued by the Office.

Modification or

25. ó (1) Consequent to a clarification or otherwise, a supplier or bidder

withdrawal of pre-qualification application or bid.

may modify or withdraw a pre-qualification application or bid, respectively, by submitting a notice of modification or a notice of withdrawal, as the case may be, to the procuring entity not later than the deadline for the close of submission of pre-qualification applications or bids.

(2) The notice of modification under paragraph (1) shall be submitted to the procuring entity ó

(a) by a supplier, in a sealed envelope labelled ó

(i) to bear the words òModification of Application to Pre-qualifyö, òWithdrawal of Pre-qualification Applicationö or òModification of Proposalö, as applicable; and

(ii) to identify the supplier and the pre-qualification application to which the notice relates;

(b) by the bidder, in a sealed envelope labelled ó

(i) to bear the words òAmendment of Bidö, òWithdrawal of Bidö or òWithdrawal of Proposalö, as applicable; and

(ii) to identify the bidder and the invitation to bid to which the notice relates.

Late pre-qualification applications and bids.

26. ó (1) Where a pre-qualification application or a bid is received by the procuring entity after the deadline for submission of the pre-qualification applications or bids, the procuring entity shall ó

(a) not open that application or bid; and

(b) notify the supplier or bidder to collect the pre-qualification application or bid from the procuring entity within thirty days after the deadline for submission and that if not collected, the late pre-qualification application or bid shall be dealt with in accordance with paragraph (2).

(2) Where a supplier or bidder submits a pre-qualification application

or bid after the deadline for submission the supplier or bidder, on being notified of the late submission by the procuring entity, shall collect the late application or bid from the procuring entity within thirty days after the deadline for submission and if the supplier or bidder, as the case may be, fails to collect the pre-qualification application or bid as required the procuring entity shall destroy the application or bid.

Clarification of pre-qualification application or bids.

27. ó (1) The procuring entity may ask a supplier or bidder for clarification of its pre-qualification application or of its bid, in order to assist in the ascertainment of qualifications or the examination and evaluation of bids.

(2) The procuring entity shall correct any purely arithmetical errors that are discovered during the examination of pre-qualification application or bids and shall give prompt notice of any such correction to the supplier or bidder that presented the application or bid concerned.

(3) No substantive change to a pre-qualification application or bid, including changes that materially alter the qualification or bid or which otherwise confers a competitive advantage to a supplier or bidder shall be permitted.

(4) No negotiations shall take place between the procuring entity and a supplier or bidder with respect to qualification information or bids, nor shall any change in price be made pursuant to a clarification that is sought under this regulation.

Bid validity. 28. ó (1) A bid received by a procuring entity remains valid for the duration of the bid validity period specified in the bidding document.

(2) Where a bid validity period is extended pursuant to a request under section 44(8) of the Act ó

- (a) the procuring entity shall forthwith so advise the bidders concerned;
- and

- (b) each bidder may extend the effectiveness of his bid and bid security, and a bidder who has not done so shall not be entitled to continue to participate in the procurement proceeding and shall be entitled to have his bid security returned.

Securities

Securities. 29. A procuring entity engaged in a public procurement proceeding or the performance of a procurement contract may require a bidder or a contractor to provide one or more of the following ó

- (a) bid security;
- (b) performance security;
- (c) advance payment security; or
- (d) a mobilization payment security.

Bid security. 30. ó (1) A procuring entity may, in accordance with any administrative guidance issued by the Office, require bid security.

(2) The procuring entity shall cause the bidding documents to stipulate that the issuer of the bid security, as well as the form and terms of the bid security, are to be acceptable to the procuring entity.

Forfeiture of bid security. 31. Bid security may be forfeited by the procuring entity if ó

- (a) during the bid validity period a bidder ó
 - (i) makes a major alteration to the bid of such an extent that the bid deviates materially or departs from the substance of the terms of the bid as it was at the time of its initial submission to the procuring entity; or
 - (ii) withdraws from the procurement proceedings;
- (b) after the procuring entity has notified a bidder of an arithmetical error in the bidder's bid that can be corrected without materially altering the substance of the bid, the bidder refuses to continue to

participate in the procurement proceedings; or

- (c) the successful bidder withdraws, cancels or substantially modifies the bid during the bid validity period.

Performance security.

32. ó (1) Subject to paragraph (2), a procuring entity may require, as a condition of the contract awarded, performance security.

(2) Performance security ó

- (a) may not be required to secure the performance by a contractor of a procurement contract of an estimated value of less than thirty million dollars;
- (b) subject to paragraph (3), shall not exceed 10% of the procurement contract price;
- (c) shall be payable, surrendered, discharged or forfeited in accordance with the terms of the performance bond.

(3) A procuring entity may require performance security in an amount in excess of the percentage specified in paragraph (2)(b) in accordance with any administrative guidance issued by the Office.

(4) The procuring entity shall cause the bidding documents to stipulate that the issuer of the performance security, as well as the form and terms of the performance security, are to be acceptable to the procuring entity.

Advance payment and security.

33. ó (1) Subject to paragraph (2), a procuring entity may offer, in respect of the award of a procurement contract for goods or services, an advance payment.

(2) A procuring entity shall ó

- (a) not require advance payment security, adjust the amount of an advance payment or make an advance payment in excess of 50% of the stated procurement contract price without obtaining, in the case of ó

**Second
Schedule.**

- (i) the Tier 1 Limit specified in the Second Schedule, the prior approval of the head of the procuring entity;
 - (ii) the Tier 2 Limit specified in the Second Schedule, the prior approval of the head of the procuring entity and the Commission, respectively;
 - (iii) the Tier 3 Limit specified in the Second Schedule, the prior approval of the head of the procuring entity, the Commission and the Cabinet;
- (b) if making an advance payment, require the contractor to provide an advance payment security of an amount equal to the sum of the advance payment made by the procuring entity; or
 - (c) claim forfeiture of the advance payment security in the case of the default of the contractor in completing the contract in accordance with the terms of the advance payment security.

**Mobiliza-
tion pay-
ment and
security.**

34. ó (1) Subject to paragraph (2), a procuring entity may offer, in respect of the award of a procurement contract for works, a mobilization payment.
- (2) The procuring entity shall ó
- (a) not make a mobilization payment in excess of 10% of the stated procurement contract price, unless sub-contractors are engaged in the completion of the procurement contract, in which case the mobilization payment shall not exceed 15% of the procurement contract price;
 - (b) not adjust the amount of a mobilization payment without obtaining, in the case of ó
 - (i) the Tier 1 Limit specified in the Second Schedule, the prior approval of the head of the procuring entity;
 - (ii) the Tier 2 Limit specified in the Second Schedule, the prior

approval of the head of the procuring entity and the Commission, respectively;

Second Schedule.

(iii) the Tier 3 Limit specified in the Second Schedule, the prior approval of the head of the procuring entity, the Commission and the Cabinet;

- (c) require the contractor to provide a mobilization payment security of an amount equal to the sum of the mobilization payment;
- (d) immediately return the mobilization payment security to the contractor on recovery of the mobilization payment from the contractor;
- (e) in the case of the default of the contractor in mobilizing in accordance with the terms of the works contract, forfeit the mobilization payment security.

Procurement planning.

35. ó (1) A procuring entity shall plan from the previous year all public procurement anticipated in respect of any ensuing financial year.

(2) In anticipation of the Budget Call, a procuring entity shall prepare a procurement plan in accordance with these Regulations.

(3) Where the specialist procurement unit of a Ministry manages and conducts public procurement on behalf of another procuring entity, that procuring entity shall submit a copy of its procurement plan to the Ministry for inclusion in its portfolio procurement needs.

(4) In this regulation òBudget Callö has the meaning assigned to it by the *Financial Management Regulations, 2011*.

Procurement plan.

36. The procurement plan referred to in regulation 35(2) shall ó

- (a) be comprised of an annual procurement plan in respect of all public procurement anticipated for the ensuing financial year; and
- (b) include the details of the anticipated public procurement, including the application of any domestic margin of preference and set asides.

Information and statistics.

37. ó (1) The procuring entity shall provide the Office with the approved annual procurement plan by April 30 of each financial year.

(2) The Office may utilize the information contained in the annual procurement plan provided by the procuring entity under paragraph (1) to obtain information and to extract data as necessary to discharge its functions under section 7 of the Act.

Disclosure of record of proceeding.

38. Subject to section 46(1) of the Act, the procuring entity shall, in accordance with section 47(2) of the Act, on a request, in writing, made by a supplier or bidder, cause portions of the record relevant to the request to be made available after the successful bid has been accepted or the procurement has been cancelled by the procuring entity.

Publication.

39. ó (1) Where a procuring entity engages in procurement by means of open bidding or pre-qualification proceedings, the procuring entity shall invite bids by causing a notification of the public procurement opportunity to be published ó

- (a) on at least two occasions locally, in a newspaper circulated throughout Jamaica;
- (b) using the electronic procurement system; or
- (c) otherwise in accordance with administrative guidance issued by the Office.

(2) A procuring entity is not required to publish the invitation to bid as required under paragraph (1) where the procurement is undertaken pursuant to sections 24 and 25 of the Act.

(3) The notification inviting bids referred to in paragraph (1) shall be published prior to the submission of bids, in accordance with the time-frames specified, in relation to the relevant procurement method, in the Third Schedule.

Third Schedule.

(4) Where information published at the time of the invitation to pre-qualify or bid for the participation of suppliers in the procurement proceedings becomes materially inaccurate as a result of a clarification or modification issued in accordance with regulations 21 or 22 the procuring entity shall cause the amended information to be published in the same manner and place in which the original information was published.

(5) A procuring entity shall cause a notice ó

(a) of the establishment of a framework agreement or the award of a procurement contract under section 45(1) of the Act to be published ó

(i) using the electronic procurement system; or

(ii) otherwise in accordance with the administrative guidance, if any, of the Office; and

(b) of procurement contract awards made in the preceding financial year in the Annual Procurement Contract Award Report, published under section 45(2) of the Act ó

(i) using the electronic procurement system; or

(ii) otherwise in accordance with administrative guidance issued by the Office.

(6) A procuring entity shall submit to the Office an Annual Procurement Contract Award Report, not later than June 30 of any calendar year, which shall include a list of all procurement contracts awarded in respect of the year preceding the date referred to in this paragraph.

Reports.

40. The procuring entity shall provide, in writing, from time to time, such reports and in such manner, as the Financial Secretary or the Office may request, on the procuring entity's public procurement proceedings and any matter affecting or relating to the conduct of those proceedings.

PART V. *Special and Differential Treatment Measures*

Objects of special and differential treatment measures.

41. With the purpose of improving the distribution of wealth and income within Jamaica, and to reduce costs of public procurement, including the national developmental costs, special and differential treatment measures may be applied to a procurement proceeding to ó

- (a) encourage the participation of Jamaican suppliers in public procurement opportunities;
- (b) increase the capacity of Jamaican suppliers to compete for procurement contracts; and
- (c) develop Jamaican industries.

Special and differential treatment measures.

42. ó (1) In accordance with these Regulations, a procuring entity may utilize a special and differential treatment measure.

(2) A procuring entity shall not apply a special and differential treatment measure in a public procurement in a manner inconsistent with any administrative guidance issued by the Office.

Application of domestic margin of preference.

43. A procuring entity shall apply a domestic margin of preference ó

- (a) in open bidding by means of international competitive bidding;
- (b) in preference of or to the advantage of eligible Jamaican bidders in accordance with an order under regulation 44, these Regulations and any administrative guidance issued by the Office.

Order specifying domestic margin of preference.

44. ó (1) Subject to paragraph (2), to mitigate the competitive disadvantages of the participating Jamaican suppliers, the Minister may by order, subject to affirmative resolution prescribe ó

- (a) the categories of Jamaican bidders eligible to benefit from the application of a domestic margin of preference; and
- (b) the percentage of that margin.

(2) An order made by the Minister under paragraph (1) shall

include ó

- (a) the categories of suppliers eligible to benefit from the domestic margin of preference;
- (b) the requirements as to use of domestic content by eligible bidders for the favourable application of the domestic margin of preference;
- (c) the percentage of the increase to be applied to the price criteria of the bidders ineligible to benefit from the application of the domestic margin of preference; and
- (d) any other qualification or requirement the Minister determines necessary.

Declaration of domestic margin of preference.

45. Where a procuring entity applies a domestic margin of preference in a procurement proceeding the procuring entity shall cause a declaration to be made in accordance with regulation 14(2)(d) that the procurement proceeding is subject to a domestic margin of preference.

Order specifying set asides.

46. The Minister may, by order, subject to affirmative resolution, specify any set asides to be applied under these Regulations, and the order shall include ó

- (a) the description of the categories or types of Jamaican suppliers who are to benefit from the set aside;
- (b) the terms and conditions of the set aside and the manner of its application to the Jamaican suppliers specified under paragraph (a); and
- (c) the matters that a Jamaican supplier needs to satisfy to demonstrate to a procuring entity the Jamaican supplier is qualified to benefit from the set aside.

Application and declaration of set asides.

47. ó (1) A procuring entity shall apply any applicable set aside ó

- (a) ordered by the Minister under regulation 46, in accordance with the

provisions of the order; and

(b) in accordance with any administrative guidance issued by the Office.

(2) Where a procuring entity applies a set aside under paragraph (1), the procuring entity shall cause a declaration to be made in accordance with regulation 14(2).

Inconsistency with orders.

48. Notwithstanding any inconsistency or error in the declaration or application of special and differential treatment measures in the notification or the bidding documents, the special and differential treatment measures shall be applied by the procuring entity in accordance with the relevant order under regulation 44 or 46.

FIRST SCHEDULE

(Regulation 8)

Procurement Method Threshold

For the purposes of regulation 8, the procurement method to be applied in relation to the relevant value limit, is as follows ó

PART I. *Goods*

SUBJECT OF PROCUREMENT	VALUE LIMIT	METHOD OF PROCUREMENT
In relation to ó	With an estimated procurement contract value ó	The procurement method to be applied is ó
1. Goods	Exceeding \$60,000,000.00	open bidding by ó <ul style="list-style-type: none"> (a) international competitive bidding; or (b) national competitive bidding
	Exceeding \$10,000,000.00 but not exceeding \$60,000,000.00	open bidding by national competitive bidding
	Exceeding \$5,000,000.00 but not exceeding \$10,000,000.00	restricted bidding with not less than 5 suppliers invited

Exceeding \$1,500,000.00 but not exceeding \$5,000,000.00	restricted bidding with not less than 3 suppliers invited
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Not exceeding \$1,500,000.00.	single-source procurement
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PART II. Works

2. Works	With an estimated procurement contract value ó	The applicable procurement method is ó
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Exceeding \$150,000,000.00	open bidding by ó
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(a) international competitive bidding; or

(b) national competitive bidding

Exceeding \$20,000,000.00 but not exceeding \$150,000,000.00	open bidding by national competitive bidding
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Exceeding \$10,000,000.00 but not exceeding \$20,000,000.00	restricted bidding with not less than 5 suppliers invited
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Exceeding \$2,000,000.00 but not exceeding \$10,000,000.00	restricted bidding with not less than 3 suppliers invited
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Not exceeding \$2,000,00.00	single-source procurement
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PART III. Services

3. Services	With an estimated procurement contract value ó	The applicable procurement method is ó
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Exceeding \$60,000,000.00	open bidding by ó
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(a) international competitive bidding; or

(b) national competitive bidding

Exceeding \$8,000,000.00 but not exceeding \$60,000,000.00	open bidding by national competitive bidding
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Exceeding \$3,000,000.00 but not exceeding \$8,000,000.00	restricted bidding with not less than 5 suppliers invited
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Exceeding \$1,500,000.00 but	restricted bidding with
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not exceeding \$3,000,000.00

not less than 3 suppliers invited

Not exceeding \$1,500,000.00

single-source procurement

SECOND SCHEDULE**(Regulations 13, 33 and 34)***Procurement Contract Approval Limit*

Contract Approval Limit

Procurement Contract Value

A procurement contract of ó

(a) Tier 1 Limit

(a) a value not exceeding \$30,000,000;

(b) Tier 2 Limit

(b) a value exceeding the Tier 1 Limit but not exceeding \$60,000,000.00;

(c) Tier 3 Limit

(c) a value exceeding the Tier 2 Limit.

THIRD SCHEDULE**(Regulation 39)***Time-Frames for Prior Notification of Public Procurement Opportunities*Part I. *Goods*

Estimated procurement contract value	Procurement Method	Manner of Publication of Notification	Minimum Time-frame for Notification Prior to Submission of Bids
_____	_____	_____	_____
1. Exceeding \$60,000,000.00	Open bidding by international competitive bidding	(a) Electronic procurement system; or	21 days
		(b) International and local newspapers and magazines	30 days
2. Exceeding \$8,000,000.00 but not exceeding \$60,000,000.00	Open bidding by national competitive bidding	(a) Electronic procurement system; or	14 days
		(b) International and local newspapers and magazines	21 days

3. Exceeding \$3,000,000.00 but not exceeding \$8,000,000.00	Open bidding by national competitive bidding	(a) Electronic procurement system; or	7 days
		(b) Local newspapers and magazines	14 days

Part II. *Works*

Estimated Procurement Contract Value	Procurement Method	Manner of Publication of Notification	Minimum Time-frame for Notification Prior to Submission of Bids
1. Exceeding \$150,000,000.00	Open bidding by international competitive bidding	(a) Electronic procurement system; or	83 days
		(b) International and local newspapers and magazines	90 days
2. Exceeding \$60,000,000.00 but not exceeding \$150, 000, 000.00	Open bidding by international competitive bidding	(a) Electronic procurement system; or	38 days
		(b) International and local newspapers and magazines	45 days
3. Exceeding \$8,000,000.00 but not exceeding \$60,000,000.00	Open bidding by national competitive bidding	(a) Electronic procurement system; or	21 days
		(b) International and local newspapers and magazines	28 days
4. Exceeding \$3,000,000.00 but not exceeding \$8,000,000.00	Open bidding by national competitive bidding	(a) Electronic procurement system; or	7 days
		(b) Local newspapers and magazines	14 days

