

## **SECTION 2 - GENERAL PROCEDURES PROCUREMENT PLANNING**

### **2.1**

#### **2.1.1      GENERAL**

Procuring entities shall perform forward planning for all procurements in order to ensure that GOJ meets its needs in the most effective, economical and timely manner. Annual procurement plans shall coincide with budgets and targets to be achieved. Plans shall address the technical, operational, management, budget and other significant considerations. Officers engaged in planning and managing procurement must be aware of all legislation in order to inform decision-making processes.

#### **2.1.2      PROCUREMENT PLANS**

The duration of time required to properly carry out the following activities should be estimated and used to develop a plan so that the procuring entity has realistic expectations on which any necessary recruitment and financing plans may be predicated.

- Research;
- Design;
- Development of Tender Documentation;
- Advertising;
- Prequalification;
- Tendering;
- Evaluation;
- Approval;
- Acceptance;
- Implementation; and
- Completion.

#### **2.1.3      PROCUREMENT METHODS AND CONDITIONS FOR THEIR USE**

Officers involved in procurement must plan the process to ensure that the most appropriate methods of procurement are employed having regard to the nature and value of the goods, works or services required and the circumstances surrounding the procurement. Following are the methods that have proven to be effective, but additional methods may be used with the agreement of the NCC.

### 2.1.3.1 Open Tender

Open tender means the procurement opportunity is open to all interested local and foreign contractors. Contracts with estimated value equal to or greater than the international contract value threshold(s), for construction works, including the associated consulting services, goods, and services, as determined by the Cabinet from time to time must be offered through open tender.

### 2.1.3.2 Selective Tender

Selective tendering is GOJ's primary method of procurement. All contractors must be registered with GOJ, through the National Contracts Commission, and included in the GOJ Register of Approved Contractors. Procurement opportunities offered through selective tender are open to all appropriately registered and qualified contractors, and are generally advertised as shown in Section 6. Procuring entities should endeavour to plan their procurement processes in order to allow sufficient time for interested contractors to complete the required registration and/or pre-qualification processes in time to prepare and submit responsive tenders.

### 2.1.3.3 Limited Tender

Limited tender is a form of selective tender, whereby the procurement opportunity is open to a limited number of contractors included in the Register of Approved Contractors. It includes the Request for Quotation (RFQ) and Sole Source procurement procedures. Procurement offered through limited tender is generally not advertised. Instead, procuring entities may contact appropriately qualified contractors on the register and invite them to participate. Criteria for selecting contractors from the register should include:

- Nature of the work required;
- Contractor's relevant experience;
- Contractor's past performance record; and
- 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 being invited to tender.

While limited tendering methods should generally be used for procurements with estimated values of less than J\$1M, they may be used in the case of sole source or direct contracting as shown below.

#### 2.1.3.4 Sole Source or Direct Contracting

Sole Source or direct contracting is a form of limited tendering where only one contractor is invited to participate. Use of this method may be justified when procurement is of a “sensitive” nature, when the procuring entity receives an unsolicited proposal that it considers to be meritorious, in the case of follow-on procurements, when there is unusual and compelling urgency, industrial mobilization, where there is need for highly specialized expert services, pursuant to external agency agreement or treaties, or where it is otherwise in the public interest. Procurement effected through the use of sole source or direct contracting methods must contain justification for its use in the record of the procurement.

#### 2.1.4 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:

- Estimated period of time the equipment is to be used and the extent of use within that period;
- Financial and operating advantages of alternative types and makes of equipment;
- Cumulative rental or lease payments for the estimated period of use;
- Net purchase price;
- Opportunities for re-deployment of equipment after completion of intended use;
- Transportation and installation costs;
- Maintenance and other service costs; and
- Potential obsolescence due, for example, to imminent technological improvement(s), etc.

##### 2.1.4.1 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.

##### 2.1.4.2 Lease

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.

### 2.1.5 EXTERNAL FUNDING AGENCIES

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

## FRAMEWORK AGREEMENTS

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GOJ enters into framework agreements on an annual basis for the supply of commonly used disposable goods and services. These agreements are entered into by the Ministry of Finance and Planning 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.

## EXPENDITURE AUTHORITIES

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

Less than J\$4,000,000	Agency or Ministry shall approve subject to procedures included herein.
From J\$4,000,000.00 but less than J\$15,000,000	Minister shall approve on the recommendation of the NCC.
J\$15,000,000 and above	Cabinet, on the recommendation of the NCC and Minister.
<b>Note:</b> In cases where procurement is funded by an agency external to GOJ, e.g., the World Bank, approval of that agency may also be required.	

## **COMPETITION REQUIREMENTS**

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Procuring entities should employ competitive procedures best suited to the circumstances of the contract action, as guided by this Handbook, and consistent with the need to fulfill GOJ's requirements efficiently and effectively.

#### **2.4.1 IMPARTIALITY**

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GOJ promotes fair and equal opportunity for all qualified and appropriately registered providers of works, goods and services, without regard to political affiliation, race, gender, age or religion.

## **PUBLICATION REQUIREMENTS**

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#### **2.5.1 INFORMATION DISCLOSURE TO THE PUBLIC**

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Except when ordered to do so by a competent court, and subject to the conditions of such an order, the procuring entity shall not disclose:

- information if its disclosure would be contrary to law, would impede law enforcement, would not be in the public interest, would prejudice legitimate commercial interests of the parties or would inhibit fair competition; or
- information relating to the examination, evaluation and comparison of tenders, proposals, offers or quotations, and tender, proposal, offer or quotation prices, other than a summary of the evaluation and comparison of tenders, proposals, offers or quotations.

#### **2.5.2 PUBLIC ACCESSIBILITY OF PROCUREMENT DOCUMENTATION**

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Applicable legislation, guidelines and procedures and all amendments thereof, are published in the English language, and available to any member of the general public from the Jamaica Printing Services located at 77½ Duke Street, Kingston.

#### **2.5.3 PUBLICIZING PROCUREMENT OPPORTUNITIES**

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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.

#### 2.5.4 PUBLIC NOTICE OF CONTRACT AWARDS

Contract award data is available in print from the National Contracts Commission and the National Contracts Commission website at [www.ncc.gov.jm](http://www.ncc.gov.jm)

### **CONTRACTOR REGISTRATION AND CLASSIFICATION**

#### 2.6

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;
- 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.

## 2.6.1 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.

## **OVERSEAS PROCUREMENT OR FOREIGN PURCHASES**

### 2.7

The Accountant General is mandated to monitor expenditure in respect of overseas purchases and/or payments to be made in foreign currencies, as provided in foreign exchange budgets of procuring entities.

To give effect to the foregoing, the Accounting Officer/Head of Procuring Entity shall ensure:

- preparation and submission of indents to the Accountant General for authorization of foreign exchange transactions;
- liaison with commercial banks to obtain required Letters of Credit, Sight Drafts and/or Telegraphic Transfers;
- where purchases are being made through persons or agencies appointed by Government to purchase supplies overseas, that the amounts required to meet the cost of the goods and or services as well as all incidental charges in the designated foreign currency, are deposited with the Accountant General;
- engagement of the services of a licensed Customs Broker, registered and approved by the NCC to provide services to GOJ, to prepare the Custom Entry Document (C78) and effect clearance of the imported item(s);
- that the 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 and Planning - Procurement Policy Implementation Unit (PPIU); and
- that the Commissioner of Customs and the Ministry of Finance and Planning (PPIU) are informed of the names / addresses of the Customs Broker(s) authorized to effect port of entry clearances on the entity's behalf.

## **REJECTION OF ALL TENDERS, PROPOSALS, OFFERS OR**

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#### **QUOTATIONS**

The procuring entity may reject all tenders, proposals, offers or quotations at any time prior to the acceptance of a tender, proposal, offer or quotation, without incurring liability to tenderers. The procuring entity must, upon request, provide the grounds for any such rejection, but is not obliged to justify those grounds.

## **SUSTAINABLE DEVELOPMENT**

### **2.9**

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#### **2.9.1 GREEN PROCUREMENT**

Procuring entities shall comply with the provisions of any national policy, law, regulation, guideline or standard related to pollution control and prevention, waste management, recycling, water and energy conservation, as shown in Section 1.1. Additionally, the GOJ “Environmental Guide to Green Procurement” shall be used in conjunction with the Handbook. This booklet provides a general checklist and best practice guidelines for evaluating whether the desired item to be procured is “environmentally-friendly.”

#### **2.9.2 OCCUPATIONAL RIGHTS AND FREEDOMS**

Procuring entities should require that, in the execution of a GOJ contract, a contractor shall:

- pay rates of wages and observe hours and conditions of labour not less favourable than those established for the trade or industry in the district where the work is carried out;
- in respect of all persons employed by him (whether in execution of the contract or otherwise) in every factory, workshop or place occupied or used by him for the execution of the contract, comply with the general conditions required by the Factories Act (1943) and any regulations there under;
- be responsible for the observance of these Conditions by sub-contractors employed in the execution of the contract, and shall notify the procuring entity of the names and addresses of all such sub-contractors;
- recognize the freedom of his employees to be members of trade unions and shall at all times during the continuance of the contract display for the information of his work-people, in every factory, or workshop or place occupied or used by him for the execution of this contract, a copy of this condition; and
- pay all wages earned by work-people directly to them and no to a foreman or any other person supervising or taking part in the operations upon which the work-people are engaged.

## **RECORD OF THE PROCUREMENT PROCEEDINGS**

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#### **2.10.1 MINIMUM STANDARD OF RECORDED INFORMATION**

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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 Planning 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.

#### **2.10.2 LIMITATIONS OF LIABILITY**

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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.

## **REPORTING REQUIREMENTS**

### **2.11**

#### **2.11.1 NATIONAL CONTRACTS COMMISSION (NCC)**

All contracts with a value within the range of J\$4M and above must be reported to the NCC.

#### **2.11.2 MINISTRY OF FINANCE AND PLANNING**

The Ministry of Finance and Planning (MFP) 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 (Appendix 1). This information is necessary for effective planning and budgeting processes and facilitates fulfillment of reporting obligations under international trade agreements. The completed PRS-1 shall be sent directly by the procuring entity to MFP, Procurement Policy Implementation Unit, no later than the seven (7) days after the end of the reference period, e.g., MFP 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 MFP.

#### **2.11.3 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, referred to in 2.11.2, 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.

## **DISPUTE RESOLUTION**

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#### **2.12.1 RIGHT TO REVIEW**

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Any contractor that claims to have suffered, or that may suffer, loss or injury due to a breach under this Handbook by the procuring entity may seek review. Notwithstanding the foregoing, the following shall not be subject to review:

- the selection of a method of procurement; or
- a decision by the procuring entity under Section 2.8 to reject all tenders, proposals, or offers, prior to acceptance.

#### **2.12.2 REVIEW BY PROCURING ENTITY**

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On receipt of a complaint, the head of the procuring entity shall ensure that the complaint is copied to the Sector or 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 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 complaints and resolution decisions shall be maintained in the record of the procurement.

### 2.12.3 ADMINISTRATIVE APPEAL

A contractor may seek appeal of a decision made by the Head of the Procuring Entity. The contractor's appeal shall be directed to and received, in writing, by the 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 appropriate resolution a copy of which shall be communicated to the 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 under Section 2.12.4. The NCC shall adopt any additional procedures in investigating and recommending resolution in respect of appeals, as far as it considers fair and reasonable in the circumstances.

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

### 2.12.4 JUDICIAL REVIEW

The Courts have jurisdiction over actions pursuant to Section 2.12.4 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.