



**PETROJAM LIMITED**

# Petrojam Limited

Procurement Sensitization Session 2019

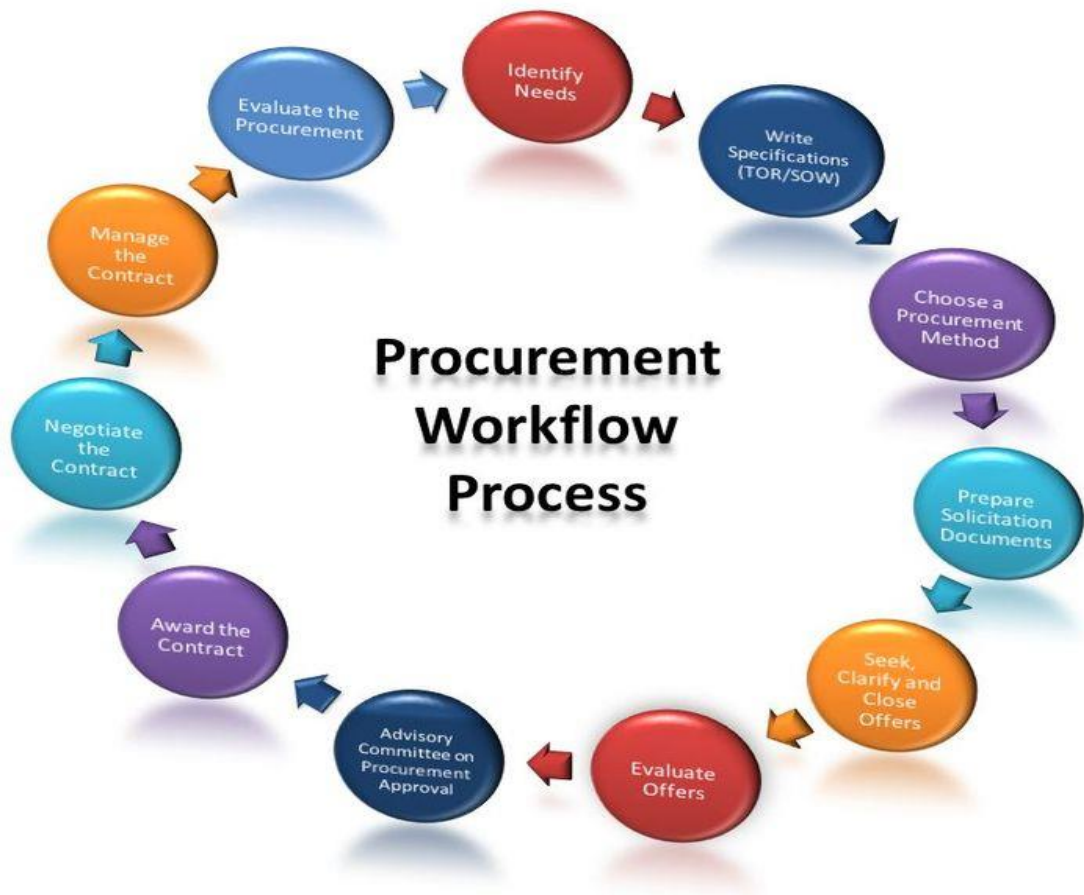


# What is public procurement?

- The acquisition of goods, services and works from an economic operator (contractor or supplier)
- The government's activity of purchasing the goods and services which it needs to carry out its functions.



# The Procurement Cycle



Procurement is done in three phases:  
**Needs identification/planning**  
**Solicitation/Contracting**  
**Contract Management**

## Why regulate procurement?

1. Taxpayer dollars are used to provide consideration (pay) for public sector contracts. Consequently, the public purse must be protected from waste and fraud/corruption and used to deliver **value for money**;
2. Requirement by international development partners or donor agencies;



## What are the objectives of public procurement?

- Maximizing economy and efficiency in procurement;
- Fairness, integrity and public confidence in the procurement process;
- Sustainable development through minimizing negative impact on the environment; and
- Fostering national growth and development



## What are the objectives of public procurement?

- Maximizing economy and efficiency in procurement;

In this sense, procurement tries to achieve Value for Money and requires:

- (i) Ensuring that goods, works or services acquired are suitable- meeting the requirements for the task/application in question but are not 'gold plated' or over specified
- (ii) Concluding contracts to secure what is needed on the best possible terms (which does not necessarily mean the lowest price)
- (iii) Ensuring the contractor/economic operator is actually capable of performing the contract on the agreed terms



## What are the objectives of public procurement?

- Fairness, integrity and public confidence in the procurement process;

In this sense, procurement pursues integrity by:

- (i) Ensuring contracts are awarded on impartially and on merit
- (ii) Ensuring that contracts are not awarded in circumstances where there is actual or potential conflict of interests
- (iii) Allowing an aggrieved supplier/contractor due process in making a claim and seeking redress if he perceives a procedural breach



## What are the objectives of public procurement?

- Sustainable development through minimizing negative impact on the environment;

In this sense, procurement is used to achieve environmental benefits that go beyond the mere acquisition of the goods, services or works. It considers the impact of government spend in the free market and how that spend may be used to improve or maintain the natural environment.





## What are the objectives of public procurement?

- Fostering national growth and development

In this sense, procurement is used to achieve social benefits that go beyond the mere acquisition of the goods, services or works. For example, Procuring Entities may find strategies to assist Small and Medium Sized Enterprises (SMEs) to obtain contracts by breaking large contracts into discrete lots where possible.



# The Public Procurement Regime in Jamaica

Currently made up of four pieces of legislation:

1. The Public Procurement Act 2015 (PPA 2015)
2. The Public Procurement (Amendment) Act 2018 (PPAA 2018)
3. The Public Procurement Regulations 2018 (PPR2018)
4. The Public Procurement (Reconsideration and Review) Regulations 2018

More legislation is to come and we will update on those when they are promulgated.



# The Public Procurement Regime in Jamaica

## The Public Procurement Act

- Establishes Institutional Framework
  - Office of Public Procurement Policy (OPPP)
  - Public Procurement Commission (PPC)
  - Public Procurement Review Board
- Establishes Legal Framework



# The Public Procurement Regime in Jamaica

## The Legal Framework- What is new?

- S 20 PPRA 2015- The Head of Procuring entity is responsible for the development of an annual procurement plan
- Also responsible to establish a specialist procurement unit staffed by persons who are competent and adequately trained to manage and execute procurement proceedings.



# The Public Procurement Regime in Jamaica

## The Legal Framework- What is new? Cont'd

- S23 PPRA 2015- S25 PPRA2015- Three methods of procurement-
  - i. Open bidding – this includes:
    - International Competitive Bidding – solicit suppliers from the international community
    - National Bidding – previously known as Local Competitive Bidding
  - ii. Restricted Bidding – formerly Limited Tender
  - iii. Single Source – formerly Direct Contracting



# The Public Procurement Regime in Jamaica

## The Legal Framework- What is new? Cont'd

S14 of PPAA 2018 which shows that each method may be managed by the following procedures

- i. Single stage tendering
- ii. Two stage tendering
- iii. Request for proposals without negotiations
- iv. Request for proposals with consecutive negotiations
- v. Request for quotations
- vi. Framework Agreements



# The Public Procurement Regime in Jamaica

## The Legal Framework- What is new? Cont'd

S14 of the PPAA2018 then goes on to define what the procurement methods entail:

- Single Stage and Two-Stage bidding holds the same meaning as before
- Request for Proposal without negotiations – used if the bidding process is one in which the technical, financial and other criteria of each bid are evaluated, and the bids ranked accordingly, with the procurement contract being awarded to the highest-ranked bidder without negotiation



# The Public Procurement Regime in Jamaica

## The Legal Framework- What is new? Cont'd

- Request for proposals with consecutive negotiations – used when:
  - a. The procurement subject matter is complex
  - b. The holding of negotiations is necessary in order to determine the commercial or financial aspects of the proposals due to the need to consider multiple variables affecting the commercial or financial aspects of the proposals
  - c. The variables affecting the commercial or financial aspects of the procurement (i) cannot be properly assessed (ii) are incapable of specification at the outset of the procurement proceedings (iii) can only be determined and agreed upon during negotiations; and
  - d. It is not necessary to negotiate any non-commercial or non-financial aspect of the procurement





# The Public Procurement Regime in Jamaica

## The Legal Framework- What is new? Cont'd

- Procurement by means of a request for quotations (RFQ) shall be:
  - a. Limited to procurement by way of restricted bidding
  - b. Utilized in the case of a selection criteria based primarily on price

You can use RFQ for readily available goods, works or services (i) that are specifically produced or provided to the particular description of the procuring entity (ii) for which there is an established market



# The Public Procurement Regime in Jamaica

## The Legal Framework- What is new? Cont'd

### **Framework agreements**

Under a framework agreement, a contractor commits to supplying the purchaser with goods and related services 'as and when' required and on a pricing basis, according to stated terms and conditions.

A Framework Agreement is not a contract, therefore quantities and delivery dates cannot be determined in advance. Any 'call-up' made against the FA represents acceptance by a purchaser of the terms and conditions.

As such, it is the 'call-up' which forms the contract and that would be submitted for approval



# The Public Procurement Regime in Jamaica

## The Legal Framework- What is new? Cont'd

Framework agreements can be either open or closed:

- Open framework – suppliers can be admitted to the pool of suppliers although they did not make a submission in the initial procurement process
- Closed framework – only those suppliers who permitted in the initial procurement will be ‘called-upon’

Specific mention is made in the Law regarding splintering.



## **Procurement Limits**

The procurement limits remain the same but are referenced as follows:

1. Tier 1 limit: procurement contract value not exceeding J\$30M – approval required from the head of the procuring entity
2. Tier 2 limit: procurement contract value exceeding Tier 1 limit but not exceeding J\$60M – approval required from Head of the Procuring Entity and the Public Procurement Commission (PPC)
3. Tier 3 limit: procurement contract value exceeding Tier 2 limit – approval required from Head of the Procuring Entity, Public Procurement Commission (PPC) and the Cabinet



## **The Procurement Process**

The process basically remains the same. However, aside from the eligibility period and qualification of bidders, checks also have to be done for disqualification of bidders.

Bidders can be disqualified as per S19 PPAR 2018 which states:

- A. If the supplier whether in Jamaica or elsewhere:
  - i. Has been convicted of an offence involving dishonesty within the 5 years preceding the commencement of the procurement proceedings
  - ii. Is an undischarged bankrupt; or
  - iii. Is not solvent or is the subject of winding-up proceedings;



## **The Procurement Process (cont'd)**

- B. If any director, general manager, it's secretary or any other similar officer of a supplier that is a body corporate, whether in Jamaica or elsewhere, has been convicted of an offense involving dishonesty, or have been the subject of legal or disciplinary proceedings for any breach of duty or professional misconduct within 5 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;



## **The Procurement Process (cont'd)**

- 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 judgement in fulfilling the supplier's responsibilities in relation to a public procurement



## **The Procurement Process (cont'd)**

The Regulations then go on to show what is required by the procuring entity to check for a supplier's disqualification (Part IV The Procurement Process S19 PPAR 2018)





## The Legal Framework- What is new? Cont'd

### **Important notifications and pre-award procedures**

#### S 44 PPA 2015- Notification of contract award

- Now *all bidders* must be advised of award outcomes in accordance with the act. The notification should also establish the commencement of the standstill period.

#### S 44 (2) PPA 2015- Standstill

- Applies to every contract, regardless of value or method (except perhaps single source). Number of days after successful bidder is determined to allow aggrieved bidders (if any) to challenge award decision.

#### S44 (8) PPA 2015- Extension of bid validity

- Mandatory notification to Office of Public Procurement Policy. This helps the OPPP to know that delays have occurred and determine cause and possible solutions.



The Legal Framework- What is new? Cont'd

## **Important notifications and pre-award procedures**

S 41 PPA 2015- Cancellation of Procurement proceedings

- Note 41(4) “Unless the cancellation of the procurement is a consequence of irresponsible or dilatory conduct on the part of the procuring entity, a procuring entity shall incur no liability by virtue of it exercising its power to cancel a procurement...”

**This suggests that procuring entities must have good reasons to cancel/abort procurement proceedings, or else incur liability for any such cancellation. It is not impossible for “dilatory” or “irresponsible” conduct to address operational activities**



## **Standstill Period**

All procurements require a standstill period. A standstill period is the period during which unsuccessful bidders can challenge the outcome of the bidding process and the recommended bidder.

The standstill period should not exceed ten (10) days.

The standstill period for procurements for Petrojam are as follows:

- Procurements up to J\$1.5M – standstill period of two (2) days
- Procurements between J\$1.5M and J\$30M – standstill period of four (4) days
- Procurements requiring PPC approval only, that is, between J\$30M and J\$60M – standstill period of five (5) days
- Procurements requiring Cabinet approval, that is, procurements over J\$60M – standstill period of ten (10) days



## **Application of Procurement Methods**

This is determined by (a) type of procurement, that is, goods, services, works (b) value

Table A shows the methodologies to be used as per the Regulations.

[Table A - Procurement Methods.xlsx](#)

## **Advertising Timelines**

The advertising timelines is determined by (a) type of procurement, that is, goods, services, works (b) value; and ( c) manner of publication

Table B shows the timelines

[Table B - Advertising Timelines.xlsx](#)



# QUESTIONS