



**GOVERNMENT OF JAMAICA**

**HANDBOOK  
OF  
PUBLIC SECTOR  
PROCUREMENT  
PROCEDURES**

**VOLUME 1 of 4**

**GENERAL PROVISIONS**



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## ABBREVIATIONS

CV	Curriculum Vitae
CFR	Cost and Freight
CIF	Cost, Insurance and Freight
CIP	Carriage and Insurance Paid to
CPT	Carriage Paid to
DAF	Delivered at Frontier
DDP	Delivered Duty Paid
DDU	Delivered Duty Unpaid
DES	Delivered Ex Ship
DEQ	Delivered Ex Quay
FAS	Free Alongside Ship
FCA	Free Carrier
FOB	Free on Board
GoJ	Government of Jamaica
ICB	International Competitive Bid
ICC	International Chamber of Commerce
IFBs	Invitation for Bids
IS	International Shopping
ITB	Invitation to Bid
ITC	Information to Consultants
LCB	Local Competitive Bid
LCS	Least Cost Selection
LOI	Letter of Invitation
QBS	Quality-Based Selection
QCBS	Quality and Cost-Based Selection
QCA	Quarterly Contract Awards Report
REI	Request for Expressions of Interest
RFP	Request for Proposal
SBCQ	Selection Based on Consultant's Qualifications
SFB	Selection under a Fixed Budget
SSS	Single Source Selection
TOR	Terms of Reference
UNDP	United Nations Development Programme

## DEFINITIONS

Accountable Officer	In accordance with Section 16 of the FAA Act, an Accountable Officer is any Public Officer, including an Accounting Officer, concerned with or responsible for the collection, receipt, custody, issue or payment of public moneys or other public property.
Accounting Officer	In accordance with Section 16 of the FAA Act, an Accounting Officer is any person designated as such by the Minister and charged with the duty of accounting for expenditure on any service in respect of which moneys have been appropriated.
Approval Threshold	Monetary values at which a proposed contract must be referred to a designated Officer or body for approval
Bid/Tender	Terms used synonymously, which refer to the complete proposal or offer submitted by a contractor in response to an invitation
Business-Sensitive Procurement	Special procurement undertaken to take advantage of business opportunities that would impact the financial viability and core business of the entity
Consultant	A service provider whose services are primarily intellectual in nature
Contractor	A provider or prospective provider of goods (under a goods contract), works (a contractor under a works contract) or services (under a services contract)
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.
Cost Overrun	A cost overrun is deemed to be an increase in the contract sum resulting from escalation in the price of labour and/or material.

## DEFINITIONS

Currency	Monetary unit of account
Day	Calendar day, unless otherwise specified
Domestic Contractor	A contractor who is established in Jamaica
Domestic Margin of Preference	A measure by which a set percentage is added to bids from foreign contractors
Fluctuation	For the purpose of this policy, fluctuation refers to changes in the price of labour, materials or other inputs under a contract.
Force Majeure	<p>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.</p> <p>Force Majeure includes but is not limited to: war, riots, civil disorder; earthquakes, fire, explosions; confiscation or any other action by Government agencies; storms, floods or other adverse weather conditions; strikes, lockouts or other industrial action (except where such strikes, lockouts or industrial action are within the power of the party invoking Force Majeure).</p>
Force Account	Force Account is a project implementation method where a Government entity implements rehabilitative or developmental works by utilizing its internal resources and equipment, rather than contracting the work to an external entity. In such instances, the Government entity may be required to procure raw materials/ or engage temporary labour and equipment to carry out the work.
Foreign Contractor	A contractor who is not established in Jamaica
Goods	Objects of every kind and description (except land or interest in land), including raw material, products and equipment, electricity and objects in solid, liquid or gaseous form - The term "goods" could also include services incidental to the supply of the objects if the value of those incidental services does not exceed that of the goods themselves.

## DEFINITIONS

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 of procuring, operating, supporting and (if applicable) disposing of the items being procured
Lowest Responsive Bid	One that conforms to all terms, conditions and specifications in the bid documents without material deviations, reservations or omissions and has the lowest cost after evaluation
Mis-procurement	Where the procurement of a good/service was not consistent with the established rules/laws
National Contracts' Commission (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 payment accounts by means of domestic content, licensing of technology, investment requirements, or similar arrangements
Pre-tender/ Comparable Estimate	An estimate that is compiled from the same documentation which is made available to the contractors - The pre-tender/comparable estimate is used for the comparison of tenders.
Policies	Policies, as referred to in this Handbook are established by GoJ for the purpose of giving information and direction. These policies establish basic philosophies and determine the major values upon which GoJ procurement functions must operate.
Procedures	Procedures are prescribed means of ensuring the proper implementation of 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.



## DEFINITIONS

Procurement	For GoJ purposes, <i>Public Sector Procurement</i> is the acquisition of goods, services and works by any method, using public funds, and executed by the Procuring Entity or on its behalf.
Procurement Contract	A contract for the provision of goods, services or works, between the Procuring Entity and a contractor, resulting from a procurement process
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's 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 needs 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, i.e. 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 Procurement	Acquisition of goods, works and services, by any method, by or on behalf of Procuring Entities for their use
Sensitive Procurement	Any procurement of national concern that is deemed confidential by Cabinet
Services	Any object of procurement other than goods or works

## DEFINITIONS

Shall	For the purposes of this Handbook, the term “shall” signifies a mandatory action.
Turnkey Contract	A contract generally covering complex works, in which the contractor is responsible for completing the entire work including design, procurement of equipment and construction
Variation	A variation is a change to the deliverable(s) under a contract caused by an increase or decrease in the scope of works to be performed, amount/type of goods to be supplied or services to be provided, and must be directly related to the specific contract.
Works	All work associated with construction, re-construction, demolition, repair or renovation, which includes civil, electrical, mechanical and other related engineering works - “Works” could include supply and installation of equipment and specialized engineering incidental services that are related to the works.
Works of Art	Works of Art include: <ul style="list-style-type: none"><li>(a) a fine-art piece;</li><li>(b) a designed object;</li><li>(c) a musical composition, musical performance;</li><li>(d) a literary or poetic composition; a performance in live theatre, ballet, opera, film;</li><li>(e) a visual computer programme;</li><li>(f) a conceptual art piece or performance art; and</li><li>(g) items that are created and/or valued primarily for their “aesthetic/artistic” qualities, rather than practical or entertainment functions.</li></ul>

# SECTION 1

## HANDBOOK OF PUBLIC SECTOR PROCUREMENT PROCEDURES

### 1.1 AUTHORITY AND PURPOSE

This Handbook of Public Sector Procurement Procedures 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 Contractor General's Act.

This Handbook consists of four volumes which outline the procedures and methods for Public Officers engaged in planning and managing the procurement of goods, works and services on behalf of the Government of Jamaica (GoJ), in accordance with its policy on Public Sector Procurement. It also provides information for contractors to better understand GoJ procurement policies and to assist them to submit better bids and proposals, thus meeting the objectives set by GoJ.

The statements and procedures contained in the Handbook are consistent with the principles and goals of *GoJ's Policy on Public Sector Procurement*. They represent the permanent foundation upon which GoJ operates.

The Handbook shall be continually updated from time to time as necessary, to reflect GoJ requirements.

The Ministry of Finance, therefore, encourages feedback from Procuring Entities, contractors and other stakeholders to assist the continued development of best practices in Public Sector procurement in Jamaica. Requests for clarification on these procedures and general comments should be sent the Procurement and Asset Policy Unit at the Ministry of Finance, c/o [mofps.papu@mof.gov.jm](mailto:mofps.papu@mof.gov.jm).

## 1.2 SCOPE

This Handbook should be utilized by all Government entities for the procurement of goods, works and services.

### 1.2.1 EXCLUSIONS

This section addresses issues which are outside the scope of coverage of the procedures contained in this Handbook. These issues will be governed by other guidelines or where no guidelines exist, Procuring Entities may refer to industry practice or utilize their own procedures.

**The following are not subject to the procedures contained in this Handbook:**

- (a) acquisition or rental of land, existing buildings, or other immovable property or the rights thereon;
- (b) procurement of works of art; artistic and cultural performances; creative products and services associated with the staging of cultural productions and services in support of, and associated with the staging of cultural events, which shall include but not be limited to:
  - (i) artistic co-ordination, direction and management;
  - (ii) management of artistic works and events;
  - (iii) management of Intellectual Property Rights;
  - (iv) health and medical services;
  - (v) venue rental;
  - (vi) infrastructure and technical effects;
  - (vii) design, technical direction, artistes and performers;
- (c) contracts of employment;
- (d) procurement of legal services - this exclusion is applicable to all Procuring Entities except for Central Government entities which are provided with legal services by the Attorney General's Department;

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- (e) procurement of services of medical professionals/facilities;
- (f) procurement for National Honours Awards: medallions, insignias;
- (g) procurement of a sensitive nature for national defence and/or national security purposes;
- (h) procurement of services related to pension funds;
- (i) 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;
- (j) procurement of items on the International Commodities Market (e.g. wheat, corn, crude oil);
- (k) procurement of media services as relates to the selection of a media house for advertising to reach a target audience. This does not apply to the engagement of advertising agencies and public relations firms for marketing/public relations campaigns;
- (l) procurement of motor vehicles for assignment to Public Officers/officials - Procuring Entities should be guided by the Motor Vehicle Policy issued by the Ministry of Finance;
- (m) procurement of air travel services, hotel accommodation and hotel services related to conferences, training seminars and other functions hosted by the government;
- (n) procurement under GoJ's bilateral and other agreements;
- (o) procurement of Group Health and Life Insurance; and
- (p) co-sponsorship arrangements, trade and travel road shows and co-operative advertising.

**NOTE:** *Any other exclusion determined from time to time will be highlighted as appropriate, through circulars issued by the Ministry of Finance.*

## **1.2.2 BUSINESS SENSITIVE AND OTHER RELATED PROCUREMENT PROVISIONS**

Business Sensitive Procurement is defined as special procurements undertaken to take advantage of business opportunities that would impact the financial viability and core business of the procuring entity. For business-sensitive procurement of goods, services or works the operating functions or business objectives of the Procuring Entity are likely to be significantly impeded, or placed in jeopardy if the procurement is not executed expeditiously.

In the above circumstance, the Head of the Procuring Entity has the authority to approve contract awards through the use of the Direct Contracting Procurement Methodology as stipulated in the provisions for contracting under emergency circumstances. In this regard, the contract award is to be reported to the Ministry of Finance in the PRS1 Report, the Office of the Contractor General in the QCA Report and the National Contracts Commission (NCC) within thirty days.

The provisions for commercial entities should be noted as follows:

### **Petrojam Limited**

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

- (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 Contractor List** - Petrojam may use its pre-approved contractors list for the selection of contractors by way of 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.

**All other procurements will be subject to standard tender rules and procedures as contained in the Government of Jamaica Handbook of Public Sector Procurement Procedures, 2010.**

### **Port Authority of Jamaica (PAJ)**

1. Cabinet's prior approval is required for values above **J\$50M**.

## General Requirements

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 Ministry of Finance, the OCG and NCC must be duly advised of all contract awards.

### **1.2.3 PROCUREMENT BETWEEN TWO GOVERNMENT ENTITIES**

Government entities are permitted to enter into contractual agreements with each other for the provision of goods and services by means of Direct Contracting. For such procurement, the Procuring Entity must ensure that the rates being charged are competitive and offer value for money. Where it is clear that value for money will not be obtained, the Procuring Entity should revert to a competitive tender process as stipulated in the procedures.

When goods or services are being procured between two Government entities, the requirements for a Tax Registration Number (TRN), Tax Compliance Certificate and registration with the National Contracts' Commission do not apply. Contract awards to Government entities must be approved in accordance with the approval thresholds set out in Section 2.4 of this Handbook.

Where a Government entity is interested in offering goods or services to another, it should so indicate. The Procuring Entity is then obliged to engage in exploratory discussions with its counterpart with a view to concluding a contract.

**NOTE:** *Government entities shall not participate in public tender processes.*

### **1.2.4 PROCUREMENT AT GOJ OVERSEAS STATIONS**

Procurement must be done on a competitive basis, with quotations from at least three contractors. Where this is not possible, the reason must be documented and proper records should be kept of all procurement.

## **SECTION 2**

### **PROCUREMENT RESPONSIBILITIES**

#### **2.1 OVERSIGHT RESPONSIBILITIES**

##### **2.1.1 MINISTRY OF FINANCE**

The Ministry of Finance has overall responsibility for the Public Sector Procurement System, as well as direct responsibility for developing Public Sector Procurement Policy and procedures, informing legislation and monitoring the effectiveness of the implementation of the policy.

##### **2.1.1.1 PROCUREMENT AND ASSET POLICY UNIT (PAPU)**

The Procurement and Asset Policy Unit in the Ministry of Finance is the national contact point for GoJ public sector procurement. 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.

##### **2.1.2 OFFICE OF THE CONTRACTOR GENERAL (OCG)**

In accordance with the Contractor General's Act, the Contractor General shall monitor and as necessary, investigate, at his own discretion, the award and implementation of any Government contract, in order to ensure that contracts are awarded impartially and on the basis of merit; that the circumstances under which the contracts are awarded or terminated do not involve impropriety or irregularity; and that the contracts are implemented in conformity with the established terms and conditions.

#### **2.2 FUNCTIONAL RESPONSIBILITIES**

##### **2.2.1 CABINET**

The Cabinet is responsible for setting the national policy for public procurement and directives that govern the procurement process; and Cabinet approves the award of contracts with values above the prescribed threshold.



### **2.2.2 INFRASTRUCTURE SUB-COMMITTEE OF CABINET**

The Infrastructure Committee is a sub-committee of Cabinet established to:

- (a) recommend contracts for approval by Cabinet;
- (b) ensure compliance of proposed infrastructure-related contracts submitted for Cabinet's approval within the existing policy framework; and
- (c) make recommendations to Cabinet for improving the efficiency and effectiveness of the contracts' award system.

### **2.2.3 NATIONAL CONTRACTS' COMMISSION (NCC)**

The NCC shall promote efficiency, transparency and equity in the process of awarding Government contracts. It shall also review Procuring Entities' recommendations for contract awards for the procurement of goods, services and works within the established values. 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's Act.

### **2.2.4 NCC SECTOR COMMITTEES**

The NCC's review of Procuring Entities' recommendations for contract awards is facilitated through the operation of a number of Sector Committees established in various Procuring Entities service-wide. Certain specialist skills must be represented on Sector Committees. A listing of the Sector Committees and the entities assigned is accessible at <http://www.ncc.gov.jm>

### **2.2.5 PROCUREMENT COMMITTEES**

Each Procuring Entity shall establish a Procurement Committee. The requirements for its operation follow on Pages 7 and 8.

- (a) The Procurement Committee must consist of not less than five (5) persons and shall include:

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- (i) senior Financial Management personnel; and
- (ii) four (4) other appropriately qualified Public Officers.

**NOTE:** *A member who is requesting procurement approval shall not vote in that procurement approval process, nor will members of the Procurement Committee (who sit on the Evaluation Committee) have a vote at the Procurement Committee meeting considering that issue.*

- (b) Members of the Procurement Committee should have received training in GoJ procurement procedures before being selected to serve.
- (c) Internal Audit personnel must not sit on the Procurement Committee.
- (d) Technical personnel must be co-opted as necessary, pursuant to the nature of the procurement being considered.
- (e) With respect to Parish Councils and Municipalities, a Councillor may sit on the Procurement Committee, provided that the Conflict of Interest provisions contained in this Handbook and the Parish Council Act are not contravened.
- (f) Councillors shall not chair the Procurement Committee and shall not comprise more than 40% of the Committee's membership.
- (g) Board members shall not comprise more than 40% of the entity's Procurement Committee.
- (h) The Chairman of the Board and the Head of the Procuring Entity shall not sit on the Procurement Committee.
- (i) The Procurement Committee shall review all procurement which require the final approval of the Head of Entity, according to the established thresholds. The lower limit of this threshold should be no greater than **\$1.5M**.

*Any entity which, in its own estimation, lacks the capacity to constitute its own Procurement Committee, can avail itself of the services of the Procurement Committee in its parent Ministry.*

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**2.2.5.1 MANDATE OF THE PROCUREMENT COMMITTEE**

Within the threshold set by the Head of the Entity, the Procurement Committee is mandated to:

- (a) review recommendations for the award of contracts;
- (b) ensure compliance with relevant policies, guidelines and procedures;
- (c) review evaluations done by Evaluation Committees;
- (d) facilitate responses to contractors inquiries;
- (e) maintain proper records of Committee meetings, including records of the recommended contract awards;
- (f) ensure compliance with standard reporting obligations; and
- (g) make recommendations to the Head of the Procuring Entities.

Procurement Committee meetings should be convened pursuant to the needs of the entity. Proper minutes must be recorded and maintained for each meeting. The required quorum should be pre-determined by the Chairman and no meeting shall be properly convened in the absence of this quorum. In a situation of urgency, a 'round-robin' may be carried out.

**2.2.6 EVALUATION COMMITTEES**

Procuring Entities are responsible for establishing Evaluation Committees in accordance with the type of procurement and the relevant expertise required to carry out the evaluation process. Evaluation Committees are responsible for the evaluation and comparison of the bids received and for the preparation of the Bid Evaluation Report.

During the bid evaluation period, GoJ requires that all Evaluation Committees adhere strictly to the following principles:

- (a) ensure that the bid evaluation process is strictly confidential;

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- (b) reject any attempt or pressure to distort the outcome of the evaluation;
- (c) reject any proposed action likely to lead to fraud and corruption;  
and
- (d) ensure that only the evaluation and qualification criteria specified in the bidding documents are applied.

**NOTE:** *Procurement Committee members who sit on an Evaluation Committee should not vote at the subsequent Procurement Committee meeting regarding the acceptance of the Evaluation Report.*

### **2.2.7 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 made 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 addressed in accordance with the Financial Administration and Audit Act, the Public Bodies Management and Accountability Act and the Public Service Regulations. Accounting Officers shall support recommendations made to the National Contracts' Commission (NCC), unless otherwise exempted by the Minister of Finance.

*The approval of the Accounting Officer is mandatory for all contract award recommendations to the NCC.*

### **2.2.8 ACCOUNTABLE OFFICERS**

Any Public Officer, including an Accounting Officer, concerned with or responsible for the collection, receipt, custody, issuing or payment of 'public moneys' or other

public property, must ensure that appropriate safeguards are in place to guarantee that the requirements set out herein are adhered to at all times.

### **2.3 SPECIALIST PROCUREMENT UNIT**

Each Procuring Entity shall establish a specialist core Procurement Unit, staffed with competent personnel who are knowledgeable and adequately trained to manage the entity's procurement process. In this way, all procurement for the entity will be channelled through this Unit, and each entity will be able to build a cadre of professional procurement staff. Functionaries within the entity are required to prepare their specifications and submit them in order for the Unit to complete the process.

### **2.4 PROCUREMENT APPROVAL THRESHOLDS**

The approval thresholds for contract awards are as follows:

THRESHOLD	AUTHORITY
<b>J\$15 Million and below</b>	The Head of the Procuring Entity shall approve, subject to procedures included herein.
<b>Above J\$15 Million up to J\$40 Million</b>	The Head of the Procuring Entity shall approve on the endorsement of the recommendation by the NCC.
<b>Above J\$40 Million</b>	Cabinet shall approve the recommendation for contract awards following approval by the Head of the Procuring Entity/Accounting Officer and the endorsement of the NCC.

The threshold values outlined here relate to the gross value of the contract. These sums will be revised from time to time, as approved by Cabinet.

### **2.5 COMPLAINTS AND APPEALS**

Any contractor, who claims to have suffered loss or injury due to a breach of these procedures by the Procuring Entity, may seek a review of the specific procurement

process. Notwithstanding the foregoing, it should be noted that the following are not subject to review: (i) the selection of the method of procurement and (ii) the decision by the Procuring Entity to reject all tenders, proposals, offers or quotations.

**The Administrative Complaints Review Process comprises the following:**

- (a) review by the Procuring Entity;
- (b) review by the National Contracts' Commission;
- (c) review by the Procurement Appeals' Board; and
- (d) review by the Financial Services Commission (complaints in relation to an Insurance Broker).

If an aggrieved Bidder fails to get adequate redress from the administrative review process, the final option is for a Judicial Review.

***Note: Complaints and appeals will not automatically stop the contract award process.***

### **2.5.1 REVIEW BY THE PROCURING ENTITY**

Complaints shall be received by the Procuring Entity within twenty (20) days of the date the contractor became aware that the circumstances giving rise to the complaint had occurred.

On receipt of a complaint, the Head of the Procuring Entity shall address it in accordance with the procedures as outlined here.

- (a) Within fourteen (14) days of the receipt of a complaint, issue a written decision to the complainant, stating the reasons for the decision and indicating that any appeal of the decision shall be lodged with the NCC within fourteen (14) days of the contractor's receipt of the Procuring Entity's decision. However, if the complainant and the Procuring Entity have reached an agreement prior to that, it should also be put in writing.

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- (b) 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 (14)-day period.
- (c) A copy of all complaints and the decisions arising from these complaints shall be maintained in the Procuring Entity's record.

**2.5.2 REVIEW BY THE NATIONAL CONTRACTS' COMMISSION (NCC)**

A contractor may appeal a decision made by the Head of the Procuring Entity. The contractor's appeal must 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: a) the complaint addressed to the Procuring Entity; b) the Procuring Entity's decision; and c) the rationale upon which the contractor has relied in determining the validity of the decision against which he/she has appealed. The NCC shall, within fourteen (14) days of receipt of the appeal, recommend an appropriate resolution, a copy of which shall be submitted 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 for review by the Procurement Appeals' Board.

***NOTE: A copy of all appeals and the recommendations made shall be maintained in the record of the procurement.***

### **2.5.3 REVIEW BY THE PROCUREMENT APPEALS' BOARD**

A contractor may seek to appeal 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 NCC's decision. The appeal shall contain:

- (a) the complaint addressed to the NCC;
- (b) the NCC's decision; and
- (c) 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, recommend an appropriate resolution, a copy of which should be submitted 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 a judicial review.

**NOTE:** *A copy of all appeals and the recommendations made shall be maintained in the record of the procurement.*

### **2.5.4 REVIEW BY THE FINANCIAL SERVICES COMMISSION (FSC)**

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

- (a) if an Insurance Broker ("Broker") has a genuine complaint regarding the conduct of an Insurer who is deemed to have acted prejudicially in respect of the Broker's proposal, a formal complaint should be submitted to the FSC Insurance Division.
- (b) A copy of the complaint should be forwarded to the Ministry of Finance's, **Procurement and Asset Policy Unit**, as well as the entity associated with the tender in question.



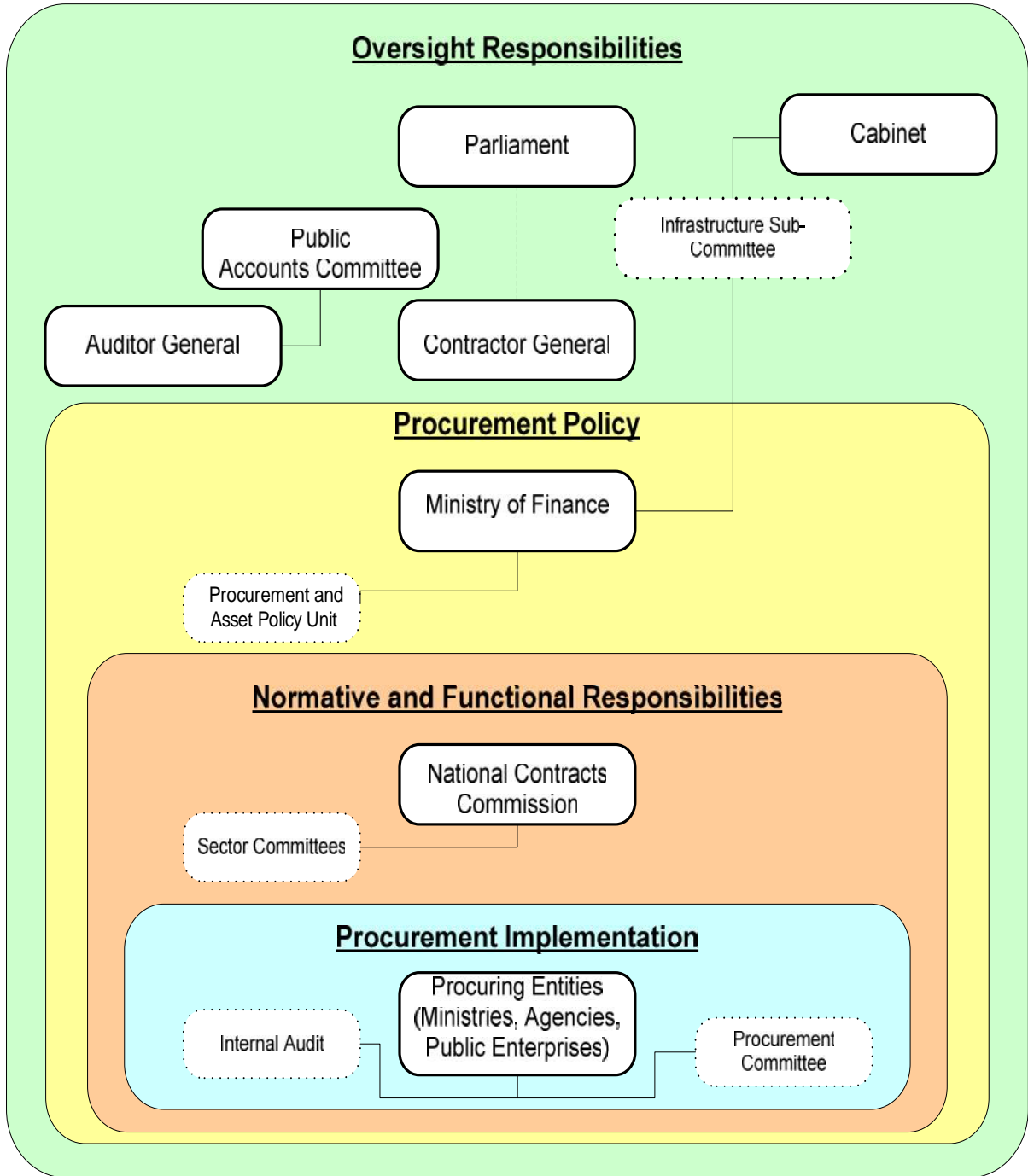
### 2.5.5 JUDICIAL REVIEW

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

Figure 1 (Page 15) illustrates the institutional framework for public sector procurement in Jamaica.

SECTION 2  
PROCUREMENT RESPONSIBILITIES

Figure 1



## **SECTION 3 CONFIDENTIALITY**

The tender process shall be treated confidentially by all staff members. As such, information regarding the evaluation and other critical aspects of the process should not be divulged.

It is unethical and illegal, as well as damaging to GoJ's 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 those prescribed by the Laws of Jamaica, including the Access to Information Act.

Disclosure of a Bidder's proprietary or strategic information to unauthorized sources by an employee shall result in sanctions against the employee(s).

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

## **SECTION 4**

### **CONFLICT OF INTEREST & UNETHICAL CONDUCT**

#### **4.1 SCOPE**

These procedures apply to all personnel who participate in any phase of the Government procurement process. This includes Board Members and persons appointed to other areas of the Public Service, who stand to benefit from the procurement decision.

#### **4.2 CONFLICT OF INTEREST**

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

##### **4.2.1 DECLARATION**

Any GoJ employee involved in the procurement process, who has entered into, or is about to enter into a financial or other 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 and a decision taken as to whether there is a conflict of interest, and if so, what course of action is to be adopted.

It is the duty of all staff and any other Public Officers and officials directly or indirectly involved in 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 contractor, which may affect or might reasonably be deemed by others, to affect impartiality on any matter related to his/her duties.

SECTION 4  
CONFLICT OF INTEREST & UNETHICAL CONDUCT

**Note:** *Public Officers 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.*

A conflict of interest exists when GoJ employees involved in the procurement process:

- (a) have an outside interest that materially encroaches on time or attention that should be devoted to the affairs of GoJ;
- (b) have a direct or indirect interest in, or relationship with an outsider that is inherently unethical, or who it might be implied or construed could make possible personal gain due to his/her ability to influence dealings or otherwise inhibit the impartiality of the employee's judgment;
- (c) are directors/owners/shareholders in a company incorporated either locally or overseas, which is bidding on a GoJ contract (this excludes persons holding shares bought on public offer);
- (d) take personal advantage of an opportunity that properly belongs to GOJ;
- (e) use GoJ property without approval; and
- (f) disclose GoJ trade secrets or any other proprietary information to unauthorized persons.

A Public Officer shall declare any relationship with a Bidder, 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 verbally, in the context of a meeting. However, having made the disclosure, the individual shall not sit in the meeting while deliberations on the issue are being conducted.

### 4.3 UNETHICAL CONDUCT

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

**Public Officers shall seek to maintain and enhance the reputation of the GoJ by:**

- (a) adhering to the highest standards of honesty and integrity in all relationships both inside and outside the Procuring Entity in which he/she works;
- (b) developing the highest possible standards of professional competence;
- (c) using funds and other resources for which he/she is responsible to provide the maximum benefit to GoJ; and
- (d) complying both with the letter and the spirit of the Laws of the Jamaica, accepting professional ethics and contractual obligations.
- (e) **Confidentiality and accuracy of information** - Public Officers shall respect the confidentiality of information gained in the course of their duty and shall not use such information for personal gain or for the unfair benefit of any Bidder, contractor or consultant. Information given in the course of their duty shall be true, fair and not designed to mislead.
- (f) **Competition** - All Bidders and consultants shall be treated with fairness and impartiality, and public servants shall avoid any business arrangements with them which might prevent the effective operation of fair competition.
- (g) **Gifts** - Public Officers shall not accept gifts from current or potential GoJ contractors.

SECTION 4  
CONFLICT OF INTEREST & UNETHICAL CONDUCT

- (h) **Hospitality** - Public Officers shall avoid any business hospitality that could be viewed by others as potentially influencing a Government business decision, as a result of accepting that hospitality.
- (i) **Reporting** - All Public Officers have a moral responsibility to report any unethical conduct by a colleague, a Bidder or a contractor to their superiors, oversight agencies, the Contractor General or to the auditors.

#### **4.3.1 EXAMPLES OF UNETHICAL CONDUCT**

The following are some examples of the type of conduct prohibited by the Code of Ethics outlined in the Public Sector Procurement Regulations:

- (a) revealing confidential or “inside information” either directly or indirectly to any Bidder or prospective Bidder;
- (b) discussing a procurement exercise with any Bidder or prospective Bidder outside the official rules and procedures for conducting procurement;
- (c) favouring or discriminating against any Bidder, prospective Bidder or consultant in preparing technical specifications, terms of reference, standards or the evaluation of bids and proposals;
- (d) destroying, damaging, hiding, removing, or improperly changing any formal procurement document;
- (e) accepting or requesting money, travel, meals, entertainment, gifts, favours, discounts or anything of material value from Bidders or prospective Bidders, contractors or consultants;
- (f) discussing or accepting future employment with a Bidder or prospective Bidder, contractors or consultants;
- (g) requesting any other person to violate the public procurement rules or procedures;
- (h) ignoring evidence of violation of the Code of Ethics; and

SECTION 4  
CONFLICT OF INTEREST & UNETHICAL CONDUCT

- (i) ignoring illegal or unethical activity by Bidders or prospective Bidders, contractors or consultants, including any offer of personal inducements or rewards.



## SECTION 5 FRAUD AND CORRUPTION

### 5.1 FRAUD AND CORRUPTION

GoJ requires that all Public Officers and individuals engaged in the procurement process, including Bidders and contractors under GoJ-financed contracts, observe the highest standard of ethics during the procurement process and in the execution of contracts.

Within the context of GoJ's Procurement Policy the following terms are defined:

- (a) Corrupt Practice means the offering, giving, receiving or soliciting of anything of value to influence the action of a Public Officer in the procurement process or in the execution of a contract.
- (b) Fraudulent Practice refers to a misrepresentation of facts in order to: influence a procurement exercise; manipulate the tender process; or the execution of a contract to the detriment of GoJ. This includes collusive practices 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.
- (c) Collusive Practice refers to a scheme or arrangement between 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.
- (d) Coercive Practice refers to deliberately harming or threatening to harm, directly or indirectly, persons, or their property to influence their participation in a procurement exercise, or to affect the execution of a contract.
- (e) Obstructive Practice refers to the act of deliberately destroying, falsifying, altering or concealing evidence material to an investigation, or making false statements to an inquiry, in order to materially impede an investigation

SECTION 5  
FRAUD AND CORRUPTION

(by GoJ) into allegations of corrupt, fraudulent, coercive or collusive practices. Making threats, harassing or intimidating any individual to prevent him/her from disclosing knowledge of matters relevant to an investigation, or from pursuing the investigation - are also regarded as obstructive practice. In addition, this definition includes all acts intended to materially impede the exercise of the GoJ's inspection and audit rights.

**5.1.1 SANCTIONS/REJECTION**

- (a) All persons involved in proven fraudulent and/or corrupt practices will be subject to sanctions in accordance with the Laws of Jamaica.
- (b) Bid/proposals will be rejected if it is determined that the Bidder recommended for the award has engaged in corrupt or fraudulent practices in competing for the contract in question.
- (c) Any firm which has engaged in corrupt or fraudulent practices in competing for, or in the execution of GoJ-financed contracts, will be declared ineligible to participate in the GoJ procurement process for a stated period or indefinitely. Similarly, contractors should be aware that corrupt behaviour will have implications for future contract awards.

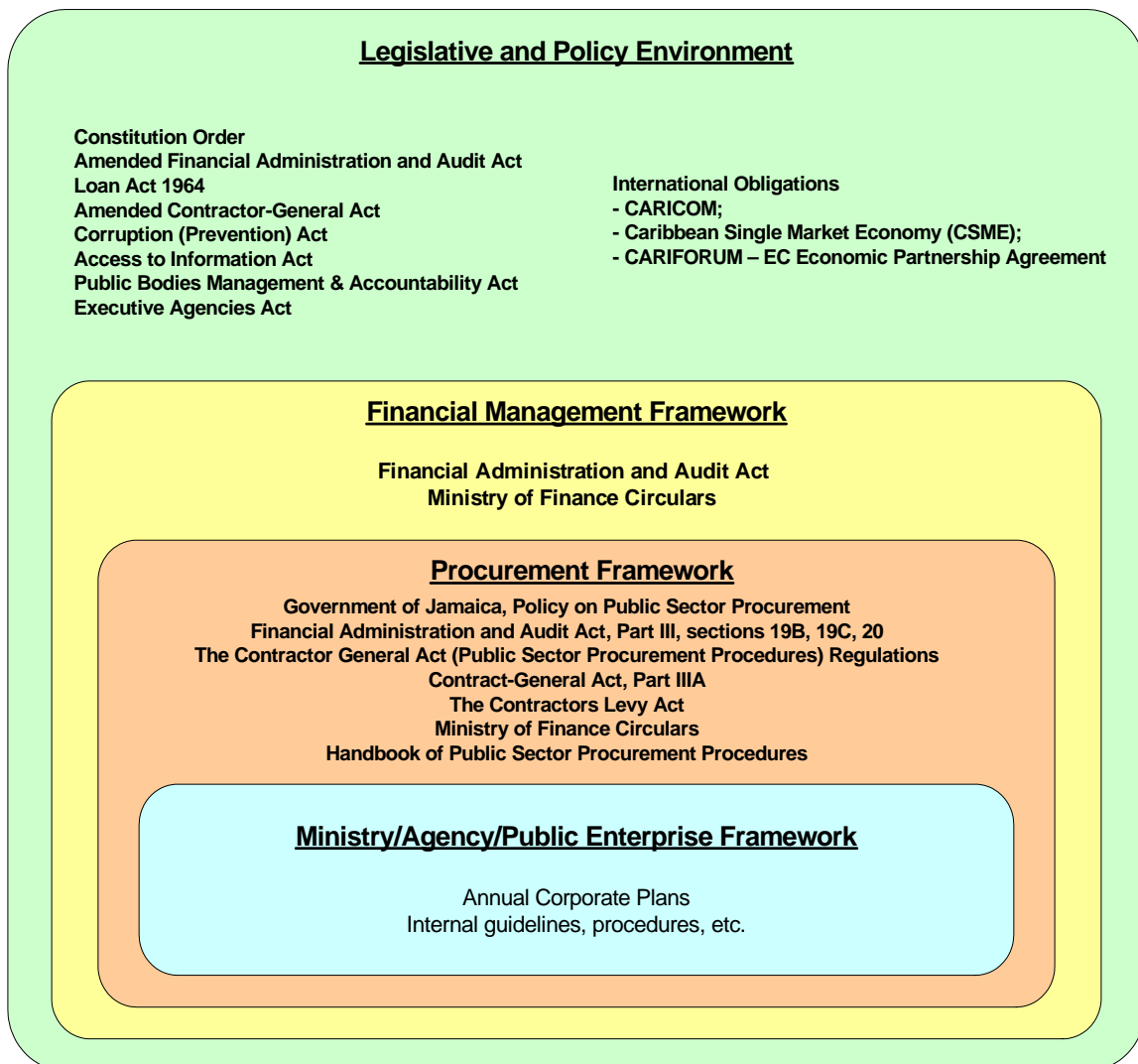
***Note: Employees/persons who are involved in the preparation of tender estimates and the management of the procurement process, are prohibited from assisting or providing services to contractors in the preparation of their bids.***

## SECTION 6 LEGAL CONTEXT

### 6.1 THE LEGAL FRAMEWORK

The foundations of the legal framework for public financial management and procurement are outlined in Jamaica’s Constitution, which sets out 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’s Act, as amended, and further developed in other Acts and Regulations. As a member of the Caribbean Community (CARICOM) and the Association of Caribbean States (ACS), Jamaica is also a signatory to a number of international treaties with implications for Public Procurement, including the European Commission’s (EC’s) Economic Partnership Agreement (EPA). This framework is summarized in Figure 2 below.

**Figure 2**



SECTION 6  
LEGAL CONTEXT

The Ministry of Finance (MoF) has the overall responsibility for Public Sector Procurement in accordance with the FAA Act and, therefore, issues relevant Circulars in relation to Public Procurement.

The full texts of all the Acts governing Public Sector Procurement in Jamaica are appended at Appendix II.

Related legislation includes:

- (a) the Executive Agencies' Act;
- (b) the Public Bodies' Management and Accountability Act;
- (c) the Access to Information Act;
- (d) the Corruption (Prevention) Act; and
- (e) the Staff Orders issued by the MoF (which contain a Code of Conduct for Civil Servants and provisions concerning disciplinary action).

## SECTION 7 OTHER VOLUMES OF THE HANDBOOK

Procedures for the various categories of procurement can be found in Volumes 2 - 4 of the Handbook. These documents are available on the Ministry of Finance's website at [www.mof.gov.jm](http://www.mof.gov.jm).

### **Volume 2:**

[Procedures for the Procurement of Goods, General Services and Works](#)

### **Volume 3:**

[Procedures for the Procurement of Consulting Services](#)

### **Volume 4:**

[Procedures for the Procurement of General Insurance Services](#)

# APPENDICES

## APPENDIX 1 LEGAL TEXTS

### A1.1 THE FINANCIAL ADMINISTRATION & AUDIT ACT (15<sup>TH</sup> JUNE 1959)

#### 19 B. REGULATIONS GOVERNING CONTRACTS

- (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.

#### 19 C. AUTHORIZATION OF PAYMENTS

- (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.

## **A1.2 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.

<b>FIRST SCHEDULE</b>	- (Section 2)
<b>SECOND SCHEDULE</b>	- Tillage Operations (Section 2)
<b>THIRD SCHEDULE</b>	- Haulage Operations (Section 2)
<b>FOURTH SCHEDULE</b>	- 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**

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

- (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

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**

A Collector of Taxes may authorize payment to, or on account of, a principal contractor or sub-contractor 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**

- (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**

- (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.

APPENDIX II  
LEGAL TEXTS

- (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 wilfully 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**

- (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 (1) 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**

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**

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**

- (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

- (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 fine not exceeding five thousand dollars and in default of payment to imprisonment for a term not exceeding twelve months.

### 14. REGULATIONS

- (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, power-lines, telegraphic-lines, aircraft runways, docks and harbours, railways, inland waterways, pipe-lines, 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, earth-moving, 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.

## **A1.3 THE CONTRACTOR-GENERAL ACT (7TH 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

- 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**

This Act may be cited as the Contractor-General Act.

### **2. INTERPRETATION**

In This Act -

"COMMISSION" means the established under section 23B;

"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;
- (b) the Jamaica Defence Force;
- (c) the Island Special Constabulary Force; and
- (d) the Rural Police.

### **3. CONTRACTOR-GENERAL COMMISSION**

- (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**

- (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;

APPENDIX II  
LEGAL TEXTS

- 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**

- (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**

- (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.**

- (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 misbehaviour 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.**

- (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**

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**

- (1) Where a vacancy arises in the office of Contractor-General the Governor-General, after consultation 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**

- (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

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.

- (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

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**

- (1) 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**

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**

- (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**

- (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**

- (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**

- (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**

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**

The proceedings of a Contractor-General shall not be rendered void for want of form.

## **23. PRIVILEGES**

- (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**

In this Part "prospective contractor" means any person, firm or entity proposing to obtain the award of a Government contract.

### **23B. ESTABLISHMENT OF COMMISSION**

- (1) There is hereby established for the purposes of this Act a body to be called the .
- (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**

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**

- (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**

- (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**

- (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**

- (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**

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**

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**

- (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**

- (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.**

- (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**

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.**

- (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 Contractor-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**

- (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**

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**

(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**

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**

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 of 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



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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 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

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- (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 of 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 of 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 (1) 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 will faithfully perform any functions assigned to me under the Contractor-General Act, and I will not, on any account, at any time whatsoever, except in so far as provisions of the Act authorize, directly or indirectly reveal any information or the nature or contents of any documents communicated to me in the performance of any functions assigned to me by virtue of me Act.

So help me God.

## **THIRD SCHEDULE (Section 23B)**

### **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 the extent that it would have been if that member were an employee or agent of the Commission.

# QUICK REFERENCE

## QUICK REFERENCE

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