

MINISTRY OF FINANCE & ECONOMIC EMPOWERMENT
PROCUREMENT POLICY OFFICE

Circular No. 12 of 2009

Ref : F/PPO/4/1 Vol 2

From: Director, Procurement Policy Office

To : Heads of Public Bodies

Amendments to the Public Procurement Act & the Public Procurement Regulations

As you are aware amendments have been brought to the Public Procurement Act through the Additional Stimulus Package (Miscellaneous Provisions) Act 2009 and The Finance (Miscellaneous Provisions) Act 2009.

2. Following the said amendments, the Public Procurement Regulations 2008 have been amended as per G.N. 86 of 2009.
3. The amendments brought to the Public Procurement Act through the Finance (Miscellaneous Provisions) Act 2009 and to the Regulations are reproduced at Annex 1(a) and 1(b).
4. The tables at Annex II(a) and II(b) show the existing provisions and the new provisions, and also the implications of the amendments.
5. Moreover, the First Schedule to Public Procurement Regulations 2008 has been revoked and replaced as reproduced at Annex III.
6. The updated version of the Act and the Regulations are available on the website of the Procurement Policy Office (<http://ppo.gov.mu>).

Procurement Policy Office
01 September 2009

THE FINANCE (MISCELLANEOUS PROVISIONS) ACT 2009

Act No. 14 of 2009

I assent

SIR ANEROOD JUGNAUTH

President of the Republic

30th July 2009

ARRANGEMENT OF SECTIONS

Section

1. Short title
2. Bail Act amended
3. Banking Act amended
4. Bank of Mauritius Act amended
5. Business Registration Act amended
6. Code Civil Mauricien amended
7. Companies Act amended
8. Customs Act amended
9. Dangerous Drugs Act amended
10. Data Protection Act amended
11. Employment Relations Act 2008 amended
12. Employment Rights Act 2008 amended
13. Excise Act amended
14. Finance and Audit Act amended
15. Financial Intelligence and Anti-Money Laundering Act amended
16. Financial Reporting Act amended
17. Financial Services Act amended
18. Freeport Act amended
19. Gambling Regulatory Authority Act amended
20. Ground Water Act amended
21. Income Tax Act amended
22. Insurance Act amended
23. Investment Promotion Act amended
24. Land (Duties and Taxes) Act amended
25. Law Reform Commission Act amended
26. Local Government Act 2003 amended
27. Mauritius Revenue Authority Act amended
28. Mauritius Sugar Authority Act amended
29. Mutual Assistance in Criminal and Related Matters Act amended
30. National Savings Fund Act amended
31. Non-Citizens (Property Restriction) Act amended

32. Pensions Act amended
 33. Professional Architects Council Act amended
 34. Public Debt Management Act 2008 amended
 35. Public Procurement Act amended
 36. Reform Institutions Act amended
 37. Registration Duty Act amended
 38. Securities Act amended
 39. Social Aid Act amended
 40. State Lands Act amended
 41. Statutory Bodies (Accounts and Audit) Act amended
 42. Sugar Industry Efficiency Act amended
 43. Sugar Industry Pension Fund Act amended
 44. Sugar Insurance Fund Act amended
 45. Tourism Authority Act amended
 46. Tourism Employees Welfare Fund Act amended
 47. Value Added Tax Act amended
 48. Validation of resolution
 49. Commencement
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35. Public Procurement Act amended

The Public Procurement Act is amended –

- (a) in section 2, in the definition of “public body”–
 - (i) in paragraph (b)(iii), by deleting the words “; but” and replacing them by a semicolon;
 - (ii) by repealing paragraph (c);
- (b) in section 3 –
 - (i) in subsection (1)(a), by deleting the words “by notice in the *Gazette*”;
 - (ii) in subsection (2), by inserting, after the words “public body”, the words “, other than an exempt organisation”;
- (c) in section 7 –
 - (i) in paragraph (da), by inserting, before the words “public bodies”, the words “the Board and”;
 - (ii) by inserting, after paragraph (da), the following new paragraph –
 - (db) attend to complaints from bidders or suppliers and advise the Board or public bodies on the appropriate course of action;
- (d) in section 7A(1)(a), by inserting, after the word “from”, the words “the Board or”;
- (e) in section 11(1)(d), by deleting the words “and independent”;
- (f) in section 16, by adding, the following new subsection, the existing provision being numbered (1) accordingly –
 - (2) A public body may, in appropriate cases and subject to any regulations to that effect, confer an advantage or preference to domestic or regional goods, services or contractors in the case of open advertised bidding proceedings.
- (g) in section 18, by repealing subsection (2);
- (h) by repealing the Schedule and replacing it by the Schedule set out in the Fourth Schedule to this Act.

FOURTH SCHEDULE
[Section 35(h)]

SCHEDULE
[Section 2]

Column 1 Public body	Column 2 Type of contract	Column 3 Prescribed amount
PART I		
Local Authorities	All Contracts	Rs 15 million
Mauritius Qualifications Authority	All Contracts	Rs 15 million
Rodrigues Regional Assembly	All Contracts	Rs 15 million
Other parastatal bodies not specified in Parts II, III, IV and V	All Contracts	Rs 15 million
PART II		
Ministries/Government Departments	All Contracts	Rs 50 million
Beach Authority		
Farmer's Service Corporation		
Financial Services Commission		
Industrial and Vocational Training Board		
Irrigation Authority		
Mahatma Gandhi Institute		
Mauritius College of the Air		
Mauritius Educational Development Company Ltd		
Mauritius Film Development Corporation		
Mauritius Institute of Health		
Mauritius Meat Authority		
Mauritius Oceanography Institute		
Mauritius Standards Bureau		
Mauritius Tourism Promotion Authority		
National Computer Board		
Private Secondary Schools Authority		
Public Officers' Welfare Council		
Rodrigues Educational Development Company Ltd		
Sir Seewoosagur Ramgoolam Botanical Garden Trust		
Small Enterprises and Handicraft Development Authority		
Sugar Industry Labour Welfare Fund		
Sugar Planters Mechanical Pool Corporation		
Tea Board		
Tertiary Education Commission		
Tourism Authority		
University of Mauritius		
University of Technology, Mauritius		

Column 1 Public body	Column 2 Type of contract	Column 3 Prescribed amount
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PART III

Agricultural Marketing Board Mauritius Examinations Syndicate Outer Islands Development Corporation	Goods, Civil Engineering Works & Capital Goods Consultancy Services Other Services	Rs 50 million Rs 50 million Rs 50 million
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PART IV

Airports of Mauritius Ltd Cargo Handling Corporation Ltd Central Water Authority Development Bank of Mauritius Ltd Enterprise Mauritius Information and Communication Technologies Authority Mauritius Housing Company Ltd Mauritius Ports Authority Mauritius Revenue Authority Mauritius Shipping Corporation Ltd Mauritius Sugar Authority National Housing Development Company Ltd National Transport Corporation Road Development Authority State Informatics Ltd State Investment Corporation Limited State Property Development Company Waste Water Management Authority	All Contracts	Rs 100 million
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Column 1 Public body	Column 2 Type of contract	Column 3 Prescribed amount
PART V		
Central Electricity Board Mauritius Broadcasting Corporation State Trading Corporation	Goods, Civil Engineering Works & Capital	Rs 100 million
	Goods Consultancy	Rs 100 million
	Services	Rs 100 million
	Other Services	Rs 100 million

Government Notice No. 86 of 2009

THE PUBLIC PROCUREMENT ACT

**Regulations made by the Minister under section 61 of the
Public Procurement Act**

1. These regulations may be cited as the Public Procurement (Amendment No. 3) Regulations 2009.
2. In these regulations –
“principal regulations” means the Public Procurement Regulations 2008.
3. Regulation 4 of the principal regulations is amended –
 - (a) in paragraph (2), by deleting the words “and independent”;
 - (b) in paragraph (3), by revoking subparagraph (a), the existing subparagraph (3)(b) being renumbered (3).
4. Regulation 35 of the principal regulations is amended –
 - (a) by deleting the heading and replacing it by the following heading –
Margin of preference
 - (b) in paragraph (1), by deleting the words “materials, if any,” and replacing them by the words “, domestic and foreign contractors,”.
5. Regulation 38 of the principal regulations is amended by adding after paragraph (2), the following new paragraph –
 - (3) For the purposes of section 40(3) of the Act, the prescribed threshold shall be 15 million rupees.

Made by the Minister, on the recommendation of the Policy Office, on 28 July 2009.

Amendments to Public Procurement Regulations

Regulations	Existing	Amended	Remarks
4 Para. 2	“Subject to paragraph (3), the Board shall select from a list of qualified <i>and independent</i> evaluators maintained by it to act as members of the bid evaluation committee”	“Subject to paragraph (3), the Board shall select from a list of qualified evaluators maintained by it to act as members of the bid evaluation committee”	The word ‘independent’ needs to be deleted to avoid confusions due to misinterpretations. The Act contains sufficient provisions to safeguard against situations of conflict of interest.
4 Para. 3(a)	“As far as possible, no public officer working in a public body shall act as member of the bid evaluation committee where the evaluation relates to a procurement in respect of that body”	Para 3(a) revoked and existing sub-paragraph 3(b) being re-numbered 3: (3) No person shall act as a member of the bid evaluation committee where his participation would constitute a conflict of interest.	It has been found that it is essential to include someone from the public body concerned in the Bid Evaluation Committee to ensure that the selected bid meets the requirements of the public body.
35	Domestic and regional margin of preference	Margin of preference	The amendment will enable the implementation of any kind of margin of preference as per the policy of the Government.
35 Para. (1)	“Where applicable, the financial evaluation stage shall involve the application of price preference in favour of domestically manufactured goods and <i>materials, if any</i> , and a regional price preference where the regional preference is applicable.”	“Where applicable, the financial evaluation stage shall involve the application of price preference in favour of domestically manufactured goods and <i>domestic and foreign contractors</i> and a regional price preference where the regional preference is applicable.”	Moreover, the word ‘materials’ has to be deleted as margin of preference do not apply to materials.
38 Para (2)	New paragraph	New paragraph: (3) For the purposes of section 40(3) of the Act, the prescribed threshold shall be 15 million rupees.	The new paragraph provides for a common threshold to all public bodies to give prior notification of award and allow unsuccessful bidders to challenge before a formal award is made.

Amendments to Public Procurement Act

Annex II(b)

Section	Existing	Amended	Remarks
Section 2(a)(iii)	2. Interpretation "public body" - (a) means any Ministry or other agency of the Government; (b) includes - (i) a local authority; (ii) a parastatal body; and (iii) such other bodies specified in the Schedule; but	2. Interpretation "public body" - (a) means any Ministry or other agency of the Government; (b) includes - (i) a local authority; (ii) a parastatal body; and (iii) such other bodies specified in the Schedule; but	The amendments aim at making the definition of exempt organization clearer.
Section 2(c)	"public body" - (c) does not include an exempt organisation	Repealed	
Section 3(2)	Application of Act (2) This Act applies to any other procurement effected by a public body.	Application of Act (2) This Act applies to any other procurement effected by a public body, other than an exempt organization.	
Section 3(1)(a)	Application of Act (1) Notwithstanding any other enactment, this Act does not apply to procurement undertaken to protect national security or defence, where - (a) the Prime Minister so determines by notice in the <i>Gazette</i> ; and	Application of Act (1) Notwithstanding any other enactment, this Act does not apply to procurement undertaken to protect national security or defence, where - (a) the Prime Minister so determines; and	This part of the Act relates to National Security or Defence
Section 7(da)	Functions of Policy Office The Policy Office shall – (da) act as a focal point to guide public bodies with a view to ensuring consistency in the application of this Act and any regulations made under this Act;	Functions of Policy Office The Policy Office shall – (da) act as a focal point to guide the Board and public bodies with a view to ensuring consistency in the application of this Act and any regulations made under this Act;	The amendment is required to include the CPB, as it is operationally involved in handling procurement activities.

Section	Existing	Amended	Remarks
		<p>New paragraph (db): (db) attend to complaints from bidders or suppliers and advise the Board or public bodies on the appropriate course of action;</p>	<p>This amendment will empower the PPO to carry out preventive compliance monitoring as well as help in reducing queues at the IRP, thus reducing procurement lead time.</p>
<p>Section 7A(1)(a)</p>	<p>Powers of the Policy Office (1) In the discharge of its functions, the Policy Office may – (a) request for such information, records and other documents as it may require from any public body;</p>	<p>Powers of the Policy Office (1) In the discharge of its functions, the Policy Office may – (a) request for such information, records and other documents as it may require from the Board or any public body;</p>	<p>The amendment will enable the PPO to examine documents of the CPB for compliance monitoring.</p>
<p>Section 11(1)(d)</p>	<p>Functions of the Board (1) The Board shall, in respect of major contracts – (d) select persons from a list of qualified and independent evaluators maintained by it to act as members of a bid evaluation committee and oversee the examination and evaluation of bids; and</p>	<p>Functions of the Board (1) The Board shall, in respect of major contracts – (d) select persons from a list of qualified evaluators maintained by it to act as members of a bid evaluation committee and oversee the examination and evaluation of bids; and</p>	<p>The word “independent” is being interpreted as being essentially someone outside the public body for whom the procurement exercise is being undertaken. This amendment will clarify it. Independence of evaluators is sufficiently safeguarded through provisions that regulate conflicts of interest under Part VIII – Procurement Integrity.</p>

Section	Existing	Amended	Remarks
<p>Section 16</p>	<p>Open advertised bidding method Where the open advertised bidding method is used, the invitation to bid, or the invitation to pre-qualify, shall be published in a national newspaper with wide circulation and, in the case of international bidding, in selected international media with wide circulation as well.</p>	<p>Open advertised bidding method (1)Where the open advertised bidding method is used, the invitation to bid, or the invitation to pre-qualify, shall be published in a national newspaper with wide circulation and, in the case of international bidding, in selected international media with wide circulation as well. (2) A public body may, in appropriate cases and subject to any regulations to that effect, confer an advantage or preference to domestic or regional goods, services or contractors in the case of open advertised bidding proceedings.</p>	<p>Paragraph (2) has been inserted to make margin of preference also applicable to open national bidding.</p>
<p>Section 18(2)</p>	<p>Open international bidding A public body may, in appropriate cases and subject to any regulations to that effect, confer an advantage or preference to domestic or regional goods, services or contractors in the case of open international bidding proceedings.</p>	<p>Repealed</p>	<p>Amendment is consequential to amendment made to section 16.</p>

FIRST SCHEDULE

(regulation 2)

EXEMPT ORGANISATION

Public Body

Type of Contract

PART I

Goods purchased for resale, including services incidental to the purchase or distribution of such goods.

Agricultural Marketing Board
Central Electricity Board
Outer Islands Development Corporation
State Trading Corporation

PART II

Independent Commission Against Corruption All contracts.

PART III

Mauritius Examination Syndicate Goods purchased, including services, relating to or for the purpose of the holding of examinations.

PART IV

Mauritius Broadcasting Corporation Purchase of films or acquisition of transmission rights for public broadcasting.
