

**MINISTRY OF FINANCE & ECONOMIC EMPOWERMENT**  
**PROCUREMENT POLICY OFFICE**

**Circular No. 5 of 2009**

**Ref : F/PPO/4/1 Vol 2**

**From: Director, Procurement Policy Office**

**To : Heads of Public Bodies**

**Amendments to Public Procurement Act**

You are hereby informed that certain sections of the Act have been amended by The Additional Stimulus Package (Miscellaneous Provisions) Act 2009 (Government Gazette No. 32 of 16 April 2009) as detailed in the annex:

	<b><u>Amendment</u></b>	<b><u>Remarks</u></b>
1.	Part II -Section 7	New subsection (da) added New section 7A added
2.	Part III -Section 14	New subsection 6 added
3.	Part IV -Section 21	Subsection 3(c) amended
4.	Part V -Section 26	Section 26 repealed and replaced
5.	Part V -Section 28	Subsection 1 renumbered and subsection 2 added
6.	Part V -Section 37	Subsections 1, 2, & 3 amended
7.	Part V -Section 40	Subsection 2A added and Subsection 3 amended

2. The updated version of the Act is available on the website of the Procurement Policy Office (<http://ppo.gov.mu>)

**Procurement Policy Office**  
**30 April 2009**

**SECTION 7**

***(New subsection (da) added)***

- (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;

***(New Section 7A added)***

**7A. 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;
  - (b) examine such records or other documents; and
  - (c) carry out procurement audit.
- (2) Any person to whom a request is made under subsection (1)(a) and who fails to comply with the request, or willfully provides false or misleading information, shall commit an offence.
- (3) Where, in the discharge of its functions, the Policy Office finds that there has been a deliberate non-compliance with any provision of this Act or instructions issued, the Director shall refer the matter to the Head of the Civil Service recommending such action as he may deem appropriate.
- (4) The Head of the Civil Service may, where he considers appropriate, refer any matter referred to him under subsection (3) to the Police for enquiry.

**SECTION 14**

***(New subsection 6 added)***

**14. Procedure of the Board**

- (6) For the avoidance of any doubt, this section shall not apply where the award of the contract is made following an emergency procurement under section 21 or a direct procurement under section 25.

**SECTION 21 (**

***Subsection 3(c) “and” has been replaced by “ or”***)

- (c) the condition or quality of goods, equipment, building or publicly owned capital goods may seriously deteriorate unless action is urgently and necessarily taken to maintain them in their actual value or usefulness; **or**

**SECTION 26**

*(Section 26 repealed and replaced)*

**26. Application of Part V**

This Part shall apply to bids for every procurement contract.

**SECTION 28**

*(Subsection 1 renumbered & subsection 2 added)*

**28. Bidding documents**

(1) A public body shall provide the bidding documents to all bidders that respond to an invitation to bid or, if prequalification proceedings have taken place, to all bidders that have been pre-qualified.

(2) In appropriate cases and subject to regulations to that effect, a bidding document may provide for an advantage or preference to a bidder.

**SECTION 37**

*(Subsections 1, 2 and 3 amended)*

**37. Examination and evaluation of bids**

(1) The Board, in the case of a major contract, or a public body may seek clarification during the examination of bids from any bidder to facilitate evaluation, but it shall neither ask nor permit any bidder to change the price or substance of his bid.

(2) The Board, in the case of a major contract, or a public body shall, in order to evaluate bids, set up a bid evaluation committee, selected from a list of qualified evaluators maintained by it.

(3) Following the opening of bids, the Board, in the case of a major contract, or a public body shall -

- (a) examine the bids in order to determine whether they are complete and in accordance with the bidding documents; and
- (b) ascertain whether -
  - (i) they are properly signed; and
  - (ii) the documents required to establish their legal validity and the required security have been furnished.

**SECTION 40**

***(Subsection 2A added and subsection 3 amended)***

**40. Award of procurement contracts**

(1) A procurement contract shall be awarded to the bidder having submitted the lowest evaluated substantially responsive bid which meets the qualification criteria specified in the prequalification or bidding documents, following the steps outlined in subsections (3) and (4).

(2) There shall be no negotiation between a public body and a selected bidder or other bidders except in such special circumstances as may be prescribed.

**(2A)** In the case of a major contract, the Board shall, where special circumstances provided in subsection (2) apply, initiate and oversee the negotiation between a public body and a selected bidder or other bidders in accordance with such instructions as may be issued by the Policy Office.

(3) A public body, in relation to a procurement contract, the value of which is above the prescribed threshold, shall notify the successful bidder in writing of the selection of its bid for award and a notice in writing shall be given to the other bidders, specifying the name and address of the proposed successful bidder and the price of the contract.

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**MINISTRY OF FINANCE & ECONOMIC EMPOWERMENT**  
**PROCUREMENT POLICY OFFICE**

F/PPO/1/2

**NOTES REGARDING THE AMENDMENTS TO THE PUBLIC PROCUREMENT ACT**  
**(Re. Circular No. 5 of 2009)**

The Public Procurement Act has been amended through the Additional Stimulus Package (Miscellaneous Provisions) Act 2009 (Government Gazette No. 32 of 16 April 2009) as detailed below::

	<b><u>Amendment</u></b>	<b><u>Remarks</u></b>
1.	<p>Part II -Section 7            New Subsection (da) added –            (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;</p> <p>New section 7A added –</p> <p><b>7A. Powers of the Policy Office</b></p> <p>(1) In the discharge of its functions, the Policy Office may –</p> <p style="padding-left: 20px;">(a) request for such information, records and other documents as it may require from any public body;</p> <p style="padding-left: 20px;">(b) examine such records or other documents; and</p> <p style="padding-left: 20px;">(c) carry out procurement audit.</p> <p>(2) Any person to whom a request is made under subsection (1)(a) and who fails to comply with the request, or willfully provides false or misleading information, shall commit an offence.</p> <p>(3) Where, in the discharge of its functions, the Policy Office finds that there has been a deliberate non-compliance with any provision of this Act or instructions issued,</p>	<p>The amendment provides for Policy Office to act as the focal point for the provision of guidance to the public bodies in matters relating to the application of the Act. This has been done with a view to ensuring consistency in the interpretation of the provisions of the Act and its regulations.</p> <p>Failure on the part of a public body to provide the information/document asked for by the Policy Office in the discharge of its functions or the submission to the PPO of false and misleading information by a public body shall henceforth constitute an offence under the Act, and the matter shall be reported to the Head of the Civil Service for appropriate action.</p>

	<p>the Director shall refer the matter to the Head of the Civil Service recommending such action as he may deem appropriate.</p> <p>(4) The Head of the Civil Service may, where he considers appropriate, refer any matter referred to him under subsection (3) to the Police for enquiry.</p>	
2.	<p>Part III -Section 14 New subsection 6 added - <b>14. Procedure of the Board</b></p> <p>(6) For the avoidance of any doubt, this section shall not apply where the award of the contract is made following an emergency procurement under section 21 or a direct procurement under section 25.</p>	<p>The amendment clarifies that the approval of the Central Procurement Board is <b>not</b> required where an award is made following an emergency procurement under section 21 or a direct procurement under section 25.</p>
3.	<p>Part IV -Section 21 Subsection 3(c) amended</p> <p>(c) the condition or quality of goods, equipment, building or publicly owned capital goods may seriously deteriorate unless action is urgently and necessarily taken to maintain them in their actual value or usefulness; <b>or</b></p>	<p>The amendment corrects an error found in the original text. The word 'and' at end of the sub-section is substituted by 'or'.</p>
4.	<p>Part V -Section 26 Section 26 repealed and replaced This Part shall apply to bids for every procurement contract.</p>	<p>The amendment corrects an error in the original text. Part V of the Act <b>is</b> applicable to all contracts irrespective of their value.</p>
5.	<p>Part V -Section 28 Subsection 1 renumbered and subsection 2 added</p> <p>(1) A public body shall provide the bidding documents to all bidders that respond to an invitation to bid or, if prequalification proceedings have taken place, to all bidders that have been pre-qualified.</p> <p>(2) In appropriate cases and subject to regulations to that effect, a bidding document may provide for an advantage or preference to a bidder.</p>	<p>The amendment will enable application of a margin of preference to work contractors hiring local labour as announced by Government in the context of the Stimulus Package</p>

6.	<p>Part V -Section 37 Subsections 1, 2 &amp; 3 amended</p> <p>(1) The Board, in the case of a major contract, or a public body may seek clarification during the examination of bids from any bidder to facilitate evaluation, but it shall neither ask nor permit any bidder to change the price or substance of his bid.</p> <p>(2) The Board, in the case of a major contract, or a public body shall, in order to evaluate bids, set up a bid evaluation committee, selected from a list of qualified evaluators maintained by it.</p> <p>(3) Following the opening of bids, the Board, in the case of a major contract, or a public body shall -</p> <p>(a) examine the bids in order to determine whether they are complete and in accordance with the bidding documents; and</p> <p>(b) ascertain whether -</p> <p>(i) they are properly signed; and</p> <p>(ii) the documents required to establish their legal validity and the required security have been furnished.</p>	<p>Consequential amendments following the amendment to section 26 rendering Part V applicable to all contracts. Also, in view of the confusion in the interpretation of the term 'independent' evaluators in section 37(2), the word 'independent' is deleted in referring to list of evaluators to be maintained by public bodies.</p>
7.	<p>Part V -Section 40 Subsection 2A added and Subsection 3 amended</p> <p><b>(2A)</b> In the case of a major contract, the Board shall, where special circumstances provided in subsection (2) apply, initiate and oversee the negotiation between a public body and a selected bidder or other bidders in accordance with such instructions as may be issued by the Policy Office.</p> <p>A public body, in relation to a procurement contract, the value of which is above the prescribed threshold, shall notify the</p>	<p>The amendment clarifies the role of the CPB in the conduct of negotiations in respect of major contracts and also provides for the fixing of a common threshold above which notification for award will henceforth be mandatory. It is to be noted that, prior to the amendment, notification for award was mandatory only in the case of contracts the value of which exceeded the <b>prescribed</b> amounts. Regulations are being made to fix the prescribed amount.</p>

	successful bidder in writing of the selection of its bid for award and a notice in writing shall be given to the other bidders, specifying the name and address of the proposed successful bidder and the price of the contract.	
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**Procurement Policy Office**  
**30 April 2009**