



MINISTRY OF FINANCE AND THE PUBLIC SERVICE

OFFICE OF PUBLIC PROCUREMENT POLICY

Contracts for Security Guard Services

This Guidance Note describes principles and practices for the procurement, negotiation and amendment of contracts for security guard services.

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Introduction

Interpretation:

In this Guidance Note:-

Qualifying Contract means a procurement contract for security guard services requiring amendment to the contract price in accordance with the instructions in this Guidance Note

Security Guard means a person employed to provide security guard services, and includes District Constable, Security Officer and any other such person

Security Guard Services means armed or unarmed patrols, entry and exit screening, local first defence, personnel checks, frisks, firearm detection, etc, provided by trained security personnel

Security Guard Service Provider or Service Provider means a company, entity or firm engaged in the business of providing security guard services through the use or deployment of security guards

All other words or phrases not defined above are given the meaning imputed by Section 2 of The Public Procurement Act 2015 (as amended) herein referred to as “The Act”.

Scope and Context:

This guidance note sets out principles and practices to be adopted by procuring entities in the procurement, negotiation and amendment of contracts for security guard services. Except in the case of those procurement contracts described in para a.iii. “How to comply”, these guidelines govern all procurement contracts for security guard services already in existence, and those contracts in the process of formation.

Amendments to procurement contracts for security guard services have become necessary following the policy decision of the executive branch of the Government of Jamaica in response to the judgment in the matter of *National Housing Trust v Marksman Limited and Robert Epstein [2022] JMRC1* which was handed down on September 23, 2022. The effect of the judgment is that security guards are to be recognised as employees, and must therefore benefit from customary accommodations and rights that ordinarily attach to employees.

Traditionally, security guards were viewed as independent contractors. Consequently, contract prices offered by security guard service providers during procurement proceedings may not have taken account of certain employer related obligations imposed by law. Additionally, these prices may not be burdened for employee benefits, administrative or other costs typically associated with employment. **Contract price increases may therefore be necessary. However these price increases must be limited to those reasonable sums associated with the transitioning of a security guard from status as independent contractor, to employee.**

To ensure compliance on the part of the service provider, the amendments to be made will also affect other conditions of the contract such as termination of contract provisions, the employer’s duty to recognise the security guard as an employee, and connected matters.

Amendments to contract prices are only permissible where security guards deployed to fulfil requirements of procurement contracts are not already given the status of employees. All

other amendments to terms and conditions of contract will apply to all contracts regardless of the status of the security guard.

Law and Compliance

The Law:

- a. Section 7 of The Act provides that the Office of Public Procurement Policy (OPPP) is mandated to develop public procurement policy, provide policy implementation guidance, training and advice to persons participating in public procurement.

Amongst its functions, the OPPP is required to:

- i. Monitor the operation of the public procurement process and compliance with the provisions of the principal Act and regulations made thereunder;
 - ii. Review the methods, procedures and processes used in public procurement and recommend any modifications as appropriate;
 - iii. From time to time issue administrative guidance, in any form, including directives, guidelines, instructions, technical notes or manuals, with respect to the conduct of public procurement and the implementation of the Act and Regulations.
- b. The following Acts of Parliament create obligations on employers in relation to their treatment of employees, and these obligations include accommodations for paid leave, employer contributions to statutory schemes or trusts, and connected matters:
 - i. The Income Tax Act
 - ii. National Insurance Act
 - iii. The Education Tax Act
 - iv. The Human Employment and Resources Training (HEART) Act
 - v. The National Housing Trust Act
 - vi. The Holidays with Pay Act
 - vii. The Labour Relations and Industrial Disputes Act
 - viii. The Minimum Wage Act
 - ix. The Maternity Leave Act
 - x. The Employment (Termination and Redundancy Payments) Act

How to Comply:

Price Adjustments for Existing Procurement Contracts for Security Guard services

a. Identify qualifying contracts

- i. Procuring entities must negotiate contract price amendments with security guard service providers only where the current contract price is based on the deployment of security officers as independent contractors.
- ii. To satisfy itself that a particular contract qualifies for price amendment, the procuring entity must request for each security guard or guard type (for example, armed guard, unarmed guard) currently appropriated to its contract, copies of contracts between the security guard company and the security guard, or copies of tax returns in respect of the security guards, **or any other similar document which may be used to validate the employment status of the security guards who are deployed under the contract.**
- iii. Where it is found that a particular contract does not qualify for price amendment, **the procuring entity must take no further steps in respect of the contract price**, and must only discuss the amendments set out herein “Amendments to other contract terms”. Procuring Entities must report any non-qualifying contract in the manner Appendix 2.

b. Settle contract price composition for qualifying contracts

- i. For each contract to be amended, procuring entities must require in respect of each security guard or security guard type appropriated to its contract, that security guard firms complete a workbook similarly constructed to that provided in the Appendix to this guidance note. **The workbook is a template and is useful for broad guidance.** It sets out for each guard, the sum of money that based on existing compensation, would now be payable by the employer for the following:
 - Employer’s statutory contributions each to National Insurance Scheme, National Housing Trust, Education Tax and HEART
 - Allocation for paid vacation leave
 - Allocation for paid sick leave
 - Allocation for maternity leave
 - Allocation for overtime work
 - Allocation for uniforms
 - Allocation for other special allowance (existing agreements for negotiated benefits provided to guards deployed to fulfil the relevant qualifying contract- for example, firearm licensing fees etc.)
 - Administrative fees (example fees associated with establishing or improving Human Resource Management systems for employee benefit administration)

c. Negotiate the sums offered for price components other than employer's statutory contributions

- i. On receipt of the completed workbook, procuring entities should confirm that calculations are appropriate. Errors or incorrect assumptions should be corrected.
- ii. In respect of the prices quoted for uniforms, a procuring entity must satisfy itself of the reasonableness of these prices by obtaining, on its own initiative, or in reliance on the security guard firms, comparable quotes from reliable uniform suppliers, establishing the market rates for security guard uniforms. Where rates or prices quoted exceed market rates, procuring entities should negotiate those prices by using the market prices as a benchmark.
- iii. In respect of other allowances and administrative fees, a procuring entity must satisfy itself of the reasonableness of the proposed allocation, by considering its purpose, and comparing the proposed rates with relevant market rates and prices. Where quoted rates or prices exceed market rates, procuring entities should negotiate those prices by using the market prices as a benchmark.

d. Determine final contract price

- i. Calculate final amended contract price by adding to the existing contract price, the amount representing the sums set out in b(i) above.
- ii. Calculate the overall increase in the normal manner, and report the value of this increase in the manner set out in Appendix 2.

Price Adjustments for Procurement Contracts for Security Guard Services not yet Awarded

a. Evaluate bids for eligibility and qualification

- i. In respect of bids received **and opened** by procuring entities in response to calls for tender, procuring entities must evaluate all bids in accordance with the terms and conditions of the solicitation documents.

b. Negotiate contract prices with all bids that were not rejected

- i. For all bids capable of acceptance, procuring entities should adjust or cause adjustment of tender prices by following the steps set out above for contracts already existing.
- ii. Having identified and agreed the overall rate of increase, procuring entities must increase the original pre-tender estimate by the same rate. This updated estimate is to be used for comparison of the updated tenders in the usual manner.
- iii. Upon agreement and validation of the contract price, procuring entities must update the bid opening record to reflect the new contract prices, and distribute this record to all bidders.

c. Award the contract to the successful bidder

- i. Taking account of the criteria for contract award, procuring entities should award the contract to the bid that offers the lowest price, or is the most advantageous based on the published criteria, and in accordance with Section 38 of The Act.
- ii. Procuring entities should thereafter seek prior approval in accordance with the respective Tier in which the contract price now falls, pursuant to Section 45 of The Act.

Amendment of other contract terms

- a. Procuring entities are required to set out in the amending instrument, the following terms and conditions:

1. Security Guard is an employee

1.1 The service provider shall at all times:-

1.1.1 recognise each security guard in its employ as an employee and accord to all such security guards treatment consistent with his or her status as an employee; and

1.1.2 execute with each security guard in its employ, a contract of employment, setting out terms and conditions of employment including the employee's entitlement to paid vacation leave, paid overtime, paid sick leave and the mode and manner of computation of these benefits.

1.2 The service provider shall at each salary period, deduct employee taxes and other applicable statutory contributions, and pay the entire sum together with employer portion of each statutory contribution to the Tax Administration of Jamaica.

1.3 The service provider shall at each salary period, provide to the employee a pay advice outlining details of the payment for the relevant period, all deductions of taxes and other statutory contributions together with a statement of all payments and deductions to date.

1.4 As required by law, the service provider shall provide to each employee, such certificates or statements of taxes deducted in the relevant period.

- b. In any contract provision setting out grounds for termination of the contract, the procuring entity is required to amend each such clause as follows:

1. The Procuring Entity shall be entitled to service a Notice of Compliance where the procuring entity finds after due process, that a service provider has failed to accord to a security guard the rights and privileges attaching to that security guard by virtue of his status as employee and such notice shall require the service provider to become compliant no later than thirty (30) days after the date of the Notice;

2. The Procuring Entity shall terminate this Contract with immediate effect if the service provider having been served a Notice of Compliance by the procuring entity fails to

accord to that security guard the rights and privileges attaching to that security guard by virtue of his status as employee; and

3. *In addition to termination of the Contract, the Procuring Entity shall reject a bid from that service provider if the Procuring Entity determines that the service provider, has consistently failed to treat security guards in its employ as employees and the service provider may be declared disqualified either indefinitely or for a stated period of time in respect of any future award of contracts for security guard services.*

Reporting:

- i. All amended contracts prices are to be reported to the Ministry of Finance and the Public Service in the format set out in Appendix 3.

Procuring Entities are also reminded of the following reporting requirements:

- ii. All procurement contracts whether or not exempt by virtue of the Act, and with nominal value exceeding J\$500,000.00 entered into by the Government of Jamaica, must be reported to the Integrity Commission on the Quarterly Contract Award report.
- iii. A monthly report of all contracts whether or not exempt, and regardless of value, must be reported to the to the Ministry of Finance and the Public Service, in accordance with the prescribed report format existing.

Further information and Guidance

For further information, procuring entities are encouraged to contact the Office of Public Procurement Policy in the Ministry of Finance and the Public Service by sending an e-mail to: oppccustomer@care@mof.gov.jm or by calling 876-932-5264