

STATES OF JERSEY



PUTTING JERSEY BUSINESSES FIRST (P.56/2020): SECOND AMENDMENT

**Lodged au Greffe on 9th June 2020
by the Council of Ministers**

STATES GREFFE

1 PAGE 1, PARAGRAPH (a) –

Replace paragraph (a) with the following paragraph –

“(a) that the States of Jersey will continue to support the Island’s social and economic recovery from the Covid-19 crisis by seeking to maximise the amount of goods and services that the States of Jersey procures from on-Island suppliers where it is legal and practical to do so;”.

2 PAGE 1, PARAGRAPH (b) –

Replace paragraph (b) with the following paragraph –

“(b) to request the Minister for Treasury and Resources to ensure that internal procurement processes and guidelines include positive weighting, within a balanced assessment, of the contribution of the economic, social and environmental benefits to Jersey, in particular on-Island employment. This reflects the need at this particular time to stimulate and recover Jersey’s economy, (subject to exemptions for specialist services that can only be purchased from off-Island suppliers, legal restrictions and meeting minimum acceptable quality and other thresholds);”.

3 PAGE 1, PARAGRAPH (c) –

Replace paragraph (c) with the following paragraph –

“(c) to request the Minister for Treasury and Resources to present a report by the 31st August 2020 setting out the amended procurement policies and evaluation criteria, with further and future amendments published on the gov.je website in accordance with our Public Finances Manual processes;”.

4 PAGE 1, PARAGRAPH (d) –

Replace paragraph (d) with the following paragraph –

“(d) to request the Minister for Treasury and Resources to present an annual procurement report to the States Assembly detailing expenditure by the States of Jersey of the top 100 Suppliers by value across goods and services, identifying those with an on-island presence, from off-Island suppliers, with the first such report to be published no later than 31st March 2021, in order to provide a full 12 calendar month view;”.

5 PAGE 1, PARAGRAPH (e) –

Replace paragraph (e) with the following paragraph –

- “(e) to request the Minister for Economic Development, Tourism, Sport and Culture to commit to develop supply-use tables for Jersey as part of the evidence base building phase of the Future Economy Programme.”.

COUNCIL OF MINISTERS

Note: After this amendment, the proposition would read as follows –

THE STATES are asked to decide whether they are of opinion –

- (a) that the States of Jersey will continue to support the Island’s social and economic recovery from the Covid-19 crisis by seeking to maximise the amount of goods and services that the States of Jersey procures from on-Island suppliers where it is legal and practical to do so;
- (b) to request the Minister for Treasury and Resources to ensure that internal procurement processes and guidelines include positive weighting, within a balanced assessment, of the contribution of the economic, social and environmental benefits to Jersey, in particular on-Island employment. This reflects the need at this particular time to stimulate and recover Jersey’s economy, (subject to exemptions for specialist services that can only be purchased from off-Island suppliers, legal restrictions and meeting minimum acceptable quality and other thresholds);
- (c) to request the Minister for Treasury and Resources to present a report by the 31st August 2020 setting out the amended procurement policies and evaluation criteria, with further and future amendments published on the gov.je website in accordance with our Public Finances Manual processes;
- (d) to request the Minister for Treasury and Resources to present an annual procurement report to the States Assembly detailing expenditure by the States of Jersey of the top 100 Suppliers by value across goods and services, identifying those with an on-island presence, from off-Island suppliers, with the first such report to be published no later than 31st March 2021, in order to provide a full 12 calendar month view;
- (e) to request the Minister for Economic Development, Tourism, Sport and Culture to commit to develop supply-use tables for Jersey as part of the evidence base building phase of the Future Economy Programme.

REPORT

Amendment to paragraph (a)

If unamended this paragraph would not give due consideration to the significant amount of expenditure already committed to the Jersey supply-chain, e.g. **75%** of our top 100 suppliers by spend in 2019 was awarded on-island, contributing towards our economy, and is a positive increase from 60% in 2018. The Council of Ministers fully supports the motive and intention of this paragraph.

Amendment to paragraph (b)

Procurement is a responsibility of the Minister for Treasury and Resources, so this amendment corrects that responsibility (as do the amendments to paragraphs (c) and (d).

The Minister does not wish to be tied to a decision that she is unable to comply with without, putting the States of Jersey at risk of discriminating against provision of services and goods by foreign suppliers.

It is widely recognised that the “WTO’s work on government procurement aims to promote transparency, integrity and competition in the market”, culminating in the Government Procurement Agreement (“GPA”). It is also recognised that “providing preferential treatment for domestic goods, services and suppliers discriminates against foreign suppliers and therefore acts as a trade barrier in this sector”.

Whilst, we are not signed up to the GPA, we would air caution towards implementing an explicit policy that could impact our leverage during the wider Brexit negotiations. In particular, we should protect our “most favoured nation” obligations and our reputation as an open and liberal trading nation.

In relation to the use of the phrase “Most Economic and Advantageous Tender (“MEAT”), we should be considerate of the contract award criteria, as detailed under “Article 67, Directive 24/Article 82 Directive 25 of the EU Directives” which state that, award criteria shall –

- not confer unrestricted freedom of choice
- ensure the possibility of effective competition
- allow the information provided by the tenderers to be verified
- be linked to the subject-matter of the contract.

Further to discussions to remedy the aforementioned, and in the spirit of the original proposition, the Minister would support enhancing the existing internal guidelines and processes to further develop the selection criteria for tenders, enabling evaluation within a balanced assessment quantifying the contribution to be made towards the economic, social, and environmental benefits for Jersey. This would be acceptable and would not put us at risk, as it complies with regulations, it is worth noting that we have been undertaking this method for some time within Government of Jersey but believe that this would provide us with an opportunity to extend this practice further across the States of Jersey.

Amendment to paragraph (c)

The Council of Ministers considers that it is impractical for procurement policies and evaluation criteria to be brought to the Assembly for approval. The broad policy will be set by this proposition itself, if approved as amended. If the Assembly were to approve the underlying details, for example appropriate weightings, then any subsequent changes would need to be brought back to the Assembly. This would be cumbersome and inappropriate. Compare this with the [Public Finances \(Jersey\) Law 2019](#), which sets the parameters for the control of public finances in Jersey. That Law requires the production of a Public Finances Manual (“PFM”), which contains significantly more detail. That Manual is published by the Minister for Treasury and Resources, with any significant changes being made by public Ministerial Decision, published and notified to the Public Accounts Committee, it should be noted that all procurement processes are sub-ordinate to the Public Finance Manual. The Minister is content to publish any significant changes to procurement policies and evaluation criteria in future in accordance with PFM processes. The change of date from 1st August to 31st August recognises the significant impact that Covid-19 is having on the limited Commercial Services resources, reasonable endeavours will be made to bring this forward.

Amendment to paragraph (d)

This amendment protects the Minister from a commitment to publish material that would constitute an infringement of either Freedom of Information legislation or any individual confidentiality agreements entered into with suppliers. The proposal to publish the top 100 suppliers by spend is good practice, it should be noted that this still requires significant manual effort at this time. Further to discussions, agreement was made that the report will be presented by the end of March 2021 to enable it to cover the whole of 2020.

Amendment to paragraph (e)

This amendment protects the Minister from a commitment to develop a set of multipliers which would not be possible. Existing data would not produce an accurate index of multipliers that show the economic impact of spending the States of Jersey funds within Jersey’s economy through the purchase of goods and services from Jersey-based suppliers, and off-Island suppliers employing Jersey-based staff. However, the Minister has committed to the Future Economy Programme, which include plans to develop supply-use tables for Jersey as part of the evidence base building phase of the Future Economy Programme.

Conclusion

These amendments seek to identify a practical way forward, as part of our recovery plans, building on existing practices and in broad agreement with the Deputy around the value and importance of procurement as we do this.

The amendments seek to support transparency, respect our international obligations, and recognise that procurement decisions can impact on our wider well-being, not just economic. They also aim to secure practical deadlines as part of an overall approach to recovering from the impact of coronavirus.