

KNOWLEDGE CENTRE

Variations

VAR:1

Relevant Facts or Questions Asked

- A Procuring Entity (PE) awarded a contract for the provision of security services to Company X at one of its Kingston locations. The period of the contract was for one year (July 1, 2021-June 30, 2022) - contract value \$8,642,250.00.
- Further to the temporary return of the space to Lessor for the same property leased at the Kingston location, the PE made a request for three (3) additional guards for approximately five (5) months, July 1 – November 13, 2021. Approval was granted for variation of contract in the sum of \$4,117,726.80 (47.6% variation).
- Further requests were made for approval of variation for the periods November 15, 2021 to November 30, 2021 in the sum of \$480,902.40 (5.6% variation) and December 1, 2021 to March 31, 2022 in the sum of \$3,757,050.00 (43.5% variation). This was to facilitate completion of works being carried out by the Lessor and to ensure the safeguarding of the PE's assets housed at the same Kingston location.

Based on these facts the PE sought guidance whether:

- it can utilise the Sole-source procurement method to engage same Company X to secure the desired security services in another contractual arrangement under these circumstances for the same location/space, in the event that the Head of Entity denies the request for variation approval listed in #3 above.
- other alternatives exist under which Company X can be engaged for the services mentioned above. Further, can Direct Contracting be used to engage the same Company X?

Issues Arising



Whether the deployment of the single-source procurement method is a suitable alternative for the continued engagement of a supplier, in the event that a variation request is denied.



Advice

1. The PE is reminded that variations are specific increases or decreases in the scope of a contract owing to changes in deliverables, so that where the price associated with such variations falls within the relevant thresholds, it should obtain the associated approvals ex ante from the competent bodies.
2. The Head of Procuring Entity (Head), as the accountable officer, has the overall responsibility for the conduct of all processes related to procurement for their respective entity (please see Section 20 of the Public Procurement Act, 2015 (as amended) (“the Act”) for reference). As such, it follows that the Head is empowered in law to give prior written approval for all contract variations in addition to the deployment of the Single-source method. Section 1.4 – 1.5.5 of volume 2 of The GOJ Handbook of Public Sector Procurement is relevant.
3. Where the cumulative value of the variations exceeds 50% of the original contract sum, all previously approved variations shall be reported to the PPC, with the required formalities/ supporting letter from the Permanent Secretary within 21 days of the approval of the Head.
4. The facts as presented on this matter are unusual given that the prior approval of the Head was still pending. The Head’s authority to issue a prior written approval for a variation must undoubtedly be on the basis of inter alia, cogent reasons/information from the procurement specialist unit, experts connected to the contract in question and the value for money procurement objective.
5. Should the Head opt to grant approval for the new stated variations (5.6% and 43.5%); the retroactive nature of the matter will require Cabinet’s prior approval.
6. Regarding the matter of alternatives, to contemplate the re-contracting of Company X by way of the Single-source procurement method, for the delivery of security services that the firm is already under contract to perform, for the same site and PE, is abnormal and is not supported under existing law and policy.
7. This Ministry reiterates that the single-source procurement method must be deployed only in accordance with the Section 25 of the Act, together with Regulations 7 and 8 of the Public Procurement Regulations, 2018.
8. The PE should note that though Section 25(b) of the Act supports the direct re-engagement of contractors for goods, works or services where additional supplies/services are being procured, in our view, there must be a nexus and break between the existing contract and the contemplated new/additional contract.





9. Finally, the PE may wish to consider engaging a separate security firm to cover the security gaps which have arisen from the works being carried out by the Lessor.

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