

KNOWLEDGE CENTRE

Bid Validity**BV:1**

Relevant Facts or Questions Asked

A Procuring Entity (PE) sought guidance as follows:

A contract was approved by the Public Procurement Commission (final approval) before the bid validity period expired, however, the contract was subsequently signed by both parties after the bid validity period expired.

- I. Should the contract be signed by both parties before the bid validity period expired?
- II. At what point in the procurement processes is the bid validity period no longer required?

Advice

1. The Government of Jamaica's (GoJ) procurement law requires that procurement contracts are signed within the bid validity period. The bid validity period takes effect from the date of bid opening until the constitution of the procurement contract.
2. Consequently, any contract signed post the bid validity period would be invalid and would not be supported by the law. Section 44 (6)(7) of the Public Procurement Act, 2015 is relevant and has been set out below for ease of reference:

44.-

(6) Between the time when the notice of acceptance is dispatched to the successful bidder and the signing of the procurement contract, neither the procuring entity nor that successful bidder shall intentionally take any action that interferes with the formation of a binding procurement contract or impedes or frustrates the performance of the procurement contract.

(7) The head of a procuring entity shall take necessary measures to ensure that the procuring entity obtains any approvals required, prior to the expiration of-

- a) the bid validity period specified in the bidding documents; or*
- b) the period of effectiveness of any bid security which may be required.*

3. Jamaica's procurement system considers a procurement contract formed and binding upon the procuring entity's receipt of the written acceptance included in the notification of award. This is supported by clause 'L' of the 'Form of Bid' contained in GoJ standard bidding documents. The reference clause is set out below for ease of reference:

"...We understand that this bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed..."

4. Thus, though the formal contract is often signed post the bid validity period, this would not invalidate the contract, which was constituted upon the procuring entity's receipt of the written letter of acceptance.
5. Additionally, upon the receipt of the written letter of acceptance, the bid validity period would be at an end and all bid securities returned.

