

KNOWLEDGE CENTRE

Disqualification

DQ:3

Relevant Facts or Questions Asked

A Procuring Entity (PE) sought guidance as follows:

- I. The entity has recently sent out a request for bids for a canteen concessionaire. In the event that past concessionaires who had a bad financial record with us apply, can they be disqualified from the process if their bids are responsive.

Issues Arising

Whether a bidder may be disqualified from a procurement proceeding on mandatory grounds where the bidder's past impropriety in the handling of money.

Advice

1. Pursuant to Regulation 19 of the Public Procurement Regulations, 2018 ("the Regulations"), a procuring entity may disqualify a bidder on any of the grounds set out in paragraph 19(1)(a)-(e) therein. These grounds touch and concern several attributes of a bidder that if present, would imply into the ensuing contractual relationship, significant financial, reputational, and legal risks to government.
2. Regulation 19 (1)(c) of the Regulations which has been set out below is arguably pertinent to the question of supplier disqualification on the grounds of past

impropriety with the handling of money:

-(1) A supplier shall not be qualified to bid if-

(c) the supplier's record of participation in public procurement or the supplier's business practices gives the procuring entity reasonable cause to believe that the supplier carried out any act involving impropriety in the handling of moneys;

3. By virtue of this regulation, a procuring entity may disqualify a supplier on mandatory grounds, where the supplier's past participation and business conduct strongly suggest that the supplier carried out acts that involve impropriety with the handling of money.
4. Note however that the mandatory disqualification of any supplier on any ground(s) must not be frivolous or arbitrary as this would be unfair and anti-competitive. Moreover, such frivolous action would violate the constitutional guarantee of equitable treatment of suppliers.
5. Consequently, the PE should be mindful to ensure that the duration of the exclusion of the supplier from participation in procurement opportunities published by the PE are proportional to the offence. In this regard, this Ministry recommends that the internal legal counsel of the PE be consulted. The PE may also want to consider consulting case law from other jurisdictions to get an idea of how similar offences are treated.

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