

KNOWLEDGE CENTRE

Emergency Procurement

EP:1

Relevant Facts or Questions Asked

A Procuring Entity (PE) sought guidance as follows:

- I. The PE cited the need for emergency procurement proceedings on the basis of there being a need to upgrade the electrical infrastructure for a regional health centre, which experiences severe electrical load issues that leads to frequent incidents of low voltage;
- II. Hence, an engineer was contracted to scope and price the project. An estimate of over J\$500 million was developed, and a detailed scope of work and priced bill of quantity (BQ) provided;
- III. The engineer also made a recommendation in favour of three contractors that were thought to possess the capacity to respond quickly to the needs of PE;
- IV. The PE later determined that only one of the recommended contractors was suitable, and initiated procurement proceedings for large works were initiated utilising the single-source procurement method;
- V. A submission was made to the Works Sector Committee who did not support the award of contract on the basis of the procurement method utilised, and in addition to the fact that the value for money objective was not established;
- VI. The submission was later withdrawn by the PE, the process cancelled, and the restricted bidding procurement method deployed where the bidder (Bidder

A) from the previous single-source procurement process, in addition to other contractors randomly selected from the PPC register were invited to participate;

VII. One week was given for the submission of bids. The PE was of the opinion that this would be sufficient time given that Bidder A was able to submit their quote in less than week in the previous procurement process.

VIII. At the close of the deadline for submission, one bid was received from Bidder A, however, the other contractors had requested extensions of up to 40 days, which the PE did not agree to stating that *“it would defeat the purpose of an ‘emergency procurement’ to offer an extension, especially one for 40 days”*;

IX. Subsequently, a submission was made to the PPC, who gave a notice of non-approval citing the following reason:

“The procuring entity has not adhered to prescribed procedural requirements”.

Advice

1. The PE is reminded that the Government of Jamaica’s (GoJ) emergency procedures becomes applicable in circumstances where an unforeseen and urgent situation arises and creates risks to human life, public property etc. In such instances, a procuring entity may choose to award a contract pursuant to section 25(1)(e) of the Public Procurement Act, 2015 (as amended) (“the Act”) and Regulation 7 of the Public Procurement Regulations, 2018 (Regulations).
2. Notwithstanding the urgency associated with emergency contracting, procuring entities are required to observe GoJ’s procurement objectives, such as value for money, fairness, and transparency.
3. Therefore, The PE is advised that its circumstances, though urgent do not appear to align those establish for the deployment of emergency contracting



procedures. This is on the grounds that this matter appears to have been ongoing for some time and was not unforeseen by the PE. As such, it is recommended that a permanent solution be implemented through the deployment of procurement proceedings through open bidding.

4. Competition would be the most effective means by which the PE is able to guarantee that the best possible solution is being developed for the issue in question. This is given the fact that competition enables the maximization of value for money in the procurement proceedings, through the comparison of multiple bids.
5. Moreover, open bidding is the default procurement method under the GoJ's procurement system, as it is the most effective method of procurement in promoting and achieving GoJ procurement objectives. As mentioned in paragraph four (4) herein, given the value and urgency of the procurement activity, it would be the most effective means by which the government would be able to achieve the procurement objectives, including value for money.
6. Another option the PE may consider would be the deployment of the restricted bidding procurement method. However, the PE should be mindful that the restricted bidding procurement method is deployed only in accordance with the provisions set out in section 24 of the Act, together with Regulation 8 of the Regulations.
7. In this instance section 24(1) (d) appears to align most to the circumstances of the PE, this section states:

24. – (1) (d) where there is an urgent need in the public interest for the subject matter of the procurement, whether arising from the occurrence of a catastrophic event or otherwise, making it impractical to use any such other competitive method of procurement because of the time involved in using any such other method.



The PE would need to include in its record a justification as to the circumstances that necessitated use of the restricted bidding procurement method, as opposed to open bidding. Please see section 23(3) of the Act for reference.

8. Furthermore, the added benefit of deploying the restricted bidding procurement method would be the fact that it gives the procuring entity flexibility in relation to the timeline for notification of bids. It follows therefore that it is open to the procuring entity to determine its own timeframe, which should be reasonably set and in the view of the principles of transparency, competition and equal treatment underlying the law, and according to normal benchmarks. The PE could also consider inviting the bidders from the previous process in addition to other capable suppliers to participate in the restricted bidding process.

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