

KNOWLEDGE CENTRE

Procurement Method

PM:1

Relevant Facts or Questions Asked

A Procuring Entity (PE) sought guidance as follows:

- I. A PE initiates tender proceedings for the procurement of uniforms for its staff on a yearly basis;
- II. The PE initiated three (3) separate tender proceedings up to March 2023 for the purchase of the staff uniforms;
- III. The PE reported that it deployed the restricted bidding procurement method twice and national competitive bidding (NCB), all of which failed to yield favourable results because no bids were received;
- IV. The pre-tender estimate was J\$2,100,000.00;
- V. Based on the results of these tender proceedings the PE sought to be guided whether section 25(1)(b) of The Public Procurement Act, 2015 offers grounds to deploy the single-source procurement method to engage the contractor previously engaged to supply the staff uniforms for the 2022 contract.

Issues Arising

Whether section 25(1)(b) of The Public Procurement Act, 2015 can be deployed to justify the contracting of the supplier on the basis that the deployment of competitive methods were unsuccessful.

Advice

Application of Section 25(1)(b)

1. The PE is advised that in the deployment of the cited section of the Public Procurement Act, 2015 ("Act") the following should be considered:-
 - i. Section 25(1)(b) requires that "the procuring entity, having procured goods, works or services from a contractor, determines that additional supplies must be procured from that contractor". Therefore, the PE's justification should demonstrate this prerequisite, which is that a contract would have had to be previously initiated with the contractor in question, for the supply of staff uniforms, to then make the case for additional goods.
 - ii. Section 25(1)(b) also requires that the consideration for the new goods/uniforms must "take into account the effectiveness of the original procurement in meeting the needs of the procuring entity, the limited size of the proposed procurement in relation to the original procurement, the reasonableness of the price". This further requires the PE to demonstrate and establish that the original contract for the staff uniforms was effective in meeting the needs of the procuring entity.
 - iii. In consideration of the limited size of the proposed procurement in relation to the original procurement prerequisite, the PE should carefully note that the proposed estimate of J\$2,100,000.00 must not be more than the previous contract price for the supply of the staff

uniforms. Therefore, to apply the law the PE must be able to demonstrate that it had previously contracted for the staff uniforms and now desires additional incidental goods/uniforms which must be smaller in scope and value to that of the original contract.

2. The fact that the PE deployed competitive procurement methods which failed to yield satisfactory responses is not to be regarded as a reason to resort to an un-competitive procurement method.
3. Given the number of qualified and PPC registered contractors in the category for the subject goods, this Ministry strongly recommend that the PE make another concerted effort to ascertain the reason/reasons for the low level of responses to the concluded restricted and NCB tender proceedings. In our view, this activity can still be done.
4. We see benefit to the expanding of that contractor engagement effort to include other qualified contractors to gauge interest in the opportunity to tender for the supply of the staff uniforms.
5. We strongly advocate that every effort should be made to remove any perception/taint of bias in this matter, especially since the desired contractor was previously engaged by the PE for the supply of the staff uniforms. The objects under section 5 of the Act must be upheld.

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