

# KNOWLEDGE CENTRE

## Procurement of Consultancy Services

**PCS:1**

### Relevant Facts or Questions Asked

A Procuring Entity (PE) sought guidance as follows:

- I. The PE deployed the national competitive bidding (NCB) procurement method to contract for civil engineering consultancy services;
- II. The pre-tender estimate was J\$23Million;
- III. At the close of tender two proposals were received with only one proposal deemed responsive to cause the opening of the Financial Proposal ("FP");
- IV. The FP was 26.6% above the PE's pre-tender estimate;
- V. From the assessment of the Technical Proposal ("TP") it was observed that the consultant had assigned too many human resources/consulting professionals to the assignment which led to negotiations on the matter;
- VI. Subsequently, negotiations were held with the consultant who agreed to reduce his team and by extension adjust FP;
- VII. Thereafter, the consultant submitted a revised FP in keeping with the terms of the negotiations. The new proposal was 18.27% above the PE's pre-tender estimate;

VIII. The PE further outlined that without its prompting or request, same consultant submitted another FP for the assignment which amounted to 10.8% above the PE's pre-tender estimate. In support of this decision, the consultant stated that:-

*The firm conducted further assessments of its proposal and have realized opportunities to incorporate additional efficiencies in the execution of the proposed services, including the use of templates previously utilised for projects of similar nature and completed for Government of Jamaica clients, thus resulting in a further reduction to the submitted revised Financial Proposal.*

IX. The PE sought to be guided whether:

- a. it is permitted to accept this unsolicited FP, or should the consultant's actions be viewed as an indication that there is unwillingness to stand by the amount proposed;
- b. the unsolicited FP be rejected; or
- c. should the consultant's entire submission (TP and FP) be rejected

### Issues Arising

Whether it is permissible to accept a new/modified Financial Proposal during tender proceedings that was not as a result of the procuring entity's prompting or request for such.

### Advice

#### **ACCEPTANCE OF A MODIFIED PROPOSAL/BID POST BID SUBMISSION DEADLINE**

1. The PE is advised that the appropriate action to be taken in regards to the *unsolicited* FP is that it should be rejected. This Ministry's position rests primarily on the basis of specific instructions contained in the issued tender document, specifically Bidding Data Sheet clause 31.1 – *Clarification of Proposal*, which states in part that:

*“.....Any clarification submitted by a consultant/firm in respect to its proposal Clauses and that is not in response to a request by the procuring entity shall not be considered....”*

2. Furthermore, the action on the part of the consultant to submit a new proposal essentially represents a modification/repair to its bid which is not permissible in existing procurement law. Modification to a bid is permissible prior to the bid submission deadline as set out in regulation 22 of The Public Procurement Regulations, 2018.
3. Therefore, the PE may opt to accept the subject consultant's adjusted FP that was arrived at following the conclusion of TP negotiations.
4. This Ministry's is however concerned that the consultant may not have understood the nature of the assignment based on the structure of his TP and similarly on the basis of the reason advanced for the submission of the unsolicited FP.
5. Hence, the PE should satisfy itself by way of a formal confirmation from the consultant that the nature of assignment is clearly understood and that response should form part of its procurement records.

#### **BID PRICES OUTSIDE OF THE ALLOWABLE MARGIN**

6. Where bid prices exceed or falls below the 15 per cent margin of the comparable estimate, the PE is reminded that existing policy requires certain further inquiries.
7. While it is permissible to accept a bid price outside of this margin, procuring entities are required to examine the prices/bills of greatest deviation, and to be satisfied itself of the reasons for the wide deviation from the comparable estimate.
8. Where upon its examination, a procuring entity identifies cogent reasons for accepting such a bid price, it may accept the bid price and award the contract accordingly. However, procuring entities must be prepared to demonstrate that any

such award is in the public interest, and represents the most prudent option in the circumstances.

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