

# KNOWLEDGE CENTRE

## Bid Security

**BS:1**

### Relevant Facts or Questions Asked

A Procuring Entity (PE) sought guidance as follows:

- I. A Procuring Entity (PE) notes that the issued solicitation document, states inter alia:  
  
*“In the case of the electronic submission of bids, an electronic copy of the bid security shall be sent and uploaded by the bidder, the original must be submitted to the address provided at ITB Sub-Clause 23.1 within 24 Hrs. of the bid submission deadline or as otherwise specified in the BDS”.*
- II. The PE sought guidance on whether it is suitable to accept the original bid security after the time and date specified in the bidding document; and
- III. Whether the procuring entity may grant additional time to bidders for the submission of the original copy of the bid security.

### Issues Arising

- I. Whether the late submission of the original bid security is a material deviation; and
- II. Whether a procuring entity may grant additional time for the submission of mandatory requirements after the deadline for submission of bids?

### Advice

1. The standard of compliance required in Jamaican procurement law is the “substantial compliance” or “substantial responsiveness” standard. This is set out in Section 36 of The Public Procurement Act 2015 (“the Act”).

2. By this standard, latitude is given to procuring entities to regard a bid as responsive even if it contains minor deviations and/or omissions that do not materially alter or depart from the requirements set out in the bidding documents, or immaterial errors or oversights that could be corrected without materially altering the substance of the bid.
3. Current policy holds that a material deviation, reservation or omission is one that:-
  - a. Affects in any substantial way the scope, quality, or performance of the subject matter of the contract;
  - b. Limits in any substantial way, inconsistent with the bidding documents, the procuring entity's rights or the bidder's obligations under the contract; or
  - c. If rectified would unfairly affect the competitive position of other bidders presenting substantially responsive bids.
4. The foregoing makes clear that :
  - a. the substantial compliance standard does not confer upon the procuring entity unfettered freedom to accept or condone all deviations. However, in its analysis of the impact of accepting/condoning a deviation, the procuring entity should conscientiously account for the actual or potential detriment to the government, the prejudice to other bidders, or to other objectives of procurement, and then exercise its discretion in a reasonable and transparent manner to the benefit of government; and
  - b. a deviation/omission that does not meet any of the criteria for materiality must be considered immaterial. It is therefore useful for the procuring entity to consider the deviation under the heads given above and draw reasonable conclusions therefrom.
5. In this instance, the PE was reminded that a bid security is a requirement used to guarantee compensation to the Government of Jamaica (GoJ) for the loss of time and money in the event that a successful bidder fails to honour their bid and its contractual obligations. Further, the bid security of unsuccessful bidders is returned upon the receipt of the successful bidder's signed contract agreement or performance security if required.
6. Therefore, the PE must make an assessment of whether the late submission of the original bid security affects the GoJ's ability to call on the security in a prompt manner. Additionally, the issued bidding document required the submission of original bid security be done within 24 hours of the deadline for the submission of bids. As such, it is our

opinion that a deviation from this requirement would be material in keeping with the grounds outlined in paragraph 3(b).

7. In relation to the question of granting additional time for the submission of the original bid security, the PE was advised that any modification to the requirements of an issued bidding document which would require additional time to be given for bid submission should be done prior to the bid submission deadline. Please see Regulation 22 of the Public Procurement Regulations, 2018 for reference.

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