

KNOWLEDGE CENTRE

Eligibility Requirements

ER:4

Relevant Facts or Questions Asked

A Procuring Entity (PE) sought guidance as follows:

- I. The PE launched ten (10) procurement proceedings for the procurement of consultants. This was done using the Government of Jamaica (GoJ) procurement guidelines.
- II. Eight (8) of the 10 activities failed due to a lack of submissions for four (4) of the activities, and the non-compliance with eligibility requirements for the remaining four (4) activities.
- III. Following an internal assessment of the failed activities, it was determined that the requirement for the submission of a Tax Compliance Letter (TCL) was the chief contributing factor.
- IV. The PE further pointed out that under the World Bank procedures and the loan funding for the project, bidders/consultants are required to provide a valid TCL at the award of contract, not as a part of their bid submission;
- V. Hence, the PE sought guidance on whether this approach may be used where the GoJ funding and procurement procedures are being employed. Thereby making the TCL requirement applicable at contract award rather than at the time of bid submission.

Issues Arising

Whether the TCL requirement may be required at the time of contract award instead of at the time of bid submission for procurement activities where GoJ funding is being utilised.

Advice

GoJ Eligibility Requirements and Alternate Procurement Systems

1. The PE is advised that the procurement of all goods, works and services by public funds with the exception of those falling under the categories outlined in the First Schedule of the Public Procurement Act, 2015 (as amended) (“the Act”) are subject to the GoJ procurement guidelines. Hence, the GoJ’s established eligibility requirements obtain. For reference, the PE’s attention is directed to Regulation 17 of The Public Procurement Regulations, 2018 (as amended) (Regulations), which treats with eligibility requirements.
2. The PE highlighted that the World Bank and the loan funding requirement for the project, requires a valid TCL at the time of award, and not at bid submission. The OPPP acknowledges that the GoJ occasionally enter into agreements where alternate procurement systems are used for procurements under the respective agreement. However, the determination of the applicable procurement system and such considerations pertaining to the agreement would be decided on before the entry into force of the agreement. Therefore, in this instance, it is implied that the GoJ procurement system was determined to be the system to be utilised; as such, the PIOJ would be required to follow the GoJ procurement guidelines. *(Please see Guidance note 1/21 – Procurement Under Alternate Systems, for reference)*

Eligibility of suppliers

3. The GoJ procurement guidelines require that bidders be in tax compliance at the time of the bid submission deadline. However, in the case of procurement by way of international competitive bidding, a procuring entity may ascertain whether a supplier is eligible at the time of award of the procurement contract. *(Please see Regulation 17(4) for reference).*

4. Further, 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 Act.
5. 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.
6. 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.
7. 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.
8. A bidder’s bid may still be accepted as being responsive, if the bidder fails to submit the TCL at the date of bid submission deadline, and the bidder is thereafter able to obtain the TCL and the procuring entity is able to verify that the bidder was in fact tax compliant at the relevant time.

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