

KNOWLEDGE CENTRE

Responsiveness of Bids

RB:1

Relevant Facts or Questions Asked

A Procuring Entity (PE) sought guidance as follows:

- I. Procurement proceedings were initiated through the deployment of the restricted bidding procurement method, for the procurement of consulting services;
- II. Five individual consultants were invited to submit proposals;
- III. At the close of tender, one bid was received;
- IV. It was a condition of the bidding document that bidders must submit a valid Tax Compliance Letter (TCL);
- V. The sole bidder submitted a TCL belonging to the Company / Consulting Firm owned by the individual consultant and not a TCL in his own name;
- VI. The PE seeks advice on whether TCL should be accepted.

Issues Arising

- I. Whether in view of applicable Government of Jamaica's (GOJ) procurement law, the bidder's submission of a TCL for a company in circumstances where a PE has instituted proceedings for individual consultant is a material deviation; and
- II. Whether the confirmation of a bidder's eligibility can be sought where such is missing.

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 bidder's error or omission in submitting the required TCL does not appear to meet the criteria of material deviation, reservation or omission. This is so, because it is the government that decides whether or not a bidder is eligible.

6. The TCL to be presented must be specific to either the individual consultant or the consulting firm. Therefore, if it is that an individual consultant is the focus, the TCL of that consultant's affiliated firm is not acceptable.

7. It follows that consistent with Regulation 18(6) of The Public Procurement Regulations 2018, which allows a procuring entity to request corrections to defective qualification information; the PE could verify the bidder's compliance via the Tax Administration portal and ask the bidder to promptly supply his individual TCL within a fixed timeframe.

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