

KNOWLEDGE CENTRE

Responsiveness of Bids

RB:2

Relevant Facts or Questions Asked

A Procuring Entity (PE) sought guidance as follows:

Guidance is required concerning how to proceed with evaluating bids where bidders:

1. Failed to submit the required Delivery Schedule; and
2. Failed to sign or stamp their respective delivery schedule

The PE sought guidance on whether it is allowable to proceed with the evaluation or to disqualify bids due to the circumstances outlined above.

Issues Arising

Whether pursuant to Jamaica's procurement laws now in force, a bidder's omission/failure to satisfy the mandatory requirements should result in the rejection of such a bid.

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.

Issue 1: Non-submission of Delivery Schedule

5. In this instance, the non-submission of the Delivery Schedule would not be adequate grounds for the disqualification of a bid. This is due to the fact that the requirement of the Delivery Schedule was not listed as a qualification requirement. Please see Regulation 19 of The Public Procurement Regulations, 2018 (Regulations) for reference. Hence, the bid should be included in the evaluation process, where the requirement of the delivery schedule is included as a component for the evaluation process.
6. The PE would therefore need to carefully determine whether the non-submission of the delivery schedule is a material omission in accordance with paragraphs 2 and 3 herein. The OPPP is of the opinion that the acceptance of a Delivery Schedule would meet all three of the elements outlined in paragraph 2 and be classified as a material deviation and hence the bid can be deemed non-responsive.

Issue 2: Submission of unsigned or unstamped Delivery Schedule

7. The unstamped and unsigned Delivery Schedule when held up to the light of paragraph 2 herein could be deemed minor deviations, as these irregularities are unlikely to affect the substance of the bid.
8. This is in keeping with Section 36 of the Act, which allows a procuring entity the latitude to regard a bid as responsive even if it contains errors or oversights that can be corrected without affecting the substance of the bid.

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