

KNOWLEDGE CENTRE

Modification of Procurement Proceedings

MPP: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 for the award of contract for the supply and delivery of reagents and equipment for laboratory services;
- II. The entity's pre-tender estimate was J\$400M;
- III. During the preparation of the submission to the Public Procurement Commission (PPC) for its endorsement of the contract award, a proposal was submitted for modification to the tender requirements;
- IV. The PE sought to be guided on whether modification to the tender requirements is permissible under existing procurement law and policy.

Issues Arising

Whether procuring entities are permitted to modify tender requirements/bidding documents post bid submission deadline.

Advice

1. The PE's attention is directed to Regulation 22(1) of The Public Procurement Regulations, 2018 which sets out, *inter alia*, when the pre-qualification or *bidding documents* can be modified which is prior to the bid submission deadline. Additionally, the PE's attention is directed to section 35 of the Public Procurement Act, 2015, which outlines that "*in evaluating bids and determining the successful bid, the procuring entity shall use only those criteria and procedures set out in the bidding documents and apply those criteria and procedures in the manner disclosed in such documents.*"
2. A modification to a bidding document includes the terms and requirements initially imposed by the procuring entity that are to be fulfilled by bidders.
3. In the instant case, the proposal to amend the tender requirements represents not just a modification, but a material modification to the bidding document in general and the requirements to be satisfied by bidders in particular.
4. To initiate the proposed changes after the deadline for submission of bids would be counter to the provisions in Regulation 22(1) of The Public Procurement Regulations, 2018.
5. Further, the referenced provision prevents procuring entities from making arbitrary changes to tender rules and requirements during a tender proceeding which is contrary to the objects of the law, more specifically section 5(d), (e) and (f) of The Public Procurement Act, 2015 (as amended) ("Act").
6. The PE should also be mindful that suppliers prepared respective bids on the basis of the information (inclusive of the defined bid requirements) within the issued tender document. The information and requirements may become obsolete should the terms be changed after the bid submission deadline and fairness would demand that the bidders be given an opportunity to modify their offers.
7. Should the PE decide to proceed with the proposed changes, it must, without delay, cancel the subject tender proceedings in accordance with section 41(1)(b) and 41(3)(b) of the Act and also promptly return the respective bid securities.

8. Thereafter, PE may put into effect the desired changes and re-tender the opportunity.

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