

# KNOWLEDGE CENTRE

## Responsiveness of Bids

**RB:4**

### Relevant Facts or Questions Asked

A Procuring Entity sought guidance as follows:

- I. The Procuring Entity enquired whether bidders' deviation from the requirements for bid security set out in the issued bidding document would be considered a material deviation;
- II. The requirements for bid security in the issued bidding document were as follows:
  1. *The Bid Security shall be in the form of a Bond or Bank Guarantee. If the Bid Security is in the form of a Bond or Guarantee, it must be stamped by the Commissioner of Stamp Duty and submitted in the format prescribed or one approved by the Procuring Entity prior to the submission of the bid.*
  2. *The Bid Security must be valid for a minimum of two hundred and seventy (270) days and should not expire before the bid submission deadline. Bidders are encouraged to ensure that their tender security expires at least sixty (60) days after the bid validity. Also, kindly note that the bond must:*
    - a. *Be issued by a reputable institution selected by the bidder. If the institution issuing the bond is located outside of Jamaica, it shall have a correspondent financial institution located in Jamaica to make it enforceable.*
    - b. *Be substantially in accordance with the Form of Bid Security included in Section IV, Bidding Forms, or another form approved by the Procuring Entity prior to bid submission.*
    - c. *Be payable promptly upon written demand by the Procuring Entity in the case the conditions listed in ITB Sub-Clause 24.5 are invoked;*
  3. *We require forty-eight (48) hours' notice of the Procuring Entity's intention to claim. The demand statement must be received by us at this office within thirty (30) days*

*of the expiry of the bid validity. Any demand in respect of this Bond shall not be valid after that period.*

4. *The Guarantor shall acknowledge the beneficiary's notification of claim within seven (7) working days of the delivery of such notification and pay the beneficiary in accordance with its claim within thirty (30) days of the date of delivery of the notification of the intention to claim..."*

III. The deviations were as follows:

	<b>Type of Tender Security Submitted</b>	<b>Deviation</b>
1	Manager's Cheque	A bond or bank guarantee was not submitted.
2	Tender bond	The bond expired in 108 days, and not the required 270 days.
3	Letter of Credit Guarantee	A bond or bank guarantee was not submitted.
4	Manager's Cheque	A bond or bank guarantee was not submitted.
5	Tender bond	The following were omitted from the bond: <ul style="list-style-type: none"> <li>▪ The requirement for the guarantor to acknowledge the Procuring Entity's notification of claim within seven (7) days.</li> <li>▪ The section requiring the guarantor to pay the amount within thirty (30) days of delivery of the notification.</li> <li>▪ The requirement that the bond is to be governed and construed in accordance with the law of Jamaica.</li> </ul>
6	Tender bond	The bond was signed but not witnessed.
7	Tender bond	The following deviations were observed with the bond: <ul style="list-style-type: none"> <li>▪ The surety's notification period should be thirty (30) days and not twenty-eight (28) days as stated therein;</li> <li>▪ This condition which could result in the bond being called in was omitted: <i>"Refusal to accept the correction of errors in the bid in accordance with conditions of invitation."</i></li> </ul>

## Advice

1. The Procuring Entity's attention is first directed to this Ministry's previous guidance on the responsiveness of bids, which can be found on our website under the "Knowledge Centre" tab using the keyword "responsiveness", checking the box titled "Procurement Policy Implementation", and select enter.
2. The Procuring Entity is 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.

### *Unsubmitted bid bond or guarantee*

3. A manager's cheque instead of a bond or bank guarantee is generally an acceptable deviation. It places the PE in a more advantageous position with respect to the possibility of claiming payment should the bidder withdraw the bid prior to award, or fail to enter the contract when awarded.
4. A letter of Credit guarantee could give similar coverage to a bond. The Procuring Entity could examine the terms of the guarantee to determine whether it may be able to call the security without difficulty.

### *Bid validity less than the number of days required*

5. If the bid validity is for 270 days, then this is not an acceptable deviation. The validity of the bond must be at least equal to the bid validity.

### *Omission from the bid bond*

6. The Procuring Entity may grant the bidder the opportunity to rectify the bonding instrument to conform with the standard form. There are occasions in which the failure to submit the form is a simple oversight on the part of the bidder. Where

there is a simple explanation, the Procuring Entity can use its power to clarify or have the bidder rectify- since there was partial compliance.

***Signed bid bond that was not witnessed***

7. The Trust could allow the bidder to re-submit a signed and witnessed bond.

***The surety notification period is less than the required number of days***

8. These deviations cannot be accepted.

-End-