

DEPARTMENT OF HEALTH PROTECTION

TO: Chief Procurement Officer, Procurement Unit

FROM: Director Health Protection - Procurement Authority For The Procurement Of The Management Of Solid Waste Collection Services

DATE: 31st March 2015

RE: **Report - Cancellation Of The Procurement For The Management Of Solid Waste Collection Services For Zones 1, 2, 3 And 4 Pursuant To Section 28(3) Of The Resolution Of The Procurement Board**

Background to the Procurement

1. A procurement notice was disseminated on 20 May 2014 to the general public for the Management of Solid Waste Collection Services for Zones 1, 2, 3 and 4.
2. The procurement notices invited sealed bids from eligible bidders and detailed that bidding would be conducted through a two-envelope competitive sealed bid procedure pursuant to the Public Procurement and Contract Administration Act, 2012 (the "Act").
3. The Act endorses a two-envelope bidding process. Section 1 of the Act defines what is meant by a "two-envelope bidding process" and section 23 (1) and 23 (6) provides for the manner in which such a procedure must be carried out by the Chief Procurement Officer.
4. The two-envelope competitive sealed bid procedure requires the simultaneous submission of the technical and financial bids by interested bidders, but in separately sealed envelopes. The envelopes therefore must be labeled "Technical Bid" and "Financial Bid". The "Technical Bids" would contain the bidder's proposal based on and intended to meet the scope of works. The "Financial Bids" would contain the financing or cost proposal for such scope of works.
5. The envelopes containing the "Technical Bids" are opened by the Chief Procurement Officer of the Procurement Unit and evaluated by the Evaluation Committee first at the first bid phase. The technical bids which meet the technical criteria set out in the Bid Documents and are deemed to qualify after evaluation are selected (see section 1 of the Act. Section 27 of the Resolution allows for the rejection of bids by the Board at this stage). The envelopes containing the "Financial Bids" for those qualifying bids are then opened in the second bid phase and an award is made by the Procurement Board to the lowest responsive and responsible bidder (see section 26 of the Act). The envelopes containing the financial bids for those technical proposals determined not to have qualified are returned to the bidders unopened.

6. The procurement notice further stated that the bids should be received no later than 4 July 2014 at 12:00 noon and that bids would be opened publicly on 4 July 2014 at 2:00 pm.
7. Addenda were issued subsequent to the 20 May 2014 dissemination which served to inform the general public that the bid closing date was extended to 25 July 2014 at 12 noon and the bids would be opened publicly on 25 July 2014.

The Opening of the Technical Bids

8. Eleven bids were received for the Management of Solid Waste Collection Services for Zones 1, 2, 3 and 4 by the amended closing date and time of 25 July 2014 at 12 noon.
9. The sealed envelopes for the technical bids for the Management of Solid Waste Collection Services were opened on 25 July 2014 at 2:00pm.
10. On 25 July 2014 during the opening of the technical bids the Chief Procurement Officer raised an issue as to the compliance of four of the bids and declined to act any further with regard to those four bids.

Stay of the Procurement

11. On 11 August 2014 one of the bidders for the procurement for the Management of Solid Waste Collection Services was given leave to file judicial review proceedings. Additionally, an injunction was granted restraining the Government of Anguilla from continuing with the procurement for the Management of Solid Waste Collection Services.
12. The matter was heard in December 2014 and a decision issued by the Court on 7 January 2015 held that the noncompliance of the bidder may be excused and the decision of the Chief Procurement Officer not to open the envelopes of the four bids was quashed.

The Evaluation of the Technical Bids

13. Subsequent to the Court's decision, the procurement process progressed and the evaluation committee evaluated the technical bids of the eleven bids pursuant to Part 4 of the Resolution of the Procurement Board which was duly made and published in the Official Gazette of the Government of Anguilla, Vol. 41 No. 5 dated Wednesday 27 February 2014 and tabled in the House of Assembly on 28 February 2014 pursuant to section 42 of the Act (the "Resolution").
14. An evaluation report on the technical bids was produced by the Evaluation Committee and forwarded to the Procurement Authority and the Board pursuant to section 19 of the Resolution.

15. On 24 March 2015, the Procurement Board pursuant to section 27(2) of the Resolution, on its own volition rejected six bids because they material departed from the requirements specified in the Bid Documents.

Second Stay of the Procurement

16. On 24 March 2015 two bidders applied for leave to apply for judicial review and an injunction of the procurement process for the Management of Solid Waste Collection Services for Zones 1, 2, 3 and 4.
17. On 25 March 2015 the Court granted an injunction and the procurement process for Management of Solid Waste Collection Services for Zones 1, 2, 3 and 4 was stayed until further order of the Court.
18. On 31 March 2015 the claim was withdrawn and/or discontinued having obtained permission to do so from the Court on the understanding that the Procurement authority was minded to cancel the process for the reasons set out below.

Decision of the Procurement Authority

19. The Procurement Authority, upon a review of the bid documents following the filing of the claim, has identified sections within the bid documents relating to the technical and financial criteria that give rise to concern when taking into account the Act, Regulations and Resolution of the Procurement Board.
20. The Procurement Authority took into account section 26(2) of the Resolution of the Procurement Board.
21. For these reasons, the Procurement Authority, prior to the acceptance of a successful bid, has made the decision to **cancel the procurement for the Management of Solid Waste Collection Services for Zones 1, 2, 3 and 4** pursuant to section 28 of the Resolution.

Best Regards,



Ambrell Richardson
Director, Health Protection
Procurement Authority

Cc. Administrator