

REQUEST FOR PROPOSALS
CONSULTANCY FOR THE CONDUCT OF AN ASSESSMENT OF
COMPETITION IN THE SUPPLY OF ELECTRONIC COMMUNICATION
SERVICES

DOCUMENT NO. RFP 2015/TEL/003/RFP.001

CLARIFICATION #1

DATE: JULY 3, 2015

Question 1

Our firm has previously supplied software to a company affiliated to one of the telecommunications service providers operating in Jamaica. We have an ongoing maintenance agreement for this software but do not provide any consulting or advisory services to the firm or its affiliates. Under these circumstances, please can you clarify whether we would be eligible for the contract?

Answer 1

Section 1.6 of the RFP which deals with Conflict of Interest states as follows:

- “
- 1.6 *Consultants are required to provide professional, objective, and impartial advice and at all times hold the OUR's interests paramount, strictly avoid conflicts with other assignments or their own corporate interests and act without any consideration for future work.*
- 1.6.1 *Without limitation on the generality of the foregoing, Consultants, and any of their affiliates, shall be considered to have a conflict of interest and shall not be contracted, under any of the circumstances set forth below:*

- (i) *A firm that has been engaged by the OUR to provide goods, works or services other than consulting services for a project, and any of its affiliates, shall be disqualified from providing consulting services related to those goods, works or services. Conversely, a firm hired to provide consulting services for the preparation or implementation of a project, and any of its affiliates, shall be disqualified from subsequently providing goods or works or services other than consulting services resulting from or directly related to the firm's consulting services for such preparation or implementation. For the purpose of this paragraph, services other than consulting services are defined as those leading to a measurable physical output, for example surveys, exploratory drilling, aerial photography, and satellite imagery.*

- (ii) *A Consultant (including its Personnel and Sub-Consultants) or any of its affiliates shall not be hired for any assignment that, by its nature, may be in conflict with another assignment of the Consultant to be executed for the OUR or for another procuring entity. For example, a Consultant hired to prepare engineering design for an infrastructure project shall not be engaged to prepare an independent environmental assessment for the same project, and a Consultant assisting the OUR in the privatization of public assets shall not purchase, nor advise the procuring entities of, such assets. Similarly, a Consultant hired to prepare Terms of Reference for an assignment should not be hired for the assignment in question.*

- (iii) *A Consultant (including its Personnel and Sub-Consultants) that has a business or family relationship with a member of the OUR's staff who is directly or indirectly involved in any part of (i) the preparation of the Terms of Reference of the assignment, (ii) the selection process for such assignment, or (iii) supervision of the Contract, may not be awarded a Contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to the OUR throughout the selection process and the execution of the Contract.*

1.6.2 *Consultants have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of the OUR, or that may reasonably be perceived as having this effect. Failure to disclose said situations may lead to the disqualification of the Consultant or the termination of its Contract.*

1.6.3 No agent or current employees of the OUR shall be permitted to work as Consultants in connection with the project to which this RFP relates. Recruiting former employees of the OUR to work on this project is acceptable provided no conflict of interest exists. If the Consultant nominates any Government employee as Personnel in its technical proposal, such Personnel must have written certification from the Government or their employer confirming that they are on leave without pay from their official position and allowed to work full-time outside of their previous official position. Such certification shall be provided to the OUR by the Consultant as part of its technical proposal... ”

It should be noted that the mere presence of a conflict of interest is independent of and separate from any evidence or appearance of impropriety. Such conflict may arise in circumstances wherein there is any possible risk, perceived or otherwise, that a party's professional judgement or actions in a fiduciary relationship regarding a present party of primary interest (such as the OUR) will be unduly influenced by a separate and secondary interest.

We are of the view that the ongoing provision of maintenance services for the software provided to the company affiliated to the local telecommunications company could prevent the Consultant from providing impartial advice to the OUR or from acting without any possible consideration for future work. We are of the view that this would amount to a conflict of interest and would prevent the Consultant from being engaged by the OUR for this project.

Question 2

The RFP does not mention the need or requirement of face-to-face meetings of the Consultant with OUR staff. Could the OUR please clarify whether, in the course of the Project, it will require the Consultant to meet face-to-face with OUR staff a minimum number of times to review ongoing Project work and, if so, could the OUR specify the required minimum number of such meetings. Further, could the OUR please indicate whether and how the number of proposed face-to-face meetings with the OUR will be taken into account in scoring Consultants' responses to the RFP?

Answer 2

The OUR has not predetermined the minimum number of face to face meetings that the Consultant should have with the OUR staff. This is a decision for the Consultant. It should also be noted that the OUR is not against having virtual meetings where appropriate. It is expected that the Consultant in its proposal, under the section dealing with Work Plan, will indicate the

stages when and how it proposes to meet with OUR staff and the purpose of each meeting. There is no specific score to be allotted for face-to-face meetings when evaluating the proposals. However, the Work Plan of the Consultant, which may include face-to-face meetings, will be evaluated and scored as indicated in section 5.2 of the Data Sheet in the RFP.

Question 3

The Data Sheet adds a paragraph to the conflict of interest provisions in 1.6.1 that prohibit the contracting of a Consultant (including its Personnel and Sub-Consultants) that is engaged in a contract to provide services to any telecommunications services provider in Jamaica or any affiliate thereof. As written, this prohibition would limit access by the Consultant to certain qualified Sub-Consultants, notably Jamaican consumer survey firms and Jamaican-qualified lawyers that may be engaged by a telecommunications services provider in Jamaica or an affiliate thereof. Consumer survey firms and lawyers are experienced in performing services for competing interests without compromising their advice or raising conflict of interest concerns. Further, Jamaica is a relatively small market and it is unlikely that any experienced Jamaican consumer survey firms and Jamaican-qualified lawyers would not be conflicted under this provision. Accordingly, we respectfully request that new paragraph 1.6.1(iv) be amended to apply the conflict of interest provisions to the Consultant and its personnel, but not to its Jamaica-based Sub-Consultant Jamaican consumer survey firms and Jamaican-qualified lawyers.

Answer 3

The OUR intentionally added the relevant paragraph to the said Conflict of Interest provision. In the course of its procuring activities and for the purposes of transparency, the OUR strives to anticipate and eliminate all possible avenues wherein a conflict of interest could occur or arise because of previous and continuing conditions or fiduciary relationships. Although Jamaica is indeed a relatively small market relative to that of more developed nations, there still remains a sufficient number of qualified consumer survey firms and lawyers. As such, even with the disqualification of some of these companies from being sub-contracted, Consultants should still have little difficulty finding suitable alternatives for this project. It should also be noted that the Conflict of Interest Provisions only excludes companies with current/continuing engagements to local telecommunications companies and their affiliates from being sub-contracted.

Question 4

In Section 5, Part D.1 of the RFP (pages 53-54), project team composition requirements are described, which consist of a Team Leader and two Industry Analysts. The RFP indicates that
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while three team positions are defined in the RFP, a Consultant make choose propose a project team consisting of less than or more than three members. At the same time, under Section 5.2(iii) of the Data Sheet Instructions to the Consultant (page 25 of the RFP) the specified project team (key professional staff) rating criteria appear to apply in the case of a three member team, with a maximum of 10 percentage points allocated to each team member and a maximum of 30% for the team as a whole.

- a) Could the OUR please confirm that the descriptions of Industry Analyst #1 and #2 described on pages 53 and 54 of the RFP were intended to be identical. If not, please provide revised descriptions.
- b) Regarding the application of the project team (key professional staff) rating criteria described in Section 5.2(iii), could the OUR please explain by way of example how the rating criteria would be applied in the case (i) where there were less than three team members (e.g., a team leader and one Industry Analyst) and (ii) where there are more than three team members

Answer 4

- a) The OUR can confirm that the description of Industry Analyst 1 and Industry Analyst 2 are identical. Given the expected volume of work and the time period in which it is to be completed, the OUR considers that a minimum of two Industry Analysts are needed for this project.
- b) If less than three team members are indicated, for instance a Team Leader and one Industry Analyst, then the Consultant would only be scored on those two distinct positions and could only receive a maximum score of 20 for that section. Where more than three persons are indicated, the scoring would still be based on the three distinct positions identified in the RFP. For instance, if two persons are indicated in the proposal as Team Leader, then both will be scored in accordance with the RFP and their scores averaged. As such, the maximum score for each position will remain at 10 even if more than one person is identified as filling a particular position.

Question 5

It is mentioned in paragraph 3.3(b) of the Instructions to Consultants Data Sheet (page 21) that “the estimated number of professional staff-months required for the assignment is nine (9) months”. Can you clarify if the number of staff months required to do this project is 9 staff-

months or are these 9 months the duration of the project? If the 9 months are the duration of the project what is the estimated workload for this project in terms of staff-months?

Answer 5

The nine (9) months indicated in the Data Sheet is in reference to the expected duration of the project. It is left to the Consultant to propose the number of staff months that they require to achieve the scope of work listed in the RFP. The number of staff months will largely be dependent on the proposed Methodology and Work Plan of the Consultant.

Question 6

Can you confirm that a legal expert / lawyer is not required for this project and that the project does not include any drafting of legal documents? For example the regulatory interventions that the consultant may find as appropriate will be recommended to OUR and it is OUR who will decide and include these recommendations in a legal document/decision.

Answer 6

The OUR can confirm that a legal expert is not required for the project and the project does not include the drafting of legal documents. However, it should be noted that the OUR is bound by the provisions of the Telecommunications Act (“the Act”) and any findings and recommendations made by the Consultant to the OUR in relation to this project should accord with the legal framework governed by the Act. As such, it is expected that the Consultant will familiarise itself with the sections of the Act which are applicable to this project. In all cases, it will be the OUR that ultimately decides what is to be included in decision documents, as all documents written by the Consultant will be vetted by the OUR. Further, only the OUR is authorised to share documents with the public in relation to this project.

Question 7

As travel costs from Europe to Jamaica are important, how much time would OUR require the consultant to be on site? For example are 3 trips of 3-4 days during the whole project enough as the majority of the work will be done from the Consultant's office?

Answer 7

As indicated earlier in Answer 2, the OUR has no stipulation as to the number of face-to-face meetings which are required. Further, the OUR has no stipulation on the number of days an onsite trip should span. This is left solely to the discretion of the Consultant. The OUR is aware that the number of onsite visits and the length of each visit will impact the Consultant's Financial Proposal. It is therefore worth reminding potential bidders that the OUR will be using a Quality and Cost based method of selection in determining the winning bidder as stated in the RFP.

Question 8

Do we have to mention the name of the local research firm in our proposal or could the Research firm be decided later whenever the project is attributed to the Consultant?

Answer 8

The name of the research firm does not have to be submitted in the proposal since the local research firm selected by the Consultant does not have to be approved by the OUR. However, the OUR expects to have an input in the formulation of the questions to be posed in the market survey. To prevent any delays in the completion of the project, the OUR would recommend that the Consultant at least has a tentative agreement with a local research firm to conduct the market survey.

Question 9

Can you confirm that the consultation with the stakeholders should only be on the principles, methodology and guidelines and that it should not include the recommendations/results in terms of markets defined, whether an operator has been found dominant in a market and the potential regulatory measures that will be applied?

Answer 9

The RFP envisages that consultation with stakeholders in relation to this project will cover the principles and methodology that will be used to determine what constitutes a market and which operators, if any, are deemed to be dominant in those markets. That is, the results of the

assessment should also form part of the consultation with stakeholders. It is not expected that the potential regulatory remedies to correct for dominance, if it is found, will be part of the consultation with stakeholders at this point. The Consultant is also expected to prepare a report on the potential regulatory remedies to correct for dominance. If the initial assessment of the market as detailed in the Consultation Document suggests that dominance exists in some markets, if the scale and scope of the dominance is limited and the proposed remedy to correct the market failure is not overly involved, the OUR may take the decision to include the proposed remedy as part of the Consultation Document.

Question 10

Section 3.4 (a) page 12 of the RFP states: “For each assignment, the outline should indicate the names of Sub-Consultants/ Professional staff, duration of the assignment, contract amount, and Consultant’s involvement. Information should be provided only for those assignments for which the Consultant **was legally contracted by the OUR** as a corporation or as one of the major firms within a joint venture” Does this mean that only the assignments done for OUR should be mentioned in TECH 2 or is this a mistake and assignments done for other clients should be added here?

Answer 10

This is an error. Assignments done for other clients should also be included.

Question 11

Form TECH-6, under “12. Work Undertaken that Best Illustrates Capability to Handle the Tasks Assigned” we have:

Name of assignment or project:

Year:

Location:

OUR:

Main project features:

Positions held:

Activities performed

Can you also tell us if this is a mistake having “OUR:” there and that the CVs should include any relevant work done for other clients and not only work done for OUR?

Answer 11

This is also an error. The section “OUR” should be omitted and replaced with “CLIENT” to indicate the company for whom the project was done.

Question 12

Paragraph 3.7 of the Instructions to Consultants deals with the two local tax issue: 1) the inclusion/exclusion of local taxes in the Financial Proposal and 2) the evaluation of such taxes in the context of the scoring of the Financial Proposal by the OUR, as follows: “Any such amounts shall not be included in the Financial Proposal as they will not be evaluated”.

In the corresponding section of the Data Sheet, it deals with the first of these issues: “Notwithstanding... the proposed Contract Sum shall be deemed to include all such taxes, duties, fees or other impositions.” And that “the OUR may be required to withhold taxes from certain payments made to non-resident/overseas-based Consultants.”

However, the Data Sheet does not deal with the second of these issues – the evaluation of such taxes in the context of the scoring of the Financial Proposal by the OUR.

We note that Non-resident and resident firms may or may not be subject to withholding taxes and hence including taxes in the scoring of the Financial Proposals would have the effect of penalizing non-resident firms for which a withholding tax applies, thereby favouring resident firms. Further, as the OUR may be aware, the withholding tax in Jamaica differs by country of the non-resident firm and this would also penalize/favour firms based on the applicable origin of the non-resident firm.

Taking all this into account, please clarify as to whether or not any local and withholding taxes included in the Financial Proposal will or will not be evaluated in the scoring of the Financial Proposal by the OUR.

Answer 12

The Data Sheet does implicitly deal with the issue of the evaluation of taxes in the scoring of the Financial Proposal by the OUR when it states:

“Notwithstanding paragraph 3.7 of the Instructions to Consultants, the Consultant is required to ascertain its liability for Jamaican taxes, duties, fees or other impositions, and take any such taxes, duties, fees and other impositions, if any, into account when finalizing its Financial Proposal, as it will be responsible for paying such taxes. The proposed Contract Sum shall be deemed to include all such taxes, duties, fees or other impositions”

The Contract Sum which is deemed to be inclusive of all applicable taxes is what will be evaluated when assessing financial proposals.

The OUR is cognisant of potential disparities which may arise as a result of differences in the liability for Jamaican taxes on the basis of the location of the Consultants. However, this matter is outside the control of the OUR as this organisation has no jurisdiction over Jamaican tax liability. As indicated in the RFP, Consultants are encouraged to ascertain their own liability for Jamaican tax purposes and factor it in the preparation of their Financial Proposal.