



SUMMARY OF FINDINGS

TENDER NO. 07/2023/51

February 02, 2024

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File No.	013/2023/INV
Complainant	MS Investments
Tender Reference No.	07/2023/51
Procuring Entity	Ministry of Home Affairs
Evaluation Board	National Procurement & Tender Administration Board (‘NPTAB’)

Background

[1] On June 6th, 2023, the Public Procurement Commission (PPC) (‘the commission’) received a letter dated May 30th, 2023, from MS Investments, signed by Mr. Siddiq Mohamed, Manager (‘the complainant’) alleging certain irregularities in the contract award of Tender Reference No. 07/2023/51 – Procurement of Dry and Fresh Rations for Inmates and Officers Lots 1-4 – Guyana Prison Service by the Ministry of Home Affairs. The tender was evaluated by the National Procurement and Tender Administration Board (NPTAB).

[2] The complainant alleged that-

- he submitted a bid for four (4) lots of the aforementioned tender, to wit, New Amsterdam, Lusignan, Camp Street and Timehri;
- the Evaluation and Qualification Criteria stated that the “*bid will be awarded least cost per item.*”
- on Tuesday May 30th, 2023, he received a RTP for Timehri Prison via WhatsApp from the procuring entity listing the items that he was awarded through the evaluation process;
- in that message was a RTP for ‘AZ Halaal Butchery’ for the said tender which showed that the said Butchery was awarded for four (4) items, the price of which was higher than the bid of the complainant, to wit, for fresh beef, salt beef, mince beef and yam.

[3] The complainant further attached a letter he sent to NPTAB dated May 30th, 2023, outlining the aforesaid. He also attached a letter dated May 31st, 2023, from him to the Permanent Secretary of the procuring entity (Ministry of Home Affairs) (‘MOHA’) requesting that the matter be resolved with five (5) working days failing which he would make a request to the PPC for an investigation.

[4] By way of the aforesaid letter to the PPC, the complainant requested that an investigation be launched into the award of the aforesaid items; the contract therefor, he alleged, being due to be signed on June 6th, 2023. That is, the date the letter was received by the commission.

[5] After obtaining certain particulars as to the tender from the complainant and the commission being satisfied that there were *prima facie* grounds for launching an investigation pursuant to its functions as set out in Art. 212AA of the constitution of The Co-operative Republic of Guyana, the commission on June 9th, 2023, informed NPTAB of the complaint. Further, pursuant to Article

212DD of the constitution, the commission requested NPTAB to submit the following information within five (5) days of the date of the said letter-

- i. a copy of the tender documents, Report of the Evaluation Committee and all other such relevant documents touching and concerning the tender,
- ii. confirmation whether the contract therefor has been entered into, and if so, particulars thereof,
- iii. confirmation of whether S. 39(3) of the Procurement Act, Cap. 73:05 was complied with, that is, whether the Report of the Evaluation Committee was sent to the procuring entity and they gave their approval or disapproval prior to the contract award decision and its publication,
- iv. whether the contract award decision has been published on the Board's website as mandated by S. 11 of the Procurement Act, Cap. 73:05.

[6] A similar request was also made on the said date to the procuring entity (MOHA) through its Permanent Secretary.

[7] The Permanent Secretary of the procuring entity (MOHA) responded by way of a letter dated June 14th, 2023, and received by the commission on June 16th, 2023, stating that she had informed NPTAB of the complaint on June 2nd, 2023, and was awaiting a response. She further stated that the complainant was so informed. To the said letter was attached the letter of June 2nd, 2023, to NPTAB informing of the complaint which sought rectification. The Permanent Secretary in that letter to NPTAB informed NPTAB that the Ministry was in the process of preparing contracts which were scheduled to be signed on June 5th, 2023, and was in the circumstances requesting the advice of the Board on the way forward.

[8] NPTAB responded to the commission's request by way of letter dated June 13th, 2023, and received by the commission on June 22nd, 2023. It stated that-

- i. Copies of the tender documents, Report of the Evaluation Committee and all other such relevant documents with reference to the subject tender were attached,
- ii. The Ministry of Home Affairs signed contracts with the recommended suppliers on June 5th, 2023,
- iii. Pursuant to S. 39(3) of the Procurement Act, Cap. 73:05, a copy of the Evaluation Report and recommended tenderers was shared with the procuring entity,
- iv. Pursuant to S. 11(1) of the Procurement Act, Cap. 73:05, the award was published on NPTAB's website on April 20th, 2023.

[9] Although stating that "*the tender documents, Report of the Evaluation Committee and all other such relevant documents with reference to the subject tender*" were attached to the said letter dated June 13th, 2023, they were not so attached. The commission after numerous follow-ups and a public disclosure by way of Press Release on October 31st, 2023, as to the non-submission of information to the commission to permit pending investigations (which included the matter herein), the commission finally received from NPTAB in November 2023, a copy of the tender proceedings, including the Evaluation Report. That is, some five (5) months after the request therefor.

[10] In accordance with S. 39(3) of the Procurement Act, Cap. 73:05 and having regard to NPTAB's statement that it was complied with, the procuring entity ought to have had within its possession the Report of the Evaluation Committee. However, despite the request as aforementioned, the procuring entity failed to submit same to the commission or respond directly to the itemized requests.

[11] On review of the Report of the Evaluation Committee, it was determined by the commission that the contract documents were required to determine what cost per item was in fact contracted. These were requested from the procuring entity in November 2023 and submitted to the commission in December 2023.

Analysis

a. Procedure

[12] Among the thirteen (13) functions of the commission enshrined in Article 212AA the constitution, the commission is vested with three (3) investigative functions – Article 212AA (h), (i) & (j).

[13] 'Investigations' may be brought before the commission in one of two ways-

- i. **Administrative Review** through the 'Bid Protest' procedure which is reserved only for tenderers pursuant to Part VII of the Procurement Act, Cap. 73:05. The process therefor is strict. A complainant must submit a 'Bid Protest' to the procuring entity within five (5) business days of the publication of the contract award. The timely submission of a Bid Protest stops the final contract award decision. If the 'Bid Protest' is not reviewed within five (5) business days or the complainant is dissatisfied with the review, then a request for an Administrative Review can be made to the PPC. The complaint is heard by the Bid Protest Committee of the commission and decisions made thereunder are binding on the procuring entity.
- ii. **Request for an Investigation** into an irregularity or mismanagement. Although the ambit of persons which can invoke the jurisdiction of the commission under this heading is wider (and may also include tenderers, contractors and or suppliers), the remedies thereunder are in the form of recommendations.

[14] There is no statutorily prescribed form for a Bid Protest or Administrative Review. The commission being aware that in the circumstances, there may be uncertainties which may arise from navigating the procedure therefor, has pursuant to its authority under S. 17(2) of the Procurement Act, Cap. 73:05, created and published on its website (www.ppc.org.gy) forms for the lodging of a Bid Protest and an Administrative Review. It must be noted that the Forms are a guide and do not invalidate a Bid Protest lodged in any other format.

[15] It appears from the aforementioned correspondence, that at the time the procuring entity became aware of the dissatisfaction of the complainant and his request for rectification, the subject contract was not yet signed. In the premises, the procuring entity ought to have stopped the final award decision pursuant to Part VII of the Procurement Act, Cap. 73:05; deeming the letter a Bid Protest. As a result of their failure to do so, they will have to suffer the consequences flowing therefrom.

[16] Notably, the letter of the complainant did not request an “Administrative Review”, rather an investigation.

[17] The commission accordingly in exercise of its constitutional mandate and functions, initiated an investigation as distinct from an ‘Administrative Review’ pursuant to Part VII of the Procurement Act, Cap. 73:05.

b. Methodology

[18] The commission adopted the following methodology:

- i. First, determine on the request for an investigation whether there are *prima facie* grounds of mismanagement and or irregularity.
- ii. On being satisfied thereof, request all of the relevant documentation and review the subject tender proceedings to determine whether any irregularities as alleged or otherwise appear thereon.
- iii. If so, bring the irregularities and or mismanagement to the attention of the procuring entity and subject tender board for an explanation together with a request (if applicable) for remedial action within a certain time frame.
- iv. The complainant is informed accordingly thereafter.

[19] Ideally, the commission strives to complete the aforesaid process within twenty-one (21) days of receipt of the complaint (request for investigation). However, the timeframe, as seen herein, may be altered due to the failure of the procuring entity and or tender board to submit information within a timely manner.

[20] The commission considered the following documents-

- i. Letter dated May 30th, 2023, from complainant to NPTAB dated May 30th, 2023.
- ii. Letter dated May 31st, 2023, from complainant to the procuring entity through the Permanent Secretary.
- iii. Letter dated May 30th, 2023, from the complainant to PPC.
- iv. Letter dated June 6th, 2023, from the PPC to the complainant.
- v. Email dated June 7th, 2023, from the complainant to the PPC.
- vi. Letter dated June 7th, 2023, from the PPC to the complainant.
- vii. Email dated June 8th, 2023, from the complainant to the PPC.
- viii. Letter dated June 9th, 2023, from the PPC to NPTAB.

- ix. Letter dated June 9th, 2023, from the PPC to the Permanent Secretary, Ministry of Home Affairs.
- x. Letter dated June 14th, 2023, from the Permanent Secretary, Ministry of Home Affairs to the PPC with attached letter dated June 2nd, 2023, from the said Ministry to NPTAB.
- xi. Letter dated June 13th, 2023, from NPTAB to the PPC.
- xii. Letter dated July 7th, 2023, from the PPC to the Permanent Secretary, Ministry of Home Affairs.
- xiii. Letter dated September 6th, 2023, from PPC to the Permanent Secretary, Ministry of Home Affairs.
- xiv. Letter dated September 4th, 2023, and received on September 9th, 2023, from the Permanent Secretary, Ministry of Home Affairs to the PPC.
- xv. Letter dated September 13th, 2023, from the PPC to the Permanent Secretary, Ministry of Home Affairs.
- xvi. Letter dated September 22nd, 2023, and received on September 25th, 2023, from the Permanent Secretary, Ministry of Home Affairs to the PPC.
- xvii. Letter dated September 22nd, 2023, from the PPC to NPTAB.
- xviii. Letter dated November 20th, 2023, from the PPC to the complainant.
- xix. Letter dated November 20th, 2023, from the PPC to the Permanent Secretary, Ministry of Home Affairs.
- xx. Letter dated November 27th, 2023, from the Permanent Secretary, Ministry of Home Affairs to the PPC.
- xxi. Letter dated December 27th, 2023, from the PPC to the Permanent Secretary, Ministry of Home Affairs.
- xxii. Letter dated December 27th, 2023, from the PPC to NPTAB.
- xxiii. Letter dated December 27th, 2023, from the PPC to the complainant.
- xxiv. Letter dated January 19th, 2024, from the PPC to NPTAB.
- xxv. Letter dated January 19th, 2024, from the PPC to the Permanent Secretary, Ministry of Home Affairs.
- xxvi. Letter dated December 29th, 2024, and received on January 22nd, 2024, from NPTAB to the PPC.
- xxvii. Letter dated January 24th, 2024, from the PPC to NPTAB.
- xxviii. Letter dated January 26th, 2024, and received on January 30th, 2024, from NPTAB to the PPC with attached letter dated May 22nd, 2023, from the Permanent Secretary, Ministry of Home Affairs to NPTAB, and letter dated May 23rd, 2023 from NPTAB to the Permanent Secretary, Ministry of Home Affairs.
- xxix. Standard Bid Solicitation Document Tender Reference No. 07/2023/51 dated January 2023.
- xxx. Bid Submission of the complainant.
- xxxi. Contract Document between the Ministry of Home Affairs and Super Graphics dated May 29th, 2023, executed on June 5th, 2023.
- xxxii. Contract Document between the Ministry of Home Affairs and R. Wharton Mini Mart dated May 29th, 2023, executed on June 5th, 2023.
- xxxiii. Contract Document between the Ministry of Home Affairs and Super Graphics dated May 29th, 2023, executed on June 6th, 2023.

- xxxiv. Contract Document between the Ministry of Home Affairs and S&K Construction, Consultancy Services and General Supplies Inc. dated May 29th, 2023, executed on June 6th, 2023.
- xxxv. Contract Document between the Ministry of Home Affairs and NY Venture dated May 29th, 2023, executed on June 6th, 2023.
- xxxvi. Contract Document between the Ministry of Home Affairs and AZ Halaal Butchery dated May 29th, 2023, executed on June 6th, 2023.
- xxxvii. Contract Document between the Ministry of Home Affairs and Star Imports and Trading dated May 29th, 2023, executed on June 5th, 2023.
- xxxviii. Contract Document between the Ministry of Home Affairs and P Ramroop & Sons dated May 29th, 2023, executed on June 7th, 2023.
- xxxix. Contract Document between the Ministry of Home Affairs and I & S Sankar's Importers and Distributors dated May 29th, 2023, executed on June 6th, 2023.
- xl. Contract Document between the Ministry of Home Affairs and Andrew's Enterprise dated May 29th, 2023, executed on June 5th, 2023.
- xli. Contract Document between the Ministry of Home Affairs and HR Distributors dated May 29th, 2023, executed on June 5th, 2023.
- xlii. Contract Document between the Ministry of Home Affairs and M & D Investments dated May 29th, 2023, executed on June 6th, 2023.
- xliii. Contract Document between the Ministry of Home Affairs and Guybiz Establishment dated May 29th, 2023, executed on June 5th, 2023.
- xliv. Contract Document between the Ministry of Home Affairs and Paradise Food Products dated May 29th, 2023, executed on June 5th, 2023.
- xlv. Contract Document between the Ministry of Home Affairs and Survival Shopping Complex dated May 29th, 2023, executed on June 5th, 2023.
- xlvi. Contract Document between the Ministry of Home Affairs and Raphael's Trading Enterprise dated May 29th, 2023, executed on June 5th, 2023.
- xlvii. Tender Evaluation Report dated January 2023.
- xlviii. Cabinet Decision (CP (2023) 04:06:6(n)(ix).
- xliv. NPTAB letter of Contract Award.
 - l. Report of the Operations Department, PPC.

c. Evaluation of Bids

[21] In January 2023, the Ministry of Home Affairs issued an Open Tendering process for the Procurement of Dry and Fresh Rations for Inmates and Officers, Lots 1-4, Guyana Prison Service, Ministry of Home Affairs, for the period of twelve (12) months.

[22] Forty-nine (49) bids were received. On evaluation by NPTAB, thirty (30) of the forty-nine (49) bids were found to be non-responsive. No complaints were received by the PPC with regard to those rejected bids. The complainant was deemed responsive.

[23] The complaint concerned Lot 3(A) of the four (4) Lots of the tender. As aforementioned, the items questioned in that Lot by the complainant were fresh beef, salt beef, mince beef and yam. That is, items #2, #4, #6 and #33, respectively.

[24] On review of the record before the commission, the following was found with regard to the aforementioned items in Lot 3(A)-

Name of Bidders	Fresh Beef Item #2	Salt Beef Item #4	Mince Beef Item #6	Yam Item #33
MS Investments	\$1200	\$1500	\$1500	\$560
AZ Halaal Butchery	\$1452	\$1980	\$1980	\$792
M&D Investment	\$1485	\$1610	\$1800	\$900
Memorex Enterprise	\$1400	\$1550	\$3200	\$800
NT Ventures	\$1397	\$1900	\$1960	NO BID
HR Distributors	\$1318	\$1850	\$1900	NO BID
Star Imports & Trading	\$1400	\$1500	\$1400	\$500
Super Graphics	\$1518	\$1650	\$1569	\$1012
Ralph's Trading Enterprise	\$1505	\$1636	\$1555	\$1003
INS Sankars Imports & Distributors	\$1638	NO BID	NO BID	NO BID
Guybiz Establishment	\$1585	\$1610	\$1840	\$900
P. Ramroop & Sons	NO BID	NO BID	NO BID	NO BID

[25] The Evaluation and Qualification Criteria set out in the Standard Bid Solicitation Document dated January 2023 provided-

- No. 17 – *“Bidder must bid for all items in the lot.”*
- No. 18 - *“Bids will be awarded least cost per lot.”*

[26] There was however an Addendum thereto which deleted the aforesaid Nos. 17 and 18 and replaced them with-

- No. 17 - *“Bids will be awarded least cost per item.”*

[27] The latter formed part of the Contract Document and is in accordance with the complaint that the bid would be awarded the lowest cost per item.

d. Findings

[28] Accordingly on review of the aforesaid, the commission found that-

- i. The complainant, MS Investments, was the lowest priced proposal for item #2 in Lot 3A of the subject tender, to wit, ‘fresh beef’, but was not awarded this item. It was erroneously awarded to Star Imports & Trading.
- ii. Both the complainant, MS Investments and Star Imports & Trading bid the same price for item #4 in Lot 3A of the subject tender, to wit, ‘salt beef’, however, the Evaluation Committee recommended the award for the supply of this item to P. Ramroop & Sons, who the record before the commission reflects, did not bid for this item.
- iii. The complainant was not the lowest bid proposal for items # 6 and #33 in the said Lot, to wit, ‘mince beef’ and ‘yam’ as alleged. Star Imports & Trading was the lowest bid proposal for those items and was rightfully so awarded.
- iv. Contrary to the allegation of the complainant, AZ Halaal Butchery was not awarded any of the items in issue.
- v. The copy of the Evaluation Report submitted reflects that it was signed by only one (1) of the three (3) Evaluators.

[29] On the settlement of the aforesaid findings of the commission at its meeting on Friday 22nd December 2023, the commission, in accordance with its aforesaid methodology, wrote to the procuring entity and NPTAB on December 27th, 2023, to bring the aforesaid to their attention. The commission further requested that they submit within seven (7) days of the letter, an explanation therefor and any corrective measures which they propose to take.

[30] After numerous follow ups and a reminder letter dated January 19th, 2024, NPTAB finally responded by way of letter dated December 29th, 2023, and received by the commission on January 22nd, 2024, stating –

“NPTAB is pleased to confirm the approval issued to the Ministry of Home Affairs on May 23rd, 2023. This approval allows the contract to proceed, aligning with corrections highlighted in a letter responding to the Permanent Secretary’s request. The awarded sum ... adequately covers the proposed changes.”

[31] The commission sought clarification of the aforesaid from NPTAB by way of letter dated January 24th, 2024.

[32] NPTAB responded by way of letter dated January 26th, 2024, and received by the commission on January 30th, 2024, attaching the referenced request of the procuring entity dated May 23rd, 2023, and the approval thereof by NPTAB dated the said May 23rd, 2023.

[33] The said letters on review, however, do not relate to the subject items. The request from the procuring entity related to corrections for-

- *“Lot 1 C Line Item 64 was not awarded.*
- *Lot 1 D Line Item 5 was not awarded.*

- *Lot 1 D Line Item 9 was awarded to R. Wharton Mini Mart, however on the price schedule R. Wharton Mini Mart, did not bid for said line item.*
- *Lot 3 B Line Item 46 was not awarded.*
- *Lot 4 B Line Item 38 was not awarded.*
- *Lot 4 C Line Item 13 was not awarded.*
- *Lot C 4 Line item 5 was awarded to Perba Trading & Construction, however, on the price schedule Perba Trading & Construction did not bit [sic] for the said line item.*
- *Please see spread sheets attached with further discrepancies.”*

[34] The procuring entity did not respond to the commission’s letter of December 27th, 2023.

[35] In light of the record before the commission not showing an award to AZ Halaal Butchery as alleged by the complainant, the commission requested of the complainant by way of letter also dated December 27th, 2023 to submit within five (5) days of the date thereof, the WhatsApp chat to which he referred in his complainant as evidencing an award to the said AZ Halaal Butchery, or any other matters supporting his allegation in this regard.

[36] The complainant responded on January 31st, 2024, after the time delimited for response and after the commission had on January 30th, 2023, adopted the findings herein. The complainant stated that the information the commission required was “in the bidding documents”. However, an award, does not form part of the bidding documents.

[37] The commission having nothing before it to the contrary, the aforesaid findings stand.

Recommendations

- I. The procuring entity was in error in not awarding the contract for item #2 (‘fresh beef’) in Lot 3 of the subject tender to the complainant, MS Investments since, on the record, he was the lowest priced proposal for that item in accordance with the Evaluation and Qualification Criteria. The award of item #2 in Lot 3A of Tender Reference No. 07/2023/51 to Star Imports & Trading was therefore in breach of S. 39(2) of the Procurement Act, Cap. 73:05.

In the premises, the contract entered into therefor should be rescinded and a contract entered into with the complainant together with compensation to the complainant for lost revenue for the lapsed period of the contract. However, the entry into a contract and part performance since June 2023 could give rise to privity of contract issues and practical considerations. It is therefore recommended that in the alternative, the complainant be compensated by the procuring entity for his loss as a result of wrongly not being awarded the contract. The compensation should reflect the profit he would have earned during the contract period of twelve (12) months.

- II. The procuring entity also fell into error in the contract award for item #3 (‘salt beef’). Both the complainant and Star Imports & Trading bid the same price for this item. Therefore, the award ought to have been split equally between the suppliers.

In light of the contract being entered into, the aforesaid recommendation (I) also applies to this item.

- III. The Report of the Evaluation Committee, having only been signed by one (1) of the three (3) Evaluators, is not valid and effectual. This the commission views as an irregularity which can be remedied on the signing by the other two Evaluators or a majority thereof. It is recommended that the other Evaluators, if agreeable with the Report dated January 2023 sign the Report so validating. If not, the entire award is vitiated.
- IV. It is recommended that for tenders such as that herein, where there is more than one lot and a number of items in each lot, that the award be made per complete lot and not per item. The award per item can prove cumbersome as shown herein where a number of discrepancies were found and for which correction had to be made prior to the contract signing. This was recognized by NPTAB in its aforesaid letter to the procuring entity dated May 23rd, 2023, in response to the procuring entity's request for correction. The last paragraph of the said letter reads-

“As a result of the foregoing, the Board is advising that future tender for projects of this nature be awarded per complete lot in an effort to avoid discrepancies and delays in the process.”

The commission endorses this course.

- V. It is recommended that complainants contact the PPC for guidance before filing a complaint to ensure that the correct procedure is followed.
- VI. The commission once again expresses grave disappointment and concern at the sloth and non-response by the procuring entity and NPTAB. The commission did not have a complete set of documents for an investigation until December 2023. That is, six (6) months after the request therefor was made.

Such inaction adversely affects and undermines transparency, confidence in the system and leads to embarrassment. The complainant by way of email to the commission dated January 31st, 2024, understandably expressed utter frustration at the length of time the matter was taking.

The delay in the submission of information to the commission could add, and in this case in the finding of irregularities, adds to the costs of procuring entities since they would not be liable to the complainant for compensation over a protracted period of time. Had this matter been resolved sooner, corrective action could have been taken sooner, saving on loss to the complainant and thereby costs to the procuring entity.

The commission further recommends that Parliament enact legislation to give effect to Article 212DD(2) of the constitution to provide for offences and penalties on the failure to comply with a request or decision of the commission.

Disposal

[38] The procuring entity, NPTAB and the complainant are to be informed of the findings herein.

[39] The commission is to follow up, pursuant to Article 212DD of the constitution, as to the implementation of the recommendations made herein.

[40] Adopted at a Meeting of the Commission on February 2nd, 2024.