



SUMMARY OF FINDINGS

TENDER NO. 10/2023/75

DECEMBER 29, 2023

SUMMARY OF FINDINGS

File No.	018 2023 J14
Complainant	Bickram Motiram trading as Motiram Construction
Tender Reference No.	10/2023/75
Procuring Entity	Ministry of Local Government & Regional Development
Evaluation Board	National Procurement & Tender Administration Board ('NPTAB')

Background

[1] By way of letter dated September 1, 2023, and received on September 6, 2023, the Public Procurement Commission (PPC) ("the commission") received a letter from Mr. Bickram Motiram trading as Motiram Construction (hereinafter referred to as 'Mr. Motiram') captioned "*Re: Bid Protest towards the award of Project – Extension of Fort Wellington Secondary School.*"

[2] In the said letter, Mr. Motiram alleged that at the tender opening, his bid was the lowest and that he had fulfilled all administrative requirements. He further submitted that he was "a well-rounded and seasoned contractor with vast experience and resources which were all demonstrated and attached with [his] bid document."

[3] Mr. Motiram further acknowledged in the said letter that he was cognizant that the NPTAB does not always award to the lowest bidder but expressed frustration that his bid was overlooked for a higher bid and requested the reasons therefor.

[4] The commission in the exercise of its constitutional mandate and functions, reviewed the tender proceedings to determine whether there was any irregularity in the award of the tender.

[5] In accordance with Article 212DD of the constitution of the Co-operative Republic of Guyana, the commission on September 13, 2023, requested that NPTAB submit to the commission within five (5) days of the date thereof –

- i. a copy of the record of the tender proceedings, including the Evaluation Report;
- ii. confirmation as to whether the tender was awarded and if so, the date of publication on NPTAB's website in accordance with S. 11 of the Procurement Act, Cap. 73:05. If awarded but not published, the reason for not so doing;
- iii. whether a copy of the Evaluation Report has been sent to the procuring entity for compliance with S. 39(3) of the Procurement Act, Cap. 73:05.

and that the procuring entity, Ministry of Local Government & Regional Development similarly submit –

- i. a copy of the tender proceedings and Evaluation Report. If not in the possession of the procuring entity, why not.
- ii. whether the procuring entity complied with S. 39(3) of the Procurement Act, Cap. 73:05, and if not, why not;
- iii. confirmation as to whether the tender has been awarded;

- iv. if the tender has been awarded, confirmation as to whether the contract has been entered into and if so, a copy thereof;
- v. if the contract has been entered into, confirmation of whether the tender award decision was published on NPTAB's website prior to entry into the contract;
- vi. confirmation as to whether any work has commenced on the subject tender.

[6] The commission did not receive a response from the procuring entity whether within the requested timeline or at all.

[7] On or about November 10, 2023, almost two (2) months after the commission's request, it received a copy of the tender proceedings including the Evaluation Report from NPTAB. The commission did not receive a response from NPTAB to the other aforementioned requests.

Analysis

a. Procedure

[8] The initiating letter although captioned "Bid Protest" did not satisfy the requirements therefor as set out in Part VII of the Procurement Act, Cap. 73:05. There was nothing before the commission which showed that Mr. Motiram submitted a 'Bid Protest' to the subject procuring entity protesting the rejection of his bid within five (5) business days of the publication of the contract award as is required by Section 52(3), Part VII of the Procurement Act, Cap. 73:05 and or at all. Further, the correspondence to the commission sought the reasons for the rejection of his bid rather than protesting or objecting thereto.

[9] There was also nothing before the commission to show that Mr. Motiram requested the reasons for rejection from the procuring entity before approaching the commission. It must however be noted that while it may be good administrative practice to provide reasons for a decision, there is strictly nothing within the Procurement Act, Cap. 73:05 which expressly mandates that reasons be provided to a bidder for the rejection of a bid. Section 43 of the Act only provides that the bidders be informed of the entry into contract with the winning bidder, that bidder's name, address and the contract amount. Further, Section 10(2) & (3) of the Procurement Act, Cap. 73:05 limits the portions of the tender proceedings which can be made available to a bidder or any person after the termination of subject proceedings. The Evaluation Report, which would disclose the reasons for the rejection of the tender, is not included in the portions of the record which could be made available to a tenderer.

[10] Notwithstanding the aforesaid and as hereinbefore stated, the commission exercised its authority under its constitutional mandate to bring resolution to the complainant's grouse.

b. Methodology

[11] It should be noted from the onset that there are no Regulations or other legislative direction on the procedure to be followed by the commission in these matters.

[12] In the absence thereof, the commission adopted the methodology of first determining on the request for an investigation, whether *prima facie* grounds are raised. On being satisfied thereof, the commission requests and reviews the subject tender proceedings to determine whether any irregularities as alleged or otherwise appear thereon. If so, it is brought 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. The complainant is informed accordingly thereafter.

[13] The timeframe for the completion of the aforesaid varies depending on the steps to be taken within the aforesaid framework and timely responses by the procuring entity and or tender board.

[14] As hereinbefore mentioned, there was no response by the procuring entity to the request for information by the commission. The documents made available by NPTAB to the commission to conduct the review were-

- i. the Report of the Evaluation Committee
- ii. the NPTAB letter of contract award
- iii. all tender documents

c. Evaluation of Bids

[15] The bids for the subject tender were opened at the office of NPTAB on June 27, 2023. Twenty-three (23) bids were received of which five (5) were deemed responsive. That is, less than a quarter of the bids were deemed responsive.

[16] The Engineer's Estimate was given as \$23,209,723.00 (twenty-three million, two hundred and nine thousand, seven hundred and twenty-three dollars).

[17] The contract was awarded to Safraz Construction & Supplies which was deemed the lowest evaluated tenderer at \$20,416,000.00 (twenty million, four hundred and sixteen thousand dollars).

[18] While Mr. Motiram's bid was the lowest submitted at \$19,386,930.00 (nineteen million, three hundred and eighty-six thousand, nine hundred and thirty dollars), the Report of the Evaluation Committee disclosed that the bid was deemed non-responsive for not being compliant with two (2) of the seventeen (17) evaluation criteria, to wit -

- *Criteria #1 - The submission of a valid Business Registration or Certificate of Incorporation that is clearly legible.*
The copy of your Business Registration on record was not endorsed with a stamp of validity for the period.
- *Criteria #16 – Provision of qualification and experience of key personnel. The bidder must designate an individual to fill each key position and provide detailed curriculum vitae (CV) for the key personnel with consent letter.*

The record reflects that while Mr. Motirma did submit a list of key personnel, one (1) of the two (2) key listed personnel, to wit, the electrical foreman, did not submit a detailed CV and the consent letter for the use of his CV, was not signed.

[19] In accordance with the Procurement Act, Cap. 73:05, in order to be deemed responsive and considered for a contract award, the bidder must not only satisfy the administrative requirements but also **all** of the evaluation criteria. The failure to satisfy any one of the evaluation criteria will result in the bid being non-responsive and thereby not considered for the award.

[20] Section 10(1) of the Procurement Act, Cap. 73:05 expressly vests the procuring entity with the responsibility of maintaining a record of the tender proceedings. The procuring entity is therefore expected to maintain systems of the highest integrity in ensuring an accurate record of the tender proceedings, including documents submitted by bidders, especially since there is no mechanism within the current tender procedure to independently verify documents submitted to, and or received by, the **procuring entity**. Bids are submitted in a sealed envelope and only the **administrative requirements are read and recorded at the opening.**

Findings & Recommendations

- I. On the record, the complainant, Mr. Motiram did not satisfy all of the evaluation criteria and was thus deemed non-responsive. Accordingly, he was not found by the Evaluation Committee to be the lowest evaluated tenderer in accordance with Section 39 of the Procurement Act, Cap. 73:05.
- II. The commission has not found any irregularity by way of breach of the Procurement Act, Cap. 73:05 in the rejection of the bid of the complainant as being non-responsive.
- III. The commission expresses disappointment and concern at the non-response by the procuring entity and sloth of response by NPTAB to the request for information by the commission. In addition to adversely affecting the work and efficiency of the commission, it also unnecessarily undermines transparency. The commission urges procuring entities and NPTAB to be better responsive.
- IV. The commission notes that in the absence of response (as those matters are only within the purview of the procuring entity and or NPTAB and not the complainant) there is nothing before it to show:
 - i. that S. 39(3) of the Procurement Act, Cap. 73:05 was complied with;
 - ii. when the contract award was published, particularly, whether prior to the entry into force of the contract so as to give bidders the statutorily provided five (5) days for a Bid Protest;
 - iii. whether S. 43 of the Act was complied with.

While the aforesaid does not affect the contract award in this particular matter, the lack of compliance could adversely affect the right of a bidder to lodge a Bid Protest under Part VII of the Act. Pursuant to Section 53 of the Act, the timely lodging of a Bid Protest suspends the final contract award which can provide wider remedy to an aggrieved party than an investigation for which there is no binding authority.

The commission therefore encourages procuring entities and NPTAB to ensure strict compliance with the aforesaid statutory requirements so as to not undermine transparency and confidence in the system which are imperative for its good functioning.

Disposal

[21] Mr. Motiram by way of letter dated December 6, 2023, was informed of the substantive findings of the commission.

[22] A copy of the Summary of Findings herein will also be made available to the procuring entity and evaluation board.

Adopted at a Meeting of the Commission on December 29th, 2023.

Dated 29th day of December, 2023.