



# SUMMARY OF FINDINGS

TENDER NO. 166/2023/21

April 16, 2024

## SUMMARY OF FINDINGS

<b>File No.</b>	020/2023/INV
<b>Complainant</b>	David Patterson
<b>Tender Reference No.</b>	166/2023/21
<b>Procuring Entity</b>	National Drainage and Irrigation Authority (NDIA), Ministry of Agriculture
<b>Evaluation Board</b>	National Procurement & Tender Administration Board ('NPTAB')

### ***Background***

[1] By way of letter dated October 3<sup>rd</sup>, 2023, Hon. David Patterson, MP, requested the Public Procurement Commission (PPC) ('the commission') to conduct an investigation into the award to Tepui Group Inc. of the *Tender Reference No. 166/2023/21- National Drainage & Irrigation Authority (NDIA) – Construction of Pump Station at Belle Vue, West Bank Demerara, Region 3*, and should the award prove defective "*that the necessary actions be taken against the entities and individuals associated with [the] award.*"

[2] The complainant alleged that –

*"The technical requirements of the bid documents required the successful bidder to have successfully completed projects of a similar nature and size within the last three years. Tepui Group Inc. having been established in August 2022, do not meet these requirements, however, were still awarded the contract."*

[3] The complainant attached to his said letter, a purported copy of the contract award dated August 14<sup>th</sup>, 2023, and an extract of an article published in the Kaieteur News dated September 30<sup>th</sup>, 2023, titled "*Guyanese Critic part of company which received \$865M pump station contract.*"

[4] Receipt of the complainant's letter was acknowledged in writing, the following day, October 4<sup>th</sup>, 2023.

[5] Further, on October 6<sup>th</sup>, 2023, the complainant was invited by way of letter to submit to the commission within five (5) business days thereof, any further documents which he may wish to place before the commission for consideration in support of his aforementioned allegation being the basis for his request for an investigation. The complainant did not accept the commission's invitation and no further documents or information was submitted.

[6] On the said October 6<sup>th</sup>, 2023, the commission also requested from the subject tender board, that is, the National Procurement & Tender Administration Board (NPTAB), submission of the following information within five (5) days of the date thereof, to wit-

- "i. a copy of –*
  - a. the tender document,*
  - b. all tenders submitted,*

- c. *the Report of the Evaluation Committee, and*
  - d. *all other such relevant documents touching and concerning the said tender; and*
- ii. *a copy of the contract award;*
- iii. *date of publication of the contract award; and*
- iv. *confirmation whether S. 39(3) of the Procurement Act. Cap. 73:05 was complied with, that is, whether you, the Report of the Evaluation Committee was sent to the procuring entity for their approval or disapproval prior to the contract award decision.”*

[7] A similar request was made of the procuring entity (NDIA, Ministry of Agriculture) by way of letter of the said date.

[8] On November 1<sup>st</sup>, 2023, NPTAB submitted to the commission:

- i. a copy of the Evaluation Report, and
- ii. the bid submitted by the subject awarded contractor, Tepui Group Inc. (*‘TEPUI’*).

[9] There was no response to the other aforementioned requested information.

[10] There being no response from the procuring entity (NDIA), a reminder was sent by way of letter dated December 4<sup>th</sup>, 2023. NDIA responded by way of letter dated December 7<sup>th</sup>, 2023, and received by the commission on December 13<sup>th</sup>, 2023, that is, more than two (2) months after the initial request. It submitted a copy of the-

- i. tender document,
- ii. contract, and
- iii. contract award.

[11] There was no response to the other aforementioned requested information.

[12] Notably, neither the procuring entity (NDIA) nor the tender board (NPTAB) submitted any information to the commission to permit investigation until public disclosure of the failure thereof via Press Release of the commission dated October 31<sup>st</sup>, 2023.

[13] Further, by way of email of October 9<sup>th</sup>, 2023, the Hon. Ghanesh Mahipaul, MP, *inter alia*, raised certain concerns with regard to the subject contract award. The Honourable MP questioned, as we understand it, how “*a solitary project encompassed three awards, each bestowed upon the lowest, the second lowest, and the third lowest responsive bidders.*” [hereinbelow addressed].

## ***Analysis***

### ***a. Procedure***

[14] The commission is vested with thirteen (13) functions as laid out in Article 212AA(1) of the constitution.

[15] Among the thirteen (13) functions, the commission is entrusted with an investigative function to –

“(h) *investigate complaints from suppliers, contractors and public entities and propose remedial action;*

(i) *investigate cases of irregularity and mismanagement, and propose remedial action;*

(j) *initiate investigations to facilitate the effective functioning of public procurement systems;”*

[16] These provisions are enabled in part by the Procurement Act, Cap. 73:05. Accordingly, the investigative function of the commission can be initiated in one of the following ways:

- i. **Administrative Review** through the ‘Bid Protest’ procedure which is reserved only for bidders (contractors and suppliers) pursuant to Part VII of the Procurement Act, Cap. 73:05. The process 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.
- iii. **On the Commission’s own Motion** “*to facilitate the effective functioning of public procurement systems.*” This arm appears to be wider in scope and not necessarily limited to one specific complaint.

[17] The complainant did not bid for the subject tender. The provision therefore invoked by the complainant is that of Article 212AA(1)(i) of the constitution. As noted, the said provision is wider in scope than Article 212AA (h) and is not limited to only bidders.

[18] Markedly, in other jurisdictions, such as Jamaica, the only other country in the Commonwealth Caribbean with a “Public Procurement Commission” (*albeit* statutory and not constitutional) complaints are restricted to only “*aggrieved persons*” being a ‘*person, firm or entity [who] claims to have suffered or to be likely to suffer loss or injury due to an action or decision of a procuring entity taken in procurement proceedings.*’ – S. 48, *The Public Procurement Act 2015 (Jamaica)*. The complainant in that jurisdiction must therefore prove to be directly affected by the decision sought to be reviewed.

[19] In Guyana, the class of persons who can lodge a complaint is wider due to Article 212AA(1)(i) which contains no limiting words and could therefore even include the commission in its own deliberate judgment, the remedies available are different. This was borne out by an enquiry from the complainant.

[20] By way of letter dated October 23<sup>rd</sup>, 2023, the complainant enquired from the commission whether in pursuance to his request for an investigation, *“an instruction was issued to NPTAB, to place the contract on hold.”* The complainant reasoned that, *“This is imperative, in the event that, the PPC investigation determines that the tender was incorrectly awarded to Tepui Group Inc., the company would be prevented from benefitting from taxpayers monies due to an illegally awarded contract.”*

[21] The commission in response on the following day (October 24<sup>th</sup>, 2023) drew the complainant’s attention to Part VII of the Procurement Act, Cap. 73:05. S. 53(5) therefor which prescribes that on the initiation by a bidder of the process of Administration Review under the said Part, *“the final contract award is suspended during the period of review”*. This was not open to the complainant as he was not a bidder.

**[22] Further, on the entry into a contract, privity of contract issues arise. There is nothing within the statutory framework which permits the commission to revoke, rescind, recall and or in any way alter, suspend or stop the contract once entered.**

[23] This underscores the importance of the vigilance of bidders, particularly due to the short time frame to act to *“suspend”* the contract award. Bidders would be the immediate first step in the process to be seized with the requisite circumstances, facts and information of a suspicion of mismanagement or irregularity.

[24] In the premises, the commission, in the exercise of its jurisdiction pursuant to Art. 212AA(1)(i) of the constitution, considered the complaint of the complainant to determine whether there were any irregularities or mismanagement in the contract award, as alleged, or otherwise. And if so found, make such recommendations to prevent a reoccurrence.

*b. Methodology*

[25] The commission adopted the following methodology:

- i. Request all relevant documentation and review the subject tender proceedings to determine whether any irregularities as alleged or otherwise appear thereon.
- ii. 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.
- iii. The complainant is informed accordingly thereafter.

[26] The commission considered the following documents-

- i. Letter dated October 3<sup>rd</sup>, 2023, from the complainant to the PPC.
- ii. Letter dated October 4<sup>th</sup>, 2023, from the PPC to the complainant.
- iii. Letter dated October 6<sup>th</sup>, 2023, from the PPC to the complainant.
- iv. Letter dated October 6<sup>th</sup>, 2023, from the PPC to NPTAB.
- v. Letter dated October 6<sup>th</sup>, 2023, from the PPC to NDIA.
- vi. Letter dated October 23<sup>rd</sup>, 2023, from the complainant to the PPC.
- vii. Letter dated October 24<sup>th</sup>, 2023, from the PPC to the complainant.
- viii. Letter dated October 31<sup>st</sup>, 2023, from NPTAB to the PPC.
- ix. Report from the Operations Department, PPC dated November 15<sup>th</sup>, 2023.
- x. Letter dated December 4<sup>th</sup>, 2023, from PPC to NDIA.
- xi. Letter dated December 4<sup>th</sup>, 2023, from the PPC to NPTAB.
- xii. Letters (2) dated December 7<sup>th</sup>, 2023, and received on December 13<sup>th</sup>, 2023, from NDIA to PPC.
- xiii. Letter dated December 12<sup>th</sup>, 2023, and received by the commission on December 20<sup>th</sup>, 2023, from NPTAB to the PPC.
- xiv. Letter dated February 6<sup>th</sup>, 2024, from the PPC to NPTAB.
- xv. Letter dated February 15<sup>th</sup>, 2024, and received on February 21<sup>st</sup>, 2024, from NPTAB to the PPC.
- xvi. Letter dated February 20<sup>th</sup>, 2024, from NPTAB to the PPC.
- xvii. Letters (2) dated February 26<sup>th</sup>, 2024, from the PPC to NPTAB.
- xviii. Letter dated February 26<sup>th</sup>, 2024, from NPTAB to the PPC.
- xix. Letter dated February 29<sup>th</sup>, 2023, and delivered on March 4<sup>th</sup>, 2024, from the PPC to NPTAB.
- xx. Bid Submission of Tepui Group Inc.
- xxi. Report of the Evaluation Committee dated June 2023.
- xxii. Contract Award
- xxiii. Contract dated September 22<sup>nd</sup>, 2023.
- xxiv. Report of the Operations Department of the commission dated March 26<sup>th</sup>, 2024, on project inspection carried out on March 23<sup>rd</sup>, 2024.
- xxv. Letter dated April 10<sup>th</sup>, 2024, from NDIA to PPC.
- xxvi. Letter dated April 11<sup>th</sup>, 2024, from NPTAB to PPC.

*c. Evaluation of Bids*

*i. The Tender*

[27] On May 10<sup>th</sup>, 2023, NDIA ('the procuring entity') issued an open tendering process for the *Construction of Sluice Pump Station at Bell Vue, West Bank Demerara, Region No.3*, being the subject tender herein.

[28] The record of the tender proceedings reflects that bids for the tender were opened on June 27<sup>th</sup>, 2023, at NPTAB.

[29] The Evaluation Report records twenty-six (26) bids as having been received of which, half, that is, thirteen (13) bids, were deemed substantially responsive.

ii. *The Evaluation Criteria*

[30] The complainant alleges that the awarded contractor ('TEPUI') did not satisfy the technical criteria for "specific construction experience" - Evaluation Criteria No. 8, to wit, the contractor did not demonstrate that it had "[completed] projects of a similar nature and size within the last three (3) years".

[31] However, Evaluation Criteria # 8, is worded differently. It states that the winning contractor must-

*"Demonstrate specific construction experience by providing copies of contracts with previous clients that show the bidder has completed one (1) project of similar nature within the past five (5) years.  
(Similar projects shall include pump stations, sluices and drainage structures)"*

[32] The Evaluation Criteria therefore only required the completion of one (1) project, not more than one (projects) and within the last five (5) years and not three (3) years as alleged by the complainant. Also, the words "and size" were absent.

[33] On observing this difference, the commission wrote to the procuring entity, NDIA, on December 4<sup>th</sup>, 2023, and sought clarification as to "whether the aforesaid criteria, as worded, is usual for and or in accordance with other projects of similar nature, size and value by your procuring entity."

[34] The commission received a response on December 7<sup>th</sup>, 2023, in which the procuring entity contended that, "the specific criteria used in the tender documents for the Bell (sic) Vue Pump Station project is similar to the criteria used for projects of similar nature."

[35] In support of its contention, the procuring entity submitted a copy of the Evaluation Criteria for the project "Construction of Drainage Pump Station at Greenwich Park/Barnwell Area, Region No. 3 which was tendered by the NDIA in 2021." The criteria (#8) states-

*"Demonstrate specific construction experience by providing copies of contracts with previous clients that show the bidder has completed two (2) contracts of similar nature, size and complexity of a minimum value of 50% of Bid Price within the past five (5) years.  
(Similar projects shall include pump stations, sluices and drainage structures)."*

[36] While the criteria may be considered "similar", they are not the same-

- the number of required contracts/projects is different - two (2) vs one (1),
- the words "size and complexity of a minimum value of 50% of [the] Bid Price" have been omitted.

[37] The Standard Evaluation Criteria for works prescribes the following wording –

*“Demonstrate specific construction experience by providing copies of contracts with previous clients that show the bidder has completed **two (2) contracts** of similar nature, size and complexity of a minimum value of 50% of Bid Price within the past five (5) years.”*

[38] S. 32(2) of the Procurement Act, Cap. 73:05 vests NPTAB with the responsibility of approving documents, prepared by the procuring entity for a tender, prior to their issuance, within the ambit of the standard bidding documents set by the commission pursuant to S. 17(2) of the said Act.

[39] The Standard Bidding Documents (SBD) have not been codified as Regulations.

[40] Strictly therefore, there is nothing which prevents a procuring entity from altering the terminology of the standard bidding criteria, in a non-fundamental form, as circumstances may require. And there may be policy or other considerations which would so necessitate and for which the standard bidding documents may not have foreseen or be applicable. The commission, however, cautions that this should be done sparingly and with considered judgment as “*value for money*” issues may arise should the awarded contractor not be able to execute the works project. This could result in delays and added costs.

[41] The commission notes that the aforesaid difference in wording in the Evaluation Criteria No. 8, that is, the number of projects required and size, complexity and value considerations, did not, for the subject tender, restrict the pool of tenderers but instead served to widen the pool. It was not unfair as it made it more competitive, permitting more bidders to be eligible; the aforesaid caution applying.

[42] In the premises, the issue turns to whether the awarded contractor (*TEPUI*) satisfied Evaluation Criteria No. 8, as expressed, and not alleged to have been expressed by the complainant.

iii. *Evaluation – Technical Criteria No. 8 – Specific Construction Experience*

[43] As hereinbefore set out, Evaluation Criteria No. 8, required the awarded contractor to-

*“Demonstrate specific construction experience by providing copies of contracts with previous clients that show the bidder has completed one (1) project of similar nature within the past five (5) years.  
(Similar projects shall include pump stations, sluices and drainage structures)”*  
[emphasis re Bidding Documents].

[44] The record before the commission reflects that *TEPUI* submitted two (2) contracts under this criterion heading, to wit-

- i. a contract between it and Hadi’s World Inc. dated March 27<sup>th</sup>, 2023, for the construction of a concrete wharf at Providence, and
- ii. a contract between it and the Central Housing and Planning Authority dated February 24<sup>th</sup>, 2023, for the upgrading of roads in Block 3, Great Diamond.



[45] Further, the List of Current Projects submitted by *TEPUI* under Evaluation Criteria No. 14, gives the status of the aforesaid projects at the time of the bid submission (June 2023) as 30% and 20% completed, respectively.

[46] The commission noting that the works for which the contracts were submitted by *TEPUI* were neither for a ***“pump station, sluice and or drainage structure”*** as specified in the Evaluation Criteria nor were any, by *TEPUI*’s own admission, completed, also as required by the Evaluation Criteria, the commission put the aforesaid to NPTAB by way of letter dated February 6<sup>th</sup>, 2024 and requested clarification as to the basis on which the Evaluation Committee deemed the said awarded bidder, *TEPUI*, as responsive to the said criterion No. 8.

[47] In addition, the bidder, *TEPUI*, submitted as part of its tender, a letter addressed to the procuring entity and dated June 13<sup>th</sup>, 2023, under the hand of *“Winston Martindale, Director”* (*TEPUI*) captioned *“Record of Past Work Experience”* in which it is stated –

*“Our company was registered in August 2022 and has now commenced the process of bidding for projects, hence we do not have any past work experience but our team of personnel have years of experience under upgrading and rehabilitation of roads as indicated on their respective resumes.”*

[48] By way of the aforesaid letter of February 6<sup>th</sup>, 2024, the commission also requested from NPTAB, *“clarification as to the authority on which the Evaluation Committee acted which permitted the winning bidder to rely on, and the Evaluation Committee to accept, the purported work experience of the bidder’s officers, as distinct from the bidder itself (a company) which admitted no past work experience.”*

[49] NPTAB responded, first by way of letter dated February 15<sup>th</sup>, 2024, and received by the commission via email on February 21<sup>st</sup>, 2024, in which it stated-

*“The National Procurement and Tender Administration Board (NPTAB) seeks to clarify the similarities between the construction projects: Pump Station at Belle Vue, West Bank Demerara; construction of pile bed and foundation for wharf at Providence for Hadi’s World Inc.; and Infrastructure Development Works at Block 3 Great Diamond. The evaluation ensured compliance based on the bidder’s relevant contracts, such as with Hadi’s World Inc. and Central Housing & Planning Authority (CH&PA).*

<i>Works required for Belle Vue Pump Station</i>	<i>1) Project deemed pertinent to the tender requirement</i>
	<p><b><i>Construction of Pile bed and foundation for wharf.</i></b></p> <p><i>The construction of a pump station and a pile bed foundation involve multifaceted tasks and material supplies to create robust infrastructure. Commonalities lie in foundational aspects, with earthworks for the pump station and pre-stressed concrete piles for the wharf providing stability. Structural works are vital in both projects, encompassing the construction of pile caps and beams for</i></p>

<p><b><i>Excavation, construction of foundational elements, erection of the pump station's main structure, procurement and installation of pumps, additional works, road access provision, landscaping within the site, revetment construction for erosion control, and electrical system implementation.</i></b></p>	<p><i>the pump station and various structural elements like deck slabs and U-beams for the wharf. Additionally, revetment works are necessary for both to prevent erosion and ensure long-term stability.</i></p> <p><i>Both projects require meticulous attention to detail in supplying and installing essential components such as steel frameworks and pumps. Furthermore, aspects like road access, internal landscaping, and electrical works contribute to the functionality and aesthetics of both structures.</i></p>
	<p><b><i>Infrastructure Development Works at Block 3 Great Diamond, EBD, Region # 4—Lots 1-5</i></b></p> <p><i>Both projects entail earthmoving tasks like excavation and grading to prepare the construction site. They also necessitate the erection of various structures such as roads, bridges, and pump station superstructures, often involving concrete work. Additionally, they require the establishment or enhancement of road infrastructure, drainage systems, electrical installations, landscaping, and equipment supply.</i></p>

*The decisions regarding bid evaluation were consistent with past practices, where leniency was extended to bidders lacking direct pump station construction experience but demonstrating proficiency in similar projects. Upholding principles of fairness, transparency, and accountability, NPTAB assures of its commitment to maintaining integrity and professionalism in procurement processes.*

*Additionally, NPTAB acted on precedence and discretion to criteria No. 8, please see examples below.*

- 1. 2747/2018/21- National Drainage & Irrigation Authority- Construction of Pump Station at Devonshire Castle, Essequibo, Region No. 2 awarded to Samaroo Investments without any pump station construction experience.***
- 2. 2748/2018/21- National Drainage & Irrigation Authority- Construction of Pump Station at Den Amstel, Region No. 3 awarded to JR Ranch Inc. J/V GSK Excavation Services Joint Venture without any pump station construction experience....”***

[50] NPTAB submitted a further response by way of letter dated February 20<sup>th</sup>, 2024, and received by the commission on February 26<sup>th</sup>, 2024, in which it stated –

*“1. Concerning Evaluation Criterion No. 8, which mandates bidders to exhibit specific construction expertise, it is imperative to elucidate the rationale behind the Evaluation Committee’s determination of the awarded bidder, Tepui Group Inc, as responsive.*

- i. *The committee evaluated the bid submission, adhering to the stipulated criteria, and observed that the bidder had furnished documentation pertaining to contracts, **notably one with Hadi's World Inc. for the construction of a concrete pile bed and foundation at Providence.** This project was deemed pertinent to the tender requirements, as delineated in the attached document labeled '1'...*
- ii. *It is important to note that discrepancies were identified between the original bid document and electronic copies, particularly regarding project completion percentages. The original bid document listed the projects the **construction of a concrete pile bed and foundation at Providence (Hadi's World Inc.) and the upgrading of roads in Block 3, Great Diamond (CH&PA)** as 100% and 80% completed, respectively, while the electronic copies indicated lower completion rates of 30% and 20%. In such cases, the information provided in the original bid document takes precedence (refer to the attached document labelled '2' ...."*

[51] Whether the projects submitted by *TEPUI* were 20% complete or 80% complete (re letter from NPTAB dated February 20<sup>th</sup>, 2024) is immaterial, as what was required by the Evaluation Criteria was '**completion**' – 100%.

[52] As hereinbefore stated, *TEPUI* submitted two contracts under criterion No. 8, to wit, a contract for the construction of a wharf and a contract for the upgrading of roads. Neither of these contracts, by *TEPUI*'s submission (whether hard or soft copy) was stated at 100% completion, even if it were to be assumed that they were "*projects of a similar nature*".

[53] The only "*project*" listed in the tender at 100% completion was for the construction of an "8'Pre-stressed Concrete Pile Bed". Although listed by the bidder (*TEPUI*) in its Table of "*CURRENT PROJECTS*", and stated at 100% completion, with a value of \$150M, there is no such supporting contract on the record as required by the criterion. By NPTAB's aforementioned response dated February 20<sup>th</sup>, 2024, at paragraph 1(i) this "*project*" for the construction of a pile bed seems to have been extracted from a clause in the contract for the wharf construction –

*"1. SCOPE OF WORKS*

*(b) The Contractor is responsible for the production and supply of all **pre-stressed precast concrete piles, deck slabs, pile caps/beams and U-beams to be used for the construction of the wharf facility at Block U, Track 'A' Providence/Peters Hall, East Bank Demerara, Guyana.**" [highlight that of NPTAB]*

[54] NPTAB in its said letter of February 20<sup>th</sup>, 2024, attached a copy of the '*wharf contract*' which is labelled '1' as aforementioned and highlighted the aforesaid paragraph from the contract in support of its contention at paragraph 1(i) of its letter–

*"The committee evaluated the bid submission, adhering to the stipulated criteria, and*

*observed that the bidder had furnished documentation pertaining to contracts, notably one with Hadi's World Inc. for the construction of a concrete pile bed and foundation at Providence. This project was deemed pertinent to the tender requirements...*

[55] As can be seen from the above extracts, the clause relied on by NPTAB is the responsibility of *TEPUI* for the “production and supply of pre-stressed precast concrete piles, deck slabs, pile caps/beams and U-beams to be used for the construction of the wharf facility”, not the “construction of a concrete pile bed” and or “foundation” as referenced in the aforementioned responses of NPTAB. Further, there is nothing before the commission that they are one and in the same. There is nothing on record with regard to the “*construction of a pile bed and foundation*”.

[56] Notwithstanding, from NPTAB's aforesaid responses, it appears that the Evaluation Committee considered the projects submitted by *TEPUI* as relevant in satisfying the requirement of “*projects of a similar nature*” and interpreted the criterion to mean that they were not limited to consider only “***pump station, sluice and or drainage structure***”. The Evaluation Committee, which was comprised of two Civil Engineers, appears to have exercised a professional judgment that the work involved in the projects submitted by the bidder were of sufficient complexity and similarity to be considered. Ostensibly, an evaluation, particularly of this criterion, would involve an exercise of judgment or opinion and as with judgments and opinions, there would be mixed views.

[57] The criteria however required completion of a similar project. The use of the term “*previous clients*” in the Evaluation Criteria connotes that the project must have been completed and not part of an ongoing project per contract with *Hadi's World* and by *TEPUI's* own submission the road project was not complete.

[58] NPTAB contends that the evaluation and the award is in keeping with precedence established prior and listed in its letter to the commission of February 15<sup>th</sup>, 2024, two (2) projects awarded in 2018 in support, to wit-

- 2747/2018/21 – National Drainage & Irrigation Authority – Construction of Pump Station at Devonshire Castel, Essequibo, Region No. 2 awarded to Samaroo Investments without any pump station experience.
- 2748/2018/21 – National Drainage & Irrigation Authority – Construction of Pump Station at Den Amstel, Region No. 3 awarded to JR Ranch Inc. J/V GSK Excavation Services Joint Venture without any pump station construction experience.

[59] On request, NPTAB submitted the files for the aforesaid tenders to the commission.

[60] The commission notes that NPTAB's contention that the awarded bidder *JR Ranch Inc. J/V GSK Excavation Services Joint Venture* for tender 2748/2018/21 did not have any pump station construction experience is borne out therein. The winning bid for the other tender 2747/2018/21 was missing from the file.

[61] The commission further notes however that the specific construction Evaluation Criteria is

worded differently for those projects than the subject project herein-

*“Demonstrate specific construction experience by **providing copies of contracts** with previous clients that show the bidder has **completed at least 1 [one] project of similar size and complexity of a minimum value of G\$100 million dollars.**”*

[62] Unlike the subject project herein, what a “*similar project shall include*” is not expressed. This is in accordance with the SBD.

[63] NPTAB further contended in its said letter of February 20<sup>th</sup>, 2024, that the awarded bidders for the *Jimbo, Meten Meer Zorg and Poudroyen* pump stations projects which were advertised and evaluated at the same time as the subject tender herein, *Belle Vue*, also did not have prior experience specifically in pump station construction but were deemed to have completed a project of a similar nature and therefore the same leniency applied-

*“Please take into consideration that the successful bidder for the other three (3) pump stations similarly lacked prior experience specifically in pump station construction. However, they had completed a project of a similar nature. This same leniency was applied to this bidder, as well as the other three, given their status as the lowest bidders and the value for money they provided.”*

[64] On request, NPTAB also submitted the files (soft and hard copies in part) of the tender proceedings for the *Meten Meer Zorg and Poudroyen* pump stations projects. A file was not submitted for the *Jimbo* pump station project.

[65] The commission notes that NPTAB’s aforesaid contention is borne out in the record of the tender proceedings submitted to the commission in that those bidders also did not have prior experience specifically in pump station construction.

[66] Whether the Evaluation Committee has a discretion in determining what is a “*project of similar nature*” is dependent on the terms of the evaluation criteria. So, while there may be precedent for the exercise of such professional judgment and or discretion, an Evaluation Committee should not assume such discretion onto itself but ensure that it is acting within the terms of the evaluation criteria for the specific tender being evaluated. Similarly, the procuring entity in setting the evaluation criteria should ensure that the criteria is expressed in simple, clear and unambiguous terms.

[67] The subject evaluation criterion is couched in the term “*shall include*”. While the word “*shall*”, is generally imperative, the word “*include*” is not exhaustive.

[68] If only certain projects and works are to be considered in the evaluation, phrasing which leaves no ambiguity should be employed. For instance-

*Demonstrate specific construction experience by providing copies of contracts with previous clients that show the bidder has completed at least one (1) pump station or sluice or drainage structure within the past five (5) years.*

[69] If the exercise of professional judgment is not to be curtailed, wider language can be used.

[70] This is important in the interest of fairness and transparency. The Evaluation Report in any event should set out the analysis used in arriving at the conclusion.

[71] With regard to *TEPUI*'s aforesaid admission in its tender submission by way of letter dated June 13<sup>th</sup>, 2023, that it “[does] not have any past work experience but our team of personnel have years of experience under upgrading and rehabilitation of roads as indicated on their respective resumes”, NPTAB in response to the commission’s query as to the authority on which the bidder *TEPUI* was deemed responsive to the criteria in the circumstances, stated in its aforesaid letter dated February 20, 2024, at paragraph 2 thereof, that the Evaluation Committee had engaged the bidder *TEPUI* for clarification on the perceived “discrepancy between the list of projects submitted by the bidder and the content of the referenced letter.”

[72] NPTAB attached its request for clarification by way of letter dated July 27<sup>th</sup>, 2023, and the purported response from *TEPUI*, dated July 30<sup>th</sup>, 2023, in which it stated that-

*“The letter was meant to explain that we never completed a pump station. However, in accordance to the evaluation criteria, we have completed works of similar nature. Please see list of projects showing their updated status and those that we would have completed.”*

<b>Project</b>	<b>Client</b>	<b>Value (GYD)</b>	<b>% Completed</b>
<i>80' Pre-stressed Concrete Pile Bed</i>	<i>Hadi's World</i>	<i>\$150,000,000</i>	<i>100%</i>
<i>Construction of Concrete Wharf at Providence</i>	<i>Hadi's World</i>	<i>\$372,000,000</i>	<i>100%</i>
<i>Construction of 120' Pre-stressed Pile Bed at Onverwagt</i>	<i>TBN Enterprise</i>	<i>\$160,000,000</i>	<i>100%</i>
<i>Rehabilitation of South Pakistan Street</i>	<i>Ministry of Public Infrastructure</i>	<i>\$25,000,000</i>	<i>100%</i>
<i>Rehabilitation of Tyre Shop Street</i>	<i>Ministry of Public Infrastructure</i>	<i>\$24,204,495</i>	<i>100%</i>
<i>Upgrading of Roads in Block 3, Great Diamond</i>	<i>Central Planning and Housing Authority</i>	<i>\$313,000,000</i>	<i>80%</i>

[73] To our mind, for the aforesaid reasons, this does not advance the matter.

[74] Further, the commission notes that the letters requesting and giving “clarification” are dated July 2023. The award was made in August 2023. The Evaluation Report, however, is undated save and except for the cover which bears “June 2023”. Bids were opened on June 27<sup>th</sup>, 2023.

[75] S. 39(1) and (2) of the Procurement Act provides that tenders must be “promptly” conveyed to the Evaluation Committee “following the bid opening ceremony” and the Evaluation Committee must “within a reasonable period of time, but not longer than fourteen days” convey its recommendation to the procuring entity.

[76] The provision does not detail however, whether the “*fourteen days*” is to run from the date of receipt of the tenders by the Evaluation Committee or from the date of the bid opening and what is the effect if the timeline is not complied with.

[77] There is nothing before the commission to record the date on which the tenders were received by the Evaluation Committee. And if it is to be taken from the date of the bid opening, then the evaluation ought to have been completed by the time the aforesaid ‘*clarification letters*’ were sent. There is however, as hereinbefore noted, nothing in the Act, in any event which expressly prohibits acting outside of the statutory timeline or so doing being fatal to the tender proceedings. It appears to be no more than a guide to urge efficiency in the process. The uncertainty as to when time should run from, however, ought to be removed by way of legislative amendment.

[78] The commission is of the view that the Evaluation Report nonetheless ought to properly include the date the tenders were received by the Evaluation Committee and bear the date (being day, date, month and year) the evaluation was completed. In addition to this not being borne out the subject Evaluation Report, the report generally lacked analysis as to how the committee arrived at its recommendation. The report simply listed the bids received, the criteria failed and the recommendation.

[79] S. 39(4)(a) of the Procurement Act, Cap. 73:05 provides that-

*“The procuring entity may ask, within a reasonable period of time, suppliers or contractors for clarifications of their tenders in order to assist in the examination and comparison of tenders. No change in a matter of substance in the tender including changes in price and changes aimed at making a non-responsive tender responsive shall be sought, offered or permitted.”*

[80] Procuring entities and or tender boards through who they act, therefore ought to exercise caution in seeking clarifications from bidders to ensure that the result would not offend against the ambit of the aforesaid provision.

#### *iv. Evaluation – Financial Criteria No. 9 – Financial Capacity*

[81] Evaluation Criterion No. 9 required the successful bidder to provide-

*“Evidence of financial capacity representing (30%) of the bid price. Bidder must provide a bank statement or **LINE** of credit from a bank or a recognized financial institution. The document must be dated within one month of the bid opening date and be clearly legible. When a photocopy is presented, it must be certified a ‘true copy of original’ by the issuing company.*

*Financial capacity should cover the current job and also the list of ongoing projects. If financial ratios will be assessed these must be clearly stated and formulae provided for:*

- (1) *Current ratio must be less than 1, calculated by current assets divided by current liabilities;*
- (2) *Quick ratio must not be less than 1, calculated by adding cash and accounts receivable, and then divided by current liabilities.”*

[82] The criterion has a number of levels within it to be satisfied. The first, being a bank statement or line of credit from a “*recognized financial institution*”.

[83] The record reflects the submission by *TEPUI* of a line of credit issued by Puran Bros. Top Mix.

[84] In the absence of bank statements, which are not reflected in the record as having been submitted, a line of credit from a “*bank*” or “*recognized financial institution*” is required.

[85] What is a “*recognized financial institution*” is not defined. Notwithstanding, the issuer must at least be a “*financial institution*”. What is a financial institution is defined by law, pursuant to the Financial Institutions Act, Cap. 85:03 and in accordance therewith, must be licensed by the Bank of Guyana (Sections 2 and 3).

[86] A bank must be similarly licensed by the Bank of Guyana in accordance with the said Act.

[87] Puran Bros. Top Mix is not a ‘bank’ or a ‘financial institution’ within the meaning of the Financial Institutions Act, Cap. 85:03. ([bankofguyana.org.gy](http://bankofguyana.org.gy))

[88] The wording of the criterion, however, leaves a lot to be desired. For the avoidance of any doubt, it ought to state, ‘a financial institution licensed by the Bank of Guyana.’

[89] This is in keeping with the wording prescribed by the Standard Bidding Document (SBD), Instructions to Bidders (ITB). Pg. 6 thereof, para. 3 under the heading of “Qualifications of the Bidder”, gives the standard wording as – “*evidence of adequacy of working capital for this Contract whereby the bidder must provide a bank statement or LINE of credit from a bank or an insurance company licensed by the Bank of Guyana.*”

[90] The ITB for the subject tender is so worded. However, the Evaluation Criteria differs, as set out aforesaid.

[91] Even if Puran Bros. Top Mix was a “*financial institution*” within the evaluation criteria, the document was nevertheless dated October 2022. It was therefore not “*dated within one month of the bid opening date*”. This document appears, properly, not to have been accepted by the Evaluation Committee.

[92] NPTAB also submitted as part of the procurement proceedings, a ‘**Letter of Credit**’, dated June 15<sup>th</sup>, 2023, issued by Caricom General Insurance Company, Inc. This document is dated, ‘*within one month of the bid opening date*’ in accordance with the evaluation criteria.



[93] However, it was issued by an insurance company and not a financial institution. The evaluation criteria, as set out hereinbefore, does not permit the submission and acceptance of a line of credit from an insurance company.

[94] The aforementioned ITB however, in accordance with the SBD, permits the submission and acceptance of a line of credit from an insurance company. There is therefore an inconsistency between the ITB and the evaluation criteria.

[95] S. 39(2) of the Procurement Act, Cap. 73:05 mandates that –

*“The Evaluation Committee, shall using only the evaluation criteria outlined in the tender documents, evaluate all tenders...”*

[96] The Evaluation Committee is therefore bound to evaluate tenders in accordance with the “*evaluation criteria*” and not the ITB and should there be any inconsistency between the two, the evaluation criteria prevails in accordance with the aforesaid enactment.

[97] Pursuant to S. 17(2) of the Procurement Act, Cap. 73:05, the SBD will be amended by the commission to bring it in line with statutory requirements.

#### *v. Evaluation – Financial Criteria No. 12 – Audited Financial Statements*

[98] Evaluation Criteria No. 12 required the successful bidder company to –

*“...provide audited financial statements **for the last financial year**, dated within one year, for incorporated companies. Financial statements must be audited by a Chartered accountant/accountancy firm and include an auditor’s note...”*

[99] *TEPUI* by its Certificate of Incorporation on the record was registered with effect from August 4<sup>th</sup>, 2023. Therefore, by the time of its subject tender in June 2023, it had not yet completed a year in operation, much less a financial year.

[100] This is acknowledged by *TEPUI* in its tender submission. Included in the record is a letter from *TEPUI*, under the hand of Winston Martindale, Director, addressed to the procuring entity dated June 13<sup>th</sup>, 2023, which states –

#### ***“Audited Financial Statement***

*Our company was registered in August 2022 and has now commenced the process of bidding for projects, hence we do not have any financial statements.”*

[101] While not part of the SBD, it is not unusual for the Evaluation Criteria at the end thereof to include *FINANCIAL ASSESSMENT* directions such as, *inter alia*, that arithmetic checks would be carried out and which evaluation criteria must be satisfied (*Appendix A*).

[102] As shown in *Appendix A*, it is not unknown, by express provision, that the requirement for audited financial statements is not mandatory to be deemed responsive. There are also tenders for which it is mandatory, expressly. (*Appendix B*)

[103] However, the evaluation criteria in this matter, stamped approved by NPTAB, was devoid of any such directions. (*Appendix C*)

[104] It may very well be that, in such an absence, the Evaluation Committee considered that it could exercise discretion with regard to the criteria, particularly the said criterion No. 12, as it has been known not to be mandatory.

[105] The commission, however, is of the view on its reading of the Procurement Act, Cap. 73:05 (Section 39), that only if a listed evaluation criteria is expressly excepted thereby, should it be so deemed. Unless there are directions to the contrary, all Evaluation Criteria must be satisfied to be deemed responsive. The alternative would create uncertainty, has the potential to interject unfairness in the system, undermine transparency and confidence in the evaluation.

[106] As aforementioned, an Evaluation Committee should not abrogate onto itself a discretion which is not expressly provided for in the Evaluation Criteria.

*vi. Evaluation – Criteria No. 16 – Ownership and or Possession of Key Equipment*

[107] Evaluation Criterion No. 16 requires the successful bidder to show “*evidence*” that the therein listed equipment, in the specified number, is available for the project.

[108] The criterion provides that-

*“ownership or possession can be demonstrated by providing the licenses, purchase documents, registrations, agreement to lease or rent from a recognized leasing Agency, and or affidavit of ownership”*

[109] The record reflects that Tepui Inc. did not submit any of the aforesaid, to wit, a ‘*license, purchase document, registration, agreement and or affidavit.*’ It submitted a letter dated June 13<sup>th</sup>, 2023, under the hand of “*Winston Martindale, Director*” titled –

*“Equipment Declaration*

*We hereby declare that all equipment shown on the list of equipment is owned by the company. And they are available for use on any project that may be assigned to our company.”*

[110] The criterion is not crafted in limiting language and is in accordance with the SBD. “*Can be*” is not the same as “*must be*”. Strictly therefore, there was nothing in the view of the commission which prohibited the submission and acceptance of the letter in satisfaction of this criterion.

[111] However, having regard to the important nature of this criterion in the execution of a project, the commission will review the wording of this criterion in the SBD pursuant to its responsibilities under S. 17(2) of the Procurement Act, Cap. 73:05.

[112] Notwithstanding, *TEPUI* did not account for all of the key equipment listed in the Evaluation Criteria. It required-

1. 1 No. (Long reach hydraulic excavator
2. 1 No. (Short boom) hydraulic excavator
3. 1 No. 22RB dragline or crane for pile driving
4. 1 No. Pile driving hammer (Diesel, pneumatic or drop hammer)
5. 2 No. Dump Truck (10 to 20 Tonne)
6. 1 No. 10 Tonne steel wheel tandem roller
7. 1 No. Steel Sheet Pile Driving Assembly
8. 2 No. Concrete mixers (Min 8 Cu. yd. each)

[113] *TEPUI* submitted a list of fifteen (15) equipment, which it stated to be in “GOOD/NEW” condition and owned by the company –

1. 67 Ton Crane	-	NCX Ajax	-	No. 1
2. Diesel Hammer	-	Delmag D-30	-	No. 1
3. Excavators	-	Hyundai 225 (Short Boom)	-	No. 2
4. Front End Loader	-	CAT 928G	-	No. 1
5. Excavator (Mini)	-	Hyundai	-	No. 1
6. Hydraulic Jackhammer-		For mini excavator	-	No. 1
7. Electric Jackhammer	-	Husky	-	No. 4
8. Poker Vibrator	-	2 Mechanical, 2 Electrical	-	No. 4
9. 2” Water Pumps	-	Honda	-	No. 2
10. Hauler and Low Bed	-	Daf	-	No. 1
11. 30’ Flat Bed	-	Daf	-	No. 1
12. 10 KVA Generator	-	Loncin	-	No. 1
13. 6KVA Generator	-	Beta Star	-	No. 5
14. Dump Trucks	-	Daf	-	No. 2
15. Hydraulic Excavator	-	CAT Long Reach	-	No. 1

[114] From the list submitted by *TEPUI*, Nos. 1-5 of the required key equipment are accounted for; however, Nos. 6-8 are not, in satisfaction of this criterion.

#### *vii. Evaluation – Financial Criteria No. 6 – Bid Security*

[115] The aforementioned criterion required the successful bidder to submit “*bid security in the sum of 1% of the Bid Price.*”

[116] The form the Bid Security is to take however, is expressed differently in the Instructions to Bidders (ITB), Bid Data Sheet (BDS) and Evaluation Criteria.

[117] Paragraph 15.2 of the ITB states that the Bid Security “*shall be a bank guarantee issued by a **bank** (emphasis ours) located in Guyana or by a local correspondent bank in case when the security is issued by a foreign bank, or from a licensed financial institution in Guyana.*”

[118] However, paragraph 15.2 of the BDS states-

**“Form of Bid Security:**  
... shall be a **bank guarantee** or a **bid bond** issued by an insurance company (underlining ours) licensed by the Bank of Guyana.”

[119] And Evaluation Criteria No. 6 states that the Bid Security “*shall be a **bank guarantee** or a **bid bond** issued by a reputable financial institution.” (underlining ours)*

[120] The record reflects that *TEPUI* submitted a Bid Security from Assuria, an insurance company. As addressed above, an insurance company is not a financial institution within the Financial Institutions Act, Cap. 85:03.

[221] Also as addressed above, the Evaluation Committee is bound to evaluate a tender in accordance with the terms expressed in the Evaluation Criteria and if there is any conflict with that and any other document, the Evaluation Criteria prevails. Strictly therefore, the bid security should be issued by a “*reputable financial institution*”. The commission is however aware that Bid Securities for the purpose of tender proceedings are usually issued by insurance companies and accepted.

[122] In furtherance of the commission’s responsibilities under S. 17(2) of the Procurement Act, Cap. 73:05, the aforesaid documents will be revised to reflect uniformity therein and remove the identified conflict.

[123] While it may be the practice, in light of the aforesaid conflict to accept a Bid Security issued by an insurance company, the Bid Security must nevertheless be in the sum of “**1% of the Bid Price.**”

[124] *TEPUI*’s bid was in the sum of \$865,543,500. Hence, the Bid Security ought to have been in the sum of \$8,655,435. However, the security submitted by *TEPUI* was in the sum of \$7,791,985. That is, \$863,450. less than the required sum in satisfaction of this criterion.

#### *viii. Contingency*

[125] The commission noted in the contract document submitted by the procuring entity (NDIA) that it had written to the NPTAB on September 1<sup>st</sup>, 2023, that is, after receiving the contract award but prior to entering into the subject contract, to bring to its attention certain arithmetic errors in the calculation of the winning bid. NDIA advised NPTAB as a result of its arithmetic checks, the new contract sum would be \$870,563,500. instead of the tendered sum of \$865,543,500. NDIA sought NPTAB’s guidance on the way forward.

[126] NPTAB responded on September 15<sup>th</sup>, 2023, advising NDIA that the difference of \$5,020,0000.00 “*should be financed using the contingency.*”

[127] The contingency by the bidding documents was fixed at \$65,000,000.00.

[128] In the premises, the commission by way of its aforesaid letter dated February 6<sup>th</sup>, 2023, enquired from NPTAB as to the authority on which it acted in rendering the aforesaid advice.

[129] NPTAB responded by way of its aforesaid letter dated February 20<sup>th</sup>, 2024, in which it stated that-

*“With regards to arithmetic errors in awarded sum calculation and the authority on which the advice was rendered concerning the use of contingency funds, we wish to inform you that ... NPTAB rectified this discrepancy by issuing an amended award for the corrected sum of **G\$870,563,500**. While ensuring that the contingency funds remained intact. Additionally, NDIA was advised to adjust the contract accordingly to reflect the revised amount ...”*

[130] NPTAB attached to the said letter a Contract Award in the aforesaid corrected sum.

[131] As can be seen, the said response did not answer the commission’s query as to what authority permitted the rendering of the advice to finance the difference using the contingency.

[132] However, the commission is satisfied that the issuance of a new award in the full corrected sum cured the irregularity. The next lowest bidder was still higher than that of *TEPUI* by \$5,443,200.00 and therefore the ranking was not affected by the arithmetic adjustment.

[133] S. 39 of the Procurement Act, Cap. 73:05 provides for the Evaluation Committee to conduct arithmetic checks as part of its evaluation. There is nothing before the commission to show whether arithmetic checks were in fact done. This ought to be disclosed in a proper Evaluation Report and done by a competent Evaluation Committee.

*ix. Award to Third Lowest Responsive Bidder – Lots*

[134] By way of letter dated December 4<sup>th</sup>, 2023, the commission requested an explanation from NPTAB as to the authority on which the Evaluation Committee acted in recommending the award of the contract to the third lowest responsive bidder and not the lowest responsive bidder.

[135] At page 14 of the Evaluation Report, the Evaluation Committee recommended *TEPUI* for the contract award on the basis that-

*“Bidder No. 4 & 12 were evaluated as the lowest responsive bidders respectively. However, these bidders were recommended for Construction of Pump Station at Meeten Meer Zorg, West Coast Demerara and Construction of Pump Station at Jimbo, Grove, East*

*Bank Demerara, projects respectively and do not appear to have the capacity to execute both projects simultaneously.”*

[136] NPTAB responded by way of letter dated December 12<sup>th</sup>, 2023, and received by the commission on December 20<sup>th</sup>, 2023. It stated-

*“... in response to your letter dated December 4<sup>th</sup>, 2023... the National Procurement and Tender Administration Board (NPTAB) will like to inform you of the following:*

- 1. The National Drainage and Irrigation Authority advertised the construction of four (4) new Pump Stations (all together) but in separate lots with a closing date of 27 June.*
- 2. Bidders were given the opportunity to bid for one (1) or more lots.*
- 3. In order to qualify for a single lot, bidders were asked to demonstrate their equipment, financial, technical and Human Resource capabilities to complete that lot.*
- 4. In order to qualify for 2 or more lots, bidders must demonstrate sufficient financial, technical and Human Resource capacity to undertake all the lots that they propose to bid for.*
- 5. Bidders are therefore qualified for lots individually and cannot use the SAME EQUIPMENT, FINANCIAL, TECHNICAL AND HUMAN RESOURCE CAPACITY to qualify for additional lots.*
- 6. These criteria were used by the Evaluation Committee and supported by NPTAB.*
- 7. The recommended bidder only demonstrated capacity (financial, equipment, technical & Human Resource) to undertake one (1) lot.*
- 8. This means that the bidder CANNOT win the bid for a second or third or fourth lot even if that bidder was the lowest price bidder.*
- 9. The National Procurement and Tender Administration Board (NPTAB) supports the Evaluation Committee’s recommendation.”*

[137] The commission finds the aforesaid reasonable, commonsensical, logical, fair and a prudent course. The alternative would result in one bidder receiving all four pump stations instead of four separate bidders benefiting from an award.

[138] Further it appears to be in accordance with Evaluation Criteria No. 14 which expressly provided and put bidders on notice that-

*“**Bidder must complete the Statement of On-going projects (listed in Forms)** which would include the following: name of contract, date of commencement and completion of contract, name of client and contact information (telephone number and email address,*

*value of project, and completion percentage. The bidder may be required to provide statement of resources dedicated against each project.*

***Bidder must complete and sign the Statement of On-going projects Form.***

*For consideration of awards of additional projects, the bidder MUST provide evidence of adequate financial, human and equipment resources to demonstrate that the award of this contract would not impede or detract from the effective and efficient implementation and completion of existing contracts.*

*Bidders who have have Three (3) or more outstanding contracts, from any public sector agency, will not be considered for award. An outstanding contract in (sic) one where more than 20% of the value of the contract is not completed as per original contract deadline for completion.”*

[139] The Evaluation Committee therefore could have properly taken the aforesaid factor into consideration in its evaluation. The first and second lowest bidders already having been awarded projects and did not demonstrate that the award of another project would not “*impede or detract*” therefrom. In other words, that they had the sufficient capacity to execute more than one project simultaneously.

[140] The Invitation for Bids published all four pump station projects at the same time. The commission, however, notes that it was not specifically stated to be in Lots and that in what chronological order the evaluation would be done. The publication read-

*“MINISTRY OF AGRICULTURE  
NATIONAL DRAINAGE AND IRRIGATION AUTHORITY  
INVITATION FOR BIDS (IFB) EXTENSION OF TIME*

*The National Drainage and Irrigation Authority, Ministry of Agriculture invites bids from suitably qualified and experienced bidders to undertake the following projects:*

- *Construction of Pump Station at Meten Meer Zorg, West Coast Demerara, Region No. 3 (EE: 918,231,387)*
- *Construction of Sluice/Pump Station at Belle Vue, West Bank Demerara, Region No. 3*
- *Construction of Sluice/Pump Station at Poudroyen Area, West Bank Demerara, Region No. 3 (EE: 945,179,772)*
- *Construction of Pump Station at Jimbo, Grove, East Bank Demerara, Region No. 4 (EE: 865,182,752.) ....”*

[141] In the premises, in order to avoid uncertainty or misunderstanding and to promote transparency, the procuring entity ought to ensure that from the outset, it is clear whether the evaluation and thus award would be made in Lots or *en block*.

## *Status of Works*

[142] Having regard to the time which has elapsed since the award and entry into the contract, the commission, pursuant to its mandate and functions enshrined in Articles 212W and 212AA of the constitution, carried out an inspection of the project works on March 23<sup>rd</sup>, 2024, through the Operations Department of its Secretariat.

[143] The inspection was carried out in the presence of representatives of the contractor, procuring entity and supervising engineer. The scope was to determine and advise the commission whether the operational, administrative, and financial controls for the procuring entity are in place and operative. Specifically, the team from the commission, comprising of the Civil Engineer and Chief Executive Officer (CEO) enquired as to-

- The administration of the bid and award process,
- Delegation of construction management authority,
- Contract execution and required contract bonds and insurance,
- Review and approval of project design, budget, and funding, and
- Construction management and accounting.

[144] The methodology included interviews, walkthroughs, and review of project documents, including the Procurement Plan for 2023 as submitted to the commission by the procuring entity.

[145] The Report submitted to and accepted by the commission, found that-

- **Contract execution and required contract bonds and insurance –**
  - Preliminary works completed (Survey Levels and Digital Models).
  - Traffic Management Plans to be published in April 2024.
  - The contractor submitted a mobilization bond value of 30%, the contract stipulated 15%, hence 15% was paid to the contractor and is the only payment to date.
- **Review and approval of project design, budget and funding-**
  - Design review was completed by the consultant and approved by the procuring entity, the updated Bill of Quantities and drawings were received by the contractor on March 21, 2024.
  - Addendum to the contract stipulates that equipment as well as pumps and motors (200 Cusec -2 No.) will now be supplied by the procuring entity.
  - Addendum to the contract for the construction of new sluice at the project site.
- **Materials Onsite-**
  - Timber Piles (Test Piles) 15-inch diameter 55 feet long – 3 No.
  - Steel Sheet Pile – 96 No.
  - Backfill (clay) for cofferdam construction.
- **Equipment Onsite-**
  - Site Office (to be relocated)
  - Project Sign Board (erected and in place)



- Excavator – Long Boom – 1 No.
- Excavator – Short Boom – 1 No.
- Mini Excavator – 1 No.
- Bulldozer – 1 No.
- Double axel truck – 1 No.

[146] The Special Conditions of Contract (SCC) provided that the start date of the project shall be fourteen (14) days after the signing of the agreement with a completion period of eighteen (18) months thereafter.

[147] Therefore, the agreement having been signed on September 22<sup>nd</sup>, 2023, the project ought to have commenced by October 6<sup>th</sup>, 2023, and be complete by March 21<sup>st</sup>, 2025.

[148] The procuring entity during the inspection acknowledged and confirmed delays in the commencement date, which they attributed to a design review of the project by the consultant and hence the commencement date was amended to January 29<sup>th</sup>, 2024. That is, 115 days after the original commencement date.

[149] While works are now progressing, it is concerning that delays occurred due to a “design review”. Delays, while unavoidable at times, nevertheless affect efficiency in the procurement process. A procuring entity must therefore at all times take such steps to guard against delays, particularly on its part which are not due to an act of nature and are avoidable through proper planning and competency.

[150] The Procurement Act, Cap. 73:05 is silent on anything after the entry into the contract, whether extent of permissible addendum, change in scope of works, retendering standards or otherwise and this may be a consideration for the Legislature to bring it into conformity with international best practices.

[151] No fundamental shortcomings were found in the inspection carried out at the current status of the project. However, the Report advised that to ensure due completion of the project, time management processes would have to be developed and observed.

### ***Recommendations***

[152] Pursuant to Article 212AA of the constitution, the commission shall –

*“(i) investigate cases of irregularity and mismanagement and propose remedial action.”*

- I. As noted from the outset, the complainant herein was not a bidder for the subject tender and did not allege, demonstrate or prove to be directly affected by the tender award. Therefore, remedial recommendations to his benefit (*re MS Investment matter*) do not apply.

- II. In order to avoid a reoccurrence of the hereinbefore set out matters, the commission recommends that Evaluators must strictly abide with the express terms of the Evaluation Criteria for the tender being evaluated. The commission supports and reiterates the recommendation of the prior commission in their Investigation Report, dated August 2018, into the tender for the *“Provision of Uniform Related Materials and Ready-Made Uniforms for Regions 1, 7, 8 and 9 – Ministry of Indigenous People’s Affairs (1015/2018/17) that-*

*“The Evaluation Committee should not consider evaluation criteria not outlined in the tender documents.”*

An Evaluation Committee does not possess the authority, discretion or jurisdiction to vary or waiver Evaluation Criteria unless expressly provided for in the tender documents.

- III. The Evaluation Committee should be very meticulous in its review of bids to ensure that they are evaluated in accordance with the Evaluation Criteria so that the Procurement Act, Cap. 73:05 is not breached.
- IV. The Evaluation Report should give a true and complete account of the evaluation process. Accordingly, it must clearly set out all pertinent matters, including but not limited to, date of completion of the evaluation, analysis of the tenders, whether arithmetic checks were done in accordance with S. 39(4)(b) of the Procurement Act, Cap. 73:05 and whether clarification was sought from any of the bidders and if so the particulars thereof.
- V. Procuring entities should take care in crafting Evaluation Criteria to ensure that it meets the realities of the project and their intentions as the Evaluation Committee is bound by what is set out therein and cannot exercise a discretion or waiver not so expressly provided for in the tender documents.
- VI. Any inconsistency between the Instructions to Bidders (ITB) and the Evaluation Criteria, the Evaluation Criteria prevails in accordance with S. 39(2) of the Procurement Act, Cap. 73:05.
- VII. The contract for the subject tender having been entered into, it is recommended that the procuring entity strictly monitor the performance of the contract and if the awarded bidder *TEPUI* is found in breach, that the necessary steps, including termination if considered to be prudent, be taken to ensure that value for money is achieved. In light of NPTAB’s disclosure as to the other three (3) pump stations, to wit, *‘Jimbo, Meten Meer Zorg and Poudroyen’* which were advertised and evaluated at the same time as the subject tender herein, *Belle Vue*, also *“lacked prior experience specifically in pump station construction”* but were deemed to have *“had completed a project of a similar nature”* and therefore the *“same leniency was applied”*, the recommendation herein also applies to those pump stations.

The commission pursuant to its constitutional mandate, functions and powers shall exercise oversight in this regard.

- VIII. The commission recommends that when tenders are being evaluated and awarded in Lots, it must be clearly so stated in the Invitation for Bids and Bidding Documents. This is in keeping with this commission's recommendation made recently in the *R. Kissoon Contracting Service* matter.
- IX. It is recommended that the Legislature effect an amendment to S. 39(2) of the Procurement Act, Cap. 73:05 to clarify whether time runs for the completion of an evaluation from the date of opening of the tender or the date of receipt of the bids by the Evaluators from the procuring entity.
- X. The Procurement Act, Cap. 73:05 does not prescribe any penalty for breach of the procurement process. Consequently, the complainant's request that the commission take "*the necessary actions ... against the entities and individuals associated with [the] award*" is not applicable.  
In the premises, the commission recommends that legislation be enacted to make provision for procurement breaches and the procedure therefor.
- XI. Despite request, nothing was submitted to the commission to show whether S. 39(3) of the Procurement Act, Cap. 73:05 was complied with. Procuring entities are therefore reminded (*PPC Circular No. 8/2023*) of their obligations thereunder and ensure compliance therewith prior to entering into a contract award.
- XII. The commission once again urges procuring entities to be better responsive to requests for information from the commission and recommends that procedures be instituted by procuring entities to strengthen administrative processes with regard thereto. Delays negatively impact on transparency and undermines trust in the system.  
While there is no statutory provision for the timeframe within which an investigation emanating out of a complaint is to be completed, the commission nevertheless strives to complete its consideration of complaints within a timely manner having regard to the complexity of the matter and due process requirements. The timeframe can be further impacted by delays in receiving responses to requests for information. It must however be noted that nonetheless the determination of complaints by this commission have been in keeping with the timelines of its predecessor commission.
- XIII. Pursuant to Article 212AA(l), this matter along with the tenders for the '*Jimbo, Meten Meer Zorg and Poudroyen*' pump stations are referred to the Auditor General.

### ***Disposal***

[153] The procedure of the commission dictates that a copy of the draft Summary of Findings be sent to the tender board and procuring entity for any corrective measures they deem prudent to take to remedy any matters highlighted herein and or offer additional comments. And, if no

remedial action is taken within the time delimited by the commission, then the Summary of Findings be made public.

[154] Consequent thereon, the draft Summary of Findings was sent to the tender board and procuring entity on April 4<sup>th</sup>, 2024, for response within five (5) business days of the date thereof.

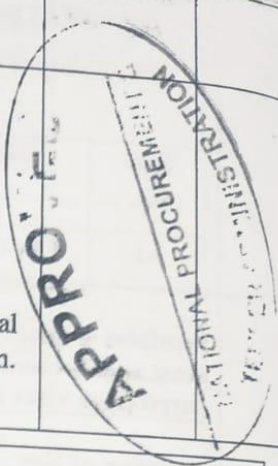
[155] The responses received are set out in Appendices D and E.

[156] In accordance with the aforesaid procedure of the commission, the Summary of Findings herein was adopted in its finality with the addition of Appendices D and E, at a meeting of the commission held on April 12<sup>th</sup>, 2024.

[157] A copy thereof is to be sent to the tender board, procuring entity and complainant, and published on the commission's website.

[158] Adopted by the commission on April 12<sup>th</sup>, 2024.

## APPENDIX A

	2. References to Occupational Health and Safety Standards.	
	3. List of equipment to be utilised.	
18	<p>Bidder must provide audited financial statements for the past three years for incorporated companies. Financial statements must be audited by a Chartered accountant/accountancy firm and include an auditor's note.</p> <p><b>OR</b></p> <p>Registered businesses must provide Balance Sheets, Profit and Loss Accounts, and Income and Expenditure Accounts for the past three years. These financial statements must be approved by a Chartered accountant/accountancy firm.</p>	

<u>FINANCIAL ASSESSMENT</u>	
(a)	<i>Tender Corrections: All administrative compliant bidders are checked for arithmetical and other errors to show corrected and original sum.</i>
(b)	<p><i>Any bidder who received a 'NO' in any of the criteria (1-16) stated above shall be <b>Non – responsive</b></i></p> <p><i>Bids will be rejected if information submitted is found to be false, forged or misrepresented</i></p>
(c)	<i>The Contract would be awarded to the Bidder whose bid is determined to be substantially Responsive to the Bidding Document (who has gained all yes) and who has offered the lowest evaluated Bid Price</i>

\* EQUIPMENT (must submit affidavit of ownership or letter of commitment to lease)

**A penalty of immediate rejection of a bid or termination of contract will be applied upon discovery of forgery and/or misrepresentation of information.**

### Important Note:

- (i) All pages of the Contractor's Bid Document as well as supporting documentations **MUST** be signed, stamped and numbered (copy and original).
- (ii) All letters and statements (including: litigation, ongoing project and suspended/terminated projects) must be dated between the period **within one month of bid opening**.
- (iii) All financial documents (letter of credit or bank statement) and equipment & machinery ownership by affidavit must be dated between the periods **within one month of bid opening**.
- (iv) **CONTRACTORS WHO TENDER FOR MULTIPLE PROJECTS AND CANNOT SHOW THE ADEQUATE PERSONNEL EQUIPMENT AND FINANCES TO OPERATE THE PROJECTS SIMULTANEOUSLY, WILL ONLY BE AWARDED**

## APPENDIX B

Position of Key Personnel		Required qualification and experience
Civil Engineer		Degree in Civil Engineering with more than 5 years' experience
Civil Engineer Technician		Diploma in Civil Engineering with more than 5 years' experience
General Construction Foreman		Sound Secondary School with more than 5 years' experience
All appointed individuals must sign a letter consenting to the use of his/her CV by the bidder. Letters must be dated within one month of bid opening. All Documents must be original with dates, also direct contact numbers to personnel for due diligence purposes.		
18	The document MUST be submitted in its ORIGINAL FORM as purchased and Submit one (1) original (in paper) and 1 electronic copies (flash drive only) with an exact PDF version of the paper tender. (It is the responsibility of the bidder to ensure that the PDF file is accessible and readable and is an exact copy of the original.)	
19	<p>Bidder must submit a detailed work programme and/or method statement that is in keeping with the scope of works detailed in the bill of quantities. Evaluation of work programmes/method statements will take into consideration whether, inter alia, the following are included:</p> <ol style="list-style-type: none"> <li>1. Title Page - "Work Programme", "Work Method Statement"</li> <li>2. Schedule of personal protective equipment- list should state all PPE required.</li> <li>3. Brief description of works, tasks, processes.</li> <li>4. Sequence of work- step by step safe work sequence of the work.</li> <li>5. Supervisory arrangements.</li> <li>6. References to Occupational Health and Safety Standards.</li> <li>7. Schedule of Plant - list of plant and tools.</li> </ol>	

### FINANCIAL ASSESSMENT

- (a) Tender Corrections: All responsive bidders are checked for arithmetical and other errors to show corrected and original sum.
- (b) Any bidder whose bid is less than 80% of the Engineer's Estimate will be considered "NON-RESPONSIVE"
- (c) The Contract would be awarded to the Bidder whose bid is determined to be substantially Responsive to the Bid Document and who has offered the lowest evaluated Bid Price within range.
- (d) Any Bidder Who receives a 'NO' in any of the criteria stated above shall be NON - RESPONSIVE discretion may be shown in extreme circumstances.
- (e) Availability of ALL resources will be determined from the information given.

**NOTE: A PENALTY OF IMMEDIATE REJECTION OF A BID OR TERMINATION OF CONTRACT WILL BE APPLIED UPON DISCOVERY OF MISREPRESENTATION OF INFORMATION (THE CLIENT RESERVE THE RIGHT TO DO DUE DILIGENCE FOR ALL DOCUMENTS SUBMITTED BY THE CONTRACTOR).**



## APPENDIX C

	<p>An agreement to lease or rent must be dated within one month of the bid opening.</p> <p><b>Affidavit</b></p> <p>of ownership must be duly signed by a commissioner of oaths or justice of peace and the list of equipment must be endorsed by same if it is supplied as an attachment to the affidavit.</p>	
17	<p>Provision of qualification and experience of key personnel - the bidder must designate an individual to fill each key positions and provide detailed curriculum vitae for the key personnel:</p> <ol style="list-style-type: none"> <li>1. <b>Civil Engineer</b> – Must have a minimum experience of 5 years in construction (Must provide a BSc/Masters in Civil Engineering from a recognised education institution)</li> <li>2. <b>Mechanical Engineer</b> – Must have a minimum experience of 5 years in construction (Must provide a BSc/Masters in Mechanical Engineering from a recognised education institution)</li> <li>3. <b>Foreman</b> – Must have a minimum experience of 8 years in construction (Must Provide Technical Certificate in Construction from GTI, GITC or any recognised education institution)</li> <li>4. <b>Sworn Land Surveyor</b> – Must provide minimum qualification of a technical diploma in Land Surveying from a recognized institution and a Sworn Land Surveying Certificate (SLS) and 4 years' experience and over.</li> </ol> <p>All designated individuals must sign a letter consenting to the use of his/her CV by the bidder. Letters must be dated within one month of bid opening.</p>	
18	<p>Bidder must submit a detailed work programme that is in keeping with the scope of works detailed in the bill of quantities. Evaluation of work programmes will take into consideration whether inter alia, the following are included:</p> <ol style="list-style-type: none"> <li>1. Sequence of work- step by step, safe work sequence of the work and duration.</li> </ol> <p>Bidder must submit a method statement that is in keeping with the scope of works detailed in the bill of quantities. Evaluation of method statements will take into consideration whether inter alia, the following are included:</p> <ol style="list-style-type: none"> <li>1. Brief description of works, tasks, processes.</li> <li>2. References to Occupational Health and Safety Act Cap 99:10</li> <li>3. List of equipment to be utilised.</li> </ol>	



## APPENDIX D

In replying Quote Date

Hereof and No. ....



**National Procurement & Tender  
Administration (NPTA)**

49 Main & Urquhart Streets,  
Georgetown

223 -7041, 227- 0009

[npta.procurement@finance.gov.gy](mailto:npta.procurement@finance.gov.gy)

April 11<sup>th</sup>, 2024

Ms. Pauline Chase  
Chairperson  
Public Procurement Commission  
262 New Garden Street,  
Queenstown,  
Georgetown

Dear Ms. Chase,

**Re: 166/2023/21- National Drainage & Irrigation Authority- Construction of Pump Station at Belle Vue**

### **Experience**

Regarding evaluation criteria #8 the evaluators relied on a contract between the bidder and Hadi's World Inc where the scope of work of that contract required the bidder to " *provide the services of constructing a wharf on the client's property situated at Block U, Track A, Providence, Peters Hall, East Bank Demerara in accordance with project design, layout and specification ... including the sourcing and providing of material, and equipment, and labour for the construction and completion of the project and the production and supply of pre-stressed concrete slabs ...* ".

Accordingly, the evaluators assessed that the scope of work of the said contract was consistent with the works required for the pump station. This is in addition to the nature and scope of the works of other contracts listed by the contractor.

NPTAB has been notified of the technical justifications made by NDIA, from an engineering perspective, which is being shared with the PPC by a separate response from NDIA.

### **Audited Financial Statements**

The evaluators recognized that the company was formed in 2022 and, therefore, did not apply this criterion.

### **Line of Credit**

Regarding criteria 9, NPTAB notes the PPC's comments and will work with the PPC to review this going forward. At the same time, we will seek to remedy the inconsistency between the ITB and the SBD in this regard.



### **Bid Security**

Use of engineers estimate vs bid price as the basis for provision of bid security. The provision of a bid security as a percentage of the bid price could potentially compromise the integrity of the bid price. It would be more prudent for bidders to provide the bid security as a percentage of the Engineers Estimate (where the Engineer's Estimate is published) or as a FIXED sum (clearly stated in the SBD) in cases where the Engineer's Estimate is not stated). The rationale being that, if a bidder uses a percentage of his bid price any person can compute his bid price thereof. Since many bidders use the SAME facility to issue their bid security, their bid price could be compromised long before bid submission.

### **Status of works**


The status of works after the award of contract and the commencement order issued by the procuring entity falls under the purview of construction management and supervision. NPTAB notes that contract administration empowers the supervision engineer and the procuring entity to rigorously apply liquidated damages when the contract is in delay. Liquidated damages shall apply to the value of 10 percent of the contract sum and if the contractor does not remedy performance, grounds may exist for the termination of the contract. This, of course, does not apply to this contract alone but across the board to all contracts.

### **Response to recommendations**

The NPTAB acknowledges and agrees with the recommendations of the PPC and will collaborate to facilitate:

1. Review the language in the bidding document to be more precise when tenders are advertised in lots.
2. A reminder to evaluators not to exercise any discretion outside of the evaluation criteria stated in the bid documents.
3. Coordination with the PPC to strengthen the SBD to eliminate inconsistencies and strengthen the evaluation criteria.
4. Reaffirmation with the procuring entity the need to exercise greater management and oversight in the performance of contracts (post award) and apply strictly the terms of the contract.

Yours sincerely,

  
for Dr. Tarachand Balgobin

Chairman

National Procurement and Tender Administration Board

## APPENDIX E



### NATIONAL DRAINAGE AND IRRIGATION AUTHORITY

MINISTRY OF AGRICULTURE

Regent and Vlissengen Roads

Po. Box 1030

GEORGETOWN, GUYANA

Tel: (592)-(225)-(5005)

Fax: (592)-(225)-(5006)

April 10<sup>th</sup>, 2024

Ms. Pauline Chase  
Chairperson  
Public Procurement Commission  
262 New Garden Street,  
Queenstown,  
Georgetown

R  
4/11/2024

Dear Ms. Chase,

**Re: 166/2023/21-Pump Station- Belle Vue, West Bank Demerara, Region 3.**

Further to your correspondence dated April 4, 2024 on the caption project, the National Drainage and Irrigation Authority wish to offer the following comments.

**Experience:** Page 7 of 30. States: Evaluation criteria required the awarded contractor to “Demonstrate specific construction experience by providing copies of contracts with previous clients that show the bidder has completed one (1) project of similar nature within the past five (5) years.

(Similar projects shall include pump stations, sluices, and drainage structures)”.

**NDIA Comment:**

In addition to NPTAB response dated February 15, 2024, **the main category of works for the construction of the pump station** is the following:

- 1. Earthworks:**
  - a) Excavation to the design invert level to construct the pump station foundation.
  - b) Stockpiling of excavated earthen materials and rehandle same to backfill around pump station and revetment.
- 2. Foundation:**

Driving of timber piles to the design invert level. Driving of piles require dragline, pile rig, pile driving hammer (diesel) or a dragline with drop hammer.
- 3. Reinforced Concrete Works:**

Placement of steel reinforcement (rebars) on pile caps, foundation slab, pump sump walls, top slab, and pipe support and pouring of concrete to form the reinforced concrete superstructure for the pump station.

4. **Pump House:** Cutting and fabrication of steel beams, plates to form base plates and end connections and assembly by bolting and welding to form main metal frame for pump house.

From the draft report, the contracts named in the bidder submission in response to “*Evaluation Criteria No. 8-Specific Construction Experience*”, **it is common for the following category of works to be undertaken as part of the awarded contractor’s previous work experience for the projects submitted.**

A) Construction of Pile Bed and Foundation for Wharf.

- a) Require cutting, welding and fabrication of steel beams and metal plates to form pile mould and steel wall to hold prestressing forces. **This is considered pertinent experience for the pump station since the pump building (upper structure) require cutting, welding and fabrication of steel beams, columns, steel base plates and assembly for the pump station.**
- b) The construction of wharf entails a deck on pile arrangement. The foundation consists of pre-prestressed precast piles manufactured and driven using a crane and diesel pile driving hammer to embed the piles to the design invert, steel reinforcement (rebars) placed to from pile cap/beam and pouring of concrete to from supporting beam/deck structure. **This is considered pertinent experience for the pump station since timber piles will be driven in a less complex requirement using dragline and drop hammer, steel reinforcement (rebars) placed to on pile cap, base slab, walls, top slab and pouring of concrete to form foundation slab, pump chamber walls and top slab.**
- c) Excavation of soft earthen materials at the wharf site, supply, place, and compact white sand to form stable ground for crane operation and approach driveway to facilitate wharf construction. **This is considered pertinent experience for the pump station since excavation is required for the driving and cutting off of timber piles to the designed invert level, sand filling and compaction below foundation slab.**

B) Infrastructure Development Works at Block 3 Great Diamond, EBD, Region No. 4-Lots 1-5.

- a) The infrastructure works involves the establishment of drainage system and **hydraulic structures such as reinforced concrete culvert**. This type of hydraulic structure construction requires excavation of earthen materials to design invert level, construction of cofferdams and dewatering to keep pit dry during foundation works, sand filling and compaction, placement of reinforcement (rebars) and pouring of concrete to from base slab, walls, head walls and top slab to form culvert. **This is considered pertinent experience for the pump station since excavation is required, sand filling and compaction, construction of cofferdams, dewatering to keep pit dry to facilitate the placement of steel reinforcement (rebars) to from base slab,**

walls and top slab and pouring of concrete to form foundation slabs, pump chamber walls and top slab.

Regarding the specific experience requirement stated in the evaluation criteria. It should be noted that sluices, pump station and drainage structure such as culverts are commonly termed **HYDRAULIC STRUCTURES** in engineering. Culverts forms part of the bidders past experience. As such, commonalities in the scope of work for the construction of pump station and the awarded contractor stated previous experience on the stated projects.

All for your information and guidance.

Yours Sincerely,



**Mr. Lionel Wordsworth**

**Chairman, NDIA**

