

PUBLIC PROCUREMENT COMMISSION

INVESTIGATION INTO THE PROCUREMENT OF CONSULTANCY SERVICES FOR THE FEASIBILITY STUDY AND DESIGN FOR THE NEW DEMERARA RIVER BRIDGE

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1.0 BACKGROUND

The Public Procurement Commission (PPC) received a letter, dated September 18, 2017, from Ms. Gail Teixeira, PPP/C MP, requesting that the PPC examine the process and procedure used to award a tender to LievenseCSO Engineering Contracting BV. The referenced tender for consultancy services to conduct a feasibility study and design for a new bridge across the Demerara River had a contract value of US\$706,091.00, approximately G\$148M.

Having regard to the acknowledged national importance of the construction of a new bridge across the Demerara River, and the allegations of impropriety made against the Ministry of Public Infrastructure (MPI), the PPC, in accordance with Article 212 AA(1) of the Guyana Constitution, decided to examine the circumstances surrounding the award of the consultancy contract to the company LIEVENSECSO ENGINEERING CONTRACTING BV. The PPC advised Ms. Teixeira of its intention to conduct the review and inform her of its findings.

2.0 METHODOLOGY

The PPC examined relevant files and documents obtained from the National Procurement and Tender Administration Board (NPTAB) and the Ministry of Public Infrastructure (MPI), respectively. The PPC also interviewed the following persons:

1. Mr. Berkley Wickham - Chairman, NPTAB
2. Mr. Donald DeClou - CEO, National Procurement and Tender Administration (NPTA)
3. Mr. Kenneth Jordan - Permanent Secretary, Ministry of Public Infrastructure (MPI)

4. Mr. Rawlston Adams - CEO Demerara Harbour Bridge Corporation (DHBC)

In addition, the PPC reviewed a number of articles about this tender, published in the print and electronic media.

3.0 SUMMARY OF FINDINGS

3.1. Tender Proceedings

The Government of the Co-operative Republic of Guyana, through the MPI, advertised its intention to construct a new bridge to replace the current floating bridge across the Demerara River. The MPI indicated that it wished to engage a team of national and international specialists along with its own resources to undertake a feasibility study for the development of options for the crossing of the Demerara River.

The MPI invited companies, via an advertisement in the local newspapers, to submit Expressions of Interest (EOIs) to the Chairman of the National Procurement and Tender Administration Board (NPTAB) before **Tuesday, December 8, 2015, at 09:00hrs.**

The twenty-three foreign and local companies listed below submitted EOIs by the deadline stated in the public advertisement:

1. COWI of Denmark
2. Politecnica Ingegneria Corporation of Italy in association with Marcel Gaskin and Associates of Guyana
3. Vikar Enterprises of Trinidad
4. Stunning Nissi Inc. of Guyana
5. MMM Group of Canada in association with CEMCO of Guyana
6. China Railway First Group Company Limited of China
7. China Harbour Engineering Company (CHEC) Limited of China
8. Ballast Nedam of The Netherlands

9. SENER Engineering of South Africa
10. Stantec of Japan in association with Pedelta
11. Proficenter of Brazil
12. CFE in association with NV Rustwijk of Suriname
13. Zhejiang Provincial Institute of Communication Planning Design and Research (ZJIC) of China
14. Hewson Consulting Engineers of The United Kingdom
15. Egis of France
16. Stuart Consulting Group and Rahmand Association Inc. of the USA
17. IPRO Consult of Germany
18. CBCL Limited of Nova Scotia, Canada
19. Mott Mc Donald of The United Kingdom in association with SRKN Engineering
20. WSP Caribbean Limited of Trinidad
21. RITES Limited of India
22. China Shandong International Economic and Technical Corporation Group of China
23. Lievense CSO Infrastructure and Environment with Econovision and ACE Consultancy

3.2 Evaluation of EOIs and selection of Consultant

The Evaluation Committee appointed by NPTAB shortlisted twelve (12) companies from the twenty-three EOIs received and the MPI submitted their recommendation to NPTAB for 'No Objection' to the shortlist. NPTAB approved the shortlist and MPI sent Requests for Proposals (RFPs) to the following twelve companies:

1. Proficenter Negocios em Infraestrutura
2. WSP Caribbean Ltd.
3. MMM Group Ltd. & CEMCO Inc.
4. COWI of Denmark
5. Politecnica Ingegneria Corporation of Italy in association with Marcel Gaskin and Associates of Guyana
6. Ballast Nedam
7. Lievense CSO Infrastructure and Environment with Econovision and ACE Consultancy
8. Mott MacDonald Ltd. and SRKN 'Engineering
9. Egis International
10. China Railway First Group Company Ltd.
11. China Harbour Engineering Co. Ltd.

12. RITES LTD. of India

Only two companies submitted proposals by the stated deadline of March 15, 2016. These were:

1. China Railway First Group CO. Ltd
2. MMM Group (Canada) in Assoc. with CEMCO (Guy)

The proposals from the two companies were opened on March 15, 2016 and, on completion of the evaluation, only MMM Group (Canada) in Association with CEMCO Inc. achieved the minimum technical score of 80 points set as a requirement to pass the technical evaluation. China Railway First Group CO, Ltd. was awarded 74.9 points and consequently failed the technical evaluation.

The Evaluation Committee, after submission of the Technical Evaluation Report to NPTAB, received NPTAB's "No Objection" to the Report. NPTAB also subsequently provided approval for the Evaluation Committee to open and evaluate the financial proposal of MMM Group (Canada) in Association with CEMCO Inc. The Evaluation Committee noted that this Company's bid price of US\$848,950 exceeded the budget of US\$800,000 set for this project.

The Report of the Evaluation Committee submitted to the Chairman, NPTAB, stated that, using the Quality and Cost Based Selection Method, MMM (CANADA) in Association with CEMCO (Guyana) was determined as the lowest evaluated bidder. However, since the bid price exceeded the budget, a recommendation was made for the procuring entity to engage the consultant in direct negotiations to determine a suitable price.

The Chairman, NPTAB wrote the Permanent Secretary (PS), MPI on July 27, 2016 supporting the recommendation for negotiations with MMM Group (CANADA) in Association with CEMCO (Guyana).

3.3 Negotiations with MMM Group (Canada) in Association with CEMCO

The MPI entered negotiations with the selected company, but was unable to agree on a suitable price for the consultancy. MPI reported to NPTAB on November 17, 2016 that negotiations with the sole eligible bidder were unsuccessful due to the following:

- i) The Bidder's negotiation methodology was unsatisfactory
- ii) The Bidder proposed a consultancy fee, which exceeded the Budget allocation for this project.
- iii) The Bidder proposed a further increase of the consultancy fees to meet the Procuring Entity's technical requirements for the services.

The MPI informed NPTAB of their consequent decision to annul the tender, and re-scope the needs of the project, with a view of retendering at a later stage.

The PS, MPI wrote the Ministry of Finance on November 03, 2016 requesting approval to reallocate the funds previously approved for this project within the Ministry's Work Programme for the current financial year. The Ministry of Finance, by letter dated November 10, 2016 approved MPI's request to reallocate the funds.

The Chairman NPTAB wrote the PS, MPI on **November 21, 2016** advising of NPTAB's support of the recommendations of the Evaluation Committee

to annul the bidding process, and granted approval for the MPI to retender the project.

The PS, MPI wrote MMM(Canada) in Association with CEMCO (Guyana) on **November 22, 2016**, advising that the tender was cancelled.

3.4 Award of Contract to LIEVENSECSO ENGINEERING CONTRACTING BV

3.4.1 The PPC noted that LIEVENSECSO Infrastructure & Environment with Econovision and Ace Consultancy was one of the twenty-three entities that submitted Expressions of Interest in response to the MPI's advertisement for the project, Consultancy for Feasibility Study and Design for the new Demerara Bridge. This Group of companies was subsequently shortlisted by the MPI to submit a proposal for consideration to be selected for award of the consultancy contract, but failed to make a submission by the stated deadline of March 15, 2016.

3.4.2 The PS, MPI informed the PPC that, subsequent to annulment of the tender by the MPI, LievencSO Engineering Contracting BV, submitted an unsolicited proposal to provide consultancy services for the Demerara River Bridge project. The PPC noted that the Minister of Public Infrastructure, by Memorandum dated **November 18, 2016**, made a request to the Cabinet of the Government, seeking consideration and approval to use funds from the Demerara Harbour Bridge Corporation (Asphalt Plant Accounts) to fund the Feasibility Study and "to commence a contractual engagement with LIEVENSECSO as of the 1st January, 2017."

3.4.3 The PPC noted that this request to Cabinet was not forwarded through the NPTAB, but submitted directly by the Minister of Public Infrastructure. The

PPC also noted that Cabinet considered the Memorandum submitted by the Minister of Public Infrastructure and, on November 25, 2016, approved a total sum of G\$161,514,420 to be used from the Demerara Harbour Bridge Corporation (Asphalt Plant Accounts) to cover costs of the Feasibility Study for a New Bridge across the Demerara River.

3.4.4 Mr. Rawlston Adams, General Manager of the Demerara Harbour Bridge Corporation (DHBC) signed the contract with LIEVENSE CSO ENGINEERING CONTRACTING BV on December 9, 2016. Mr. Adams informed the PPC that the Board of the DHBC was not a party to the decision to use these funds for this purpose, as approved by CABINET, and further stated that he had not signed the contract on behalf of the DHBC, but only because he was requested to do so by the Minister of Public Infrastructure. He also advised the PPC that he was the designated project manager for the consultancy.

3.4.5 Mr. Kenneth Jordan, the current Permanent Secretary of the MPI reported to the PPC, that the consultancy project, though funded by the DHBC, with the contract signed by Mr. Rawlston Adams, General Manager of the DHBC, was still considered a project of the MPI.

3.4.6 In spite of the information provided by the Permanent Secretary, MPI and Mr. Adams, the contract with the company LIEVENSE CSO ENGINEERING CONTRACTING BV identified the Demerara Harbor Bridge Corporation as the client.

3.4.7 The DHBC was established by the Demerara Harbour Bridge Corporation Act 2003. It is a Public Corporation managed by a Board of Directors. Section 5(1) of the Act states that, "The General Manager shall, subject to the general direction of the Board, be responsible for implementing the decisions of the

Board and the efficient discharge of the functions of the Corporation. The DHBC does not fall within the definition of a Procuring Entity as provided in the Procurement Act Cap 73:05. Except for projects financed by funds provided from the Consolidated Fund of the Government, the DHBC can conduct its procurement in accordance with its own rules and procedures, once they do not conflict with the Procurement Act.

3.4.8 As advised by the General Manager, DHBC, this Corporation, however, in practice, executes procurement in accordance with the provisions of the Procurement Act. Mr. Adams confirmed to the PPC that this project was not included in the Work Programme and Budget of the DHBC for the financial year in which the consultant was contracted.

4.0 Conclusions

4.1 The MPI executed the initial tender process to select a consultant for the project in accordance with provisions of the Procurement Act, starting with the advertisement for Expressions of Interest and concluding with the annulment of the tender.

4.2 The MPI did not retender the project as approved by NPTAB. No advertisement was placed in the National Newspapers in this regard and there is no evidence that any restricted procurement process was undertaken for this consultancy. There is also no evidence in NPTAB's files or the records of the MPI that a request was made by the MPI for approval of a single source award.

4.3 The MPI's request dated November 03, to the Ministry of Finance for the approved budgeted sum for the consultancy to be re-allocated within the Ministry's current year programme indicated that the MPI was no longer

interested in pursuing the project in the current year. The PPC concludes that effective procurement planning would have avoided this outcome.

4.4 In spite of the opinion expressed by the PS, MPI, that the project was regarded as a project of the MPI, the fact that funding for the Consultancy was provided by the DHBC and the contract described the “Client” as the Demerara Harbor Bridge Corporation, it must be concluded that this was a project of the DHBC.

4.5 In view of the admission of the General Manager, DHBC that this entity, in practice, follows the provisions of the Procurement Act in the conduct of its procurement transactions, the PPC concluded that, particularly in respect of procurement activities, the DHBC continued to function in a similar fashion to that of a Department of the MPI.

4.6 Section 17 subsection 1 of the Procurement Act states that NPTAB is responsible for exercising jurisdiction over tenders, which exceed the amounts prescribed in the procurement Regulations. The Regulations state that, for the MPI, Consultancy projects that cost in excess of five million Guyana dollars (GYD\$5 million) must be administered by the NPTAB.

4.7 Based on practice, this award of a contract for the value of G\$148 million to LIEVENSECSO ENGINEERING CONTRACTING BV, by the DHBC, should have been administered by the NPTAB. If, indeed, the MPI had considered that this project was under its purview, the same requirements would have been applicable.

4.8 Examination of the procurement files and documents relating to this tender, and further discussions with officials of the NPTAB, DHBC and MPI,

indicate that the procurement procedure used to select LIEVENSEO ENGINEERING CONTRACTING BV to execute the contract did not meet the requirements of any of the methods described in the Procurement Act. There is no procedure that defines how a procuring entity should deal with “unsolicited proposals”, such as the one reportedly received from LIEVENSECSO ENGINEERING CONTRACTING BV.

4.9 The Procurement Act at Section 54.(1) states that ‘The Cabinet shall have the right to review all procurements the value of which exceeds fifteen million Guyana dollars. The Cabinet shall conduct its review on the basis of a streamlined tender evaluation report to be adopted by the Authority mentioned in section 17(2)’. In this particular procurement, since there is no evidence that the “Authority” (the NPTAB) prepared this report, the submission by the Minister of Public Infrastructure directly to Cabinet was in breach of the Procurement Act. The Procurement Act and Regulations make no provision for the Minister of Public Infrastructure to submit a procurement request directly to Cabinet for approval of award of a contract.

5.0 Recommendations

5.1 The Procurement Act specifically describes the roles of the Procuring Entities, NPTAB and Cabinet in the administration of tenders. The Act also describes in detail the procurement methods and procedures that must be used for the award of contracts for goods, consultancies and execution of works. Officials engaged in public procurement at all levels must ensure that they execute their functions in accordance with all provisions of the Procurement Act, Cap.73:05.

5.2 The MPI must ensure that procurement planning, particularly with respect to large capital projects, is effective and all risks are taken into consideration so that funds approved for a particular budget year are efficiently utilized.

5.3 The members of the Board of DHBC must ensure that they oversee the operations of the Corporation as outlined in the relevant Act.