



# SUMMARY OF FINDINGS

TENDER NO. 424/2022/21

FEBRUARY 29, 2024

## SUMMARY OF FINDINGS

<b>File No.</b>	005/2023/INV
<b>Complainant</b>	R. Kissoon Contracting Service
<b>Tender Reference No.</b>	424/2022/21
<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] On January 24<sup>th</sup>, 2023, the Public Procurement Commission (PPC) ('the commission') received a letter dated January 23<sup>rd</sup>, 2023, from R. Kissoon Contracting Service, under the hand of Rudranauth Roopdeo, General Manager ('the complainant') captioned, "*Bid Protest: Tender Reference Number 424/2022/21 – Maintenance & Service to NDIA Drainage & Irrigation Pumps within Region 2, 3, 4 and Georgetown Lot 1-4*".

[2] In the said letter, the complainant informed that it had protested the award of the said tender to the tender board, to wit, the National Procurement and Tender Administration Board (NPTAB) and having received no response since the lapse of thirteen (13) days therefrom, was requesting a review by the PPC of the evaluation of the tender on the basis that-

- it was the lowest bidder for Lots 2 and 3,
- met all of the requirements, and
- had recently concluded similar works for the year ending 2022.

[3] Attached to the said letter was a copy of a letter from the complainant dated January 11<sup>th</sup>, 2023, to the Chairman of NPTAB, similarly captioned, "*Bid Protest: Tender Reference Number 424/2022/21 – Maintenance & Service to NDIA Drainage & Irrigation Pumps within Region 2, 3, 4 and Georgetown Lot 1-4*". For the purpose of these proceedings, it is imperative to set out the said letter *verbatim*-

*"January 11, 2023*

*The Chairman  
National Procurement & Tender Administration Board  
Main & Urquhart Street  
Georgetown*

*Bid Protest: Tender Reference Number 424/2022/21 – Maintenance & Service to NDIA Drainage & Irrigation Pumps within Region 2, 3, 4 and Georgetown Lot 1-4*

*R. Kissoon Contracting Services regretfully and respectfully submits this bid protest to you regarding public tender identified above.*

*The tender opening was done on December 20, 2022, and while we would have submitted bids for lots 2, 3 & 4, we were the lowest bidder for Lots 2 & 3. A call was made to the Procurement Department of NDIA to inquire about the awards as we were told that there is no award of any of these bids for our company.*

*Given that we were the lowest bidder in two of the four lots and we have not received any award of contracts, our company believes it is necessary to file this formal protest and allow for a proper review of all circumstances applicable to the opening and evaluation of these bid proposals.*

*While the evaluation reports are not published or provided to the bidders, we are to be evaluated against the criteria as set out in the bid document which directs the awards to the lowest qualified bidder. We are sure to have met all the requirements beyond pricing as we have recently executed the exact same works as per this bid successfully and without issues over the last year ending in December 2022.*

*We have retained copies of our bid proposals and this can be made available to substantiate our position; we should have been awarded contracts for the identified lots of the captioned bid as we were the lowest bidder.*

*We respectfully request a stay of the awards of these contracts, and that a review of the evaluation of these tenders are done to ensure fairness in the award of contracts in accordance with the evaluation criteria set out for all bidders.*

*Yours Sincerely,*

*Sgd. Rudranauth Roopdeo*

*General Manager*

*Copy to:*

*Mr. Arvin Parag, Chief Executive Officer, NPTAB*

*Hon. Ashni Singh, Minister of Finance*

*Ms. Camanee Narine, Head of Procurement Department – NDIA*

*Ms. Delma Need, Permanent Secretary – Ministry of Agriculture*

*Hon. Zulficar Mutapha, Minister of Agriculture*

*Ms. Pauline Chase, Chairman, Public Procurement Commission*

*Mr. Michael Singh, CEO – Public Procurement Commission*

*Hon. Bharrat Jagedo – Vice President”*

[4] The said letter was accompanied by a cover letter of the same date, January 11<sup>th</sup>, 2023, from Mr. Sase Gunraj, Attorney-at-Law, acting on the complainant’s behalf.

[5] On January 25<sup>th</sup>, 2023, the commission acknowledged receipt of the aforesaid letter of the complainant. Further, on the same day, by way of letter to the Chief Executive Officer (CEO) of NDIA, Ministry of Agriculture (‘the procuring entity’) the commission brought the complaint to

its attention and requested the submission of all relevant documents, including the Evaluation Report, to the commission within ten (10) days of the date thereof.

[6] Subsequently on February 3<sup>rd</sup>, 2023, the commission by way of letter, requested from NPTAB through its Chief Executive Officer (CEO), Mr. A. Parag, whether a contract award was made and if so, when and to who, since a perusal of NPTAB's website did not bare publication of an award for the subject tender. Submission of relevant documents to the commission was also requested.

[7] NPTAB responded by way of letter dated February 5<sup>th</sup>, 2023, and received by the commission on February 7<sup>th</sup>, 2023, informing that the requested documents, including the Evaluation Report, was submitted to the commission on February 6<sup>th</sup>, 2023, through its Procurement Specialist.

[8] NPTAB did not respond to the request for confirmation as to the contract award and or the publication thereof.

[9] NDIA, after numerous follow ups, eventually responded by way of letter dated March 21<sup>st</sup>, 2023, and received by the commission on March 22<sup>nd</sup>, 2023. The procuring entity responded as follows-

*“I. The Tender was awarded on the 29<sup>th</sup> December, 2022 (See award attached).  
II. No contract was signed for lots 1, 2 & 4, only lot 3 has signed contract.  
III. No contract copy is available for lots 1, 2 & 4, see copy attached for lot 3.  
IV. NDIA did not execute the evaluation, please refer to NPTAB for the evaluation report.”*

[10] A copy of the entered contract for Lot 3 was submitted to the commission with the letter.

## ***Analysis***

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

[11] Part VII of the Procurement Act, Cap. 73:05 provides for and sets out the procedure for a bidder to challenge the rejection of its bid.

[12] S. 52 thereof mandates that -

*“(1) A bidder whose tender or proposal has been rejected may submit a written protest to the procuring entity.”*

[13] The aforesaid letter from the complainant, while captioned, Bid Protest, was sent to the tender board (NPTAB) and not to the procuring entity (NDIA). There is nothing before the commission to show that the protest was lodged with the procuring entity (as distinct from being copied thereto) as required by S. 52(1) of the Act.

[14] The provisions of the Act are strict and require strict compliance.

[15] However, in order to address the concerns of the complainant, the commission in exercise of its wide constitutional mandate and functions pursuant to Articles 212W and 212AA of the constitution, initiated an investigation to determine whether there was any irregularity or mismanagement in the rejection of the bid of the complainant, as alleged or otherwise.

*b. Methodology*

[16] 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 in the rejection of the bid of the complainant.
- 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.

[17] The commission considered the following documents-

- i. Letter dated January 23<sup>rd</sup>, 2023, and received on January 24<sup>th</sup>, 2023, from the complainant to the PPC with attached letters dated January 11<sup>th</sup>, 2023, from the complainant to NPTAB and January 11<sup>th</sup>, 2023, from Sase Gunraj, Attorney-at-Law to NPTAB.
- ii. Letter dated January 25<sup>th</sup>, 2023, from PPC to the complainant.
- iii. Letter dated January 25<sup>th</sup>, 2023, from PPC to NDIA.
- iv. Letter dated February 3<sup>rd</sup>, 2023, from PPC to NPTAB.
- v. Letter dated February 5<sup>th</sup>, 2023, from NPTAB to PPC.
- vi. Bid Submission of the complainant.
- vii. Report of the Evaluation Committee
- viii. Contract Award
- ix. Report from the Operations Department, PPC dated February 17<sup>th</sup>, 2023.
- x. Memo dated March 2<sup>nd</sup>, 2023, from Operations Department, PPC
- xi. Letter dated March 21<sup>st</sup>, 2023, and received on March 22<sup>nd</sup>, 2023, from NDIA to PPC.
- xii. Contract Document dated January 2023, between the procuring entity and the awarded bidder, Roopan Ramotar Investment.
- xiii. Letter dated March 31<sup>st</sup>, 2023, from PPC to NDIA.
- xiv. Letter dated March 31<sup>st</sup>, 2023, from PPC to NPTAB.
- xv. Letter dated June 6<sup>th</sup>, 2023, from PPC to NDIA.
- xvi. Letter dated June 6<sup>th</sup>, 2023, from PPC to NPTAB.
- xvii. Memo from Operations Department, PPC dated September 14<sup>th</sup>, 2023.
- xviii. Letter dated September 27<sup>th</sup>, 2023, from PPC to the complainant.

c. Evaluation of Bids

[18] NDIA (‘the procuring entity’) issued an open tendering process for the Maintenance and Servicing of NDIA Fix and Mobile Pumps, Lots 1-4, being the subject tender herein.

[19] By way of the Invitation for Bids, bids were scheduled to be opened on December 20<sup>th</sup>, 2022, at NPTAB.

[20] Twelve (12) bids were received of which three (3) were deemed responsive. That is, 75% of the bids received were deemed non-responsive and 25% responsive.

[21] The complainant bid on three (3) of the four (4) Lots, to wit Lots 2, 3 and 4. The complainant submitted the lowest bid for Lot 2, but not for Lots 3 and 4. The complainant in the complaint lodged with the commission alleged that it was the lowest bidder for Lots 2 and 3. It was not the lowest bidder for Lot 3 as alleged. The complainant submitted a bid for Lot 3 in the sum of \$319,700,000.00 (three hundred and nineteen million and seven hundred thousand dollars). R79 Mining and Construction submitted a lower bid for Lot 3 in the sum of \$203,290,000.00 (two hundred and three million, two hundred and ninety thousand dollars) but like the complainant, was deemed non-responsive.

[22] S. 39(2) of the Procurement Act, Cap. 73:05 specifies that-

*“The Evaluation Committee shall, using only the evaluation criteria outlined in the tender documents, evaluate all tenders, determine which tenderer [bidder] has submitted the **lowest evaluated tender**, and convey its decision to the procuring entity ...”*

[23] Accordingly, it is not the *lowest bid* which receives the award. It is the *lowest evaluated bid* which receives the award. That is, it is the lowest bid which is deemed by the Evaluation Committee to be most responsive to the evaluation criteria.

[24] A bidder must therefore satisfy all of the required Evaluation Criteria. The failure to satisfy any one thereof would result in the bidder being deemed non-responsive. The Evaluation Criteria expressly stated that –

*“Any bidder who received a ‘NO’ in any of the criteria (1-16) stated above shall be non-responsive.”*

[25] The complainant was deemed non-responsive by the Evaluation Committee for failing to satisfy three (3) of the Evaluation Criteria – financial and technical, particularly –

- i. Criteria #9: *Evidence of financial capacity representing (25%) for **each individual lot**. 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.*

[26] The Engineer's Estimate was stated as follows-

Lot 1: \$203,805,000.00  
Lot 2: \$158,929,000.00  
Lot 3: \$365,585,000.00  
Lot 4: \$149,220,000.00

[27] The complainant's bids were as follows:

Lot 1: -  
Lot 2: \$127,160,000.00  
Lot 3: \$319,700,000.00  
Lot 4: \$146,285,000.00

[28] Included in the record of the tender proceedings submitted by NPTAB to the commission, is a Statement from Republic Bank (Triumph Branch) evidencing a bank account balance of the complainant in the sum of \$40,957,648.63 (forty million, nine hundred and fifty-seven thousand, six hundred and forty-eight dollars and sixty-three cents). The statement was dated December 16<sup>th</sup>, 2022, that is, within one (1) month of the bid opening on December 20<sup>th</sup>, 2022, and certified as a true copy of the original by the issuing bank, in compliance with the aforesaid Criteria #9.

[29] Also included was a letter from Guyana Bank for Trade & Industry (GBTI) dated December 19<sup>th</sup>, 2022 (also within the one month of the bid opening on December 20<sup>th</sup>, 2022, in compliance with the said criteria) advising of line of credit facilities to the complainant.

[30] The letter informed that the complainant maintained with GBTI two facilities –

- a current account with a debit balance within the low eight figure range, and
- a Commercial Trading & Services Overdraft Facility with a limit within the low eight figure range - overdraft facility to that date being in debit balance also.

[31] The letter further informed that GBTI was aware that the complainant submitted a tender and should the need for financing arise, same will be provided on condition that the relevant requirements are met.

[32] The Evaluation Report is silent on and devoid of any analysis on the deemed non-responsiveness of the said Criteria #9. It simply only lists alongside the name of the bidder, the criteria by number which the bidder was deemed not to satisfy.

[33] Accordingly, the commission wrote to NPTAB requesting an explanation on the basis on which the complainant was deemed non-responsive to the said criteria.

[34] NPTAB did not respond to the request of the commission within the time delimited or at all.

[35] Nonetheless, the commission proceeded to consider the matter and found that the Line of Credit could not properly be taken into account as the facilities were with unspecified debit balances (actual sums not stated) and financing was conditional, not guaranteed.

[36] The Bank Statement balance of \$40,957,648.63 (forty million, nine hundred and fifty-seven thousand, six hundred and forty-eight dollars and sixty-three cents) was however *prima facie* sufficient to satisfy the requirement of evidencing 25% financial capacity of the complainant's bid price for Lots 2 and 4, individually, not cumulatively.

[37] As mentioned, the commission does not have the benefit of an explanation from NPTAB on the analysis of the Evaluation Committee which deemed the complainant non-responsive on the aforesaid criteria. Notwithstanding, it appears that the Evaluation Committee applied the 25% financial capacity requirement, cumulatively and not by each block individually. Therefore, the sum of \$40,957,648.63 (forty million, nine hundred and fifty-seven thousand, six hundred and forty-eight dollars and sixty-three cents) was not sufficient to satisfy the total bid price of the complainant for all three (3) of the tendered Lots.

[38] While the said evaluation criteria appears to have been applied cumulatively, the awards were however made by way of each individual Lot and not *en block*. That is, the lowest evaluated tenderer for each Lot was awarded that particular Lot.

[39] The Bid Document did not specify whether the evaluation would be done *en block* or individually by Lot. That is, whether all or any of the Evaluation Criteria listed in the Bid Document would be applied cumulatively or individually per Lot.

[40] Notably, the Evaluation Criteria at the end thereof states-

*“(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”*

[41] As can be seen, the statement appears to be incomplete and does not specify as aforesaid.

[42] Strictly therefore, there is nothing which prohibited the Evaluation Committee from applying the said criteria cumulatively.

- ii. *Criteria # 15: Ownership of key equipment – the bidder must provide evidence to show that the following key equipment are available for the project. Ownership can be demonstrated by providing either one of the following: the licenses, purchase documents, registrations, agreement to lease or rent, and/or affidavit of ownership. An agreement to lease or rent must be dated within one month of the bid opening. Affidavit of ownership must be duly signed by a commission of oaths or justice of*



*peace and notarized and the list of equipment must be endorsed by same if it is supplied as an attachment to the affidavit.  
Ownership of key equipment must be provided for EACH LOT TENDERED separately.*

Item No.	Description of Key Equipment Required	No. of Key Equipment Required
a.)	Ten (10) ton truck crane (Hiab)	1

[43] Included in the record of the tender proceedings submitted by NPTAB to the commission, is an Affidavit of Declaration of ownership of the complainant, sworn to on December 2<sup>nd</sup>, 2022, before a Commissioner of Oaths to Affidavits. The said Affidavit is dated within a month of the bid opening, is stamped and signed in compliance with the said criteria and refers to a list of equipment owned by the complainant. Specifically, three (3) hiab were listed therein. The complainant bid on three (3) Lots.

[44] This is *prima facie* in compliance with the aforesaid criteria.

[45] The commission wrote to NPTAB also requesting an explanation on the basis on which the complainant was deemed non-responsive to this criterion as there was no analysis evident in the Evaluation Report. As hereinbefore mentioned, it simply only lists alongside the name of the bidder, the criteria by number which the bidder was deemed not to satisfy.

[46] There has similarly been no response from NPTAB and accordingly, there is nothing before the commission contrary to the complainant being in compliance with the aforesaid criteria.

iii. Criteria #18: *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.*

*OR*

*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.*

[47] Included in the record of the tender proceedings which was submitted by NPTAB to the commission, are financial statements of the complainant for the three (3) years prior to the tender opening, that is, 2019-2021, inclusive, which were prepared and approved by the accounting firm Barcellos Narine & Co. An independent Auditor's Report for each year was also included.

[48] This is *prima facie* in compliance with the aforesaid criteria.

[49] The commission also requested an explanation from NPTAB in writing on the basis on which the complainant was deemed non-responsive to this criterion and again there was no

response. Accordingly, there is nothing before the commission contrary to the complainant being in compliance with the said criteria.

*d. Award*

[50] The Contract Award dated December 29<sup>th</sup>, 2022, was made as follows-

- Lot 1: United Contracting - \$185,300,000.00
- Lot 2: General Engineering Supplies and Services - \$134,934,000.00
- Lot 3: Roopan Ramotar Investment - \$326,295,000.00
- Lot 4: General Engineering Supplies and Services - \$134,820,000.00

[51] By way of the aforementioned letter from NDIA (the procuring entity) dated March 21<sup>st</sup>, 2023, the commission was informed, in response to our request for information pursuant to Article 212DD of the constitution, that a contract was signed for Lot 3, only. On review of the contract, the commission noted that the contract was dated January 1<sup>st</sup>, 2023, that is, only two (2) clear business days after the contract award was made and being a national holiday.

[52] In the premises, the commission by way of letter to NDIA dated March 31<sup>st</sup>, 2023, requested the following further information within ten (10) days of the date thereof-

- when was notice given to the awarded contractor, Roopan Ramotar Investments in accordance with S. 42(1) of the Procurement Act, and a copy thereof,
- whether Sections 11, 39(3) and 43 of the Procurement Act were complied with,
- what steps if any were taken to verify whether the contract award decision was published on the website of NPTAB prior to the entry into the contract, and
- whether you are in receipt of the Bid Protest from R. Kissoon Contracting Service dated January 11<sup>th</sup>, 2023, and if so, whether there was a response thereto.

[53] Notwithstanding follow ups and a written reminder of June 16<sup>th</sup>, 2023, NDIA (the procuring entity) did not respond to the aforesaid letter.

[54] Included in the contract document for Lot 3 submitted to the commission by NDIA on March 21<sup>st</sup>, 2023, is a Letter of Acceptance addressed to Roopan Ramotar Investments and dated January 1<sup>st</sup>, 2023. The contract as aforesaid, was also executed on January 1<sup>st</sup>, 2023.

[55] S. 52 of the Procurement Act, Cap. 73:05 provides that a bidder may invoke an administrative review process to 'protest' (object to) the rejection of its bid by lodging a written 'bid protest' "***within five (5) business days following publication of the contract award decision.***"

[56] The purported signing, therefore, two (2) clear business days after the contract award decision infringed on the complainant's right to protest the award, five (5) business days from the contract award not having elapsed.

[57] The matter is even further compounded in the absence of “*publication*” of the contract award decision prior to the signing of the contract. The Act, as aforementioned, provides that time starts to run to lodge a ‘bid protest’ from the date of *publication* of the contract award decision as distinct from the date of the contract award decision.

[58] As aforementioned, the commission first requested from NPTAB on February 3<sup>rd</sup>, 2023, and to which there was no response, confirmation of publication of the contract award decision, as none was at that time visible on NPTAB’s website.

[59] The commission again by way of letter dated March 31<sup>st</sup>, 2023, requested from NPTAB confirmation thereof. Specifically, the following was requested to be furnished within ten (10) days of the said date of the letter –

- confirmation as to whether the subject contract award decision was published on NPTAB’s website as mandated by S. 11 of the Procurement Act, Cap. 73:05,
- if so, the date of so doing and the link therefor, and
- if not, the reason for not so doing and whether there are any remedial steps to be taken.

[60] There was again no response. The commission followed up once more as recently as February 15<sup>th</sup>, 2024, again without response.

[61] The commission notes that the contract award, the publication of which was not apparent on NPTAB’s website at the time of receipt of the complaint, now appears thereon.

*e. Findings*

[62] On review, the commission found that-

- i. Strictly, there was nothing which expressly prohibited the Evaluation Committee from applying Criteria #9 cumulatively thereby deeming the complainant non-responsive.
- ii. Although the complainant was wrongly deemed to have not satisfied Criteria #15 and #18, the failure to satisfy Criteria #9 by the Evaluation Committee deemed it non-responsive in any event as the bidder was obligated to satisfy all of the required criteria. The failure to satisfy any one of the required criteria results in the bidder being deemed non-responsive.

***Recommendations***

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

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

- I. While there was, strictly, nothing which expressly prohibited the Evaluation Committee from applying Criteria #9 cumulatively, the absence of such specificity undermines fairness and transparency in the system. Bidders should be put on notice, and it be clearly communicated, how the evaluation would be conducted, award made and hence what has to be met. It should not be left to interpretation or flexibility.

Article 212W of the constitution entrusts the commission -

*“... to ensure that the procurement of goods, services ... are conducted in a **fair, equitable, transparent, competitive** and cost effective manner according to law...”*

In the premises, it is recommended that when procurement is being done in Lots, it must be clearly and expressly stated in the bid document, whether the evaluation and award would be made by Lot or *en block*, including whether bidders can bid on one or more Lots or whether they must bid on all of the Lots to qualify to be considered for the award, whether the criteria will be applied to each lot individually or cumulatively and whether a bidder can be awarded for more than one block if the evaluation and award is being done by Lot.

S. 32(2) of the Procurement Act, Cap. 73:05 vests NPTAB with the responsibility of approving bid documents for a tender prior to their issuance to ensure that they are in compliance with the form as set by the commission pursuant to S. 17(2) of the Act.

It is therefore the responsibility of NPTAB to ensure that the bid document for a tender is framed in a fair and transparent manner in order to be approved for issuance.

- II. It is further recommended that procuring entities ensure that the contract award has been published on the website of NPTAB in compliance with S. 11 of the Procurement Act, Cap. 73:05, prior to the entry into the contract and that the requisite ‘standstill’ period since the contract award publication has elapsed before entry into the contract. The failure to so do could adversely affect a bidder’s right to invoke the administrative review process provided for in the Act to protest the rejection of his bid. Such a breach could, *inter alia*, result in the procuring entity being liable for damages.

Subsequent to the complaint herein being received, the commission issued a Circular dated March 27, 2023, numbered 01/2023 and titled “Publication of Contract Award” to address this issue. A copy can be accessed via the commission’s website [www.ppc.org.gy/media-centre/circulars](http://www.ppc.org.gy/media-centre/circulars)

Further, this issue was previously flagged by the first constituted commission in their Investigative Report into a complaint by BK International Inc. dated December 27,

2017, in relation to the award of a tender by the then Ministry of Public Security for the construction of the Mazaruni Prisons. At paragraph 6.4 thereof, the commission stated that –

*“The Procuring Entity should not sign contracts without providing unsuccessful bidders the opportunity to invoke the administrative review process as specified in the Procurement Act.”*

A similar recommendation was made by this commission in our Summary of Findings of a complaint lodged by Akamai Inc. on July 17<sup>th</sup>, 2023.

The commission encourages procuring entities to ensure strict compliance with this provision. The continued failure to so do completely undermines the administrative review process for binding corrective action and thereby leads to distrust. Additionally, as noted hereinbefore, it could result in additional costs to the procuring entity should it be held liable for damages by a Court of competent jurisdiction.

- III. It is recommended that NPTAB immediately take steps to amend its website to include the date of publication of the contract award.
- IV. It is recommended that complainants contact the PPC for guidance before filing a complaint to ensure that the correct procedure is followed.
- V. The commission continues to be plagued by the non-response or sloth of response by procuring entities and NPTAB. The commission has had cause to make comment on this issue in every Summary of Findings published by this the second constituted commission.

Accordingly, we recommend that procuring entities and tender boards take steps to strengthen their administrative efficiencies to be better responsive to requests by the commission. Further, we repeat our recommendation as made in our last issued Summary of Findings dated February 2<sup>nd</sup>, 2024 (MS Investments) that *“Parliament enact legislation to give effect to Article 212DD(2) of the constitution to provide for offences and penalties on the failure to comply with a request or decision of the commission.”*

### ***Disposal***

[64] The complainant was informed in September 2023 as to the findings herein leading to the rejection of his bid.

[65] A copy hereof is to be made available to the procuring entity and NPTAB and published on the commission’s website.

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

[67] Adopted at a Meeting of the Commission on February 29<sup>th</sup>, 2024.