



SUMMARY OF FINDINGS

TENDER NO. 260/2023/53

JUNE 7, 2024

SUMMARY OF FINDINGS

File No.	001/2024/INV
Complainant	Correia & Correia Limited
Tender Reference No.	260/2023/53
Description of Tender	Provision of Works for Construction of Coast Guard Reinforced Concrete Wharf – Ruimveldt, Georgetown
Procuring Entity	Guyana Defence Force
Evaluation Board	National Procurement & Tender Administration Board ('NPTAB')

Background

[1] On March 18th, 2024, the Public Procurement Commission ('PPC') ('the commission') received a request for an investigation from Correia & Correia Ltd. into the award of *Tender Reference No. 260/2023/53 – Provision of Works for Construction of Coast Guard Reinforced Concrete Wharf – Ruimveldt, Georgetown*. The procuring entity was the Guyana Defence Force (GDF), and the evaluation was conducted by the National Procurement & Tender Administration Board ('NPTAB').

[2] Attached to the correspondence from the complainant dated March 18th, 2024, were a completed "*Application for Administration Review*" Form, a completed "*Bid Protest Form*" and the "*original complaint*" lodged with the procuring entity, the particulars of which the complainant relied on.

[3] The complainant, who had bid on the said tender, alleged several breaches of the procurement process, to wit-

- i. The awarded contractor, *Kares Engineering*, was "***non-responsive based on the Financial Assessment within the Evaluation Criteria***" and therefore ought not have been awarded the contract,
- ii. NPTAB and not the procuring entity awarded the contract,
- iii. There was no formal notification or information provided to Bidders that the contract in issue was awarded,
- iv. There was no published notification in the public domain that the contract was awarded,
- v. The Bid Security was improperly being held.

[4] On March 21st, 2024, the commission acknowledged receipt of the complainant's letter and put the allegations of the complainant to both the procuring entity and NPTAB. They were invited to submit a response and further requested to submit within five (5) business days of the date of the said letter:

- i. a complete copy of the tender proceedings, including the Evaluation Report and bid submitted by all tenderers,

- ii. confirmation whether the contract therefor has been entered into and if so, particulars thereof,
- iii. whether the S. 39(3) of the Procurement Act, Cap. 73:05 was complied with, that is, whether the Report of the Evaluation Committee was sent to the procuring entity and they gave their approval or disapproval prior to the contract award decision and publication, and
- iv. whether the contract award decision has been published on NPTAB's website as mandated by Section 11 of the Procurement Act, Cap. 73:05, and if so, the date of publication.

[5] NPTAB responded by way of letter dated April 3rd, 2024, and received by the commission on April 11th, 2024, in which it addressed the matters set out in the said letter of the commission (hereinafter referred to).

[6] The procuring entity (GDF) responded by way of letter dated April 15th, 2024, in which it acknowledged receipt of the commission's correspondence and informed that, "*we are carefully preparing our response, which will be appropriately transmitted to your office on or before April 22, 2024.*" Same was not received.

Analysis

a. Procedure

[7] Pursuant to Article 212AA(1)(h)(i) and (j) of the constitution, the commission is vested with investigative functions together with ten (10) other functions.

[8] Article 212AA(1)(h) specifically authorizes the commission to "*investigate complaints from suppliers, contractors and public entities and propose remedial action*".

[9] This Article [212AA(1)(h)] is enabled by Part VII of the Procurement Act, Cap. 73:05 which sets out the procedure which must be followed by a bidder whose bid has been rejected and wishes to object thereto.

[10] The procedure requires that a request for a review of the rejection of the aggrieved bidder's bid, must first be made to the procuring entity by the bidder by submitting thereto, a "*protest*" (usually referred to as a '*Bid Protest*') "***within five (5) business days following 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 the said 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.

[11] There is no statutorily mandated format for a '*Bid Protest*' and or '*Administrative Review*'. However, in order to bring uniformity and assist both complainants and procuring entities, the commission in accordance with its responsibilities under Section 17(2) of the Procurement Act, Cap. 73:05, established Forms therefor which are available through its website. It must be noted

that, at this time, this does not exclude a ‘*Bid Protest*’ and or ‘*Administrative Review*’ in any other format.

[12] As hereinbefore noted, the complainant, utilizing the said Forms, submitted both completed ‘*Bid Protest*’ and ‘*Administrative Review*’ Forms with its request for an investigation.

[13] As further noted hereinbefore, the complainant also submitted to the commission as part of its request for an investigation, a copy of the correspondence first sent to the procuring entity.

[14] In the view of the commission, the said correspondence, which was dated March 5th, 2024, was in sufficient detail to satisfy the requirement of being, and, properly treated as a ‘*Bid Protest*’.

[15] On the record before the commission, there appears not to have been a response thereto within the statutorily prescribed five (5) business days of submitting the protest, or at all. Thereafter, in accordance with Section 53 of the Procurement Act, Cap. 73:05, ‘*Administrative Review*’ flows.

[16] However, there is nothing before the commission, at no fault of the complainant, and as hereinafter more fully addressed, to determine the ***date of the publication of the contract award*** from which time runs for the lodging of a protest. Further, the complainant did not allege to be the lowest evaluated bidder.

[17] Nonetheless, in order to address the matters raised by the complainant, the commission exercised its function as expressed in Article 212AA(1)(i) of the constitution. That is, to “*investigate cases of irregularity and mismanagement and propose remedial action*”. As already noted by the commission in the ‘*Belle Vue*’ matter, this is wider in scope than Article 212AA(1)(h) as it is not limited to *suppliers, contractors and public entities* and or the aforementioned statutory process.

b. Methodology

[18] The commission adopted its usual and established 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.

[19] The commission considered the following documents-

- i. Letter dated March 18th, 2024, from the complainant to the PPC, with attached-
 - a. Application for Administrative Review dated March 18th, 2024,
 - b. Bid Protest Form dated March 18th, 2024,
 - c. Copy of letter dated March 5th, 2024, from the complainant to The Chief of Staff, Guyana Defence Force (GDF),

- d. Copy of Contractor's Bid dated November 28th, 2023,
- e. Copy of extracts of the Bid Document, to wit, Introduction, Invitation for Bids (IFB) pgs. 1, 13, 15 and 16,
- f. Copy of Evaluation Criteria,
- g. Bid Data Sheet (BDS) (original purchase agreement & addendum #2)
- h. Print out of www.npta.gov.gy/about-us/npta/
- i. Print out of NPTAB website search for GDF awarded contracts.
- ii. Letter dated March 21st, 2024, from PPC to complainant.
- iii. Letter dated March 21st, 2024, from PPC to GDF.
- iv. Letter dated March 21st, 2024, from PPC to NPTAB.
- v. Letter dated March 22nd, 2024, from the complainant to PPC with attached-
 - a. Copy of Addendum dated October 26th, 2023,
 - b. Copy of Addendum dated November 11th, 2023,
- vi. Letter dated March 22nd, 2024, from PPC to the complainant.
- vii. Memorandum dated March 26th, 2024, from Operations Department to CEO, PPC.
- viii. Memorandum dated April 3rd, 2024, from Operations Department to the commission, through the CEO.
- ix. Memorandum dated April 4th, 2024, from Operations Department to the commission, through the CEO.
- x. Letter dated April 3rd, 2024, and received on April 11th, 2024, from NPTAB to the PPC.
- xi. Letter dated April 15th, 2024, and received on April 19th, 2024, from GDF to the PPC.
- xii. Memorandum dated May 2nd, 2024, from the Operations Department to the commission, through the CEO.
- xiii. Memorandum of Legal Opinion dated May 7th, 2024, from the Legal/Compliance Department to the commission, through the CEO.
- xiv. Bid Submissions of all Bidders.
- xv. Report of the Evaluation Committee dated December 2023.
- xvi. "*Award of Contract*" dated December 27th, 2023.
- xvii. Copy of Bidding Documents for the subject tender.

c. Evaluation of Bids

i. *The Tender*

[20] On October 9th, 2023, the procuring entity (GDF), issued an Invitation To Bid (ITB) through an open tendering process with an opening date of October 31st, 2023, for the "*Construction of Coast Guard Reinforced Concrete Wharf-Ruimveldt, Georgetown*".

[21] There was a subsequent Addendum to change the opening date to November 14th, 2023, and then another Addendum to further change the opening date to November 28th, 2023, on which date the bids were opened at NPTAB.

[22] The Minutes of the Tender Opening, published on the website of NPTAB reflects that a total of eight (8) bids were opened as received.

ii. Evaluation Criteria

[23] The Report of the Evaluation Committee of NPTAB reflects that all of the bidders were deemed responsive.

[24] As set out in its Report, the Evaluation Committee first considered whether the bidders met the “*minimum statutory and applicable administrative requirements*’. That is, whether they submitted a signed Form of Tender, Valid Guyana Revenue Authority (GRA) Compliance and Valid National Insurance Scheme (NIS) Compliance.

[25] Having found that all of the bidders satisfied the aforesaid ‘*administrative requirements*’, the Evaluation Committee next went on to assess the bidders “*in accordance with the Evaluation Criteria outlined in the tender documents.*”

[26] In so doing, the Evaluation Committee primarily found that all of the bidders had fulfilled all of the requirements of the “*Non-Financial Assessment*” to be then considered for “*Financial Assessment*”.

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 [emphasis that of the commission]*
- (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.*

[27] The complainant alleges that the awarded bidder was non-responsive in accordance with the aforesaid paragraph (b) of the *Financial Assessment*. That is, the awarded bidder’s bid was less than 80% of the Engineer’s Estimate and therefore did not pass the *Financial Assessment* in order to be properly awarded the contract.

[28] The record of the tender proceedings before the commission reflects the following-

No.	Name of Bidder	Bid Price (\$)	Corrected Bid Price (\$)	Percentage of Engineer’s Estimate (EE)

1.	R. Basso & Sons Const. Co.	\$5,688,972,220.	\$5,688,972,220.	Above EE
2.	S. Jagmohan Const. & Gen. Sup. Inc.	\$2,146,098,420.	\$2,146,098,420.	81%
3.	Correia & Correia Ltd.	\$2,176,084,034.	\$2,176,084,034.	82%
4.	Arjune Const. Inc.	\$2,063,024,470.	\$2,063,024,470.	78.6%
5.	Memorex Enterprise	\$2,950,673,991.	\$2,950,673,991.	Above EE
6.	Kares Engineering Inc.	\$1,839,524,630.	\$2,039,998,986.	77.8%
7.	Ivor Allen	\$5,942,806,223.	\$5,942,806,223.	Above EE
8.	Gordon Winter Co. Ltd.	\$5,191,750,016.	\$5,191,750,016.	Above EE

[29] The Engineer’s Estimate (‘EE’), which appears from the record not to have been disclosed prior to the tender opening, is stated in the Minutes thereof, published on NPTAB’s website, to be \$2,623,580,053.

[30] As set out in the above table, the bid of the awarded bidder, *Kares Engineering Inc.*, was below 80% of the Engineer’s Estimate.

[31] In response, NPTAB by way of its aforementioned letter to the commission dated April 3rd, 2024, asserted that the “*Financial Assessment*” does not form part of the Evaluation Criteria. It stated-

“Regarding the financial assessment among the bidders, it’s important to clarify that the paragraph in the bidding document stating “Financial Assessment (b) Any bidder whose bid is less than 80% of the Engineer’s estimate WILL BE CONSIDERED Non-Responsive” is not a part of the evaluation criteria. Discretion is exercised to ensure the best cost per value. All criteria were meticulously met, and there is no disadvantage in awarding the contract to the bidder, who is a reputable firm. The purpose of the 80% benchmark is not to eliminate bidders but to prevent unqualified ones from submitted unrealistically low bid prices that could lead to issues during the project’s execution.”

[32] The issue therefore turns on whether the ‘*Financial Assessment*’ forms part of the Evaluation Criteria within the meaning of the Procurement Act, Cap. 73:05.

[33] Section 39(2) of the said Act provides that-

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

[34] The aforesaid explanation of NPTAB appears to be inherently contradictory and inconsistent with the Report of the Evaluation Committee. On examination of the Report, the Committee having considered whether the bidders had satisfied the ‘*administrative requirements*’, then went on to conduct a non-financial assessment of the bids to determine which would then be considered for the next and final stage in the evaluation process of “*Financial Assessment*”. [paragraphs 24-

26]. The Evaluation Committee therefore appeared to consider that the “*Financial Assessment*” was part of their evaluation process.

[35] The Evaluation Committee states in its Report –

“ **6.0 *Preliminary Examination of Bids (Administrative Compliance)***

6.1 *Table 1 above outlines how each bidder satisfied the minimum statutory administrative requirements in the tender process.”*

7.0 *Evaluation of Bids*

7.1 *The bids were assessed in accordance with the Evaluation Criteria outlined in the tender documents.”*

[36] In the following paragraph 8 of the Report of the Evaluation Committee, it states after each bidder’s name – “*This bidder fulfilled all of the requirements of the Non-Financial Assessment and was considered for Financial Assessment (See Table 2)*”

[37] Sequential paragraph 9 is headed “**RESPONSIVE BIDDERS & CORRECTED BID PRICES – TABLE 2**”. The referred to “*Table 2*” lists the name of each bidder in one column and in the corresponding column “*Corrected Amount*”. Under the Table, it is stated that “*Bidder No. 6 has a summation error.*” Of note, Bidder No. 6 is the awarded bidder (*see table above – para.28*)

[38] It therefore appears that the Evaluation Committee made arithmetic checks in accordance with the “*Financial Assessment*”, paragraph (a). Section 39(4)(b) of the Procurement Act, Cap. 73:05 also provides for the Evaluation Committee to correct “*...arithmetic errors which are discovered during the examination of tenders...*”

[39] In addition to the aforesaid, the form of the subject document also does not support NPTAB’s contention of the *Financial Assessment* not being part of the evaluation criteria. The “**FINANCIAL ASSESSMENT**” forms part of the document in the Bidding Documents titled “**EVALUATION CRITERIA**” and appears at the end thereof comprising one document. It is not listed as a separate document in the Table of Contents of the Bidding Documents. The subject document listed therein is “*Evaluation Criteria*” in which is included the “*Financial Assessment*”. – *Appendix A*

[40] As already noted by the commission in the ‘*Belle Vue*’ matter, an Evaluation Committee ought not exercise a discretion not expressly reserved. The commission notes that the Summary of Findings in the ‘*Belle Vue*’ matter was issued after the subject evaluation herein. The Evaluation Committee therefore would not have had the benefit of same in the conduct of the evaluation of the subject tender herein. The commission nonetheless reiterates same also arising herein.

[41] The only discretion expressly reserved is as expressed in paragraph (d) of the *Financial Assessment*. That is, “*Any Bidder who receives a ‘NO’ in any of the criteria stated above shall be NON-RESPONSIVE, discretion may be shown in extreme circumstances.*”

[42] This must be taken to refer to the criteria listed in the table above the *Financial Assessment* as columns in that table provide for “YES” or “NO”. – *Appendix B*

[43] The procuring entity having expressly represented that “Any bidder whose bid is less than 80% of the Engineer’s Estimate will be considered “**NON-RESPONSIVE**” and that “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” is bound thereby. It cannot arbitrarily disregard same and or purport to exercise a discretion which is not expressed and of which bidders (potential and actual) would not be aware.

[44] As also observed in the ‘Belle Vue’ matter, “The alternative [in exercising a discretion not expressly reserved] would create uncertainty, has the potential to interject unfairness in the system, undermine transparency and confidence in the evaluation.”

[45] The effect of the application of the 80% benchmark is that while the awarded bidder submitted the lowest bid, it was NON-RESPONSIVE in accordance with the express terms of the *Financial Assessment* of the Evaluation Criteria.

[46] The Evaluation Committee, having found that all of the bidders were responsive to the administrative and non-financial requirements, applying the Financial Assessment thereafter, the lowest evaluated bidder would have been *S. Jagmohan Const. & Gen. Sup. Inc.*, who bid \$2,146,098,420. Notably, the complainant, who bid \$2,176,084,034.00 would not have been the lowest evaluated bidder. There is no complaint before the commission by *S. Jagmohan Const. & Gen. Sup. Inc.*

[47] While the commission accepts the aforesaid reasoning of NPTAB as to the purpose of the 80% benchmark, the Board failed to explain why in this instance, it was not applied and or a purported discretion exercised. The Report of the Evaluation Committee is similarly so devoid. It also does not explain why the benchmark of 80% was set instead of, say, 90%, 70%, 50% or otherwise.

[48] The purpose of an Engineer’s Estimate was considered in passing by the first constituted PPC in the matter of an ‘Investigation into a Complaint by *BK International Inc. in Relation to an Award by the Ministry of Public Security for the Construction of Mazaruni Prisons*’. The Report states at paragraph 3.7.2. thereof that in response to the commission’s query as to the relevance of the Engineer’s Estimate, a member of the therein Evaluation Committee responded that, “it gives clarity to the magnitude of work”.

[49] Broadly, it is generally employed in the public procurement process to evaluate the reasonableness of a bid price in relation to other evaluation (award) criteria. There are, however, a number of inexhaustive considerations which could affect a bid price. One example is that a bidder may strategically choose to narrow his profit margin to secure the contract by bidding at a low price to keep his workforce engaged in the interim for a later larger project.

[50] In the premises, if it is that an Engineer’s Estimate will be used to determine responsiveness, then it is imperative that the Engineer’s Estimate is responsibly prepared and a realistic benchmark

set. It should be noted that in this matter, the awarded contractor, who chose to enter into the contract notwithstanding its bid falling below the expressed benchmark, was thereunder by the narrow margin of 2.2%.

[51] The aforesaid considerations are important, particularly in instances such as the matter herein, where the Engineer's Estimate is used to determine responsiveness by a percentage benchmark, since the procuring entity is bound thereby.

[52] Further, if the Engineer's Estimate is employed to determine responsiveness, it is the considered view of the commission, for obvious reasons such as transparency and fairness, that it should be publicly disclosed and form part of the Bidding Documents. And if not so disclosed, the bidders may use the provision for clarification pursuant to Section 33 of the Procurement Act, Cap. 73:05, to obtain same.

d. Contract Award

[53] The complainant contends that NPTAB and not the procuring entity awarded the contract. The basis for the complainant's contention is set out in its aforementioned letter dated March 5th, 2024, wherein it stated-

"On Tuesday, January 27, 2024, we texted the above-named Project Manager/Engineer via WhatsApp to ask if the GDF Wharf Project was still in the pipeline and if any decisions had been made for it. He kindly responded that the contract was awarded to Kares Engineering late last year (Dec. 2023). When we asked the reasons why Kares Engineering was selected, he indicated that the matter was exclusively dealt with by the NPTAB and that he has no information on what led to the decision." [emphasis that of the commission]

[54] The Procurement Act, Cap. 73:05 is clear. For tenders falling within the national threshold level, the evaluation thereof is done by NPTAB through an Evaluation Committee who makes a recommendation for the contract award to the procuring entity. If the procuring entity is in agreement with the contract award recommendation, it then awards the contract accordingly and signs same.

[55] Section 17(1) of the Procurement Act provides that-

"The National Board shall be responsible for exercising jurisdiction over tenders the value of which exceeds such an amount prescribed by regulations, appointing a pool of evaluators..."

[56] Section 39(2) of the Procurement Act, Cap. 73:05 provides, as hereinbefore set out, that-

“The Evaluation Committee shall, ... determine which tenderer has submitted the lowest evaluated tender, and convey its recommendation to the procuring entity...”

[57] Section 39(3) of Procurement Act, Cap. 73:05 provides that-

“The procuring entity shall, if it agrees with the report of the Evaluation Committee, publicly disclose the name of the tenderer identified by the Evaluation Committee as the lowest evaluated tenderer. If the procuring entity does not agree with the Evaluation Committee’s determination, the procuring entity shall issue an advisory recommendation to the Evaluation Committee regarding which bidder should be the lowest evaluated bidder, which recommendation the Evaluation Committee shall observe.”

[58] NPTAB therefore does not award contracts. It conducts the evaluation of tenders and issues a **recommendation** for a contract award to the procuring entity.

[59] In response to the query of the commission as to whether the aforesaid Section 39(3) of the Procurement Act, Cap. 73:05 was complied with, NPTAB responded by way of aforementioned letter dated April 3rd, 2024, that-

“We affirm that Section 39(3) of the Procurement Act, Cap. 73:05, was adhered to, and necessary approval was obtained prior to the contract award decision and subsequent publication.”

[60] No supporting documents to corroborate the aforesaid were supplied to the commission and the procuring entity did not respond to the commission’s request to confirm whether the said Section was complied with.

[61] Nonetheless, NPTAB confirmed also by way of its aforementioned letter that the subject contract was entered into between the procuring entity and *Kares Engineering Inc.* The “Contract Award” is dated on NPTAB’s website as December 27th, 2023.

[62] The commission in recognition of the perception that NPTAB awards contracts, recommended to NPTAB by way of correspondence dated May 14th, 2024, that the notification to procuring entities of the decision of the Evaluation Committee be titled, “CONTRACT AWARD RECOMMENDATION” and not ‘AWARD OF CONTRACT’, the latter terminology seemingly creating some confusion and misunderstanding as to the role of NPTAB.

[63] Further and prior thereto, the commission on June 19th, 2023, issued Circular No. 08/2023, titled “*Compliance with Section. 39(3) of the Procurement Act, Cap. 73:05 – Requirement for an Opportunity for the Procuring Entity to Agree or Disagree with the Report of the Evaluation Committee prior to Contract Award*”, reminding procuring entities of their responsibility under the said Section 39(3). – Appendix C.

e. Notification of Contract Award

[64] The complainant alleges that it did not receive “*formal notification or information ... that the contract was awarded*”.

[65] In addition to the Bid Documents which were relied on by the complainant, Section 43 of the Procurement Act, Cap. 73:05 mandates that-

“Upon the entry into the force of the contract, and if required by the tender documents, the provision by the supplier or contractor of a security or performance bond for the performance of the contract, notice shall be given to other suppliers or contractors, who had tendered specifying the name and address of the supplier or contractor that has entered into the contract and the contract price.”

[66] Although the aforesaid allegation was put to NPTAB and the procuring entity by the commission by way of the aforementioned letters of March 21st, 2024, neither NPTAB nor the procuring entity provided a response thereto, whether admitting, denying or otherwise.

[67] Nonetheless, the Procurement Act does not invalidate the tender process and or provide any other sanction for non-compliance with the said provision. Notwithstanding, the commission issued a Circular on May 29th, 2023, No. 06/2023 titled, “*Requirement for Notice of Contract to Unsuccessful Bidders*” reminding of the aforesaid legislative provision and urging strict compliance to promote transparency and in turn confidence in the public procurement system. – Appendix D

f. Publication of Contract Award

[68] The complainant alleges that the contract award was not published in the public domain. It stated in its aforementioned letter dated March 5th, 2024, that-

- *A comprehensive search of the NPTAB website does not list this contract and attached an Excel spreadsheet of the CSV file of awarded contracts downloaded from the NPTAB website, and*
- *It did not see any information published in the newspapers.*

[69] The complainant appropriately expressed that, “*transparency is of paramount importance for contracts funded by public/government sources; and especially for public works contracts of this size, scope, and complexity.*”

[70] In addition to the Bidding Documents relied on by the complainant, to wit, Section F, 30.2: Notification of Award, Section 11 of the Procurement Act, Cap. 73:05 mandates that-

“(1) The procuring entity shall publish notice of procurement contract awards within seven days of awarding such contracts.

- (2) *The procurement regulations shall provide for the manner of publication of the notice required by subsection (1)."*

[71] Accordingly, Regulation 4 of the Procurement Regulations 2004 provides that-

"The Administration shall create an Internet Website for the purpose of giving publicity to contract awards ..."

[72] A procuring entity is therefore mandated by law to publish contract awards, within a specified timeframe, through the website of NPTAB.

[73] The complainant contends, with supporting document, that as at the date of the complaint to the procuring entity, that is, March 5th, 2024, the contract award was not published on the website of NPTAB.

[74] In response to the commission's query as to whether the contract award was published on NPTAB's website and if so the date of publication, NPTAB stated in its said correspondence to the commission dated April 3rd, 2023, that-

"... we would like to confirm that the decision regarding the contract award has been officially published on the NPTA's website, as mandated by Section 11 of the Procurement Act, Cap. 73:05. You may access this information through the following link: <https://www.npta.gov.gy/tenders-awarded/>"

[75] On the commission being copied on and in receipt of the complaint by the complainant to the procuring entity dated March 5th, 2024, through its Operations Department, made a search of the NPTAB website on March 7th, 2024 for the subject contract award. The Report of the Operations Department way of Memorandum dated March 26th, 2024, states-

On March 7th, 2024, on the direction of the Chairman, a check was conducted to verify if the said project was awarded. It was not seen as the time on the website. However, the NPTAB officer was contacted, and I was told by the officer to keep checking. Further, checks were conducted on the said day, and it was then seen posted on the website. When I checked the website again today, March 26th, 2024, the award was no longer there. However, there is no mechanism in place on the website to indicate the date when the award was published.

[76] When a check was later made of the NPTAB website, and as last as May 23rd, 2024, the contract award appeared thereon.

[77] The publication of contracts is of upmost importance not only for information and related transparency purposes, but also for the lodging of a 'Bid Protest', the statutorily prescribed time for lodging therefor being calculated from the **date of** "publication of the contract award decision" – Section 52(3), Procurement Act, Cap. 73:05.

[78] However, similar to the aforesaid provision for the notification of contract awards to unsuccessful bidders, there is also no prescribed sanction for breach of the publication and or timely publication of contract awards.

[79] The issue of the publication of contract awards was first publicly addressed by this commission by way of the issuance of a Circular dated March 27th, 2023, No. 01/2023, titled “*Publication of Contract Award*” in which adherence to the legislative requirements for the publication of contract awards was encouraged. - *Appendix E*

[80] Following further engagements with NPTAB by the commission on this issue, a column has been propagated in the Tender Awards publication on NPTAB’s website, with effect from this month, to display the “*date uploaded*” of the contract award.

[81] The Commission in its Summary of Findings issued on February 29th, 2024, in the ‘*R. Kissoon Contracting Service*’ matter 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...”

[82] The commission had therein also referred to the Investigative Report of the first constituted PPC in a complaint by BK International Inc. dated December 27th, 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.”

[83] The commission repeats and reinforces the aforesaid.

g. *Bid Security*

[84] The complainant contends that bid securities cannot be cancelled unless formal notification of the award is issued and therefore the procuring entity “*effectively holds 2% Bid Security from each of the losing bidders for multiple months after the contract was awarded, without good reason.*”

[85] Section 37(3) of the Procurement Act, Cap. 73:05 provides that-

“The procuring entity shall make no claim to the amount of the tender security, and shall promptly return, or procure the return of, the tender security document, at such time as whichever of the following occurs earliest-

- (a) the expiration of the tender security;*
- (b) the entry into force of the contract and provision of a security for the performance of the contract, if such a security is required by the solicitation documents;*
- (c) the termination of the tender proceedings without entry into force of a procurement contract; or*
- (d) the withdrawal of the tender prior to the deadline for the submission of tenders, unless the solicitation documents stipulate that no such withdrawal is permitted.”*

[86] It is expected that bid securities would be promptly returned as they ought to be in compliance with the Act.

[87] Although the aforesaid contention of the complainant was put to both NPTAB and the procuring, they did not offer a response.

[88] The complainant is entitled to the return of its bid security, and it is the usual course that bidders would present themselves for the return thereof.

Recommendations

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

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

- I. The *Financial Assessment* as expressed in the subject tender was part of the evaluation criteria and ought to have been applied. The commission reiterates its recommendation made in its Summary of Findings issued on April 16th, 2024, in the ‘*Belle Vue*’ matter that-

“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.”

- II. The Commission repeats its recommendation made in its Summary of Findings issued on February 29th, 2024, in the ‘*R. Kissoon Contracting Service*’ matter where it was 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..."

And as similarly highlighted by the first constituted commission at paragraph 6.4 of their Investigative Report into a complaint by BK International Inc., in relation to the award of a tender by the then Ministry of Public Security for the construction of the Mazaruni Prisons –

"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."

- III. It is recommended that the notification from NPTAB to procuring entities of the decision of the Evaluation Committee be titled, "CONTRACT AWARD RECOMMENDATION" and not 'AWARD OF CONTRACT' in accordance with Section 39(2) of the Procurement Act, Cap. 73:05.
- IV. It is recommended that S. 39(3) of the Procurement Act, Cap. 73:05 be strictly complied with and such compliance evidenced in writing.
- V. It is recommended that Section 43 of the Procurement Act, Cap. 73:05 be strictly complied with and a record kept by the procuring entity of compliance.
- VI. The commission reiterates its recommendation made at paragraph 152(X) of the Summary of Findings issued in the 'Belle Vue' matter that-

"... legislation be enacted to make provision for procurement breaches and the procedure therefor."
- VII. In light of commission's finding that the tender was awarded to the lowest bidder but not the lowest evaluated bidder as required by S. 39 of the Procurement Act, Cap. 73:05, the matter herein is referred to the Auditor General, pursuant to Article 212AA(1)(l) of the constitution.

Disposal

[90] 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.

[91] Consequent thereon, the draft Summary of Findings was sent to the tender board and procuring entity on May 31st, 2024, for response within five (5) business days of the date thereof.

[92] The response received from the procuring entity dated June 6th, 2024, is set out in Appendix F. The tender board offered no response.

[93] In accordance with the aforesaid procedure of the commission, the Summary of Findings herein was adopted in its finality with the addition of Appendix F, on June 7th, 2024.

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

[95] *Adopted by the commission on June 7th, 2024.*

APPENDIX A

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APPENDIX B

EVALUATION CRITERIA NATIONAL PROCUREMENT AND TENDER ADMINISTRATION

PROPOSAL FOR STANDARD EVALUATION CRITERIA Goods, Works and Services (Non-Consulting)

	DESCRIPTION	Yes	No
	Submission of a valid business registration or certificate of incorporation that is clearly legible . For Incorporated companies the names of the directors must be submitted. Certificate of Incorporation MUST be dated within the year of current tender.		
2.	Submission of a valid NIS compliance certificate in the name of the business as per business registration. Document must be clearly legible.		
3.	Submission of a valid GRA compliance certificate in the name of the business as per business registration. Document must be clearly legible.		
4.	Completed and signed Contractor bid page (Page 104)		
5.	Completed and signed priced bill of quantities. BOQ must be stamped and signed on each page inclusive of summary page.		
6.	Submission of bid security in form of Bank Guarantee, Managers Cheque or Bid Bond issued by a licensed financial institution, in the amount of 2% of Bid Price.		
7.	Demonstrate general construction experience for the past 5 years by providing copies of past contracts to support list of verifiable completed projects. The value of the project, year completed, and clients' names and contact numbers MUST be provided.		
8.	Demonstrate specific construction experience by providing copies of contracts or completion certificates with previous clients that show the bidder has completed 2 job of similar nature and complexity of an accumulative value of Five hundred Million (500,000,000) within the past Five (5) years.		
9.	Evidence of financial capacity representing 25% (Twenty-five) percent of the bid price . Bidder must provide a bank statement or letter of credit from a bank . 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 bank. (ALL documents must have printed dates and states the amount and figures clearly).		
10.	Bidder must provide a letter of Authorization for the Procuring Entity to seek reference from the bidder's Bank relating to the financial capacity evidence supplied . The document must be dated within one month of the bid opening date and be clearly legible .		
11.	Written confirmation of authorizing signatory must be provided. For the incorporated company this must be in the form of a Power of Attorney endorsed by a Commissioner of Oaths or Justice of Peace . For a registered business that has appointed an employee to sign the bid a letter of authorizing signatory must be provided.		
12.	Registered Businesses must provide: audited financial statement, balance sheets, Profit & Loss Accounts and Income & Expenditure Accounts for the past three years: i.e 2020, 2021 and 2022. These Financial Statements must be approved by a Chartered Accountant/ Accountancy Firm. This will be used to assess annual turnover.		

The Bidder shall provide accurate information on the related bidding form as provided about any litigation or arbitration resulting from contracts completed or on-going under its execution over the last three years.

Pending Litigation: All pending litigation shall in total not represent more 50 percentage of the Bidder's net worth and shall be treated as resolved against the bidder. If found above, the bidder shall be deemed non-responsive.

Failure to mention litigation matters, bidders will be deemed non-responsive.

Litigation History: Non-performance of a contract did not occur as result of suppliers' default since 31st December, 2021

14. Bidder must provide a letter stating all ongoing projects. The letter must be dated within one month of the bid opening date and include the name of the contract, name of client, value of project, and completion percentage. Due diligence will be done to verify the projects listed and information will also be sought from other government agencies about ongoing projects. If found information was misrepresented, Bidder would be deemed non-responsive. Where a bidder has ongoing projects, the bidder must demonstrate that he has the financial, human resource and equipment capability to undertake the current project in addition to ongoing engagements.
- Bidders who have three (3) outstanding contracts, from any public sector agency, will not be considered for award. An outstanding contract in one where more than 30% of the value of the contract is incomplete.

15. Bidder must provide a letter stating any or no terminated, abandonment of projects or non-performance. The letter must be dated within one month of the bid opening date. Bidder who has 1 (one) or more terminated project as a result of poor performance with in the last 1 (year) would not be recommended for award.

Provision of Key Machinery must be provided for
Ownership of key equipment - the bidder must provide evidence to show that the following key equipment are available for the project:

Item No.	Description of Key Equipment Required	Number of Key Equipment Required
1.	Pile Driving Equipment	1
2.	22RB Dragline	1
3.	Excavator	1
4.	Pontoon	1

16. Ownership can be demonstrated by providing the registrations, agreement to lease or rent with affidavit of ownership. or
 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 commissioner of oaths or justice of peace and the list of equipment must be endorsed by same with contractor's signature also. If an agreement to lease is presented, it must be accompanied by the registration to reflect the owner in methods mentioned above.

17. Provision of qualification and experience of key personnel must be provided for
 Provision of qualification and experience of key personnel - the bidder must appoint an individual to fill the positions and provide detailed curriculum vitae (with proof of certificates) for the following key personnel:

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 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:

1. Title Page - "Work Programme", "Work Method Statement"
2. Schedule of personal protective equipment- list should state all PPE required.
3. Brief description of works, tasks, processes.
4. Sequence of work- step by step safe work sequence of the work.

References to Occupational Health and Safety Standards.
Schedule of Plant, list of plant and tools.

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



Promoting Fairness, Transparency and
Efficiency in the Public Procurement Process

Public Procurement Commission

262 New Garden Street

Georgetown, Guyana

Tel: (592) 226-3729, (592) 231-7306, (592) 226-2364

Email: publicprocurement@ppc.org.gy

CIRCULAR NO 08 /2023

To: All Permanent Secretaries, Chief Executive Officers, Regional Executive Officers, Heads of Procuring Agencies, and Heads of Department

From: Ms. Pauline Chase, Chairperson, Public Procurement Commission

Date: June 19, 2023

Subject: **Compliance with Section 39(3) of the Procurement Act, Cap. 73:05 – Requirement for an opportunity for the Procuring Entity to agree or disagree with the Report of the Evaluation Committee prior to contract award.**

Section 39(3) of the Procurement Act, Cap. 73:05 provides that-

"The procuring entity shall, if it agrees with the Report of the Evaluation Committee, publicly disclose the name of the tenderer identified by the Evaluation Committee as the lowest evaluated tenderer. If the procuring entity does not agree with the Evaluation Committee's determination, the procuring entity shall issue an advisory recommendation to the Evaluation Committee regarding which bidder should be the lowest evaluated bidder, which recommendation the Evaluation Committee shall observe."

The Public Procurement Commission hereby reminds that the aforesaid provision is mandatory and must be complied with.

Accordingly-

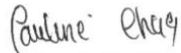
- The Report of the Evaluation Committee must be sent by the National Procurement and Tender Administration Board (NPTAB) to the Procuring Entity **BEFORE** the contract award decision is made and or published.
- The Procuring Entity must, within such reasonable time of receiving the Report, consider the Report and inform NPTAB, in writing, of its agreement or disagreement with the Report of the Evaluation Committee.
- On the Procuring Entity's agreement, the contract award decision in accordance with the Report of the Evaluation Committee shall be made and published on NPTAB's website.
- If the Procuring Entity is not in agreement with the Report of the Evaluation Committee, it shall so indicate in writing to NPTAB and issue an advisory recommendation to the

Evaluation Committee regarding which bidder should be the lowest evaluated bidder, which recommendation the Evaluation Committee shall observe. The contract award decision shall be made in accordance therewith and published on NPTAB's website.

The Public Procurement Commission issues this Circular to inform and remind Procuring Entities and NPTAB of the aforesaid legislative requirements and the mandatory requirement for adherence thereto. Particularly, the role of the Procuring Entity in the contract award decision.

The Public Procurement Commission may be contacted for further guidance.

Yours respectfully,



Pauline Chase (Ms.)
Chairperson

Public Procurement Commission
262 New Garden Street, Queenstown
Georgetown, Guyana

cc: Chairman, National Procurement and Tender Administration Board

APPENDIX D



Promoting fairness, transparency and
efficiency in public procurement

Public Procurement Commission

262 New Garden Street

Georgetown, Guyana

Tel: (592) 226-3729, (592) 231-7306, (592) 226-2364

Email: publicprocurement@ppc.org.gy

CIRCULAR NO 06 /2023

To: All Permanent Secretaries, Chief Executive Officers, Regional Executive Officers, Heads of Procuring Agencies, and Heads of Department

From: Ms. Pauline Chase, Chairperson, Public Procurement Commission

Date: May 29, 2023

Subject: Requirement for notice to unsuccessful bidders of contract

Section 43 of the Procurement Act, Cap. 73:05 mandates that-

“Upon the entry into force of the contract and, if required by the tender documents, the provision by the supplier or contractor of a security or performance bond for the performance of the contract, notice shall be given to other supplier or contractors, who had tendered specifying the name and address of the supplier or contractor that has entered into the contract and the contract price.”

This circular serves as a reminder that public procuring entities must give notice to all unsuccessful bidders when the contract for which they tendered is entered into, setting out-

- i. the name and address of the supplier or contractor that has entered into the contract, and
- ii. the contract price.

The Public Procurement Commission urges strict compliance with the aforesaid legislative requirements as they promote transparency and in turn confidence in the public procurement system.

Pauline Chase (Ms.)
Chairperson

CC: Chairman, National Procurement and Tender Administration Board

APPENDIX E



Promoting Transparency and
Efficiency in Public Procurement

Public Procurement Commission

262 New Garden Street

Georgetown, Guyana

Tel: (592) 226-3729, (592) 231-7306, (592) 226-2364

Email: publicprocurement@ppc.org.gy

CIRCULAR NO. 01/2023

To: All Permanent Secretaries, Regional Executive Officers, Heads of Agencies & Heads of Departments
From: Public Procurement Commission
Date: March 27, 2023
Subject: **Publication of Contract Award**

Sections 11 (1) and (2) of the Procurement Act 2003 and Section 4 (2) of the Procurement Regulations 2004, mandate that procuring entities report to the National Procurement and Tender Administration (NPTA), information on all contracts awarded, valuing above \$1,500,000, within five days of such award.

The reporting of this information will enable the Administration to fulfil its obligation under Section 3 of the Regulations, which mandates that contract award information be published to the Administration's website, within two (2) days of receipt, for the purpose of giving publicity to contracts awarded.

Procuring entities are reminded that these legislative requirements facilitate the Administrative Review procedures provided for in Part VII of the Procurement Act 2003, as a bidder whose tender or proposal has been rejected, can submit a written protest to the procuring entity within five business days following the publication of the contract award decision.

The Public Procurement Commission hereby issues this Circular to encourage strict adherence with these legislative requirements, as they promote accountability and transparency in the public procurement system.


Michael Singh
Chief Executive Office

cc: Chairman, National Procurement and Tender Administration

APPENDIX F



DEFENCE HEADQUARTERS
GUYANA DEFENCE FORCE
CAMP AYANGANNA
GEORGETOWN
GUYANA

Phone Georgetown, 226-6694, 624-5800
Email Address: oclsd@gdf.mil.gy

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



8 616
e
05/06/2024

Dear Ms. Chase,

RE 260/2023/53- CONSTRUCTION OF COAST GUARD REINFORCED CONCRETE WHARF RUIVELDT

Caption refers.

I write for Captain Vernon Burnett, Colonel Administration and Quartering of the Guyana Defence Force and hereby acknowledge receipt of your correspondence dated May 31st 2024.

The following are the Force's response concerning Complaint No. 001/2024/NV and the summary of findings of the Public Procurement Commission:

- i. The Force is aware that Kares Engineering Inc was deemed the lowest responsive bidder based on the submission and acceptance of a corrected bid amount to its initial submission.
- ii. The Force did not object to the report of the Evaluation Committee. Based on receipt approval and recommendation of NPTAB, the Force issued the letter of acceptance to Kares Engineering Inc (see copy of letter attached herein).
- iii. No formal notification of the contract award was provided to the unsuccessful bidders.
- iv. The Force is aware that the contract award was published on NPTAB's website, however, it is unable to confirm the exact date of the initial publication.
- v. The Force is actively working to ensure the Bid Security is returned on or before the 7th June 2024.

Submitted for your information and guidance.

MELISSA YEARWOOD-STEWART
HONOURARY MAJOR
FORCE LEGAL OFFICER

Copy to:-

1. Chief of Defence Staff – Brigadier Omar Khan
2. Colonel Administration and Quartering – Captain Vernon Burnett

LETTER OF ACCEPTANCE AND NOTICE TO PROCEED WITH THE WORK



DEFENCE HEADQUARTERS
GUYANA DEFENCE FORCE
CAMP AYANGANNA
GEORGETOWN
GUYANA

PHONE GEORGETOWN 227-2512
EMAIL ADDRESS: colaq@gdf.mil.gy

NPTAB Ref No. **260/2023/53**

Radesh Rameshwar,
Director,
Kares Engineering Inc.,
77 Anira & Irving Street
Queenstown, Georgetown

2023-12-29

Dear Director,

CONSTRUCTION OF RC WHARF, HEADQUARTERS COAST GUARD, RUIMVELDT, GEORGETOWN.

1. I am writing to officially confirm the commencement of works for the project titled "Construction of RC Wharf, Headquarters Coast Guard, Ruimveldt." We are pleased to have you on board as the contractor for this significant endeavor.
2. The project details are as follows:
 - a. Project Name: Construction of RC Wharf, Headquarters Coast Guard, Ruimveldt
 - b. Contract Duration: 30 months
 - c. Contract Period: 29th December, 2023 to 29th December, 2026
 - d. Construction Period: 18 months
 - e. Defects Liability Period: 12 months
3. Your expertise and adherence to the project timeline and specifications are crucial for the successful completion of this project within the stipulated time frame. We have full confidence in your ability to deliver quality work that aligns with Guyana Defence Force standards.
4. Thank you for your commitment to the "Construction of RC Wharf, Headquarters Coast Guard, Ruimveldt" project. We look forward to a successful partnership and the creation of an asset upon completion.

5
The key personnel assigned to the project are:

- a. Project Manager: Lieutenant Colonel Marlon Daniels
- b. Project Engineer: Major Budeshwar Persaud
SO2 G4 (Engineer)

Yours Respectfully,

A handwritten signature in black ink, appearing to read "Marlon Daniels", written in a cursive style.

MARLON DANIELS
Lieutenant Colonel
Project Manager