

PUBLIC PROCUREMENT COMMISSION

INVESTIGATION INTO COMPLAINT FROM BK
INTERNATIONAL INC. IN RELATION TO AWARD OF TENDER
BY MINISTRY OF PUBLIC SECURITY FOR CONSTRUCTION OF
MAZARUNI PRISONS

Investigation of complaint by BK International Inc. in relation to award of tender by Ministry of Public Security for construction of Mazaruni Prisons.

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1.0 BACKGROUND

The Public Procurement Commission (PPC) received a copy of a letter written by Mr. Brian Tiwarie, Managing Director of BK INTERNATIONAL INC., (the Complainant), dated December 29, 2017, to the Permanent Secretary, Ministry of Public Security (MPS). In his letter, the Complainant stated his concerns about the award of a contract for construction of the Mazaruni Prisons. The letter was also copied to the President of the Cooperative Republic of Guyana, several Guyana Government Ministers and the Chairman of the National Procurement and Tender Administration Board (NPTAB).

The PPC subsequently received a letter from the Complainant, dated January 10, 2018 advising that a formal protest had been lodged with the MPS in relation to the award of the tender, "Completion of the Mazaruni Prisons, Mazaruni, Region #7".

The PPC also received a letter from the Complainant dated January 11, 2018, with the following two attachments:

1. A copy of a letter dated January 3, 2018 addressed to the MPS formally protesting the award of the contract to another tenderer.
2. A copy of a letter dated January 10, 2018, addressed to the MPS, which detailed the Complainant's response to the MPS' identification of the Evaluation Committee's reasons for deeming BK International Inc. as being non-responsive to the tender.

In his letter to the PPC, the Complainant stated that he had not yet received a response to his request to the MPS for a review of their award decision, and asked the PPC to investigate the tender award.

Subsequent to receipt of the complaint, the Permanent Secretary, MPS informed the PPC that the Ministry had already signed the contract for the project to construct the Mazaruni Prison with the successful tenderer.

In keeping with its mandate to investigate complaints from suppliers, as outlined at Article 212AA. (1) (h) of the Constitution of the Cooperative Republic of Guyana, the PPC by letter dated January 23, 2018, wrote the Complainant acknowledging receipt of his correspondence. The PPC, in this letter, also advised the Complainant that the PPC would undertake an independent investigation of the complaint and inform him of the resulting findings and recommendations.

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The PPC requested the Permanent Secretary of the MPS to provide copies of all documentation related to the tender for the construction of the Mazaruni Prisons, to facilitate the investigation. The PPC also made a request to the Chairman of the NPTAB to provide a copy of the file containing all relevant information on this tender.

2.0 METHODOLOGY

The PPC reviewed all correspondence and documents received from the Complainant, the MPS and the National Procurement and Tender Administration (NPTA). These are as listed below:

1. Letters between the Complainant and the Ministry of Public Security.
2. Copy of letter sent by the Complainant to the President of the Cooperative Republic of Guyana.
3. Letters sent to the Commission by the Complainant
4. Evaluation Report for the tender.
5. NPTAB's submission to Cabinet and Cabinet's "no objection" to the tender award.
6. Addendum to Evaluation Report prepared by Evaluation Committee
7. The NPTAB tender opening minutes of October 17, 2017
8. Report prepared by Procurement Specialist, NPTA in response to
9. The original tender documents submitted by the Complainant and the successful tenderer.
10. Contract Award letter to successful tenderer
11. Copy of signature page of contract with successful tenderer.
12. Copies of correspondence between the Permanent Secretary, Ministry of Public Security and the Consultant VIKAB, hired to oversee the project.

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The PPC reviewed relevant media reports on the award of the contract and subsequent complaint.

The PPC also conducted interviews with the following:

1. The members of the Evaluation Committee appointed to evaluate the tender under dispute:

- Ms. Daniella McCalmon: Permanent Secretary and Coordinator of the Evaluation Committee.
- Mr. Geoffrey Vaughn: Coordinator, Works Services Group, Ministry of Public Infrastructure
- Mr. Jermaine Braithwaite: Senior Inspector, Ministry of Public Infrastructure
- Colonel Lawrence Fraser: Guyana Defense Force

2. Officials from the National Procurement and Tender Administration

- Mr. Donald DeClou - CEO NPTA
- Ms. Christina Singh, Procurement Officer, NPTA

3. Official from the National Procurement and Tender Administration Board

- Mr. Mark Bender - Deputy Chairman, NPTAB

3. O SUMMARY OF FINDINGS

3.1 Complaint

Prior to receiving formal notification from the MPS about the outcome of the tender process for the Construction of the Mazaruni Prisons, the Complainant wrote several Government Officials, including the President of the Cooperative Republic of Guyana, seeking intervention in what he deemed the unfair treatment in the tender process involving a contract award amounting to G\$3.5B.

The Complainant wrote the Permanent Secretary, MPS by letter dated December 29, 2018 about his submission of a tender in response to the Ministry's advertisement of the tender for construction of the Mazaruni Prisons. The Complainant stated that, as of the date of his letter, thirty-eight days after the closing date for the tender, there had been no communication to him about the outcome of the process.

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In his letter, the complainant expressed his specific concern about the variances in the engineer's estimate of \$2.8B advertised with the tender and that of \$3.18B announced on the day of the tender opening.

The complainant also stated that his Company had been informed unofficially by "several frustrated officials" that attempts were being made to award the contract to a Company with a foreign background and for a price which was in excess of G\$1B over his company's tender price, and nearly G\$400M over the engineer's estimate.

The Complainant copied these letters to the PPC and subsequently wrote the PPC directly, stating that he disputed the grounds on which the Evaluation Committee for this project had deemed his bid non-responsive. In his letter to the PPC, he claimed that the bid submitted had successfully met all requirements. He further stated that he had submitted all required documents with his bid and, therefore, could not be deemed non-responsive to the evaluation criteria, particularly those, which required submission of the detailed work plan, method statement and list of projects currently being worked on.

The Complainant submitted copies of the documents in contention as attachments to the letter of complaint. The Complainant further contended that his dispute was substantially based on the difference of the Engineer's estimate announced at the Tender opening, from the one published in the newspaper advertisement inviting persons to bid for the contract.

The complainant attached a summary of his company's qualifying experience and specifically identified the construction of the Main Office of the New Building Society Limited for the amount of G\$1.495 Billion as a project that met the stated criteria of "**a project of similar size, nature and complexity done within the last three years**".

3.2 Tender Proceedings

Using the National Competitive Bidding Process, an advertisement was placed in the national newspapers by the Ministry of Public Security for construction works at the Mazaruni Prisons, Region 7 ("**Completion of the Mazaruni Prisons, Mazaruni, - Guyana Prison Service, Ministry of Public Security**"). **The Bid Data Sheet named the project as "Construction of the Mazaruni Prison, Mazaruni, Region # 7. The Advertisement was placed on October 17, 2017 and opened on November 21, 2017.**

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On the Bid Data Sheet, the following requirements were stated as additional documents that the Tenderer should have submitted with the bid:

- a) Detailed Work Programme in MS Project Format**
- b) Audited Financial Statements for three (3) consecutive years prior to the Bid Date from a recognized auditing firm or individual**
- c) Work Plan and Method Statement (Must be relevant to the contractual scope of works).**
- d) Health and Safety Environmental Plan**
- e) Quality Assurance Procedure Manual**
- f) Organizational Structure and Curricula Vitae of Key Personnel accompanied by a signed and dated letter of content for each Personnel**
- g) List of projects of a similar nature. Must have at least one project of similar size, nature and complexity.**
- h) List of outstanding projects currently being undertaken. Must state Client's name, Project name, Amount and Percentage completed.**
- i) Valid certified copy of Guyana Revenue Authority (GRA) compliance. Must be in the name of the company.**
- j) Valid certified copy of National Insurance Scheme (NIS) compliance. Must be in name of company**
- k) Valid Tax Payer Identification number (TIN)**

The closing date for the tender was stated as November 21, 2017. The Newspaper advertisement included an engineer's estimate of G\$2,800,000,000. Tenders were opened at 9:00 a.m. on the stated date as evidenced by the minutes of the NPTAB of that date. Five bidders responded to the tender and an Engineer's estimate of **G\$3,186,559,049.00**, removed from the tender box and opened at the same time as the bids, was also announced.

Bids from the following five contractors were opened:

- 1. Chung's Global Enterprise-----G\$2,729,080,200
- 2. BK International Inc.....G\$2,517,808,688
- 3. R. Bassoo & Sons Construction Company....G\$2,439,612,687
- 4. Courtney Benn Contracting Services Ltd.....G\$2,585,823,576
- 5. Kee-Chanona Ltd.(T&T) JV Nabi Construction Inc.---G\$,3,562,081,616

NPTAB appointed the Evaluation Committee, which comprised the following persons:

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- Ms. Daniella McCalmon: Permanent Secretary and Coordinator of the Evaluation Committee
- Mr. Geoffrey Vaughn: Coordinator, Works Services Group, Ministry of Public Infrastructure
- Mr. Jermaine Braithwaite: Senior Inspector, Ministry of Public Infrastructure
- Colonel Lawrence Fraser: Guyana Defense Force

3.3 Evaluation Committee Report

In addition to the evaluation criteria listed in the Bidding Documents (ITB 34.2 (a)–(e), the Evaluation Committee was required to assess the adequacy of the Technical Proposal to the requirements. The Tenderer was also required to satisfy the experience and performance of work criteria by listing “one or more similar type projects of similar size, nature and complexity satisfactorily completed within the last three (3) years”.

The Evaluation Report submitted to NPTAB stated that four tenderers were deemed non-responsive and rejected for a number of reasons that were identified. The only tenderer deemed responsive (satisfied all the requirements of the tender document) by the Evaluation Committee submitted a bid price of G\$3,562,081,575.00.

The Evaluation Committee recommended award of a contract to Tenderer No. 5, KEE-CHANONA LTD. (TRINIDAD & TOBAGO IN JOINT VENTURE WITH NABI CONSTRUCTION INC. GUYANA in the sum of three billion, five hundred and sixty-two million , eighty-one thousand, five hundred and seventy-five Guyana Dollars(G\$3,562,081,575.00).

The NPTAB supported the recommendation of the Evaluation Committee and, through the Minister of Finance, submitted a memo to CABINET detailing the outcome of the Evaluation.

3.4 Contract Award

The Chairman of NPTAB received communication from Cabinet dated 27th December 2017 informing him of Cabinet's "no objection" to the award of the contract. The Chairman, NPTAB wrote the Permanent Secretary of the Ministry of Public Security, by letter dated December 28, 2017, informing her that Cabinet gave its "No Objection" to the award of the contract for the construction of the Mazaruni Prison, Guyana Prison Service to Tender Number 5 from KEE-CHANONA Ltd. (Trinidad and Tobago) in Joint venture with NABI Construction INC. for the tendered sum of G\$3, 562,081,575.00.

The first public reference to the outcome of the tender process was in the Newspapers of Sunday December 31, 2018. The Article referred to a report provided by Minister Joseph Harmon, Minister of State on the "no objection" given by Cabinet to the award of a contract in the sum of \$3.460B to a Trinidad company in joint venture with Nabi Construction, a Guyanese company.

The Letter of Acceptance written by the Permanent Secretary, Authorized Representative of the Ministry of Public Security to the successful tenderer, was dated December 28, 2017 and letters to the unsuccessful tenderers were dated December 30, 2017. The contract was dated December 30, 2017 and signed by the Ministry of Public Security and the successful tenderer, Kee-Chanona Ltd.(T&T) JV Nabi Construction Inc.

3.5 Ministry of Public Security's response to Complainant's request for review of tender decision.

By letter dated January 3, 2018, the Permanent Secretary wrote the Complainant informing him that the tender submitted by BK International Inc. for construction of the Mazaruni Prison was non-responsive and stated four reasons constituting the basis for this conclusion, as follows:

- **No evidence was submitted to indicate that any project(s) of a similar size and complexity was conducted by the bidder**
- **No detailed Work Programme was submitted**
- **No method statement was submitted**
- **List of outstanding projects currently being undertaken by the bidder was not submitted.**

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The Chairperson of the Evaluation Committee claimed that she received the Complainant's letter on 3rd January, 2018 and not the date of December 29, 2017 reflected in the letter of complaint. She further stated that she responded to the complainant the same day, providing the above reasons for his tender being unsuccessful.

3.6 Complainant's response to recommendation and explanation provided by Evaluation Committee

The complainant, by letter dated January 11, 2018 disputed the evaluation committee's conclusion that "no evidence was submitted to indicate that any project of a similar size, nature and complexity was completed by BK International Inc. In his letter, he referred specifically to the construction of the Head Office of the New Building Society at a cost of G\$1,495B, a copy of which he attached as Exhibit A.

The Complainant further stated that the evaluation report claimed that no detailed work programme had been submitted with the bid documents. He disputed this claim and referred to three pages of his original Bid document, pages 27 to 29, a copy of which he attached as exhibit B-Work Programme.

The complainant also claimed that he had submitted a method statement that was 25 pages long and it was, therefore, inaccurate for the Evaluation Committee to state that this document had not been submitted.

The claim that the List of outstanding projects currently being undertaken by the bidder was not submitted was also disputed by the Complainant. He attached to this letter a copy of a document he deemed to be the list of outstanding projects submitted, and identified it as "Exhibit C".

The Complainant claimed that the Evaluation Committee failed to address his main contention, that is, the increase in the Engineer' estimate from \$2.8 Billion (published in the Addendum Advertisement of Nov. 20, 2017) and the one in the sum of \$3,186,559,049.00 announced at the opening of the tenders at NPTA.

The PPC noted that in the Bid Data Sheet, the criterion for experience, was stated as, "**list of projects of a similar nature, at least one of similar size, nature and complexity.** However, in the list of evaluation criteria stated in the evaluation sheet of the tender documents," the criterion to be met for experience was stated as "**list of projects of a similar nature, at least one of similar size, nature and complexity completed within the past three years**".

3.7 PPC Interview of the Members of the Evaluation Committee

The Coordinator of the Evaluation Committee reported to the PPC that the MPS contracted the Consultant VIKAB to manage the project for construction of the Mazaruni Prisons. This company was engaged to oversee the entire project, prepare bidding documents, hold pre-bid meetings, prepare drawings, set the evaluation criteria and prepare the Engineer's estimate. VIKAB signed a contract for consultancy services with the MPS in May 2017 and the tender under review was advertised in October 2017.

The Coordinator of the Evaluation Committee informed the PPC that documents received at NPTAB by MOPS staff comprised one set of tender documents for each of the five tenders received. She stated that she could not confirm that the documents received from NPTAB were originals of the tenders opened at NPTAB or mere copies.

3.7.1 Limited time for completion of procurement proceedings

In response to a query about the late launch of the tender, though being included in the Work Programme for 2017, the Permanent Secretary of MPS and Coordinator of the Evaluation Committee stated that the first procurement process to hire the Consultant for the project was annulled and retendered. As a result, there was an overall delay in the launching of the tender for the construction works.

The Permanent Secretary and Coordinator of the Evaluation Committee further informed the PPC that the work of the Committee was delayed due to competing commitments to the National Budget process. The Evaluation report was completed and submitted to NPTAB on December 13, 2017, leaving just two weeks for NPTAB's review, Cabinet's 'No Objection' and award procedures by the MPS.

The Coordinator of the Evaluation Committee confirmed that the award and contract activities were rushed because this was a 2017 project and, with the budget year ending imminently, it was necessary to get the award consummated because of financial implications. She further stated that, "the 2018 budget was already approved and the Ministry of Finance(MOF) had, already informed the Ministries that they were not providing any additional funds in 2018 due to "allocation constraints". She concluded by stating, "This project was important for the Nation".

3.7.2 Relevance of Engineer's estimate to Evaluation process

In response to the PPC's queries about the significance of the engineer's estimate in evaluation of the tenders, the Evaluation Committee member, Mr. Geoffrey Vaughn, stated that, "it gives clarity to the magnitude of work". The PPC also questioned the Evaluation Committee about the evaluation criterion- "list of projects of a similar nature, at least one of similar size, nature and complexity".

The evaluation committee members indicated that the reference to size includes consideration of cost of projects completed. Further questions about the procedure used to analyze the contractor's experience, based on completed projects with costs similar to the engineer's estimate, resulted in the evaluation committee members informing the PPC that the engineer's estimate provides specific guidance to the evaluators and should not be used by the tenderers to determine their tender price for the project.

The Evaluation Committee further noted that evidence provided by the Complainant to substantiate required experience was construction of the New Building Society Headquarters building. The Complainant completed this project in 2012, which was outside of the time-period stated in the tender documents, and at a cost significantly less than either Engineer's estimate provided for the project.

3.7.3 Missing Documents

The evaluators all maintained that, during the process of evaluating the tender submitted by the Complainant, they did not see several key documents namely, the detailed Work Programme, Method Statement and List of outstanding projects currently being undertaken by the tenderer. They claimed that they examined the tender documents received from the NPTA several times to confirm that the required documents were not included.

The evaluators reported to the PPC that the Coordinator of the Evaluation Committee and one other evaluator, Mr. Geoffrey Vaughn visited the offices of the NPTA and sought the permission of the Chief Executive Officer, NPTA to examine the tender documents held there. They informed the PPC that in their examination of the tender documents of the Complainant, they failed to locate the three named documents that tenderers were required to submit with their tenders.

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The evaluators informed the PPC that they subsequently saw the named documents in a set of tender documents, which NPTA officials provided after the MPS received a complaint from BK International Inc. The evaluators reported that they examined the documents as required and completed an addendum to the original evaluation report. They reported to the PPC that, even with the subsequent review of all documents, they did not change their conclusions about the outcome of the tender process because the tender submitted by the Complainant did not satisfy the criterion for experience.

The Coordinator further stated that, on submission of the Evaluation Report to NPTAB, no member of NPTAB queried the specific aspect of the Evaluation Report, which referred to documents not seen in the tender documents during the evaluation process.

3.7.4 Shortcomings in Technical Proposal

The Evaluation Committee members referred to shortcomings in the Complainant's work programme, which they described as generic, leaving out accessories/electricals, etc.

The Evaluation Committee also stated that the Complainant did not have the required experience in vertical constructions, and noted that the experience provided for high value contracts was primarily in sea defence works.

The Evaluation Committee also contended that the Complainant did not submit the required list of outstanding projects, but on following up on this requirement, they discovered six outstanding projects and considered this new information in their review of the evaluation undertaken subsequent to receipt of the complaint.

3.7.5 Value for money considerations

When asked about the significant difference of the tender price provided by the successful tenderer, from those of the unsuccessful tenderers and even that of the final engineer's estimate, the evaluation committee stated that they fulfilled their obligation of completing the evaluation and making a recommendation. They left it to Cabinet to determine whether the Government could afford the price of the successful tender.

The members of the Evaluation Committee claimed that they concluded that the international tenderer's costs for mobilizing resources would be higher

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than that for local contractors, but they were satisfied that only the successful tenderer demonstrated the required experience to execute the project.

3.8 Evaluation Committee's Response to Queries of Complainant

The Evaluation Committee provided the PPC with a copy of a document signed by all committee members on January 18, 2018 titled, "Response to Queries made by BK International", which primarily expanded on the reasons provided in the Evaluation Report in relation to the non-responsiveness of the Complainant's tender.

In this document the Evaluation Committee stated that the tenderer (Complainant) had failed to demonstrate the achievement of the experience requirement because of limited building construction experience acquired. The members of the Committee concluded that the complainant's "experience cannot be categorized as 'highly complex', since the 'similar' projects identified in the complainant's bid are primarily for office buildings".

The Evaluation Committee contended that, "the criterion of experience implies that a responsive bidder must have completed a complex buildings construction project of minimum contract value of G\$3.0 Billion. Complexity in this case refers to a building or building complex of a highly specialized and important function, such as a specialized hospital, airport facility, academic facility, or similar."

The document also stated that the experience provided by the Complainant to meet this criterion, construction of the New Building Society New Chief Office, had a contract value that was significantly below the minimum contract value requirement for this tender and was completed prior to 2014, which is earlier than three years before this project.

The Evaluation Committee also stated the following, as a result of their review of the Work Programme, Technical Proposal and Method Statement reportedly submitted with the Complainant's tender:

1. The Work Programme was not comprehensive enough and lacked details to guide the construction of the Mazaruni Prison.
2. The Technical Proposal was inadequate.
3. The Method Statement was inadequate and not technically sound.

Finally, the Evaluation Committee stated that the contractor did not satisfactorily provide a list of current project commitments as their own

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investigations revealed that major projects currently being undertaken were omitted from the list examined.

The members of the evaluation committee maintained their original position that the tender submitted by BK International Inc. (the Complainant) was non-responsive.

4.0 CONCLUSION

4.1 The Complainant, in his first letter on this matter, referred to information received from 'Officials' during the tender evaluation process and did not initially follow the Administrative Review process by communicating with the MPS. Instead, the Complainant wrote the President of Guyana indicating that he had obtained information from these "Officials" about the outcome of the tender and the media subsequently published an article that referred to this issue. The Complainant, in the first instance, should have written the MPS seeking advice about the tender.

4.2 The Complainant's claim that he received information about the evaluation proceedings prior to the official conclusion of the process indicates a serious breach of the Procurement Act. Section 55(1) of the Procurement Act states that no information shall be divulged to anyone during the evaluation process. It is an offence for any person or Body to reveal any information or discuss any aspect of the deliberations of the Evaluation Committee prior to the conclusion of the process. The process should be considered secret up to the point of official communication between the Procuring Entity and the tenderers, subsequent to receipt of NPTAB's advice of CABINET's "No Objection" to the award.

4.3 The PPC noted that the Evaluation Committee opened the tenders and commenced the evaluation process on November 21, 2017 providing very limited time for evaluation and award of contract before the end of the Budget year. A period of only five weeks was available to conclude all steps of the process, including evaluation of the tenders by the appointed evaluation committee, review by NPTAB and submission to Cabinet for review and issue of "No Objection", advice to the MPS by NPTAB and notification of the award decision to tenderers by the MPS. The time available for effective completion of the process was inadequate and did not provide the unsuccessful tenderers with an opportunity to seek administrative review, as required by Section 52(1) of the Procurement Act.

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4.4 The MPS signed the contract with the successful tenderer on December 30, 2017 and unsuccessful bidders were officially notified only after the contract was signed. There was, therefore, no accommodation of an administrative review process as provided for in Section 52(1) of the Procurement Act.

4.5 The Evaluation criteria stated in the tender documents do not refer to the Engineer's estimate and there is no evidence that the Engineer's estimate directly influenced the decision with respect to the successful bid.

4.6 There is no evidence that the Evaluation Committee or NPTAB conducted a specific analysis with respect to value for money achieved, given that the contract price significantly exceeded the Engineer's estimate and Budget for the project.

4.7 The response of the Coordinator of the Evaluation Committee that Cabinet was expected to determine whether the final contract price was acceptable, given that the award was submitted to them for "no objection", did not fully address the issue.

4.8 The members of the Evaluation Committee and NPTAB placed significant emphasis on the criterion of 'qualifying experience' and focused primarily on the nature and complexity of construction completed by the tenderers in order to determine their suitability to execute the project. Since only one tenderer was deemed substantially responsive, there was no requirement to compare the tender price of the successful tenderer with those of the unsuccessful tenderers. The Evaluation Committee and NPTAB did not express any concern about the fact that the price of the successful tenderer exceeded the Engineer's estimate by an amount of over four hundred million Guyana dollars.

4.9 The evidence provided by the Complainant in relation to the evaluation criterion for experience constructing a project of a similar nature, complexity, etc. within the past three years was inadequate. The completion of the new Building Society Chief office in 2012 by the Complainant was the primary evidence provided to demonstrate completion of a project of a similar nature, within the past three years. This construction was completed in 2012 and did not match the nature and complexity of the project, which was the subject of the tender.

4.10 The PPC agrees that the tender submitted by the Complainant was not responsive, specifically because it did not satisfy the experience criterion stated in the evaluation requirements. The PPC noted that the successful tenderer submitted evidence of work completed that was much more substantial and complex in nature than that submitted by the Complainant.

4.11 The PPC's conclusion is also guided by the Evaluators' follow-up assessment of the Complainant's Work Plan and Method Statement, which supported the previous conclusion that the tender did not satisfy the technical requirements for this project.

5.0 OTHER OBSERVATIONS

5.1 The issue of missing documents from tender submissions is troubling and points to a possible lapse in arrangements for security of documents at the NPTAB. The PPC has noted the NPTAB's admission of this problem because of physical space constraints and their commitment to address it to ensure that there are no further issues of this nature.

5.2 The official Evaluation Report initially submitted to NPTAB did not fully address all of the issues, which ultimately disqualified the tender submitted by the Complainant because some critical documents were not seen during the evaluation. Even though the documents were subsequently examined and found to support the original conclusion of the Evaluation Committee, these circumstances engender controversy and diminish confidence in the procurement process.

5.3 The Complainant's main contention, as stated in his letter dated January 11, 2018 to the Permanent Secretary, MPS is the change of the Engineer's Estimate overnight, from \$2.8 Billion as published in the Addendum Advertisement of November of 20, 2017 to \$3,186,559,049.00. The evaluation criteria used to assess the responsiveness of the tenders do not refer to the Engineer's Estimate. The tenderers are not expected to use the engineer's estimate as the primary guide to the price of their tenders.

6.0 RECOMMENDATIONS

Article 212AA. (1)(h) of the Constitution mandates the Public Procurement Commission to investigate complaints from suppliers, contractors and public entities and propose remedial action. In light of the foregoing, and having regard to the Findings and Conclusions that are detailed herein, the PPC now makes the following Recommendations:

6.1 The NPTAB should implement systems to ensure strict security and handover of tender documents to Procuring Entities. The proposed steps to improve security of tender documents should be implemented as a priority.

6.2 In its examination and review of Evaluation Reports, the NPTAB should ensure the validity of the grounds for rejection of a tender. For example, a concerted effort should have been made to verify the accuracy of the Evaluation Report with respect to the conclusion that some key documents were not submitted by the Complainant.

6.3 The Procuring Entity should effectively plan procurement projects to ensure that adherence to the Procurement Act is not impacted by time constraints for completion of the procurement procedure.

6.4 The Procuring Entity should not sign contracts without providing unsuccessful tenderers the opportunity to invoke the administrative review process as specified in the Procurement Act.

6.5 The issue of the application of the Engineer's Estimate to the evaluation of tenders must be clarified and resolved so that the Evaluation Committees and tenderers are appropriately guided.

6.6 The publication of the Engineer's Estimate at the time of advertisement of the Tender, versus the provision of sealed Engineer's Estimate in the tender box to be opened at the time of the Tender opening, must be clarified and Procuring Entities, including the MPS, advised accordingly. The NPTAB and the PPC must resolve this issue.

6.7 The MPS must inform unsuccessful tenderers in a timely manner about the outcome of their tenders to facilitate the Administrative Review process and ensure fairness in the procurement process.

6.8 The Complainant must inform himself about the requirements of the Administrative Review/Complaints process and take the necessary steps to lodge any future complaint directly with the relevant Procuring Entity. The

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Complainant must not engage "Officials" in discussing information emanating from the evaluation proceedings for any tender he has submitted.

6.9 There should be agreement between the NPTA and the MPS that the original and one copy of the Tender documents will be provided to the Procuring Entity to facilitate the evaluation process, with one copy retained by the NPTA.