

PUBLIC PROCUREMENT COMMISSION

INVESTIGATIONS OF ANNULMENT OF TENDERS FOR THE
PROVISION OF ATTENDANT SERVICES AND FLOOR AND
JANITORIAL SERVICES FOR GPHC

Investigation of Annulment of Tenders for the Provision of Attendant Services (NPTAB#3363/2017/46) and Floor and Janitorial Services (NPTAB#3364/2017/46) by GPHC

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1.0 BACKGROUND

The Public Procurement Commission (PPC) received a letter of complaint from Cleaners 'R' US (Complainant) to the Chief Executive Officer (CEO), Georgetown Public Hospital Corporation (GPHC), dated January 31, 2018 in respect of its unsuccessful tenders for the provision of Attendant Services (NPTAB # 3363/2017/46) and provision of Floor Care and Janitorial Service (NPTAB # 3364/2017/46). The PPC, having received the letter from the Complainant, wrote to the CEO, GPHC on February 2nd, 2018 advising him about the procedure that should be observed in these circumstances. The PPC also sought advice from the CEO, GPHC on the action he proposed to take to address the matter.

The Complainant subsequently requested the PPC, by letter dated February 8, 2018 to conduct an investigation of the tenders (NPTAB # 3363/2017/46 and 3364/2017/46) and asked that the bids be awarded based on the evidence and timely submission of the bids. The Complainant stated that Cleaners 'R' US had satisfied all the tender requirements and was never offered any explanation regarding the alleged non-responsiveness of its tenders.

By letter dated February 9, 2018, which was copied to the PPC and received on February 22, 2018, the CEO, GPHC responded to the Complainant. In his response, the CEO, GPHC provided explanations as to the reasons why the Complainant failed the evaluation criteria 11 and 14 and was deemed non-responsive.

By letter dated February 13, 2018 the Complainant wrote the PPC disputing all the claims made by the CEO, GPHC with respect to the evaluation of the bids submitted by the Complainant.

Based on the correspondence received from the Complainant and GPHC, the PPC undertook to investigate the circumstances leading to the annulment of tenders.

2.0 METHODOLOGY

The PPC reviewed the correspondence received from the Complainant and the CEO, GPHC. The PPC subsequently requested the GPHC and the National Procurement and Tender Administration Board (NPTAB) to submit additional information and documents to assist in the investigation of the complaint. The Commission also reviewed the Evaluation Reports for the tenders, the NPTAB tender opening minutes of October 17, 2017, and original bids submitted by

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the Complainant. The PPC also interviewed the Complainant on March 16, 2018 to clarify matters related to its tender submissions.

3.0 SUMMARY OF FINDINGS

3.1 Tender Process

The GPHC invited bids for the provision of Attendant Services (NPTAB # 3363/2017/46) and provision of Floor Care and Janitorial Services (NPTAB # 3364/2017/46) using the open tender method. The tenders were opened on October 17, 2017 at the National Procurement and Tender Administration (NPTA). The minutes of the tender opening revealed that four (4) bidders submitted bids for the provision of Attendant Services, while six (6) submitted for the provision of Floor Care and Janitorial Services. The tables below provide summaries of the bids submitted by the various suppliers.

Table 1: Bidders for provision of Attendant Services (NPTAB # 3363/2017/46)

Name of bidder	Number of copies	Quoted bid price	Bid security	Form of tender signed	NIS	IRD	Drawn on Institution
Renmitch & Associates	1	48,000,000	500,000	Yes	Yes	No	NAFICO
Cleaners R Us	2	72,094,586	500,000	Yes	Yes	Yes	Republic
Universal Group of Companies	2	206,564,044	500,000	Yes	Yes	Yes	Assuria
Cleavar Car Wash Detailing Centre & Gen. Clean	2	105,388,260	500,000	Yes	Yes	Yes	Assuria (copy)

Source: NPTAB minutes of tender opening of October 17, 2017.

Table 2: Bidders for provision of Floor Care and Janitorial Services (NPTAB # 3364/2017/46)

Name of bidder	Number of copies	Quoted bid price	Bid security	Form of tender signed	NIS	IRD	Drawn on Institution
Renmitch & Associates	1	124,550,495	750,000	Yes	Yes	No	NAFICO
Cleavar Car Wash Detailing Centre & Gen. Clean.	2	105,388,260	750,000	Yes	Yes	Yes	Demerara (copy)
Tropical Janitorial & Property Mang. Serv.	2	6,473,319	750,000	No	Yes	Yes	Citizens
Cleaners R Us	2	91,126,344	750,000	Yes	Yes	Yes	Republic

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Stain Service & Products	Masters	2	446,425,401	750,000	Yes	Yes	Yes	Scotia
Universal Group of Companies		2	347,003,072	750,000	Yes	Yes	Yes	Assuria

Source: NPTAB minutes of tender opening of October 17, 2017

The evaluation reports for both tenders (NPTAB # 3363/2017/46 and NPTAB # 3364/2017/46) deemed all the bidders non-responsive.

The CEO, GPHC by letter dated December 18, 2017 sought approval from NPTAB to annul the open tender process for the two tenders, stating that all bidders were non-responsive (see Appendix 6).

The Chairman, NPTAB by letter dated December 21, 2017 granted approval for GPHC to annul and retender both tenders.

3.2 Complaint

In his letter dated January 31, 2018, Mr. Tyrome Anthony, Managing Director, Cleaners 'R' US stated that he received a telephone call from GPHC on January 30, 2018, informing him that the bids for tenders (NPTAB # 3363/2017/46 and NPTAB # 3364/2017/46) were non-responsive and that an explanation would be given. He stated that, at a subsequent meeting conducted by Ms. Karen Cumberbatch, Director, Procurement Unit, GPHC, he was informed that the reasons for the bids being deemed non-responsive were:

- "1) Criterion No. 1 - The bidder submitted only one copy of their bid document to the National Procurement and Tender Administration Board. However, two copies were required as stated in the bid document. (this relates to the Attendant Services bid submission).
- 2) Criterion No. 11 - The list of proposed equipment did not meet the requirements of criterion 11. (this relates to both tenders, Attendant and Janitorial Services); and
- 3) Criterion 14 - The bidder did not satisfy the 25 % of the bid price criterion."

The Complainant countered the claims made by the Director, Procurement, GPHC and provided documentary evidence in support. In particular, the Complainant stated the following:

- One original and two copies of the original bid documents were submitted. This claim was supported by extracts from NPTAB's tender opening minutes of October 17, 2017.

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- A list, along with quotations for the required equipment, was submitted with the tender documents. This claim was supported by an attached list of equipment and quotations from Mines Services Limited, SCL (Guyana) Inc. and ZOON Inc. Online Shopping & Shipping.
- Letters of credit from Republic Bank, SCL (Guyana) Inc. and Mines Services Limited were submitted with the tender documents. The Complainant attached copies of these to the letter of complaint.

3.3 Response from GPHC

In the letter dated February 9, 2018 the CEO, GPHC stated that “[GPHC] reserves the right, under section 40(1) of the Procurement Act, Chapter 73:05 to reject all tenders at any time prior to the acceptance of a tender.” He further pointed out that he accepted that the Complainant had satisfied the evaluation criterion 1, but maintained that the bids had not satisfied the evaluation criteria 11 and 14. In explaining the Complainant’s deemed non-responsiveness to criterion 11, the CEO, GPHC referred only to the list of equipment owned by the Complainant.

The CEO, GPHC, maintained that the Complainant did not satisfy criterion 14 since the documents submitted did not specify a credit line equivalent to 25 percent of the bid price as requested.

The letter from the CEO, GPHC, apart from highlighting the deficiencies in the tender submissions from Cleaners ‘R’ US, also stated that the company was performing services at the GPHC with inadequate equipment and without sanction.

3.4 Complainant’s response to explanations from CEO, GPHC

The Complainant provided extensive details countering the claims made by the CEO, GPHC, that his bids did not satisfy criteria 11 and 14. Specifically, the Complainant stated:

- that the company submitted a list with equipment which met the requirements of the tenders, contrary to what was suggested in the response he received from the CEO; and
- Letters of Credit from three reputable companies (Republic Bank (Guyana) Limited, SCL (Guyana) Inc. and Mines Services Limited) were provided with the tender documents in keeping with the stated requirements. He, however, expressed concern about why these letters of credit were rejected. He noted that the Director, Procurement, GPHC at the meeting advised that the Certificates of Incorporation for these companies were not provided, even though this was not a stated requirement in the bidding documents.

4.0 CONCLUSION

As a result of its investigation of the complaint, the PPC concluded the following:

4.1 Evaluation Committee Report

4.1.1 Criterion 1

- The PPC saw no evidence to support GPHC’s contention that the bidder had not submitted the requisite number of copies of the bid for the tender. There was also no evidence that NPTAB, in its review of the evaluation report, considered the validity of the reason given for the failure of the bidder to meet criterion 1, which referred to the number of copies of the bids submitted by the tenderer. The PPC confirmed that NPTAB’s tender opening minutes of October 17, 2017 reflected that the bidder had submitted the requisite number of copies.

4.1.2 Criterion 11

- The PPC’s examination of the original bid documents supports the Complainant’s claim that the bid documents submitted included the full list of equipment and quotations required to satisfy criterion 11 for the provision of Floor Care and Janitorial Services (NPTAB # 3364/2017/46).
- Table 3 below provides details of the PPC’s assessment of the Complainant’s bid in respect of criterion 11. The table indicates that the Complainant satisfied this criterion and the Evaluation Committee ought not to have failed the bid on this aspect of the evaluation.

Table 3: List of equipment and supplies required

Criterion 11 - equipment and supplies required	Remarks	Source documents
8 - Buffers & Burnishers	8 owned	Statutory declaration of ownership found in original bid documents
40 pieces - Scaffolding	1 owned 40 rented	
10 - Ladders	10 owned	
6 - Wet & Dry Vacuum	6 owned	
Assorted cleaning, disinfecting and Personnel Protection Equipment (PPEs) outlined in scope of works	List of various cleaning items and PPEs	Quotations from SCL Guyana Inc. and Industrial Safety Supplies Inc.

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- The bid submitted by the Complainant for the provision of Attendant Services (NPTAB # 3363/2017/46) did not fully satisfy criterion 11. The combined statutory declaration of ownership and the quotations submitted for equipment did not fulfill the requirements of this criterion.
- During an interview with the PPC, the Complainant claimed that the bid documents for this tender included a second quotation from ZOON Inc., identifying a number of equipment to be supplied (Wheel Chairs, Medi-Glide Boards, and Translide-Slide Sheets). The PPC did not find this document in the original bid documents submitted by the Complainant. In this regard, the Evaluation Committee appropriately failed the bidder on this criterion.

4.1.3 Criterion 14

- Even though the documents submitted by the Complainant to satisfy the criterion for financial capacity made no specific reference to 25 percent of the bid price as required, the PPC notes that the GPHC could have used section 39(4)(a) of the Procurement Act to seek clarification from the bidder. Section 39(4)(a) of the Procurement Act provides as follows:
"The procuring entity may ask, within a reasonable period of time, suppliers or contractors for clarifications of their tenders in order to assist in the examination and comparison of tenders. No change in a matter of substance in the tender, including changes in price and changes aimed at making a nonresponsive tender responsive, shall be sought, offered or permitted."
- The Complainant submitted, with the bid documents, Letters of Credit from three established and credible companies.
- During the interview with the PPC, the Complainant explained that it would have been difficult to obtain Letters of Credit that were specific with regard to the percentage of the bid, given the time-frame of three weeks available for obtaining the Letters of Credit, preparing bid documents, computing bid prices and submitting the bids. Consequently, the Complainant requested and submitted open Letters of Credit with the bid documents
- The Complainant claimed that Ms. Cumberbatch, Director, Procurement, GPHC, had advised that the Letters of Credit submitted by Cleaners 'R' US did not satisfy criterion 14 because the bidder did not also submit the Certificates of Incorporation for the companies that provided the Letters of Credit. If indeed, the Evaluation Committee rejected the

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Letters of Credit on this basis, then it would have acted in breach of section 39(2) of the Procurement Act, taking into consideration a criterion not outlined in the tender documents. Section 39(2) provides as follows:

"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 within a reasonable period of time, but not longer than fourteen days."

4.1.4 Responsiveness of Bids

- The PPC's investigation revealed that two evaluation criteria were fully met by the bidder for the tender, "provision of Floor Care and Janitorial Service NPTAB # 3364/2017/46". However, the Complainant was deemed as having failed to satisfy these criteria, indicating that the Evaluation Committee did not exercise sufficient care in its review of the bids. The Evaluation Committee did not have sufficient grounds to reject the bid on the basis of Criterion #14 only, as clarification should have been sought to assist the evaluation process and ensure fairness.
- The PPC, having taken all the facts into consideration, concludes that the evaluation was not fair to the bidder with respect to the tender for provision of Floor Care and Janitorial Service (NPTAB # 3364/2017/46).
- The PPC agrees with the Evaluation Committee's assessment that the bid for the tender, "provision of Attendant Services (NPTAB # 3363/2017/46)" was non-responsive, but only because criterion # 11 was not satisfied, resulting in the entire bid being rejected.

4.2 OTHER OBSERVATIONS

4.2.1 The CEO, GPHC in his letter to the Complainant dated February 9, 2018, referred to the unsatisfactory performance of Cleaners 'R' US under its current contract with the GPHC. This statement by the CEO, who was a member of the Evaluation Committee, seems to suggest that the Evaluation Committee took into consideration criteria not outlined in the tender documents. This is in breach of Section 39(2) of the Procurement Act.

4.2.2 The PPC was not provided with minutes of the pre-bid meeting held by GPHC for the two tenders. The Director, Procurement, GPHC, advised the Chairperson, PPC, that no minutes were available. These minutes would have assisted the PPC to verify the claims made by the Complainant that bidders were advised that they could submit quotations for supplies and equipment to satisfy evaluation criterion 11. The availability of these minutes would have also facilitated the work of the Evaluation Committee in determining whether bidders met the requirements of the stated criterion. Section 33(3) of the Procurement Act provides as follows:

"If the procuring entity convenes a pre-bid meeting of suppliers or contractors, it shall prepare minutes of that meeting containing the queries submitted at the meeting for clarification of the tender documents, and its responses to those queries, without identifying the sources of the queries. The minutes shall be provided promptly to all suppliers or contractors to which the procuring entity provided the tender documents, so as to enable those suppliers or contractors to take the minutes into account in preparing their tenders. All modifications of tender conditions made by the procuring entity whether on its own initiative, as a result of clarification requested by the tenders, or provided during a pre-tender meeting, shall be issued in the form of all suppliers or contractors to which the procuring entity provided the tender documents, so as to enable those suppliers or contractors to take the minutes into account in preparing their tenders. All modifications of tender conditions made by the procuring entity whether on its own initiative, as a result of clarification requested by the tenders, or provided during a pretender meeting, shall be issued in the form of amendments to the tender documents, which shall be provided to all prospective bidders who purchased the tender documents. Such addendum shall be binding upon all tenders."

4.2.3 The PPC observed that the Evaluation Committee submitted its report approximately 55 days after the tender opening. This is also in breach of section 39(2) of the Procurement Act, which stipulates 14 days as the maximum time for completing the evaluation of the tender.

- It cannot be considered that GPHC gave prompt notice of the outcome of the tender process to the Complainant, since the Chairman, NPTAB

approved annulment of the process since December 21, 2017 and GPHC only informed the Complainant of the decision of the Evaluation Committee by letter dated January 30, 2018.

4.2.4 In his letter dated February 9, 2018 the CEO, GPHC, referred to Section 40(1) of the Procurement Act and, in this regard, inferred that GPHC had used this provision of the Act to justify the rejection of all bids received for the two tenders. It is the considered opinion of the PPC that, since the Evaluation Committee had deemed all the tenders non-responsive, the GPHC did not have to rely on this section to justify the rejection of all the bids received. In effect, this section of the Procurement Act is not relevant in circumstances where the Evaluation Committee has completed its work in accordance with the Act and found all bids non-responsive.

4.2.5 The PPC noted the recommendation in the evaluation report for NPTAB to grant approval for use of the Restricted Tender Method to re-launch the tender after annulment. This method is permitted only when both conditions specified in section 26(1) of the Procurement Act are met. Specifically, section 26(1) provides that:

"(a) the goods, construction or services by reason of their highly complex or specialized nature, are available only from a limited number of suppliers or contractors, in which case all such suppliers or contractors shall be invited to submit tenders;
(b) if the estimated cost of the contract is below the threshold set forth in the regulations."

In each case, the value for the tenders was above the stated threshold of G\$3 million. As such, the Restricted Tender method should not be used.

5.0 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:

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- 5.1** The GPHC, at all times, should adhere to the Procurement Act. In this regard, prompt notice should be given to bidders about the outcome of tenders. Section 40(3) provides that:
"Notice of the rejection of all tenders shall be given promptly to all suppliers or contractors that submitted tenders."
- 5.2** The Evaluation Committee should be very meticulous in its review of the bid documents submitted by bidders. All relevant documents should be included in this review, including minutes of pre-bid meetings and minutes of the National Procurement Tender Administration in respect of tender openings. This is to ensure that bids are fairly evaluated in accordance with the provisions of the Procurement Act.
- 5.3** The Evaluation Committee should not consider evaluation criteria not outlined in the tender documents.
- 5.4** GPHC should use the Restricted Tender procedure only in accordance with the procedure outlined in the Procurement Act.
- 5.5** In view of the PPC's assessment that the evaluation of the bid for the provision of Floor Care and Janitorial Services (NPTAB # 3364/2017/46) was unfair, the GPHC and NPTAB should conduct a review of the decision to deem this bidder non-responsive to this tender.

March 29, 2018