

PUBLIC PROCUREMENT COMMISSION

**REVIEW OF TENDER AWARD FOR OPERATION SERVICES AT LUSIGNAN SANITARY
LANDFILL, LUSIGNAN, E.C.D.**

NPTAB # 123/2018/42

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1.0 BACKGROUND

The Public Procurement Commission (the Commission) received a letter dated August 2, 2018 from Mr. Suresh Jagmohan, Managing Director of S. JAGMOHAN HARDWARE SUPPLIES AND CONSTRUCTION SERVICES (Complainant) indicating that he was formally protesting the award of a contract and requesting a review of the procurement proceedings that led to the award of a contract for the tender, Operation Services at Lusignan Sanitary Landfill (Tender: NPTAB# 1023/2018/42).

In his letter to the Commission, the Complainant stated that his company had become aware of an award of contract for this tender when the Minister of State made the announcement at a post Cabinet briefing held on July 20, 2018. The Complainant further stated that he subsequently submitted a formal protest to the Procuring Entity, the Ministry of Communities, on July 25, 2018, seeking a review of the procurement proceedings and received a written response dated July 27, 2018 stating that his bid had been evaluated as being non-responsive.

The Complainant submitted a number of documents to support his request for a review, including a copy of the complete tender documents submitted in response to the tender advertisement and copies of all subsequent correspondence between his company and the procuring entity.

The Commission, by letter dated August 7, 2018 wrote the Permanent Secretary, Ministry of Communities advising him of its intention to review the procurement proceedings leading to the award in respect of this tender and asked him to provide the Commission with all relevant records of the procurement, including the Evaluation Report. The Commission advised the Permanent Secretary that no further action should be taken in respect of the tender, pending the completion of an investigation by the Commission.

2.0 METHODOLOGY

The Commission reviewed the documents received from the Complainant, the Permanent Secretary, Ministry of Communities (MOC) and the National Procurement and Tender Administration (NPTA). The Commission also interviewed the following persons:

1. The Complainant

2. Mr. Emil McGarrell- Permanent Secretary, Ministry of Communities and Coordinator of the Evaluation Committee appointed to evaluate the tender under review,
3. Procurement staff of the MOC,
4. Mr. Mark Bender, Deputy Chairman, National Procurement and Tender Administration Board (NPTAB) and;
5. Ms. Alexis Cooper, Senior Procurement Officer of the National Procurement and Tender Administration

3.0 SUMMARY OF FINDINGS

3.1 Tender Process

Using the Open Tender procedure, the Ministry of Communities invited bids for the project **OPERATION SERVICES AT LUSIGNAN SANITARY LANDFILL, LUSIGNAN, E.C.D. NPTAB # 123/2018/42**. The tender was advertised in the local newspapers on Sunday 25 March April 4 and 11, 2018.

The tenders were opened on April 17, 2018 at the National Procurement and Tender Administration Board (NPTAB)). The Commission noted that ten(10) prospective tenderers purchased the tender document, but only three submitted tenders. These were:

1. H. Naught and Sons - G\$189,300,000
2. Puran Brothers Disposal Inc. and Cevons Waste Management Incorporated-G\$32, 000,000
3. S. Jagmohan Hardware Supplies and Construction Services – G\$25,230,000

3.2 The Complaint

In his letter to the Commission dated August 2, 2018, the Complainant stated that his company's bid was the lowest priced and complied with all bid qualification requirements. He also attached to his letter of complaint a document titled, "Succinct Description Concerning the Alleged Breach", which provided details of communication between his company and the Procuring Entity, specifically in respect of two matters of clarification requested by the Procuring Entity. The Complainant stated in this document that, in response to his request for a review of the award decision, which he had become aware of only as a result of an announcement to the media by the Minister of State, the Procuring Entity merely stated that bidder No. 3 was evaluated as non-responsive, with no stated reason.

3.3 Interview of Complainant

Subsequent to a review of all documents related to the Complaint, the Commission decided that interviews with the Complainant and the Coordinator of the Evaluation Committee would provide additional details about the clarifications sought by the Procuring Entity.

The Complainant attended an interview with the Commission on August 23, 2018 and advised that he had received, from the Procuring Entity, two requests for clarification as follows:

Clarification 1 dated May 3, 2018: The Procuring Entity requested proof of ownership for a 312 Caterpillar Excavator registered to the Regional Democratic Council (RDC), Region No. 10

The Complainant reported to the Commission that, in response to clarification 1, he advised the Procuring Entity as follows:

He had satisfactorily complied with the qualification evaluation criteria to submit a *"List of Minimum Equipment proposed for the Project, with an affidavit of proof of ownership and/or lease arrangement. The list of equipment must be part of the affidavit."* The Complainant further explained that in his affidavit supplied with his tender documents he had listed two No. 312 Caterpillar Excavators. He also informed the Procuring Entity that the registration referred to in the bid represented a contract for the supply of one 312 Caterpillar Excavator to the Regional Democratic Council, Region No. 10. Additionally, the Complainant stated that there was no requirement to submit equipment registration as a qualifying criterion.

Clarification 2 dated May 24, 2018: The Procuring Entity requested clear copy of registration form No. 22227 attached in Complainant's bid documents

The Complainant advised the Commission that in response to clarification No. 2, he provided a clear copy of the excavator registration No. 22227 with an explanation that the registration represented equipment supplied to the RDC No. 10 under a contract awarded to S. Jagmohan Hardware Supplies and Construction Services and was listed as evidence of past performance of his business operation. He also stated that he had submitted the Certificates of Registration for the two 312 Caterpillar Excavator listed in the affidavit.

The Complainant further advised the Commission that he had submitted with his tender a renewed business registration together with the priced document, as was previously done with many other successful tenders. He explained that, pursuant to the Business Name (Registration) Amendment Act No. 3 of 2013, his business registration was renewed on March 20, 2018, whereby the Office of Registrar of Business names, Georgetown, Demerara applied a stamp with writings of Ref No. 346481, Renewed fee: G\$ 2,500 and valid until 209/3/27. The Complainant presented this document to the Commission for its examination.

3.4 Interview of Coordinator of Evaluation Committee and support staff from the Procuring Entity

The Commission discussed the details of the complaint and explanations provided by the Complainant with the Coordinator of the Evaluation Committee who subsequently reviewed the Evaluation Report, particularly the evaluation criterion for "proof of ownership".

The Commission pointed out that the criterion for proof of ownership listed in the tender document did not require the tenderers to submit copies of registration of the vehicles, but only an affidavit containing a list of the equipment proposed to be used for the project.

The Coordinator, after perusing the documents submitted by the Complainant, agreed that the decision of the Evaluation Committee to deem the Complainant non-responsive to the criterion for proof of ownership of equipment was incorrect. He agreed that the Complainant's submission of the affidavit of ownership of equipment was sufficient to satisfy the criterion for proof of ownership.

The Coordinator also agreed that the conclusion of the Evaluation Committee to treat the submission of the Certificates of Registration for the two 312 Caterpillar Excavator as new information was not correct.

3.5 Interview of Deputy Chairman, National Procurement and Tender Administration Board and Senior Procurement Officer

The Commission, in an effort to determine the method of review of the Evaluation Committee Report by the staff of NPTA and the Board, interviewed the Deputy Chairman, NPTAB and the senior procurement officer of the NPTA who reviewed the evaluation report.

The Commission pointed out to the Deputy Chair and Senior Procurement Officer that, the review of all the documents provided by the Complainant and subsequent discussion with the Procuring Entity, confirmed that the Complainant was fully responsive to the evaluation criterion regarding proof of ownership.

It was noted that the report prepared by NPTAB and submitted to Cabinet, included an additional evaluation criterion on which the Complainant was deemed to have failed to be responsive. This was in respect of the submission of a valid Business Registration.

In discussion with the procurement officer the Commission noted that the Complainant, during their interview, had provided both the original and certified copy of the Business Registration for examination by the Commission.

The procurement officer contended that the copy provided with the tender documents was not legible. It was noted, however, that the Evaluation Committee had not identified this as an issue in their Evaluation Report and had only deemed the Complainant non-responsive to the criterion in relation to submission of the affidavit of ownership of the list of equipment.

The Commission advised the Deputy Chair and Procurement Officer that it was not correct to state that the Complainant had not submitted a valid Business Registration, only on the basis that the document when examined by NPTAB was not clear. The Commission informed the Deputy Chair and Procurement Officer that the Complainant, at the interview with the Commission, had submitted the original Business Registration and copy. The Commission was satisfied that the Business Registration was valid.

The Procurement Officer of NPTA admitted that the Board would not usually fail a bid only on the basis of the criterion in respect of the Business Registration and the Complainant had failed primarily because of the conclusion that they had not met the criterion for proof ownership of the equipment.

4.0 CONCLUSION

Pursuant to its investigation of the complaint, the Commission concluded the following:

1. The Evaluation Committee misinterpreted the evaluation criterion for proof of ownership of equipment and had unfairly deemed the Complainant as being unresponsive to this requirement.

2. The PPC saw no evidence to support the Evaluation Committee's conclusion that the Complainant had provided new information in response to their request for clarification and was therefore not responsive. In fact, there was no need to request clarification of ownership of the equipment since the criterion was fully satisfied by the submission of the sworn affidavit. The subsequent submission of the registration certificates only served to strengthen the Complainant's testimony of ownership of the equipment. The Registration certificate 22227 that was included with the bidding documents was not relevant and should have been ignored because there was no requirement to provide evidence of experience related to supply of equipment and the document showed clearly that it was owned by the Region 10 RDC. Further, the affidavit did not link the equipment listed to the submitted registration. The clarification did not add value to the evaluation process.
3. There was no reason for the Evaluation Committee to seek clarification from the Complainant in respect of this particular criterion because the submission was complete, as the document requested was provided. The subsequent submission of the registration certificates to show ownership of the equipment listed was in response to the query received from the Evaluation Committee and, in effect, was not new information provided by the Complainant to make his bid responsive.
4. The review of the Report of the Evaluation Committee by the Procurement Officer at the NPTA and subsequent Report submitted for CABINET's "No Objection" failed to identify the error made by the Evaluation Committee.
5. The decision of the Procurement Officer of NPTAB to deem the Complainant non-responsive to another criterion was incorrect.

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 Evaluation Committee must be very meticulous in its review of the tender documents submitted by tenderers. All relevant documents must be included in this review to ensure that tenders are fairly evaluated in accordance with the provisions of the Procurement Act.
- 5.2 The Evaluation Committee must not consider evaluation criteria not stated in the tender documents.
- 5.3 In view of the Commission's assessment and the concurrence of NPTAB and the Procuring Entity that the evaluation of the tender submitted by the Complainant was unfair, the evaluation must be annulled.
- 5.4 The tenders must be reevaluated in accordance with the provisions of the Procurement Act, which state that only criteria stated in the tender documents must be used to evaluate tenders.
- 5.5 This decision of the Commission is final and binding on the Procuring Entity.

August , 2018