

REPUBLIC OF LIBERIA)
MONTSERRADO COUNTY)

BEFORE THE COMPLAINTS, APPEALS & REVIEW PANEL (CARP), PUBLIC
PROCUREMENT & CONCESSIONS COMMISSION (PPCC), REPUBLIC OF LIBERIA

Westwood Corporation represented by
Its General Manager, Mr. Samuel B. Cooper
of the City of Monrovia,
Republic of Liberia..... **Petitioner**

Versus

Ministry of Public Works, represented by and thru its
Minister, Hon. W. Gyude Moore of the City of
Monrovia, Republic of Liberia **1st Respondent**

And

Afrique Construction & Maintenance Company
represented by and thru its
CEO, Mr. Prince O. A. Akiremi,
Of the City of Monrovia, R. L..... **2nd Respondent**

And

Solid Rock Investment, Inc. represented by its
Managing Director/ CEO, Mr. William B. Seton
Of the City of Monrovia, R. L..... **3rd Respondent**

**Bids Opening
Irregularities**

Heard: August 4, 2016

Decided: August 5, 2016

Background

The Ministry of Public Works received funding from the Japanese Government through the Government of Liberia for Community Infrastructure Development Project (CIDP) for the year 2015/2016. Part of the funding received was intended to open the alley on the Robert International Airport (RIA) Highway. The Project was categorized or placed into four (4) Lots. The range of Lot 1, according to documents before the Panel, was put at USD 700,000 to 800,000. Lot 2 ranges from USD1,100,000 to 1,300,000; Lot 3, USD600,000 to 700,000; and finally, Lot 4 was placed in the range of USD1,000,000 to USD1,200,000.

Dependent upon the amount received, the Ministry of Public Works on April 22, 2016 invited sealed bids, referenced to IFB No. MPW/CIDP/SBA/RB/2015/2016, from Road Construction Companies prequalified employing the Restricted Bidding Method of procurement for the execution of the said contract. The total of fourteen (14) Contractors responded to the invitation to bid.

Subsequent to bids opening and the bids evaluation, the Ministry, as required by law, wrote all parties to the bidding process to inform them of the outcome of the process based on their submission's responsiveness or non-responsiveness. Westwood Corporation was declared non-responsive while Solid Rock Investment, Inc. and Afrique Construction were the most responsive bidders of Lot 2 and Lot 4 respectively. The decision of the Ministry of Public Works declaring Westwood Corporation non-responsive became the point of contention in this matter.

In view of the above and following series of exchanges between Westwood and the Ministry of Public Works, Westwood Corporation on June 27, 2016 filed a formal Complaint to the Public

Procurement and Concessions Commission (PPCC) alleging numerous PPCA/ ICB bid process violations contravening Section 61 of the amended and restated Public Procurement and Concessions Act, 2010. Westwood further alleged that bid price limit set by 1st Respondent was disregarded by other bidders violating Section 112 (Certainty of Evaluation Criteria) of the PPCA.

The Complaint was forwarded to the Complaints, Appeals and Review Panel (CARP), the Panel clothed with the authority to investigate and review all complaints relating to Public Procurement activities in Liberia consistent with Part VIII of the amended and restated Procurement and Concessions Act, 2010.

The Panel through its Chairman, Cllr. Beyan D. Howard, on July 12, 2016 wrote the Ministry of Public Works requesting all documentations for review to ascertain claims made by Westwood Corporation. The Ministry adhered to the Panel's request but submitted the documents beyond the deadline for submission.

However, the Panel carefully and thoroughly reviewed the documents presented and decided to invite all parties to a hearing which was scheduled for Tuesday, August 2, 2016 in the Conference Room of the Commission. The parties invited to the hearing included Westwood Corporation, Petitioner; Ministry of Public Works, 1st Respondent; Afrique Construction and Maintenance Company, 2nd Respondent; and Solid Work Investment, Inc., 3rd Respondent.

Unfortunately, prior to the Tuesday, August 2, 2016 hearing, Petitioner Westwood Corporation through its legal counsel, Dede D. Nyeplu, II, Attorney-at-Law of Dunbar and Dunbar Law Offices filed a Request of Continuance for two (2) weeks beginning Monday, August 1, 2016. For the sake of this record, it is worth noting that the Request of Continuance was received on August 2, 2016, the date of the hearing. However, the Request of Continuance was received by the Panel and read at the hearing. All party litigants were present with their legal representatives at the hearing except the Complainant, Westwood Corporation.

The Request for Continuance was filed by the Dunbar and Dunbar Law Offices in order to allow them to study the case and provide the requested legal representation and memorandum for their client Westwood Corporation, the Petitioner in the above entitled case.

The Request of Continuance was not granted due to statutory reason of time limitation; and that, the hearing was scheduled to resume on August 4, 2016 in the Conference Room of the PPCC at the precise hour of 3:00 p.m. The Acting Secretary of the Complaints, Appeals and Review Panel, Ben B. Teah, Jr. was mandated to communicate the decision of the Panel to the Dunbar and Dunbar Law Offices.

At the August 4, 2016 hearing, Cllr. Beyan D. Howard, Chairman of the Panel welcomed all parties and requested that each party, beginning with the Petitioner, represented by the Dunbar and Dunbar Law Offices, announce their representation for the sake of the records.

Complainant, Westwood was represented by Atty. Dede Nyeplu, II, Legal Counsel and Mr. Foine A. Cole, Operations Manager. Ministry of Public Works, 1st Respondent was represented by Atty. Francis L. Yancy, Legal Consultant and Ms. Yah V. Parwon, Legal Support Officer and Mr. A. Samuka Dunnon, Director of Procurement. Afrique Construction and Maintenance Company, 2nd Respondent was represented by Mr. Prince O. A. Akinremi, CEO, and Cllr. Idris S. Sheriff, and finally, Solid Rocks Investment, Inc. 3rd Respondent was represented by its CEO, Mr. William B. Seton and Cllr. Wiefueh Sayeh, Legal Counsel.

Atty. Dede Nyeplu, II, Petitioner's Legal Counsel presented his case in brief by summarizing his Legal Memorandum earlier filed before CARP. Atty. Nyeplu explained that his Client, on April 22, 2016, responded to an Invitation to Bid, IFB No. MPW/CIDP/SBA/RB/001/15/16, issued to pre-qualified Companies by the Ministry of Public Works for the Community Infrastructural Development Project (CDP) for grading and shaping of existing and non-existing urban

neighborhood laterite roads on the RIA high-way with funding from a Japanese grant. This project was divided into four (4) lots; namely Lot 1, Lot 2, Lot 3 and Lot 4. The Restricted Bidding Method of Procurement was employed.

Atty. Nyeplu further said that his Client, Westwood, bided for Lot 2 and 3. Atty. Nyeplu asserted that his client's bids were not treated fairly due to discrimination at bid opening on May 26, 2016.

On June 9, 2016, the Ministry of Public Work wrote Westwood that its bids were not responsive due to reasons that Petitioner's bids did not meet all of the specifications, requirements and criteria outlined in the bidding documents.

In response to 1st Respondent's June 9, 2016 communication Petitioner, Westwood, on June 10, 2016 wrote the Ministry seeking clarification and specific reasons for its findings. The Ministry on June 13, 2016 wrote Westwood and provided reasons why its bids did not pass the preliminary stage of the evaluation process. Reasons provided included: 1) all pages of the bid be signed and stamped. Westwood stamped all pages but did not sign all pages of the bid documents; 2) That the Ministry requested all bidders present a letter or authority to seek reference. Westwood did not honor or respond to the request; and finally, 3) that all Companies state clearly the value of each lot's bid security as well as requested every bidder to submit separate bid security for every lot. Westwood submitted one bid security, an original and a duplicate, for both Lot 2 and Lot 4.

The reasons stated herein above formed the basis for the Ministry's decision to inform Petitioner in its June 10, 2016 letter that Petitioner herein did not qualify to advance to the Technical Evaluation stage of the bidding process of the CIDP. Predicated on the June 10, 2016 letter, Westwood sought the intervention of the Public Procurement and Concessions Commission (PPCC).

First Respondent and members of the Panel cross-examined the Petitioner upon conclusion of its argument. The Panel then asked the Ministry of Public Works to give its account of the allegation levied against it.

First Respondent through its Legal Counsel refuted the claims made by Petitioner. Atty. Yancy clarified that at no time did the Ministry give a fix price for any of the four (4) lots to be quoted by bidders. Secondly, Atty. Yancy revealed that Petitioner bided for Lots 2 and 4 but presented a single bid security, the original and its duplicate, for the two separate lots.

Atty. Yancy further averred that the Ministry of Public Works on April 22, 2016 issued IFB No.MPW/CIDP/SBA/RB/001/15/16 to eighteen pre-qualified companies. The tender was intended to attract the most responsive bidders for Community Infrastructure Development Project for grading and shaping existing and non-existing urban neighborhood laterite roads on the RIA high way placed in four separate lots.

Atty. Yancy stated further that fourteen companies submitted bids for the said Invitation for Bid consistent with the deadline. On May 20, 2016 the bids were opened at the Ministry of Public Work at the hour of 1:05 p.m. No company at the Bid Opening objected to the process. The bids were forwarded to the Bid Evaluation Committee for evaluation in line with Section 30 of the Public Procurement and Concessions Act, 2010.

There is one fundamental issue before the Panel that is determinative of this matter. The issue is: Whether or not the Petitioner herein was permitted to present a single Bid Security for two separate lots for the Community Infrastructure Development Project advertised by 1st Respondent, Ministry of Public Works?

Analysis/ Discussion of the Issue

The one and only issue to be addressed in this case is, whether or not the Petitioner herein was permitted or required to present a single Bid Security for two separate lots for the Community Infrastructure Development Project advertised by 1st Respondent, Ministry of Public Works?

The Answer is NO.

According to Ministry of Public Works, the 1st Respondent in this entitled case, Westwood Corporation's submissions contravened ITB 13.1, ITB 13.2, ITB 17.2 of the Standard Bidding Document issued. The Ministry said in ITB 17.2 of the SBD, it requested in clear terms the value of each lot's bid security and requested separate bid securities based on the value of each lot. Westwood did not comply. Instead, Petitioner submitted one bid security which were the original and its photo copy for two separate lots. Moreover, Ministry of Public Works confirmed that ITB 13.1 of the SBD required bidders to sign and stamp all pages of the Bill of Quantities (BOQ). Westwood failed to adhere to the instruction. Finally, ITB13.2 of the said SBD required that bidders should present a letter or give authority to seek reference. Petitioner did not provide the letter.

Considering all the deviations of Petitioner Westwood Corporation stated above, which shall be seriously considered as very material to every and all bidding processes based on their nature, cannot be overlooked by any procuring entity. Therefore, Public Works Ministry being one entity which supposed to deliver quality service in all of its construction work is of no exception.

The action of 1st Respondent is consistent with Section 62 (2) which states, "Bids which are not complete, not signed, not accompanied by a bid security in the prescribed for, if one is required, or not accompanied by essential supporting documents such as business registration certificates, business licenses and tax receipts, or are substantially non-responsive to the technical specifications or contract conditions or other requirements in the bidding documents, shall be rejected and excluded from further evaluation and comparison.

Opinion

Wherefore and in view of the facts and pursuant to existing laws, it is the opinion of the Complaints, Appeals and Review Panel (CARP), Public Procurement and Concessions Commission (PPCC) of the Republic of Liberia that the Ministry of Public Works did not and has not breached or violated any provision or Section of the Public Procurement and Concessions laws or any Sections in the Standard Bidding Document issued to bidders for the Community Infrastructure Development Project during the evaluation process of Lot 2 and 4 as alleged by Petitioner Westwood Corporation.

Accordingly, the Complaints, Appeals and Review Panel upholds the decision of the Ministry of Public Works to award contracts to the winners of Lot 2 and 4 of the CIPD procurement process, which were recommended by the ad hoc bid evaluation committees.

IN WITNESS WHEREOF, WE (MEMBERS OF THE CARP) HAVE HERE ONTO SET OUR HANDS AND AFFIXED OUR SIGNATURES TO THIS INSTRUMENT, THIS 12th DAY OF AUGUST, A. D. 2016.

Signed:

1. Cllr. Beyan D. Howard.....Chairman

2. Hon. Massaquoi M. Kamara..... Co-Chairman

3. Cllr. Eric B. Morlu..... Secretary

4. Hon. David M. Jallah Member