

December 20, 2022

Attorney Jargbe Roseline Nagbe Kowo  
Executive Director  
Public Procurement and Concessions Commission  
Camp Johnson Road  
Monrovia, Liberia

For the attention of the Complaints, Appeals and Review Panel

**RE: APPEAL OF THE NATIONAL ELECTIONS COMMISSION DECISION TO REJECT  
THE BID CHALLENGE SUBMITTED BY THE WAYMARK INFOTECH/MWETANA  
JOINT VENTURE**

The Waymark Infotech/MWETANA Joint Venture (the "Appellant") submits this Appeal to the Complaints, Appeals and Review Panel Complaint, praying for a decision in its favor for the following legal and factual reasons:

1. The Appellant submitted a bid in response to ICB No: NEC/VRPLE/ICB/001/2022 issued by the National Electoral Commission (NEC) of Liberia on July 29, 2022 and subsequently presented our offer and demonstrated twice to the NEC on August 9, 2022 and October 7, 2022 respectively, the latter of which was video recorded.
2. Upon the Appellant becoming aware of NEC's selection of the Laxton Group through various media reports, the Appellant, in accordance with our rights under Section 125(1) of the Public Procurement and Concessions Act (PPCA), submitted a bid challenge to NEC on December 1, 2022 that objected to NEC's selection of Laxton Group as the most responsive vendor (see attached Bid Challenge dated November 30, 2022 marked as Exhibit "A/1").
3. On December 16, 2022, the Appellant received NEC's response to the Bid Challenge in which NEC decided to reject the challenge (see attached decision by NEC dated December 15, 2022 marked as "A/2").
4. The Appellant says Section 62(4) of the PPCA required NEC to evaluate our bid in accordance with the criteria and methodology stated in the bidding documents. Section 65(1) of the PPCA further demanded NEC to award the contract to the bidder that is qualified and submitted the lowest responsive bid. NEC failed to comply with these statutory requirements when it refused to determine award the contract to the Appellant.

Josephine Gelescio  
Dec. 21, 2022



5. Based on PPCC's November 22, 2022 response to NEC's request for PPCC to approve the awarding of the contract to the Laxton Group, NEC's Re-Evaluation Report stated that Waymark/MWETANA was one of the three companies who NEC deemed responsive following the October 7, 2022 redemonstration. (see attached article from the November 25, 2022 edition of The Analyst newspaper marked as Exhibit "A/3")
6. Further to Count Five, NEC's Re-Evaluation Report listed several reasons why NEC considered the Laxton Group to be most responsive. These reasons included "responsiveness to the redemonstration, capacity to prefinance, accessibility of supplier and responsiveness to other indicated requirements in the bid, etc."
7. Further to Counts Five and Six, the Appellant asserts that the criteria that is conspicuously absent from NEC's criteria list is bid price. The absence of bid price as an evaluation criteria is puzzling because NEC was required to evaluate the bids it received in accordance with Section III of the bid document. This section contains the criteria for NEC to evaluate the bidders and determine whether the bidders have the required qualifications and the first evaluation criteria mentioned in the "Evaluation Criteria" segment of Section III is bid price. (see attached Section III of the bid document marked as "A/4")
8. The Appellant says at the bid opening, the Appellant's bid, which was US\$11,256,929.25, was the lowest of all the bidders and approximately US\$700,000.00 lower than the other two bidders NEC deemed to be responsive following the redemonstration, Laxton Group - \$11,956,834.32 and ESI - \$11,971,969.00.
9. Further to Count Eight, the Appellant says NEC, in accordance with Section 61(2) of the PPCA, was required to make a written record of what transpired at the bid opening and share such record with all of the bidders. NEC violated this provision by not sharing the record and when the Appellant requested NEC to provide the written record, NEC refused to comply with this statutory obligation. (see attached communication from the Appellant to NEC requesting for the written record marked as Exhibit "A/5").
10. The Appellants submit that our bid documents and the video evidence of the redemonstration proves that Waymark/MWETANA satisfied the evaluation and qualification criteria contained in Section III of the bidding documents. Waymark/MWETANA's responsiveness was reinforced by NEC's Re-Evaluation Report that named our joint venture as one of the three responsive bidders. The Appellant says it is not in possession of the video recording of the October 7, 2022 redemonstration so we request that the CARP request a copy of the recording to aid in its review of our appeal.



11. The Appellant declares that considering NEC rightly deemed our bid to be responsive in its Re-Evaluation Report and our bid price is roughly US\$700,000.00 lower than the other two bidders, NEC had a statutory obligation, in keeping with the above referenced Section 65(1) of the PPCA, to award the contract to the Appellant since we met the qualification requirements and we were the lowest responsive bidder.
12. The Appellant says ITB 11.1h (as found in Section II) and Section III of the bidding document required bidders to submit audited financial statements for the past two years to show an ability to pre-finance the contract. Although the Appellant duly complied with this key requirement, by NEC's Chairwoman own admission at a press conference one month ago, Laxton failed to provide the required audited financial statements. She mentioned that Laxton only provided financial statements for the fiscal years 2020 and 2019 and she added that Laxton's financial statements were not even audited plus Laxton expressed a condition regarding its ability to pre-finance. (see attached ITB 11.1h of the bidding document marked as Exhibit "A/6" and the article from the October 26, 2022 edition of The Analyst newspaper marked as Exhibit "A/7")
13. Section III Part 4 of the bidding document pertains to Post-Qualification Requirements and it specifically says, "After determining the lowest-evaluated bid in accordance with ITB Sub-Clause 37.1, the Purchaser shall carry out the post-qualification of the Bidder in accordance with ITB Clause 38, using only the requirements specified. Requirements not included in the text below shall not be used in the evaluation of the Bidder's qualifications." The Appellant says one of the post-qualifications listed in Section III Part 4 is Financial Capacity. The text explicitly states that a bidder "furnish[ing] documentary evidence that it meets the following financial requirement(s): *ability to pre-finance the contract (i.e., financial statements)*" is post qualification requirement. (see attached Section III Part 4 of the bidding document marked as Exhibit "A/8").
14. Further to Count Thirteen, the Appellant says even if NEC legitimately scored Laxton as the lowest responsive bidder, once NEC carried out its post-qualification assessment of Laxton, NEC should have no longer considered Laxton's bid in accordance with Section 62(9) of the PPCA, which states that if a bid "contains material deviations from or reservations to the terms, conditions and specifications in the bidding documents, [the bid] shall not be considered further." In light of Laxton's apparent material breach of the bidding requirements, NEC violated the PPCA by not only continuing to consider Laxton but also deciding to ultimately deem Laxton to be the most responsive bidder.
15. The Appellant additionally notes that NEC, in its bid challenge rejection letter, did not address any of the points raised in our bid challenge that Laxton should not have been considered any further once NEC recognized that Laxton did not provide the required audited financial statements. The Appellant avers this is because NEC cannot reconcile their decision in light of the requirements contained in the bidding documents.



16. Furthermore, notwithstanding Section III Part 4 unambiguously declaring the ability to pre-finance as a post-qualification requirement, NEC, in its rejection letter of our bid challenge, stated, "a bidder's capacity to pre-finance is a pre-qualifying requirement." The Appellant says this statement from NEC is an unequivocal deviation from the bidding document. The Appellant avers that this is yet another indication that NEC considers the PPCA and the requirements found in the bidding documents to be mere suggestions that can be complied with if NEC chooses to as opposed to requirements that NEC is obligated to satisfy.
17. The Appellant maintains that one of the most stringent technical requirements in the bidding document was the use of tablets. The Appellant used one of the gold standards of tablets – Microsoft Surface – to meet this requirement. Our PowerPoint presentation further detailed the specifications of the rugged Microsoft Surface that we would use during our implementation of the project. Given that bidders' redemonstration was open to the public and stakeholders, we are aware that Laxton Group used a laptop instead of a tablet. In the aforementioned press conference that was held by the NEC Chairwoman, she conceded that Laxton's use of a laptop rather than the required tablet amounted to a failure by Laxton to meet technical specification required in the bidding document. This is another deviation from the requirements that should have disqualified Laxton.
18. The delivery schedule is another of the listed evaluation criteria found in Section III of the bidding document to determine the responsiveness of the bidders. Although Appellant's delivery schedule only spanned 50 days, the NEC Chairwoman mentioned in her press conference that Laxton had the longest delivery schedule of 147 days from the signing of the contract. Due to the fact that the delivery period Laxton submitted in its bid was almost three times as long as the Appellant's, NEC permitted Laxton to revise the length of the period. This permission NEC granted to Laxton is yet another clear breach of the PPCA, which declares at Section 62(9), "[A] bidder shall not be permitted to correct or withdraw material deviations or reservations once bids have been opened."
19. In its bid challenge rejection letter, NEC attempted to rationalize Laxton modifying its delivery date by saying since the original delivery date had changed, Laxton was allowed to change its delivery time. However, according to the bidding document's delivery schedule, each bidder's delivery period was not contingent on the proposed delivery date, rather bidders were asked to "insert the number of days following the date of effectiveness of the Contract" that it would take to deliver the equipment. So the date that controls the delivery period is the effective date of the contract. As a result, the change of NEC's proposed delivery date should not be the grounds for Laxton to revise its delivery schedule in contravention of Section 62(9) of the PPCA.
20. The Appellant says even if NEC had the authority to permit Laxton to change its delivery schedule, in the spirit of Section 33(2) of the PPCA, such request to modify should have been "communicated to all bidders participating in the procurement proceedings without delay". However, NEC only communicated to the Laxton Group about modifying the delivery schedule which was obviously intended to solely benefit of Laxton at the expense of the other bidders.



21. The Appellant requests that the Panel takes note of the November 22, 2022 communication from the Co-Chair of NEC, Cllr. P. Teplah Reeves, to the Chairperson of NEC that raised several of the same questions regarding the selection of Laxton that we have presented in our bid challenge. (see attached communication from the NEC Co-Chair marked as Exhibit "A/9")

22. The Appellant maintains that the purpose of the PPCA is to ensure that the public procurement process is conducted in a fair, transparent and non-discriminatory manner. For the reasons stated above, the Appellant contends that NEC violated the several provisions of the PPCA which resulted in an unfair, non-transparent and biased procurement.

WHEREFORE, AND IN VIEW OF THE FOREGOING, THE APPELLANT PRAYS THE PANEL TO INSTRUCT NEC TO RECONSTITUTE A BID EVALUATION PANEL TO ASSESS THE BIDS OF THE REMAINING RESPONSIVE BIDDERS, WHICH, FOR THE REASONS STATED ABOVE, SHOULD NOT INCLUDE LAXTON.

Yours Faithfully



Bidder Authorized Representative  
Lebogang M. Matjila