

REPUBLIC OF LIBERIA
COMPLAINTS, APPEALS & REVIEW PANEL (CARP)
Public Procurement & Concessions Commission
Executive Mansion Grounds
Capitol Hill, Monrovia, Liberia

IN RE:

KINGDOM BUSINESS INC.
by and through its General Manager/CEO
Mr. L. Swansey Fallah. **COMPLAINANT**

VERSUS

MINISTRY OF HEALTH by and through its
Minister, Hon. Louise M. Kpoto and all those
under her Authority, Congo Town, Monrovia
Liberia **DEFENDANTS**

COMPLAINT

FINAL RULING IN THE COMPLAINT:

**BID CHALLENGE AND REQUEST FOR BID RE-EVALUATION SUBMITTED BY
THE KINGDOM BUSINESS INC. AGAINST THE MINISTRY OF HEALTH IN THE
BO-WATERSIDE HEALTH CENTER UPGRADING PROJECT**

1.0 FACTUAL SUMMARY

The complaint before the Complaints, Appeals, and Review Panel (CARP) grows out of a Bid Challenge for which Kingdom Business Inc. is requesting bid re-evaluation for the Bo-Waterside procurement process tendered by the Ministry of Health.

Kingdom Business Inc. is alleging the following:

1. That Ministry of Health issued tender for the upgrade of the Bo Waterside Health Center under IFB No: **MINISTRY OF HEALTH/WAHO/Civil Works/NCB/001/2024** in July of 2024, for which kingdom Business Inc. participated as a bidder.
2. That participating bidders submitted the following bid prices as stated below:
 - i. Wologisi Group of Companies-----US\$424,256.96
 - ii. Beneyan Construction-----US\$470,284.75
 - iii. American Eagle Construction Company-----US\$475,349.00
 - iv. Brooklyn Group of Companies-----US\$485,356.66
 - v. Kingdom Business Inc.-----US\$455,940.00
 - vi. Universal for Construction & Trading Corporation-- US\$563,280.47
3. That on July 16, 2024, bid opening was conducted.
4. That on November 15, 2024, Kingdom Business Inc. wrote the Ministry of Health requesting "Debriefing" to ascertain who was the

most responsive bidder and why Kingdom Business Inc. was not selected.

5. That the Ministry of Health refused to give debriefing report to Kingdom Business Inc. up to the time of the filing of this complaint.
6. That notices of assignment were served on the parties by the Complaints, Appeals, and Review Panel for hearing into the complaint.
7. That during the hearing, Kingdom Business Inc. told the Panel that it insisted on the debriefing report from the Ministry of Health so as to understand reasons for not being the most responsive bidder. However, Ministry of Health refused to give said report and told Kingdom Business Inc that it has written the Public Procurement and Concessions Commission for a "no objection to award contract and at such, it could not issue a debriefing to Kingdom Business Inc.
8. That upon the Ministry of Health receipt of the Public Procurement & Concessions Commission's approval letter to its no objection request, the Ministry of Health convened a debriefing meeting inviting Kingdom Business Inc. to attend. However, Kingdom Business Inc. turned down said invitation stating that as per procurement practice, a debriefing must be held before the request of a no objection to award contract from the Public Procurement & Concessions Commission.
9. That the Ministry of Health in breach of its own bidding requirement selected American Eagle Construction Company as the most responsive bidder in the absence of (American Eagle Construction Company) having experience working in the rural areas which was one of the key requirements.
10. That American Eagle bid price was reduced from US\$475,349.00 to US\$450,000.00.
11. That while the complaint was before the Complaints, Appeals, and Review Panel for hearing, the Ministry of Health awarded the contract to American Eagle Construction Company and that American Eagle Construction Company had already commenced work on the project.

In response to Kingdom Business Inc.'s allegations, the Ministry of Health for the most part, admitted and disagreed in part. Ministry of Health admitted that they did not grant debriefing to the bidders as required by the PPC Act, 2010. However, the Ministry of Health said it had already requested no objection to award contract from the Public Procurement & Concessions Commission, as such it could not grant debriefing as requested. But all bidders were invited for debriefing after the Ministry of Health's no objection to award contract was granted by the Public Procurement & Concessions Commission, and to which Kingdom Business Inc. refused to attend.

As to Kingdom Business Inc.'s claim of American Eagle Construction Company not having any experience in working in rural areas, the Ministry of Health said that as far as they are concerned, Bo-Waterside is not

considered a rural area because Bo-Waterside is situated on a paved road which is easily accessible.

As to Kingdom Business Inc.'s allegation that American Eagle Construction Company's quoted bid price was altered and reduced to fit in as the most responsive bidder, the Ministry of Health contended that it did not proceed wrongly in discovering the arithmetic error in American Eagle Construction Company's submission and having same corrected. The Ministry avers that its action was supported by the PPC Act (2010), specifically, Section 62(6) which gives the Bid Evaluation Committee the right to correct arithmetical errors.

From the arguments put forth by both lawyers representing Kingdom Business and MOH as to this contentious issue of price adjustment due to arithmetic errors, the Panel requested for a specialized procurement practitioner from the PPCC in person of Mr. Kelvin P. Paye, Compliance Manager to further review the bid documents as submitted to the Panel and give his expert opinion/findings relative to the following questions put forth by the Panel:

1. Past performance experience of American Eagle Construction Company and Kingdom Business Inc. in similar works in rural areas;
2. Arithmetic calculation of the scoring of both American Eagle Construction Company and Kingdom Business Inc., and reason(s) for the downward adjustment of the bid price of American Eagle Construction Company from US\$475,349.00 to US\$450,000.;
3. What informed the variance of US\$25,349.00, and
4. Copy of the communication from Ministry of Health to the bidder (American Eagle Construction Company) informing it that a correction was made to its original submitted bid and the amount reduced.

The Panel adjourned to give Mr. Paye the opportunity to review the documents and return with his findings. Subsequently, at the recall of the hearing after a thorough review of the documents by Mr. Paye, he reported the following constituting his findings:

1. That there is no evidence of American Eagle Construction Company past performance history of civil works as contained in the bidder's submission; and
2. That Kingdom Business Inc. submitted past performance history in their bid submission.
3. That there was no copy of a letter from the Ministry of Health communicated to American Eagle Construction Company informing it of the arithmetic error noticed in its submission and the correction made thereto.

The Panel, having read the Complainant's complaint, listened to the testimonies and the arguments of by both parties, and a review of Mr. Kelvin P. Paye's findings, there is one issue determinative of the case.

1. Whether or not, the Ministry of Health bid evaluation process and subsequent selection of American Eagle Construction Company was consistent with the Bid Requirements as advertised and the Public Procurement Concessions Act (2010).

That from the facts contained above, the Panel says that in July of 2024, the Ministry of Health issued a tender for the upgrade of the Bo-Waterside Health Center under IFB No: **MINISTRY OF HEALTH/WAHO/Civil Works/NCB/001/2024** for which the complainant, Kingdom Business Inc. participated as a bidder. That on July 16, 2024, bid opening was conducted and the bid prices of the bidders were as follows:

- i. Wologisi Group of Companies-----US\$424,256.96
- ii. Beneyan Construction-----US\$470,284.75
- iii. American Eagle Construction Company-----US\$475,349.00
- iv. Brooklyn Group of Companies-----US\$485,356.66
- v. Kingdom Business Inc.-----US\$455,940.00
- vi. Universal for Construction & Trading Corporation-- US\$563,280.47

That from the bid prices as stated above, the complainant, Kingdom Business Inc. through a letter dated November 15, 2024 and addressed to the Ministry of Health, requested debriefing from the evaluation process and wanted the Ministry of Health to state reason(s) if there was any, for not being selected as the most responsive bidder. To this request, the Ministry of Health admitted to not responding to Kingdom Business Inc. debriefing request in time. The Ministry told the Panel that its delay in granting said debriefing request as prayed for by Kingdom Business Inc. was owing to the fact that it had already written the PPCC requesting an approval letter (on objection) to award contract.

The Ministry of Health, at its own volition decided to obtain approval for the award of contract before inviting participating bidders for a debrief session. When the Ministry knew that it had already gotten the PPCC's approval letter to award contract, it was when it invited participating bidders to attend a debriefing session – an invitation that Kingdom Business Inc. turned down and refused to honor.

Kingdom Business Inc. contended that debriefing was a matter of right delegated to bidders who request for debriefing and that said request was meant to be honor; allowing bidders to understand why they did not emerge as the most responsive bidder before a “no objection” request is made to the PPCC for award of contract.

Kingdom Business Inc. believes that in the instant case, there was no need to attend a debriefing meeting as the purpose and intent of a debriefing meeting was already eroded and made ineffective. Hence, it (Kingdom Business) declined to attend. The Panel says it is germane to this investigation to understand which obtains first between the granting of a debriefing meeting when requested for by a participating bidder, and the Ministry of Health seeking a no objection before granting a debriefing meeting.

Reverting to the law, Section 38 of the Public Procurement Act of 2010, it is clearly stated, the reason(s) for debriefing unsuccessful bidders. The PPC Act 2010, Section 38 states that “The Procuring Entity shall, upon the request of any unsuccessful bidder, inform the bidder of the reasons for which the bid was unsuccessful.”

The Panel, having read the quoted Section of the PPC Act 2010, is a little confused as to why the Ministry of Health could not have debriefed the bidders, especially

Kingdom Business Inc. that made said request consistent with law. Whatever the reason may have been that informed the Ministry of Health's decision to grant a post debriefing meeting after obtaining a no objection letter from the PPCC, said reason is not grounded in law and that the decision of the Ministry of Health to obtain a no objection from the PPCC before convening a debriefing session gave rise to this complaint.

The framers of the PPC Act, 2010, were intentional when they inserted the Section 38 "Debriefing of Unsuccessful Bidders" in the PPC Act, 2010. This Section of the Act is and must be interpreted as follows:

1. That bidders participating in a bid that were not selected, upon request, are to be told reasons for which their bids were unsuccessful. By informing the unsuccessful bidders of its shortcomings or reasons for not being selected as the most responsive bidders and how they can improve on future procurement bidding process thereby addressing those issues that made them unsuccessful.
2. That the framers also wanted bidders to exert their rights in the procurement process by filing complaints in the case of being unsuccessful and dissatisfied in a procurement process.

The PPC Act, 2010, makes it binding on bidders, participating in a tendering process who are dissatisfied with the bid evaluation outcome to file a complaint to address its dissatisfaction. However, said complaint must speak to the specific violation of the PPC, Act, 2010, for which an unsuccessful bidder believes that its bid may have been evaluated incorrectly. To fulfill this requirement of the law, it is incumbent on the procuring entity to inform participating bidders who did not win as to the reason they did not win, and this can only be done through debriefing which Kingdom Business inc. was denied of.

In a bid evaluation process/outcome in which bidders are not selected and are requesting debriefing, the following is likely to obtain when a debriefing meeting is held to inform the unsuccessful bidders in detail as to why they were not the most responsive bidder:

- i. that the bidder(s) are informed as to their demerits or shortcomings in the process which denied them success. The bidders, based on its conviction is likely to accept the outcome of the bidding process; or
- ii. that the bidders having been told of its demerits/shortcomings, could elect to seek further review or recourse by challenging the bid evaluation outcome through a complaint process.

Whatever approach the dissatisfied bidder will want to take relative to the outcome of the evaluation process, is the matter of choice and as such, the bidder(s) must be debriefed when requested.

As to the issue raised regarding the reduction in the bid price of American Eagle Construction Company from US\$475,349.00 to US\$450,000.00, the Panel says that said reduction accounts for a variance of US\$25,379.00. The reduction of American Eagle Construction Company's bid price was not in dispute. However, Kingdom Business Inc. argument is and has been that the reduction was ground for its bid not being successful, and that Kingdom Business Inc. should have been the most responsive bidder had the reduction not occurred.

On the other hand, the Ministry of Health contends that the reduction was consistent with the PPC 2010 Act, Section 62(6) which is herein stated verbatim that *"If there is an arithmetical error, such an error shall be rectified and the bidder notified but if the bidder refuses to accept such correction, its bid shall be rejected and the bid security forfeited."*

From the law cited above, the Ministry of Health was not in error to have corrected the arithmetic error which affected the bid price in a downward trend for American Eagle Construction Company that resulted to the selection of American Eagle Construction Company as the most responsive bidder.

The Panel is keen to state that while the arithmetic correction may have given rise to the selection of American Eagle Construction Company, it is important, however, that the action of Ministry of Health was consistent with the provision of the PPC Act, 2010, as stated above.

What is more concerning in this case at bar is that there was an arithmetic error for which Kingdom Business Inc. believes that it was disadvantaged and American Eagle Construction Company declared the most responsive bidder. Assuming but not admitting that the bid evaluation had not noticed this error on the submission of American Eagle Construction Company, the fact remains that Kingdom Business Inc. was no way inline to have been selected as the most responsive bidder in light of Wologisi Construction Group of Company. From the records exhibited on the bid prices submitted by the participating bidders, including Kingdom Business Inc., there was no way that Kingdom Business Inc. could have emerged as the most responsive bidder with its quoted bid price as submitted during the tendering process. Please see the quoted bid submissions for reference purpose.

The Public Procurement and Concessions Act, of 2010, Section 39 states as follow:
"Form of Communications:

- (1) *Subject to this Act, documents, notifications, decisions and other communications referred to in this Act to be submitted by the Procuring Entity to a bidder or by a bidder to the Procuring Entity, shall be in writing.*

The Ministry of Health should have communicated the issue of the arithmetic error to American Eagle Construction Company. However, the records, as submitted by the Ministry of Health to the Panel for review, did not contain any communication from the Ministry of Health to American Eagle Construction Company indicating the arithmetic error which, as per law, is a requirement.

The Panel on passing on the absence of a communication being sent to American Eagle Construction Company by the Ministry of Health, indicating the arithmetic error in its submission in the Ministry of Health tendering process, the Panel says that the lack of said communication should not be construed as an admission that Ministry of Health did not in good faith follow the requirement which guides the issue of applying arithmetic error and the correction therein. While it true that the process of concluding the arithmetic error should have been followed by a communication to the affected bidder (American Eagle Construction Company), however, the lack of evidence of said letter being communicated to American Eagle Construction Company does not in any way change the bid evaluation result in favor of Kingdom Business Inc.

It is the view of the Panel that Kingdom Business Inc.'s argument relative to the issue of the arithmetic error, will not and cannot suffice in this instant case. Hence, the Panel is keen not to give relevance to Kingdom Business Inc.'s claim.

That from the discussion and a review of the tendering bid document advertised for the procurement on the investigation, this Panel says that the Ministry of Health should have adhere to its own-crafted bid requirements as advertised; the absence of which send a noncompliance to procurement best practice and the PPC Act, 2010.

Ministry of Health did not stick to its own requirement regarding bidders past performance in rural areas, because it believes that Bo-Waterside has a paved road. Hence, said requirement for past performance in rural areas as stated in the bidding document should not apply. However, in the context of this procurement process — which did not define 'rural areas' as paved roads outside of Monrovia — it would be inappropriate to now assign a meaning that significantly differs from the generally understood definition of 'rural areas.' Doing so would imply something that was not stated in the tender document. Be it as it may, the Ministry of Health acted beyond its scope. However, the fact remains that Kingdom Business Inc. raising these issues do not put it in the position to be the most responsive bidder should the this not in a proper position to raise these issues as though it were — or should have been — the most responsive bidder.

This Panel says that, had these issues been raised by Wologisi Group of Companies, it would have sufficed to say that the claims could be overturned to favor Wologisi as the most responsive bidder. Howbeit, if it is for the Kingdom Business Inc. testing the law to know if its concerns are supported by law, the Panel says 'YES'. However, Kingdom Business Inc concerns, as legitimate as it maybe, cannot move this Panel to put it in possession of the Bo-Waterside Health Center Upgrade Project.

Further traversing on the issue of the project delivery period/time, the Ministry of Health testified to the project delivery period as being six (6) months as advertised in the tender documents. The Ministry of Health avers that from the submissions received, Kingdom Business Inc. indicated Ten (10) months as project delivery period four (4) months beyond the required delivery period. The Ministry of Health further testified that American Eagle Construction Company indicated Six (6) months consistent with Ministry of Health project delivery period.

A further review of the bid submission documents by the Panel corroborated the Ministry of Health testimony to project delivery periods of both bidders.

The Panel will like to emphasize that in procurement, the issue of completion and delivery is a key requirement that cannot be ignored or handled lightly. It is of the view of the Panel that Kingdom Business Inc. did not meet this requirement which could not be overlooked since in fact the donors would be very interested in knowing the end period of the project.

It is important to state that the Ministry of Health was not professional in the discharge of its procurement duties and to that effect, the Panel is hereby cautioning the Ministry of Health, to at all times stick to the basic requirements as set forth in its bid documents, and to at all times apply the provisions of the PPC Act, 2010, in every and all procurement transactions.

The Panel, in wanting to address a salient issue from the standpoint of this procurement process, would like to emphasize that from the records before it, the procurement process for the upgrade of the Bo-Waterside Health Center is a donor

driven project funded by the West Africa Health Organization, WAHO for short, for the people of Liberia aimed at addressing their health needs, especially, for those from the Western Region of Liberia.

At the time this complaint was filed, WAHO had already committed funding for the project—funding that is undeniably contingent upon securing additional resources to complete the entire project and initiate operations at the facilities. However, the Panel issued a stay order halting the execution of the project pending a final ruling on the matter. It should be noted that this stay order has disrupted implementation efforts and delayed project deadlines, thereby jeopardizing the project's timely completion to the detriment of the people of Liberia. Given WAHO's role in the project's execution, it is accountable for reporting on the use of funds and is bound by timelines as a condition for disbursement. In this context, public interest remains a key consideration in resolving this complaint.

Before attempting to pass on this public interest issue, the lack of which threatens the general wellbeing of the country, the Panel is moved to define public interest and how it underpins the growth and development of the people it affects in a given instance like the one before us, the Upgrade of the Health Center at Bo-Waterside.

The Panel says public interest as defined in the Black Law Dictionary, Eighth Edition is *"The general welfare of the public that warrants recognition and protection; Something in which the public as a whole has a stake; esp., an interest that justifies governmental regulations."* In the case at bar, it remains glaring that the upgrade of the Bo-Waterside Health Center fits in the definition as set forth above, and any effort to sidestep this basic principle of human existence will be a disservice to the people and the country at large.

Kingdom Business Inc., and other participating bidders in this procurement do have a concern or concerns in this matter. However, if there are concerns like the concerns of Kingdom Business Inc., said concerns do not warrant the re-constitution of the bid evaluation committee or the re-tendering of the bid, as overturning this procurement would be a decision injurious to the wellbeing and existence of a cross section of the population of the Country. Hence, this Panel is inclined to let the existing evaluation outcome remain as it is.

WHEREFORE AND IN VIEW OF THE FOREGOING FACTS, AND CIRCUMSTANCE, THE COMPLAINT IS HEREBY DENIED AND SO ORDER.

Signed by:

Cllr. Sundaiway E. Nelson Amegashie
CHAIRPERSON

Cllr. Vincent B. Smith
MEMBER (CARP)

Mr. Ezekiel F. Nyumah
MEMBER (CARP)

Cllr. Morris M. Davis, Jr.
MEMBER (CARP)

Mr. Michael C.G. George
MEMBER (CARP)

Dated this 7th Day of May, A.D. 2025.