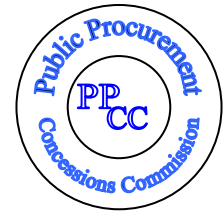


**Republic of Liberia**  
**Complaints, Appeals & Review Panel (CARP)**  
**Public Procurement & Concessions Commission**  
Executive Mansion Grounds  
Capitol Hill, Monrovia, Liberia



April 9, 2013

**Opinion in the case: Unit Export Limited (UEL) vs. Liberia Petroleum Refining Company (LPRC)**

**Background**

The Public Procurement and Concessions Act (PPC Act) which established the Public Procurement and Concessions Commission (PPCC) also created within the Commission the Complaints, Appeals and Review Panel (CARP/Panel) to review/investigate Complaints or Appeals filed by aggrieved bidder (s) to the Commission against procuring entity (ies) emanating from procurement proceedings. In keeping with the applicable law, the Commission received a complaint from Unit Export Limited (UEL) against the Liberia Petroleum Refining Company (LPRC) of the Government of Liberia, concerning bid proceeding for the supply of Smith's Loading Meters (3 units), Loading Arms (2 units); Calibration (Prover) Tank; and Transformer. The said Complaint was referred to the Panel for investigation.

**Methodology**

The Panel had two sessions – one on March 6, 2013 and another on April 9, 2013, respectively, and proceeded with the review of the complainant's complaint. Upon the review of the Complainant's written Complaint along with the attachments, the Panel resolved to write the Management of LPRC to submit all of the documents appertaining to IFB No.: LPRC/NCB/003/2012. These include

1. A list of participating bidders and the qualification criteria;
2. Minutes of bid opening including attendance sheet;
3. Bid Evaluation Panel's Report;
4. Procurement Committee Meeting Minutes;
5. Procurement Committee Resolution;
6. Findings and response to Unit Export Protest
7. Bid Securities for A&N Exports, Unit Export Limited & New Africa Technology Co.;
8. Business Registration and Tax Clearance of A&N Exports;
9. Copy of Protest filed to LPRC by Unit Export Limited; and
10. Copy of Bid Advertisement.

The Panel review was guided by the Amended & Restated PPC Act, 2010.

## Facts

In September 2012, the Liberia Petroleum Refining Company (LPRC) advertised in a local daily Invitation for Bid for the Purchase of Loading Meters, Loading Arms; Calibration (Prover) Tank & Transformer referenced IFB No.: LPRC/NCB/003/2012, and invited companies to submit sealed bids to supply the items as follows:

Lot 1: Smith Loading Meters ----- 3 units  
      Loading Arms ----- 2 units  
Lot 2: Calibration (Prover) Tank ----- 1 unit  
Lot 3: Transformer -----1 unit

The Invitation for Bid to bidders indicated the submission format as, “In order to qualify for evaluation, sealed bids must include the following documents:

- Copies of 2012 business registration documents and recent tax clearance,
- Evidences of similar goods supplied in the last four years including dates, clients full addresses, cell numbers, email address, and quantity supplied
- Company’s profile.

All sealed bids must be clearly marked “Bids for the supply of Loading equipment, IFB No. LPRC/NCB/003/2012” and submitted to the below address:

Procurement Manager  
Procurement Unit  
Liberia Petroleum Refining Company  
Bushrod Island  
Monrovia, Liberia.

Deadline for submission is October 15, 2012 at 1:00 p.m..... Bids will be opened on October 15, 2012 at 1:00 p.m. in the LPRC Training Hall. Each bidder may send a representative to the bid opening ceremony. All bids must be accompanied by a bid security of 2% of the total bid price.”

### **Complainant Unit Export Limited’s case:**

In a letter to the PPCC dated **January 11, 2013, referenced, re: Protest of Award – LPRC/NCB/033/2012 for the Procurement of Loading Arms, Loading Meters Calibration Tank and Transformers**, Complainant Unit Export Limited (UEL) by and thru its Business Development Manager alleged that it submitted Sealed Bid for all the lots and all items required under the tender to LPRC before the official tender closing date and time; and that the submission was made by its local representative, Ready Import, Inc. thru its President Mr. Joseph K. Zoumedor, who also attended the public tender opening that took place on October 15, 2012 in the Managing Director’s Conference Room at approximately 1400 hours, and provided a full report to Unit Export Limited on the bid opening.

Complainant Unit Export Limited (UEL) also alleged that in the report submitted to it by its local representative, Ready Import, Inc. thru its President Mr. Joseph K. Zoumedor, it was announced that New Africa Technology Company and Unit Export Limited provided Bid Securities as required under the terms and conditions of the tender. However, A&N Exports, Inc. did not include Bid Security, No Business Registration Certificate and No valid Tax Clearance Document, as advised to attendees by Mr. Prince W. Kieh.

Complainant Unit Export Limited noted that it was surprised to have learned from Ready Import, Inc. that they received a letter dated November 20, 2012 from Mr. J. Robert Ellis confirming “That A&N Exports, Inc had emerged as the responsive bidder for Lots 1, 2 and 3, and declared the winner for all goods under IFB No.: LPRC/NCB/003/2012”.

Complainant Unit Export Limited further noted that upon receipt of the advice, it officially notified Mr. T. Nelson Williams, II, Managing Director of LPRC by way of email/letter dated November 23, 2012 of its protest against the award to A&N Exports, Inc.; and subsequently addressed similar letter dated November 26, 2012 to the Rev. Dr. Herman Browne, Chairman of the Board of Directors when the response from the Managing Director dated November 26, 2012 appeared totally contrary and at odd with what was publically announced at the bid opening.

On March 19, 2013, the Panel wrote the Managing Director of LPRC, Mr. T. Nelson Williams to inform him of the UEL’s complaint against his entity, and requested the submission of all instruments/documents that related to bid IFB No.: LPRC/NCB/003/2012. The management of LPRC responded swiftly by submitting the requested documents.

**LPRC’s case:**

On November 26, 2012, LPRC, by and thru its Managing Director, Mr. T. Nelson Williams, II replied UEL’s November 23, 2012 protest against the award to A&N Exports, Inc. in a letter Ref: MD/LPRC/205/2012, and basically stated:

1. That LPRC didn’t publish a bid with reference IFB No.: LPRC/NCB/033/2012 as alleged; rather, it published a bid with reference IFB No.: LPRC/NCB/003/2012.
2. That there was no representative of Unit Export Limited by the name Joseph K. Zoumedor present at the bid opening session; rather, Unit Export Limited was represented by Mr. Henry G. Swen, who also purchased the bid document and submitted the sealed bid on its behalf.
3. That the information provided to Unit Export Limited by Mr. Joseph K. Zoumedor who did not attend the bid opening session was completely incorrect and a gross misrepresentation of the facts.
4. That, records from the Bid Opening Session showed that A&N Export, Inc. did submit a valid Bid Security and Business Registration Documents.

5. That LPRC followed procedures consistent with provisions laid out in the Public Procurement Concessions Act in awarding the contract to A&N Export, Inc.
6. And that LPRC was constrained to inform Unit Export Limited that the decision of its Procurement Committee to award the said contract to A&N Export, Inc. will remain unchanged.
7. That on December 12, 2012, Rev. Dr. Herman Browne, Chairman of the Board of Directors of LPRC replied Unit Export Limited's letter of November 26, 2012 and informed its Business Development Manager, Grevil Sharpe that the Board will be looking into the process and issues raised regarding the award of IFB No.: LPRC/NCB/003/2012. Managing Director Mr. T. Nelson Williams, II, and a Director Kamara were copied this letter.

Careful examination of the documents submitted to us by Complainant UEL and Respondent LPRC including those documentary exchanges by and between UEL and LPRC reveal:

- (1) That a bid proceedings was commenced by LPRC with the publication of an Invitation for Bid (IFB) in September 2012, for the purchase of Loading Meters, Loading Arms, Calibration (Prover)Tank & Transformer;
- (2) That Complainant Unit Export Limited and two (2) other companies, A&N Export, Inc. and New African Technology Company duly participated in the bid proceedings;
- (3) That on November 20, 2012, LPRC communicated a letter to UEL's Grevil Sharp that informed him that the evaluation report named A&N Export, Inc. as the most responsive bidder for Lots 1, 2, &3, and declared it the winner of IFB No. LPRC/NCB/003/2012;
- (4) Being dissatisfied with the outcome, and manner in which the proceeding was done, Unit Export Limited by & thru Mr. Grevil Sharp, filed a Letter of Protest that notified the Management of LPRC of its dissatisfaction over the award to A&N Export, Inc.;
- (5) That on November 26, 2012, the Managing Director of LPRC, T. Nelson Williams wrote Unit Export Limited by & thru Mr. Grevil Sharp and informed him that records of the Bid Opening Session indicated that Henry G. Swen represented Unit Export Limited and not Mr. Joseph K. Zoumedor, and that the information Mr. Zoumedor provided to UEL was completely incorrect and a misrepresentation of the facts. And that additionally, A&N did submit a valid Bid Security and Business Registration Documents, and that the decision of the LPRC Procurement Committee to award the contract to A&N Exports, Inc. remains unchanged.
- (6) That on the same November 26, 2012, Unit Export Limited by & thru Mr. Grevil Sharp wrote the LPRC Board of Directors thru its Chairman, Rev. Dr. Herman Browne and formally lodged its protest, requested the Board to immediately withdraw the award from A&N Exports, Inc. and undertake a full review of the process;
- (7) That on December 12, 2012, Rev. Dr. Herman Brown wrote Mr. Grevil Sharp and confirmed that the Board will look into the issues raised regarding the award of IFB No.

IFB/LPRC/NCB/003/2012 bid and revert to him when their investigations are concluded;

- (8) Having not received a satisfactory redress of its complaint from the Head of the LPRC, as well as the Board, Complainant Unit Export Limited submitted a Request for Review on January 14, 2012, requesting the PPCC to fully review and investigate the award of IFB No.: LPRC/NCB/003/2012 to A&N Export, Inc., as said company failed to comply with the terms and conditions of the tender.

**Issues:**

1. Whether or not Unit Export Limited's claim that A&N Exports, Inc. did not submit Bid Security, Business Registration Documents & a valid Tax Clearance is factual?
2. Whether or not Unit Export Limited's local representative, Mr. Joseph K. Zoumedor of Ready Import, Inc. who provided UEL with report of the bid opening session, attended the session?
3. Whether or not the Liberia Petroleum Refining Company (LPRC) followed procedures consistent with the provisions of the Public Procurement & Concessions Act, 2010 in awarding the procurement contract to A&N Exports, Inc.?

**Discussion**

**Section 61(1) of the PPCA provides:**

“Bids shall be opened at the time and place indicated in the invitation to bid, request for quotation, request for proposal or the related bidding documents, and the time of bid opening shall coincide with the deadline for submission of bids, or follow immediately thereafter, allowing a minimum time interval for logistical reasons.”

**Section 61(2) of the PPCA provides:**

“Bidders or their representatives may attend the bid opening, where the name of the bidder, the total amount of each bid, any discounts or alternative offered, and the presence or absence of any bid security, if required, and essential supporting documents shall be read out loud and recorded, and a copy of the record shall be made available to any bidder on request; and any documents containing details of the financial offer must be signed by each member of the bid opening team.”

**Section 62(1) of the PPCA provides:**

“Following the opening of bids, the Procurement Unit shall first examine the bids in order to determine whether the bids are complete and signed, whether required documents to establish legal validity and required bid security have been furnished and whether bids are substantially responsive to the technical specification and contract conditions set forth in the bidding documents.”

**Section 62(2) of the PPCA provides:**

“Bids which are not complete, not signed, not accompanied by a bid security in the prescribed form, 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 critical requirements in the bidding documents, shall be rejected and excluded from further evaluation and comparison.”

From the authorities quoted above, and a review of the Invitation for Bid IFB No.: LPRC/NCB/003/2012 issued to bidders on September 2012 and the records of the procurement proceedings, it is clearly shown that:

1. A&N Exports, Inc. did submit Bid Security, Business Registration Documents & a valid Tax Clearance, along with other technical and financial requirements before the deadline for submission of bids, and at the place and time indicated in the Invitation for Bid.
2. That Mr. Joseph K. Zoumedor of Ready Import, Inc., named as the local representative of Unit Export Limited, did not attend the October 15, 2012 bid opening session in the Training Hall of LPRC as indicated by the attendance sheet.
3. That the Public Procurement and Concessions Act makes it a requirement for a Procuring Entity to inform participating bidders involved with a procurement process, of the time and place of bid opening to afford them the opportunity to attend a bid opening session; but optional for bidders or their representatives to attend bid opening session.

**Ruling:**

After reviewing and analyzing documents submitted by the Complainant Unit Export Limited and Respondent LPRC, along with other accompanying instruments; and referencing the applicable provisions of the PPC Act, the panel is of the opinion that the Procurement Committee of the Liberia Petroleum Refining Company (LPRC) acted consistent with the PPCA when it proceeded to award the contract for the Purchase of Loading Meters, Loading Arms; Calibration (Prover) Tank & Transformer referenced IFB No.: LPRC/NCB/003/2012 to A&N Exports, Inc.

Therefore, it is the Opinion of this Panel that LPRC did not violate any of the above-quoted provisions of the Amended & Restated Public Procurement & Concessions Act, 2010 in the award of the procurement contract to A&N Exports, Inc.

In view of the above, the Panel hereby upholds and confirms the Management of LPRC's contention that the information provided to Unit Export Limited by Mr. Joseph K. Zoumedor who was not part of the bid opening session, is completely incorrect and a gross misrepresentation of the facts; and confirms the decision of the Procurement Committee to award the contract for the Purchase of Loading Meters, Loading Arms; Calibration (Prover) Tank & Transformer referenced IFB No.: LPRC/NCB/003/2012 to A&N Exports, Inc., and said decision should therefore remained undisturbed. AND IT IS HEREBY SO ORDERED.

**IN WITNESS WHEREOF, WE (MEMBERS OF THE PANEL) HAVE HEREUNTO SET OUR HANDS AND AFFIXED OUR SIGNATURES TO THIS DOCUMENT THIS 9<sup>TH</sup> DAY OF APRIL A. D. 2013.**

**Signed:**

**Cllr. Beyan D. Howard, Chairman** \_\_\_\_\_

**\*Mr. Massaquoi M. Kamara, Sr., Co-Chairman** \_\_\_\_\_

**Cllr. Eric B. Morlu, Secretary** \_\_\_\_\_

**Mr. David M. Jallah, Member** \_\_\_\_\_

**Cmmr. (Mrs.) Esther Paegar, Member** \_\_\_\_\_

**Mr. Martin S. Kollie, Member** \_\_\_\_\_

**\*Note: Mr. Massaquoi M. Kamara, Sr. did not sign this opinion because he did not participate in the investigation due to an excused absence.**