



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



November 2, 2012

Opinion in the case: Boimah Engineering, Inc. (BEI) vs. Liberia Electricity Corporation (LEC)

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 Boimah Engineering, Inc. (BEI) against the Liberia Electricity Corporation (LEC) of the Government of Liberia, concerning a bid proceeding for the procurement of consultancy Services conducted by LEC. The said Complaint was referred to the Panel for investigation.

Methodology

The Panel met on November 2, 2012 and proceeded with the review of the complaint. The Panel also reviewed documents/letters exchanged by the parties. These include the invitation to bid for the procurement of consultancy services, the Terms of Reference (TOR) outlining the scope of the consultancy services, documents/communications exchanged by the parties that clearly stated the claims/contentions of the parties to the proceedings, and copies of the complaints to the Head of LEC and to PPCC. Furthermore, the Panel chose not to request additional information from the parties because, the documents mentioned supra vividly provided information sufficient for the Panel to establish the facts of the matter.

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

Facts

On February 13, 2012, the Liberia Electricity Corporation (LEC) invited sealed bids from local companies through a Request for Proposal Ref: Consultancy Services for the Renovation of the Liberia Electricity Corporation (LEC) Warehouse Facilities, Design of Proposed Bridge, Design of Proposed Storage Facilities and Grading Design to Control Flooding of the Yard Around the Warehouse.

In the letter of invitation to bidders, the submission format was indicated as “**Proposals should be submitted on or before February 29, 2012 no later than 2:30 PM in a sealed envelope. The Technical and Financial Proposals are to be enclosed in separate envelopes and placed in a larger single envelope clearly marked: Proposal for Consultancy Services for the Renovation of LEC Warehouse Facilities.**”

Complainant Boimah Engineering, Inc. alleged that its Proposal (Sealed Bid) submitted for the provision of Consultancy Services for the Renovation of the LEC Warehouse Facilities was tampered with (i.e., opened prior to the bids opening date) by LEC; and that the LEC did not invite bidders including BEI to be present at the bids opening as required by the PPCA. These allegations were contained in an email dated April 17, 2012 and addressed to Mr. Varmunyah F. Sheriff, Executive Director/Administration/HR & Procurement of LEC.

On May 4, 2012, LEC, by and thru its Chief Financial Officer & Chairman/LEC Procurement Committee, Mr. William C. Jasura, wrote a response to BEI’s April 17, 2012 Email Ref: LEC-CFO/ED/ADM/HR/PRO/057/’012, and stated:

1. That based upon BEI’s accusation, the Procurement Committee met on **May 3, 2011** to ascertain the truth of the matter.
2. That the findings revealed that the process leading to the selection of a consultancy firm for the job was free, fair and transparent. That the Proposals (Bids) were opened on **February 19, 2012 at 2:30 PM.**
3. That it is optional in keeping with the PPCC regulations for bidders to attend bid openings, and so, no firm attended the opening.
4. That though the submission format was clearly stated as indicated in the Invitation to Bidders dated **February 13, 2012**, but Boimah Engineering, Inc. submitted two Technical Proposals (photocopy) dated **February 29, 2012** in two separate envelopes marked “copy” and enclosed them into one large envelope. And this was noted at the opening of proposals.
5. That the Procurement Committee proceeded to evaluate the Proposals and realized that BEI’s proposal was considered non-responsive due to the lack of Financial Proposal. And,
6. That everything the Committee did was in good spirit and in full compliance with the PPCC regulations.

The CEO, Mr. Shahid Mohammad, and Mr. Varmunyah F. Sheriff, Executive Director/Administration/HR & Procurement, LEC were copied this communication.

On May 15, 2012, Boimah Engineering, Inc. replied the LEC’s letter of May 4, 2012 totally disagreeing that the process leading to the selection of a consultancy firm for the job was free, fair and transparent, that it is optional in keeping with the PPCC regulations for bidders to attend bid openings, and that BEI’s proposal was non-responsive due to the lack of Financial Proposal.

He argued further, that BEI submitted two costs and two technical proposals though no requirement was spelled out for the number of submittals, and that the PPCA states that Procuring Entity shall inform bidders of the bid opening, as well as notify short-listed consultancy firms and the Commission at the same time it notifies the selected consultant. The Executive Director, PPCC, the CEO, Mr. Shahid Mohammad, and Mr. Varmunyah F. Sheriff, Executive Director/Administration/HR & Procurement, LEC were copied this communication.

Subsequently, on August 16, 2012, the PPCC received copy of BEI's letter of complaint addressed to Mr. Shahid Mohammad. Having not received redress of its complaint from the Head of the LEC, complainant, on September 25, 2012 filed a complaint informing the Commission that the Head of the LEC did not act on the complaint within the statutory period of fourteen (14) days, and so, the Commission should proceed to investigate its complaint against the LEC.

Careful examination of the documents before us, particularly the documents exchanged by and between BEI and LEC and attached to the complaint, reveal:

- (1) That a bid proceedings, which commenced with the Request for Proposal (RFP) on February 13, 2012, was conducted for the procurement of Consultancy Services for the Renovation of the Liberia Electricity Corporation (LEC) Warehouse Facilities, Design of Proposed Bridge, Design of Proposed Storage Facilities and Grading Design to Control Flooding of the Yard Around the Warehouse;
- (2) That complainant Boimah Engineering, Inc. duly participated in the bid proceedings;
- (3) That being dissatisfied with the manner in which the proceeding was done, Boimah Engineering, Inc. notified the LEC of its dissatisfaction, and filed a complaint to the PPCC requesting redress;
- (4) That Boimah Engineering, Inc. was asked to redirect its complaint to the Head of LEC in keeping with Part VIII, Section 125 (2) of the PPCA;
- (5) That Boimah Engineering, Inc. did cooperate and file a complaint with the Head of the LEC and copied the PPCC as required by Part VIII, Section 125 (2) of the PPCA;
- (6) That after fourteen (14) days of waiting without any decision from the Head of LEC, Boimah Engineering, Inc. filed a complaint with the PPCC and requested the PPCC to review the process.

Issues:

1. Whether or not the Liberia Electricity Corporation (LEC) informed bidders in the Request for Proposal of the time and place for bid opening?
2. Whether or not the Public Procurement and Concessions Act require a Procuring Entity to inform participating bidders in a procurement process to attend bid opening?

3. Whether or not the Procurement Committee fully complied with the PPC Act during the bid proceedings conducted for the procurement of Consultancy Services for the Renovation of the Liberia Electricity Corporation (LEC) Warehouse Facilities, Design of Proposed Bridge, Design of Proposed Storage Facilities and Grading Design to Control Flooding of the Yard Around the Warehouse?

Discussion:

Section 61, Bid Opening, of the PPC Act states:

”(1) 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.

(2) Bidders or their representatives may attend the bid opening, where the name of the bidder, the total amount of each bid, any discounts or alternatives 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.

(5) All bids shall be opened in the presence of the chairperson of the Procurement Committee or a member of the Procurement Committee designated by the chairperson”.

From the authorities restated above, and a review of the Request for Proposal issued to bidders on February 13, 2012, it is clearly shown that:

1. The Liberia Electricity Corporation (LEC) did not, as required/mandated by the PPC Act, inform bidders in the Request for Proposal of the time and place for bid opening.
2. 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. And
3. That the Procurement Committee did not fully comply with the PPC Act and regulations during the bid proceedings conducted for the procurement of Consultancy Services for the Renovation of the Liberia Electricity Corporation (LEC) Warehouse Facilities, Design of Proposed Bridge, Design of Proposed Storage Facilities and Grading Design to Control Flooding of the Yard Around the Warehouse.

Furthermore, the Panel wishes to clarify that Section 61.2 makes it optional only for bidders to attend bid opening. This option cannot be construed to be available to Procuring Entities.

Ruling:

After reviewing and analyzing documents submitted by the complainant which included communications that came from the respondent entity; and referencing the applicable provisions of the PPC Act and its regulations, the panel is of the opinion that the Liberia Electricity Corporation (LEC) acted illegally when it proceeded to open the bids in the absence of participating bidders or their representatives. The Panel further rules that the failure of the respondent entity to indicate the time and place of bid opening in the invitation to bid or request for proposal sent to the bidders denied the complainant the opportunity to be present at the bid opening session and to inspect and confirm whether or not its sealed bid was tampered with.

Moreover, the action taken by the Procurement Committee of LEC is not only in violation of the PPC Act, 2010, but also an attempt to mislead and misinform bidders and the public about the requirements of the Act, which the Complaints, Appeals & Review Panel is authorized by law to prohibit, correct and provide appropriate relief there for.

Therefore, it is Opinion of this Panel that LEC violated **Section 61.1** of the PPCA, which is cardinal to ensuring open competition, transparency, confidence and fairness in the procurement process.

In view of the above, the Panel hereby orders that LEC re-runs the bidding process for the provision of Consultancy Services for the Renovation of the Liberia Electricity Corporation (LEC) Warehouse Facilities, Design of Proposed Bridge, Design of Proposed Storage Facilities and Grading Design to Control Flooding of the Yard Around the Warehouse. Further, that LEC is finally ordered to extend unconditional apologies to the bidders, and ensure that the violations found during the previous process will not be repeated. 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 2ND DAY OF NOVEMBER A. D. 2012.

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 Kollie, Member _____

*NB: Cllr. Eric B. Morlu did not partake in the investigation, as he was absent from Liberia.