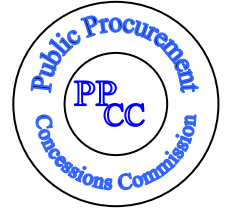


Republic of Liberia
Complaints, Appeals & Review Panel (CARP)
Public Procurement & Concessions Commission
Executive Mansion Grounds
Capitol Hill, Monrovia, Liberia



July 29, 2008

OPINION IN THE CASE: COTECNA VS. MINISTRY OF FINANCE

Background

The Public Procurement and Concessions Act (PPC Act) which established the Public Procurement and Concessions Commission (PPCC) also created within the Commission an Independent Complaints, Appeals and Review Panel (ICARP) to review/ investigate Complaints or Appeals from bidders to the Commission against procuring entities emanating from procurement proceedings. Consistent with the law, PPCC received a complaint from COTECNA Inspection SA against the Ministry of Finance concerning PSI and Scanning Services bidding proceedings that the Ministry had conducted. Said Complaint/Appeals, the Commission passed on to the Panel for investigation.

Methodology

The Panel met at its call meeting on July 8, 2008, where the members agreed to proceed with the investigation of the complaint. In so doing, the panel reviewed all relevant documents and communications on the PSI and Scanning Bidding proceedings. These communications included:

1. COTECNA protest letter, Ref: LBR/AO-MFR.02.08.a dated February 4, 2008, contesting the result of the evaluation process of the PSI and Scanning Services ;
2. The Ministry of Finance response to concerns raised by COTECNA Inspection SA dated February 22, 2008;
3. COTECNA's complaint/appeal to the Commission dated March 17, but received March 25, 2008;
4. The RFP #: GOL/MOF/01/07;
5. The Technical Evaluation Report; and
6. Host of communications between COTECNA and Finance Ministry;

COTECNA/PPCC; PPCC/Ministry of Finance.

The Panel's primary task was to establish whether or not the complaint or appeal was duly filed and presented a case for investigation by the Panel.

Facts

The evidence presented by this case is that the Ministry of Finance conducted Pre-Shipment Inspection and Scanning Services Bidding proceedings. Four companies COTECNA, BIVAC, SGS and INTERTEK were pre-qualified and issued with the RFP to submit Technical Financial Proposals. Prior to the dead line for submission of proposals, SGS withdrew from the contest. The three firms, COTECNA, BIVAC and INTERTEK, who were left in the race submitted Technical and Financial Proposals, which were evaluated starting with the Technical proposals based on predetermined evaluation criteria contained in the RFP. Results of the Technical evaluation showed that two Companies, COTECNA and INTERTEK failed to meet the minimum qualifying score and thus could not proceed to the next stage of the financial evaluation. Their Financial Proposals were therefore returned to them unopened. COTECNA Inspection SA not satisfied, protested against the evaluation process to the procuring entity stating the issues they considered crucial and worthy of redress.

As required by the PPC Act, the procuring entity (Ministry of Finance), responded to the concerns raised by COTECNA and dismissed same by citing the relevant clauses RFP to support the Ministry's proceedings. Again, COTECNA (the Complainant), was not satisfied with the Ministry of Finance's response, further appealed to the Commission for redress.

The review of the case filed revealed the following:

- a. That Ministry of Finance communication to COTECNA on the complaint was dated February 22, 2008, but was received by COTECNA on March 4, 2008;
- b. That COTECNA's formal complaint to the Commission though dated March 17, 2008, was not delivered until March 25, 2008;
- c. This date was further confirmed by COTECNA in their letter of May 27, 2008, paragraph 2(b) which states "That COTECNA formally submitted its protest/complaints to the PPCC on March 25, 2008, which timing we considered to be well within the required time frame allowed by the Procurement Act for the purpose".

The complaint of COTECNA raised three issues:

1. That its complaints in December, 2007 addressed to the Director of Procurement of the Ministry of Finance whereby they complained about the launch of the laboratory facilities by BIVAC during bids evaluation, according to COTECNA was not responded to;
2. That the timing of the launch of the laboratory facilities by BIVAC when bid evaluation was in progress is an error, and
3. That undue advantage was given to BIVAC by the extension of its contract in like manner.

The Panel took cognizance of the issue raised by COTECNA, however, had to first determine whether or not the case was squarely before the panel and was filed within statutory time to be investigated by the panel. As indicated above, COTECNA filed its complaint with the Commission on March 25, 2008. This means that COTECNA did not file formal

Complaint/Appeal to the Commission until 22 days after receipt of Ministry of Finance's REACTION to their complaint.

The Law in the Premise

Section 31 of the PPC Act required of procuring entities to notify PPCC of proposed contract awards over Threshold of US\$150,000.00 and the contract shall not be signed until at least fourteen days have lapsed since the date of the notification to award a contract was sent to the Commission. Procurement being time bound, complainants are allowed 14 days following procuring entity's decision to award contract emanating from procurement proceedings, to file appeal or seek review of procuring entity's decision. Any complainant bringing complaint to the Commission after the 14 days is forever barred by statute of limitation.

This position of the Panel is supported by the law, which says, "Failure to appeals or seek review within statutory time is sufficient ground for dismissal of the appeal".

Rationale of the Law

The 14 days are set or required for complainants to appeal or seek review because allowing an indefinite timeframe to complain or appeal would stall or delay the procuring entities work that their deliverables will not be on time and chaos will be the ordered of the day.

Rulings

In view of this finding and the law controlling, the panel is of the opinion that complainant COTECNA failed to file its complaint on time. The panel therefore resolved that the complaint against the Ministry Finance by COTECNA Inspection SA involving Pre-Shipment Inspection (PSI) and Scanning Services be dismissed for failure to file the appeal within statutory time.

AND IT IS HEREBY SO ORDERED.

IN WITNESS WHEREOF, WE THE MEMBERS OF THE PANEL HAVE HEREUNTO SET OUR HANS AND AFIXED OUR SIGNATURES TO THIS DOCUMENT THIS 29TH DAY OF JULY, A.D. 2008.

Signed:

Cllr. Beyan D. Howard, Chairman _____

Mr. Massaquoi M. Kamara, Co-Chairman _____

Atty. Eric B. Morlu, Secretary _____

Mr. David M. Jallah, Member _____

Mr. Martin Kollie, Member _____

*Comm. (Mrs.) Esther Paegar _____

* Comm. (Mrs.) Esther Paegar did not participate in this hearing, and so, did not sign this opinion.