

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

**IN RE:**

**BMC GROUP CONSTRUCTION COMPANY.**

by and thru its CEO

Mr. Hassan Kobeissi

Capitol Bye-Pass,

Monrovia, Liberia. .... **COMPLAINANT**

**VERSUS**

**Liberia Maritime Authority**

**By and thru** its Commissioner/ CEO,

Cllr. Neto Zarzar Lighe and all those acting under his

Authority, Congo Town, Monrovia

Liberia ..... **DEFENDANTS**

**COMPLAINT**

**FINAL RULING IN THE COMPLAINT:**

**REQUEST FOR RE-EVALUATION/RE-TENDERING/ OF THE PROCUREMENT PROCESS (IFB:No.LiMA/SP/ICB/001/25)**

**1.0 FACTUAL SUMMARY**

On the 25<sup>th</sup> of April 2025, BMC Group Construction Company filed a complaint against the Liberia Maritime Authority (LiMA) with the Executive Director of the Public Procurement and Concessions Commission (PPCC) which was forwarded to the Complaints, Appeals and Review Panel (CARP). The Complaint stated amongst other things, the following:

1. That LiMA issued a Tender for the Construction of an Executive Annex at its Congo Town Headquarters with a contract package code **IFB:No.LiMA/SP/ICB/001/25.**
2. Eight bidders, including BMC Group Construction Company, Amazing Group of Companies, and Real Estate and Construction Corporation (RESCO) participated in the bid process for the Construction of the Executive Annex.
3. That of the eight submissions, LiMA, on February 8, 2025, opened the bid process with the submissions of three (3) participating companies which are Amazing Group of Companies, RESCO AND BMC Group Construction Company.
4. The bid Opening Prices for the three (3) submissions are as follows:
  - i) Amazing Group of Companies. US\$2,626,416.50;
  - ii) RESCO ..... US\$3,520,286.26; and
  - iii) BMC Group Construction Company ..... US\$3,198,873.00
5. During the bid evaluation process, Amazing Group of Companies was disqualified for Conflict of Interest. The Company, Amazing Group of companies, was hired and awarded a contract through a competitive process

as an Independent Consultant to Design and Develop the Bill of Quantities (BoQ) for the proposed Liberian Maritime Executive Annex. Therefore, it could not be allowed to participate in the tendering process.

6. That the Bid Evaluation Panel recommended RESCO as the most responsive bidder and on 24<sup>th</sup> of March 2025, BMC Group Construction Company was notified about their rejection.
7. That on March 28, 2025, the BMC Group Construction Company requested for a debriefing which was granted and held on April 3, 2025.
8. Not satisfied with the debriefing, and in keeping with the PPC Act of 2010, a formal complaint against LiMA was filed with LiMA for hearing. However, LiMA failed to accord BMC Group Construction Company the opportunity to hear its complaint.
9. That LiMA having failed to accord due process, BMC Group Construction Company filed a formal complaint with the PPCC, consistent with the PPCC 2010 Act for the attention of CARP stating the following:
  - i) That LiMA rejected its BMC Group Construction Company bid stating that it was not Financially Responsive;
  - ii) That LiMA having debriefed the participants, promised to distribute debriefing minutes to BMC Group Construction Company Construction. However, said minutes as promised was never given to BMC as provided for by the PPCC 2010 Act.
  - iii) That participating bidders were requested, among other requirements, to submit two years audited financial statements as provided for in the bid tendering document for which BMC submitted the two audited financial statements for 2023 and 2024, unlike RESCO that submitted one year audited financial statement for 2023.
  - iv) That LiMA added BMC's bid price (US\$3,198,873) to that of its contingency cost (US\$319,887.30) and the Architectural and Engineering Services cost (US\$95,966.19) thus totaling US\$3,614,726.49 for which BMC Group Construction Company was considered not financially responsive.

That on the basis of their complaint filed with the PPCC, a Notice of Publication was published on the website of the Commission inviting all parties who may be affected by the resolution of this complaint to file their appearance before CARP.

That thereafter, a notice of assignment was served on both parties to appear on May 15, 2025, for hearing into the complaint.

At the call of the case, the complainant party was represented by Cllr. Emmanuel T. Reeves and Cllr. Jannidel M. Haider, while the defendant party was represented by Atty. Saidu Vasco Nyei and Atty. Kollie A. Dorko. During the representation, the Complainant Party made a submission for a Stay Order to be placed on the construction works of the project. The Defendant resisted the submission of the Complainant Party. Arguments were held by the parties and said submission was granted in favor of the Complainant, thus placing a Stay Order on the construction works.

During the hearing, the complainant produced two (2) Witnesses in persons of Mr. Hassan Kobeissi and Mr. Ka-Rufus G. Morris.

**Complainant First Witness, Mr. Hassan Kobeissi, CEO of BMC Group Construction Company** testified that BMC Group Construction Company applied for the bid documents

for LiMA construction project of the Executive Annex. After obtaining the bid documents, they (BMC) submitted the bid on February 28, 2025. According to the Witness, he personally attended the bid opening, along with representatives from other bidders.

The Witness further informed the Panel that before the bid opening commenced, LiMA procurement team distributed a checklist of qualification criteria to all attending representatives. Each bidder received their copy and verified same during the bid opening. He said, LiMA opened and reviewed each bid, and checked whether the qualification documents as required by the bid were included in each bidder's submission.

The first bidder was Amazing Group of Companies, followed by BMC Group Construction Company. According to the Witness, while reviewing the documents, the procurement team confirmed that all required qualification documents presented by BMC Construction Group Company were present and marked "Yes" on the checklist, which was verified by the procurement officer of LiMA.

LiMA continued with the third bidder (RESCO) following the same procedure. Each representative was given the opportunity to cross-check the checklist with their submitted bid documents, confirming the presence or absence of each required document. Representatives from each bidder would respond with "Yes" or "No" accordingly, which was recorded by the procurement officer.

After reviewing the qualification documents, the procurement team announced the bid prices:

- RESCO: US\$3,520,286.26
- BMC Group Construction Company: US\$3,198,873.00
- Amazing Group of Companies: US\$2,626,416.50

At the conclusion of the bid opening, which lasted approximately three hours, BMC Group Construction Company requested that the procurement officer certify the checklist for future reference. The procurement officer signed the checklist, kept the original, and provided photocopies to all representatives present.

The Witness told the Panel that in March 2025, BMC Group Construction Company received an email from the Procurement Director of LiMA inviting it to attend a presentation at LiMA Headquarters. At LiMA headquarters, BMC Group Construction Company prepared and delivered presentation, just as the other bidder did.

Further, on March 17, 2025, BMC Group Construction Company received an email which scheduled a due diligence site visit to its facilities. The request for the site visitation was accepted by BMC Group Construction Company. LiMA representatives visited BMC facilities, inspected the warehouse and materials, and completed their visit without issue.

However, on March 27, 2025, at about 4:00 PM, BMC Group Construction Company received an official communication from LiMA, dated March 24, 2025, informing them that their bid had been rejected for being "Financially Non-Responsive." According to the Witness, he signed and acknowledged receipt of the communication.

BMC Group Construction Company said that having submitted all of the required documents, including the 2023 and 2024 audited financial statements, which were verified at the bid opening, it requested a full debriefing, to which said debriefing request was granted and scheduled for March 28, 2025.

The Witness said that during the debriefing session, four representatives from LiMA and two from BMC Group Construction Company, including he (the Witness), along with BMC's procurement consultant were present. The meeting started with BMC Group Construction Company's procurement consultant requesting that the meeting minutes be recorded and signed by all parties as an official record. Initially, according to the Witness,

LiMA informed the participants that the meeting was being recorded and eventually agreed to prepare and circulate formal meeting minutes the following business day for review and signing by the participants.

Still on the direct, the Witness told the Panel that during the debriefing, LiMA gave the opportunity for participants to present their concerns. The Witness lamented that it was at that point that he raised the following points on behalf of BMC Group Construction Company:

1. He said that BMC's bid price of US\$3,198,873.00 was the second lowest as compared to the other bids.
2. That BMC's 2023 and 2024 audited financial statements were submitted and verified during the bid opening.
3. That the winning bidder, RESCO, did not have its 2024 audited financial statement included in its bid submission during the opening, which was confirmed in the presence of all attending representatives.
4. LiMA, having acknowledged that RESCO's audited financial statement for 2024 was missing at the bid opening, it however, reported that said document (2024 audited financial statement) was later found during the detailed evaluation stage.

The BMC Group Construction Company Witness told the Panel that its Procurement Consultant raised an objection which questioned the surfacing of a missing document (2024 audited financial statement) at the bid evaluation hearing. LiMA gave a response to BMC's concern which in the view of BMC Group Construction Company was not satisfactory. The debriefing session was concluded thereafter.

The Witness pointed out that despite the assurances given by LiMA that it would have provided the debriefing meeting minutes the next business day, it was important to state that "no meeting minutes were provided on the following business day or within the week that followed".

On Monday of the following week, the Witness told the Panel that he made a follow up with the Procurement Director on their promise to make available the meeting minutes. According to the Witness, the Procurement Director, promised to share the minutes with all of the parties, including BMC Group Construction Company. In concluding his testimony, the Witness stressed that as of the time of the filing of this complaint, BMC Group Construction Company is yet to receive the promised meeting minutes.

The Witness, thereafter rested with his testimony.

**Complainant Second Witness**, Mr. Kai-Rufus G. Morris, Independent Procurement Consultant of BMC Group Construction Company testified that he is a Procurement Consultant for BMC Group Construction Company. He went on to tell the Panel that he participated in the procurement process and accompanied the CEO, Mr. Hassan Kobeissi on the 2<sup>nd</sup> of April 2025, to LiMA's headquarters. The Witness told the Panel that when they arrived at the debriefing meeting, they were taken into LiMA's Conference Room where the opportunity was given to them to introduce themselves, which they did.

Thereafter, according to the Witness, LiMA informed them verbally, that the meeting would have been recorded. The Witness said at that point, something was not adding up. So, he raised a concern stating that there was a need to have the meeting minutes written for the benefit of the participants. At that juncture, the Chief of Office Staff of LiMA said that LiMA would have taken minutes.

The Witness, further told the Panel that LiMA made it known that they were recording the minutes. Knowing the importance of a debriefing meeting minutes to the procurement process, the Witness said that he requested LiMA to make a copy of the minutes available as a matter of procurement requirement to make input. He said that this was necessary

before affixing his signature to said draft minutes and making it a final document. The Witness said LiMA did not live up to its promise of providing copy of the minutes. According to the Witness, BMC Group Construction Company reminded LiMA to circulate copy of the minutes, but that did not change anything, as LiMA was determined not to circulate the minutes.

The Witness, at that point, gave notice to the Panel that he had rested with his testimony.

The Complainant Party (BMC Group Construction Company), in support of their case, presented documentary evidence which included IFB:No.LiMA/SP/ICB/001/25 and other accompanied documents which were identified and marked as P/1 in Bulk, and are stated here below:

1. LiMA Checklist
2. Letter received from LiMA on March 27, 2025, and dated March 24, 2025;
3. Rejection Letter;
4. Letter/Document for site visitation;
5. Letter for invitation to do presentation;
6. Debriefing invitation letter;
7. Email requesting for meeting minutes;
8. Letter of formal complaint to LiMA and
9. Letter of formal complaint to PPCC and confirmed.

The Complainant party (BMC Group Construction Company) filed a motion for subpoena **duces tecum** on the PPCC, which was granted by the Panel to produce the following:

1. PPCC's No Objection Letter
2. PPCC's Internal Compliance Analysis Report
3. BMC Group Construction Company's complete Bid
4. Amazing Group of Companies Bid
5. RESCO INC. Complete Bid
6. Newspaper Evidence of bid publication
7. ZENBER Group of Companies Investigation Report
8. Bid Evaluation Report and Recommendation
9. Draft Contract
10. Bill of Quantities (BoQ)
11. Procurement Committee Minutes and
12. Drawing

The PPCC in response to the Subpoena duces tecum filed on them, presented all of the above-named documents with the exception of the PPCC's Internal Compliance Analysis Report, for which a written communication was sent to the Panel.

**Defendant First Witness**, Mr. Mandela Mangull Polson, Procurement Director of the Liberia Maritime Authority testified that as Procurement Director at LiMA, he is responsible to oversee all procurement activities of the Liberia Maritime Authority, starting with supporting the budget committee, developing procurement plans, and its implementation, administering the successful implementation of procurement activities, among others.

The Witness explained that LiMA Procurement Department is challenged with capacity. He further said that LiMA launched a tendering for the construction of an Executive Annex Building within its headquarters. He went on to narrate that the bid document was developed and published based on an International Competitive Bidding Threshold. At the close of the bid deadline, the document was compiled and submitted to the Bid Evaluation Panel (BEP) for review, evaluation, selection and subsequent recommendation to the Procurement Committee for endorsement of the most responsive bidder.

So, after the BEP commenced work, it went on to evaluate the submitted bids. The Witness further told the Panel that the BEP submitted its evaluation report through him, for submission to the Procurement Committee (PC).

At its first called meeting after the submission was made, the Witness told the Panel that the PC requested that a presentation be made by the BEP, and that the PC insisted he (Mandela Mangull Polson) be present at that Bid Evaluation Panel presentation of the submitted report.

After the presentation of the report, the Procurement Committee (PC) endorsed the report from the BEP emphasizing that, they, the BEP, did a thorough review of the report which was also shared with the Board of Directors. Upon the endorsement of the bid evaluation report, the Procurement Department notified the two major contractors (RESCO and BMC Group Construction Company).

The Witness in his testimony gave a breakdown of the total submissions which he said were eight. He told the Panel that of the eight, three made it to the final submissions. Of the three final submissions, one of the bids, Amazing Group of Companies was disqualified based on conflict of interest. He said Amazing Group Companies disqualification stemmed from the fact it was hired through a competitive process to develop the Design, Drawing and Bill of Quantity (BoQ). The Witness said allowing Amazing Group of Companies to participate in the tender, having developed the Design, Drawing and BoQ, would have disadvantaged the other bidders based on the nature of its knowledge of the entire process. Hence, a notice of rejection was served on Amazing Group of Companies thus leaving BMC Group Construction Company and RESCO as the two finalists.

When the Witness was asked on the direct on the issue of debriefing, the Witness said he could not say much. He said that his colleagues who had come along with him to testify will speak to the issue of the debriefing. However, the Witness went on to say that LiMA invited BMC Group Construction Company and RESCO to attend the debriefing meeting. He furthered that both BMC Group Construction Company and RESCO attended the debriefing meeting with their teams/representatives. The Witness narrated that during the debriefing; BMC Group Construction Company raised two points which are stated here below:

1. That RESCO did not present their 2024 audited financial statement; and
2. That they (BMC Group Construction Company) were disadvantaged of being the most responsive bidder when the Bid Evaluation Panel of LiMA added its building price to the architectural and engineering cost plus the contingency cost which increased its final bid price to US\$3,614,726.49 thus exceeding RESCO, which bid price was US\$3,520,286.26.

The Witness further said based on the two issues raised by BMC Group Construction Company, the debriefing was held. However, BMC Group Construction Company was made to understand that their concern indicating that RESCO did not submit its financial statement for 2024 was not true. He said the Bid Evaluation Panel acknowledged receipt and said that RESCO's 2024 audited financial statement was part of its bid submission.

On the issue of BMC Group Construction Company's financial calculation, it was clear that as per the BoQ that was submitted to all of the bidders, the costs for contingency and architectural and engineering services were part of the overall cost for the project. The Witness went on to say that BMC Group Construction Company's action to disown the total cost when LiMA attached percentage for the cost and put a figure to it, amounted to disservice and deceit on the side of BMC Group Construction Company. He averred that BMC Group Construction Company knew that this was required of them when it came to the financial proposal as developed in the BoQ. He said BMC Group Construction Company's total cost after adding the architectural and engineering cost and the contingency cost exceeded that of RESCO.

The Witness lamented that LiMA clearly told BMC Group Construction Company that its technical team had gone to work and reviewed BMC Group Construction Company's BoQ,

and based on LiMA initial BoQ development, (LiMA) knew very well that for the successful implementation of that project, it must come with the material cost, the contingency cost and the architectural and engineering cost. At the concluding stage of his testimony, the Witness said that the Bid Evaluation Panel report was endorsed and accepted by the Procurement Committee.

LiMA notified the participants and subsequently wrote the PPCC (as it is required by the Public Procurement and Concessions Act, 2010) to seek for No Objection to award contract. LiMA's No Objection request to the PPCC was submitted along with all supporting documents. The PPCC, having reviewed LiMA's No Objection request, granted the Liberia Maritime Authority the No Objection, to proceed with the awarding of contract to the selected contractor. With the PPCC's approval, LiMA developed a draft contract and submitted same to the contractor, RESCO and the relevant authority for approval. The contract was approved subsequently, thereby entering a contract with RESCO for the construction of the Executive Annex Building. The contract was Witnessed by the Ministry of Justice and Ministry of Finance and Development Planning.

**Defendant Second Witness** in person of Mr. Michael K. Cooper, Director of Finance of the Liberia Maritime Authority testified that, to have the Executive Annex constructed in the best possible time, a checklist was used on the first day. Also, all documents submitted by the bidders were reviewed and thereafter, the bidders were called for an interview.

At the conclusion of the interview, a letter was sent to the Procurement Department requesting site visitation of the facilities of the participating bidders, BMC Group Construction Company and RESCO. With permission from the Procurement Department, the team from LiMA visited the various sites of the bidders. Staffers of both BMC Group Construction Company and RESCO were spoken to and warehouses inspected. The site visitation was also meant for the public to have a view both companies' facilities, and to ensure that they were actually organized, relative to the kind of materials they have.

According to the Witness, the visitation ended and they returned to the office with their report which was compiled by the Secretary of the Panel for review by the Bid Evaluation Panel (BEP). After a thorough review of the report, a voting process was conducted to determine the most responsive bidder. The Panel unanimously voted RESCO as the most responsive bidder.

A report of the outcome of the process was submitted to the Procurement Committee (PC) for approval and the subsequent award of contract. Later, the Panel was called to justify its recommendation for the award of contract to RESCO. The BEP, in justifying to the Procurement Committee, maintained that the vote outcome represented their view on the evaluation process which selected RESCO as the most responsive bidder. The Witness averred that the PC endorsed the Bid Evaluation Panel report and subsequently approved the BEP's recommendation for contract award in favor of RESCO.

The testimony of the Witness came to an end.

**Defendant Third Witness** in person of Mr. Joseph Morris Kalapele, Engineering Consultant for the Construction of the Executive Annex of Liberia Maritime Authority testified as follows:

That his name is Joseph Morris Kalapele, and he comes from California, the United States of America but currently lives at ELWA Hospital Community. He went on to tell the Panel that he is a civil engineer and owner of his brand called Bridgeport Construction. In terms of training and experience, the Witness averred that he has a Master in Engineering Technology, and does a lot of extensive consulting work in Liberia.

According to the Witness, he was hired by the Liberia Maritime Authority to provide engineering services as an engineering consultant for the construction of the New Annex. He said LiMA put out an advertisement for a consultant from an independent engineering consulting firm. He furthered that his firm participated in LiMA's bid for an engineering consulting firm from where his firm was declared the most responsive bidder.

The firm's task, according to the Witness, was to provide independent engineering consultancy to LiMA during the entire process leading to the construction of the Annex Building. The Witness said his firm has been providing that service to the point of inviting BMC Group Construction Company and RESCO to LiMA's office for presentation. It was at that presentation that he first came in contact with the BMC Group Construction Company.

This presentation, according to the Witness, was part of the engineering evaluation procedure. Conducting the engineering evaluation procedure, it would help the firm to understand and go beyond just the numbers and other procurement procedures that were put in place. According to the Witness, the presentation helped him to go beyond the ordinary in the bid document. He told the Panel that one of the things that was being looked at in the process was engineering expertise.

The Witness maintained that part of his role was to cross-examine the bidders, just as the lawyers are doing in this hearing, to see who is actually qualified to be able to execute this task. He said he was actually leading the entire team because it was a technical approach and he had to evaluate all of the companies that were involved. He said as part of the Panel, he played a very major role in assessing the technical capability of each of the companies.

Speaking of his qualification and experience, the Witness told the Panel that he has been doing this kind of job for a very long time, and that he has been involved with most of the outstanding engineering constructions around the country.

Starting with the World Bank Project, which was given to West. He went on to say that he became the Senior Project Engineer for West at the time. He continued by telling the Panel that he also served as the Quality Control Engineer for the Enfield Building, the European Union Building, and that the European Union Headquarters was also constructed by him.

The Witness narrated that with all the experience and expertise that he has, he actually spearheaded the evaluation of all of the companies. During the evaluation, health and safety initiatives are considered and are put in place. So, from experience, and as a construction company when taking over the construction of a prominent institution like LiMA for the construction of its annex building, environmental preservation, health and safety as mentioned earlier are basis for the evaluation for any construction bidder, and not just numbers and engineering ability.

During the evaluation, the Witness testified that he asked hard questions to the bidders, with a particular question on evaluating their value engineering approach. Value engineering approach is very important because when there are two companies competing neck to neck for a project, it is important to evaluate the two companies to see who can go beyond what is just on the paper. This is an understanding of the engineering practice. So, BMC Group Construction Company and RESCO were evaluated, and there was 100% consensus across the board that BMC Group Construction Company did not produce the information that was needed when it comes to value engineering. So, because the world is evolving, it is not just about looking at a plan and then going about to construct. Things are constantly changing, he said – the prices of metal and other materials are always on the increase. So, an engineering firm takes all of this into consideration.

The Witness continued his testimony by saying, that while it is true that both companies may have their prices, however, the value engineering goes beyond that. What if there is



no more construction materials coming to Liberia, what will be done, the Witness stressed. These tests are put to all the companies, to have them to respond.

In his line of questioning, the Witness said he also asked the bidders about value for money. If one goes for an interview for a job, he said, not everybody in that particular interview would qualify for the job. He went on to say that one of the reasons, that firms/companies always choose the best candidate is, if the question is asked, "why do you think you are the best candidate for this job"? That question has nothing to do with your CV; it goes beyond the CV of a candidate.

So, in this value engineering, everybody has engineering competence, everybody has a construction company, everybody has money. However, this is engineering which is being discussed, the Witness emphasized. So, some of the questions that are asked are meant to dig in depth on understanding and mastering the task at hand. The Witness mentioned that there was an important electrical engineering aspect that was missing from the drawings of BMC Group Construction Company.

The Witness averred that from a value engineering perspective, he believed that RESCO did extremely well when it came to value engineering.

The Witness, furthered that BMC Group Construction Company failed when it was unable to respond to the question as to what value engineering it brings to the LiMA's Project. On the other hand, when the question was posed to RESCO, they gave a convincing, detailed explanation of value engineering.

Going further to ask how the environmental surrounding around the building could challenge some of the materials in view, engineering-wise, and whether there could be substitutes, BMC Group Construction Company was clear in answering that question. But, as stated earlier, the Witness said he was sorry because BMC Group Construction Company did not stand out at all on some of the questions, especially the one on value engineering.

The Witness further testified that on the issue of contingency and how it plays out in procurement such as the construction of LiMA's Annex Building, the Witness stressed that this can be done in two ways; either way, he said, is not done arbitrarily or the figure is not derived by some abstract means. The Witness told the Hearing that some bidders could elect to have the contingency cost embedded into the pricing of materials and come out with a lump sum price.

While on the other hand, the bidders could decide to have a breakdown of all of the line items including contingency distinct and as subtotals. Whatever the case, both approaches are acceptable in procurement, but that the figure derived from the contingency is based on a percentage applied on the BoQ which is added to give a grand total for the duration of the contract. That a company, rather than stating a particular amount for contingency could have said that the amount was embedded into the pricing of the materials for the duration of the contract. This is a common and acceptable procurement practice.

Looking at the two submissions from RESCO and BMC Group Construction Company, RESCO had a lump sum figure without a breakdown of line items as required in the tender document. While BMC Group Construction Company had in its submission, a breakdown of line items with costs representing materials, contingency and architectural and engineering.

For clarity purpose, the Witness posed a question to RESCO, "the price that you have here is a lump sum price, does this price contain all of the line items that were in the BoQ, including contingency and architectural and engineering and services"? RESCO answered in the affirmative. That became clear during the evaluation process.

BMC Group Construction Company had breakdown figures for line items, including contingency and architectural and engineering services which were derived from applying percentage to the material cost. Upon applying the percentage and deriving the figures, said figures must be added to the material price in the BoQ to give a final or grand total as required by procurement best practice. However, this was not the case in the BMC Group Construction Company's submission. Hence, LiMA added all of the sub totals which is a standard procurement practice that gave BMC Group Construction Company a final/grand total that exceeded what they bid for.

The Witness, at this point, gave notice to the Panel that he was resting with his testimony.

The Defendant Party (LiMA), in support of their case, presented documentary evidence which included IFB:No.LiMA/SP/ICB/001/25 and other accompanied documents which were identified, marked as D/1 and D/2 in Bulk that are stated here below:

1. Tender Document (BMC Group Construction Company, RESCO and Amazing Group of Companies);
2. BMC Group Construction Company past performance;
3. LiMA's Bid Document;
4. RESCO Financial Proposal;
5. LiMA's Procurement Committee Meeting Minutes;
6. LiMA's Request for No Objection from PPCC;
7. LiMA's notification of rejection to BMC Group of Companies;
8. LiMA's final letter to RESCO to proceed;
9. RESCO BoQ;
10. LiMA's Bid Evaluation Panel Report;
11. LiMA's letter inviting BMC Group of Companies for Debrief
12. Bid Evaluation Panel Minutes;
13. LiMA's Blank BoQ
14. LiMA's Draft Contract to RESCO and confirmed.

The parties, having rested with oral and documentary evidence, the Panel assigned the hearing for final argument on May 31, 2025.

During the final argument, BMC Group Construction Company maintained that the bid evaluation process which selected RESCO as the most responsive bidder was marred by irregularities to the point of compromising the submission of the two years (2023/2024) audited financial statements in favor of RESCO. BMC Group Construction Company argued that RESCO submitted one year audited financial statement for 2023 and not 2024, as opposed to BMC Group Construction Company that submitted both 2023 and 2024 audited financial statements as required by the bid document.

Further to the above, BMC Group Construction Company claimed that the Bid Evaluation Panel (BEP) was grossly in error when it added its contingency and architectural and engineering cost to the building cost in the BoQ. BMC Group Construction Company maintained as per procurement best practice, that the BEP should not have added its contingency cost and architectural and engineer cost to the building price in the BoQ. BMC Group Construction Company went on to say that adding the contingency cost and architectural and engineer cost to the building price was ground for their rejection and denial, thus disadvantaging them to their rival, RESCO, which was said to have been the most responsive bidder.

BMC Group Construction Company went on to argue that LiMA's refusal to circulate draft copy of the debriefing and bid opening meeting minutes was deliberate and meant to disenfranchise it (BMC Group Construction Company) from seeking recourse for the selection of RESCO as the most responsive bidder.

Consistent with the above, BMC Group Construction Company prayed for the cancellation and re-tendering of the procurement process for the construction of LiMA's Executive Annex Building.

In countering their argument, LiMA rejected BMC Group Construction Company's claim that the procurement process was marred by irregularities which disadvantaged them to their rival RESCO. LiMA contended that its tender document as put forth, requested two years (2023/2024) financial statements which RESCO met. LiMA went on to further argue that, to compromise on its own bid requirement to accommodate and prefer RESCO, was unprofessional and that such thing would be the last it would ever indulge into. Hence, the Panel should dismiss BMC Group Construction Company's complaint in its entirety.

LiMA strongly opposed BMC Group Construction Company's assertion that LiMA was grossly in error when it added BMC Group Construction Company's contingency cost, architectural and engineering cost to its building cost. LiMA contended that as per practice, contingency cost and architectural and engineering cost are percentages derived from the building cost which are subsequently added to the building cost to give a final/grand total. BMC Group Construction Company being quite aware of this practice, was intentional when it ignored and refused to add the contingency and architecture and engineering costs to that of the building price which should amount to the final/grand total. LiMA argued that it was no way in error when it added BMC Group Construction Company's contingency cost, architectural and engineering cost to its building cost which is a standard practice in procurement.

As to the BMC Group Construction Company's last claim that LiMA did not make available copy of the bid opening and debriefing meeting minutes, LiMA admitted. However, LiMA maintained that it verbally informed BMC Group Construction Company that it was not selected as the most responsive bidder because its financial proposal was financially unresponsive.

So, BMC Group Construction Company cannot see this isolated instance (evaluation outcome) to be a serious procurement breach that warrants cancellation and re-tendering of the entire procurement process which has long been concluded. Hence, LiMA prayed that the Panel dismisses the Complainant's complaint in its entirety and remove the Stay Order to have LiMA continue with its construction project for the Executive Annex Building.

The Panel, having read the Complainant's complaint, listened to the testimonies of both Witnesses, reviewed documentary evidence, and the arguments put forth by both parties, says that there are four issues determinative of this case.

1. Whether or not, LiMA's bid evaluation process and the subsequent selection of RESCO were carried out in compliance with the advertised bid requirements, applicable procurement best practices, and the provisions of the Public Procurement and Concessions Act of 2010?
2. Whether or not, the absence of RESCO's audited financial statement for 2024 at the time of bid opening, as required by the Instructions to Bidders, constitutes sufficient grounds for bid cancellation and re-tendering?
3. Whether or not, the absence of documented minutes for the bid opening and debriefing meetings constitutes valid grounds for bid cancellation and re-tendering?
4. Whether or not, the inclusion of contingency costs and architectural and engineering costs in the total evaluated price of BMC Construction Group Company, resulting in a bid amount higher than that of RESCO, the bidder deemed most responsive, was in accordance with LiMA's Instructions to Bidders (ITB) and the provisions of the Public Procurement and Concessions Act of 2010?

The Panel will now discuss the issues in the order mentioned above.

That as to the first issue, whether or not, LiMA's bid evaluation process and the subsequent selection of RESCO were carried out in compliance with the advertised bid requirements, applicable procurement best practices, and the provisions of the Public Procurement and Concessions Act of 2010, the Panel answers in the **Affirmative**.

The Panel says that even though LiMA's bid evaluation process that led to the subsequent selection of RESCO as the most responsive bidder had minor deviations, howbeit, those deviations were not substantial enough to attract a violation, consistent with the below stated sections of the PPC Act 2010, that would warrant a cancellation or retender. The Panel maintains that for a deviation to be considered grave to warrant the Panel to set aside the selection of a company which has been declared the most responsive bidder, means that the entire bid evaluation process or a greater portion thereto was in breach of the provisions of the PPC Act 2010 which are here in stated verbatim:

- a. **Section 58(1) Bidding Document** states that "Procuring entities shall use the standard bidding document prepared by the Commission."
- b. **Section 59 (1) Submission of Bids** – states that "Subject to subsection (3) of this Section, a bid shall be submitted in writing, duly signed and in a sealed envelope, and bids received after the deadline for submission of bids shall be returned unopened".
- c. **Section 61(1)-Bid Opening:** "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".
- d. **Section 65 (1) Evaluation and Selection of Most Responsive Bidder**, the Act states that "The contract shall be awarded by the Procuring Entity to the bidder that is qualified and submitted the lowest evaluated responsive bid which meets the evaluation criteria as specified in the invitation to bid, request for quotation, request for proposal or the related bidding documents."

Consistent with the Sections cited above, the Panel says that it is of the firm belief that the bid evaluation process and the subsequent selection of RESCO were carried out in compliance with the advertised bid requirements, applicable procurement best practices, and the provisions of the Public Procurement and Concessions Act of 2010.

That as to the second issue, whether or not, the absence of RESCO's audited financial statement for 2024 at the time of bid opening, as required by the Instructions to Bidders, constitutes sufficient grounds for bid cancellation and re-tendering, the Panel answers in the **Negative**.

The Panel, having perused LiMA's bid document and listened to Witnesses' testimonies, the issue of the two years audited financial statements was not in dispute; as it was part of the bid requirement. It remains unresolved whether RESCO, consistent with the bid requirement, was able to submit the two years financial statements for which we have gathered here to pass on.

The Panel, in trying to address this cardinal issue for which the Complainant has prayed this Panel to cancel and retender the contract award in favor of RESCO, we are poised to look at the categories of requirements in a bid document and what the law, the PPC Act 2010 says when it comes to bid requirement, and how does it apply to the categories of tender requirements in a bid document.

The practice of procurement in Liberia, which is supported by the PPC Act 2010, its Regulations, and the bid document itself, are all instruments which should and must guide the conduct of any government procurement.

Consistent with the above, tender requirements are categorized as follows:

1. Predetermined requirements which are considered mandatory requirements; the absence of either of such requirements as stated in the bid document is ground for exclusion of the bidder to the next stage. Typical examples of requirements which fall within this category are business registration certificate, tax certificate, PPCC vendors registration certificate, NASSCORP certificate, engineering certificate, should the procurement be for construction, etc.
2. Technical requirement- has to do with the competence, experience, past performance of the company, qualifications of key staff, machinery or equipment needed to perform this task, while the
3. Financial requirement - speaks to the financial capacity of the company to be entrusted to undertake such task.

Having outlined these three basic categories, there are other requirements which find their way in bid documents, like the bid document (2024 audited financial statement) under review, that is needed and must be provided. However, the provision of such requirement when not submitted in time, may be deferred based on the Procuring Entity's discretion to be submitted at a later time.

The Panel, relying on **Section 62(Examination, Evaluation and Comparison of Bids)** specifically **Section 62(2)** of the PPC Act, 2010 which is herein quoted states that *"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."*

Further to the above, the Public Procurement and Concessions Act (PPC Act) 2010, does not specifically state that a bidder must be disqualified solely for failing to provide audited financial statements for a particular period if the bid is otherwise responsive.

So, if the bidding document requires audited financial statements, and the bidder fails to submit it, it may be considered non-responsive unless the procuring entity deems that the omission is not material or can be clarified under the margin of discretion allowed by the Act.

The Panel is emphatic, that the issue of RESCO not submitting its audited financial statement for 2024 for which BMC Group Construction Company is praying for cancellation and retendering is not a requirement that falls squarely in the ambit of Section 62(2) of the PPC Act 2010 as stated above. Hence, BMC Group Construction Company's contention for the rejection of RESCO does not warrant cancellation and re-tendering of the procurement process.

That as to the **third issue**, whether or not, the absence of documented minutes for the bid opening and debriefing meetings constitutes valid grounds for bid cancellation and re-tendering, the Panel answers in the **Negative**.

The Panel says for the cancellation and re-tendering of a procurement process to lie, either of the following conditions must exist:

- a. **Section 62 (2)** of the PPC Act, 2010, states *"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."*

**b. Section 36: Cancellation of Proceedings or Rejection of Bids**

1. A bid may be rejected only in accordance with this Act and regulations made thereunder.

2. A Procuring Entity may:

(a) Reject all bids at any time prior to the acceptance of a bid where:

- i. There is a lack of effective competition and there is a reasonable belief that minor changes in the details of the invitation to bid, request for quotation, request for proposal or related bidding documents or increased advertising will increase the level of competition;
- ii. Some or all of the bids are not substantially compliant with the invitation to bid, request for quotation, request for proposal or related bidding documents, but there is a reasonable belief that minor changes in the details of the invitation to bid, request for quotation, request for proposal or related bidding documents will increase the number of compliant bids; or
- iii. Bid prices are substantially higher than the existing budget for the procurement, but there is a reasonable belief that minor changes in quantities, requirements or other details of the bidding documents will produce lower bids.

(b) Cancel the procurement proceedings at any time prior to the acceptance of a bid were continuing with the procurement in its present form or a substantially similar form is not appropriate because:

- i. The procurement need has ceased to exist or changed significantly;
- ii. Insufficient funding is available for the procurement;
- iii. There is a significant change in the required technical details, bidding conditions, conditions of contract or other details, such that the recommencement of proceedings is necessary;
- iv. No responsive bids are received;
- v. There is evidence of corruption, fraud, coercion or collusion among bidders; or
- vi. Cancellation is deemed to be in the interest of national security.

The Panel says, the absence of the documented minutes of bid opening, and debriefing meeting does not fall in any of the above-mentioned Sections of the PPC Act of 2010, for the cancellation and re-tendering of LiMA's procurement process.

Accordingly, the Panel is of the considered view that, even if the documented minutes had been available, they would not have sufficed to establish that the concern raised by BMC Group Construction Company regarding the debriefing minutes constituted a material basis for the cancellation of the procurement process and the initiation of a retender. The Panel, therefore, finds that the ground advanced by the Complainant cannot be sustained.

That as to the **fourth issue**, whether or not, the inclusion of contingency cost and architectural and engineering cost in the total evaluated bid price of BMC Construction Company, resulting in a bid amount higher than that of RESCO, for which RESCO was deemed most responsive, was in accordance with LiMA's Instructions to Bidders (ITB) and the provisions of the Public Procurement and Concessions Act of 2010, the Panel answers in the **Affirmative**.

The Panel notes that the Instructions to Bidders (ITB), specifically Clauses 37.1 and 37.2, provide as follows:

- i. *Clause 37.1: The Bill of Quantities shall contain items for the construction, installation, testing, and commissioning work to be done by the contractors.*
- ii. *Clause 37.2: The Bill of Quantities is used to calculate the Contract Price. The Contractor is paid for the quantity of the work done at the rate in the Bill of Quantities for each item.*

Accordingly, these provisions establish that the contract price must be derived directly from the detailed pricing of individual work components listed in the Bill of Quantities, ensuring transparency, fairness, and consistency in bid evaluation and contract administration.

Further, Clause 37.2 of the Instructions to Bidders clearly stipulates that each item in the Bill of Quantities must be duly costed and utilized in the calculation of the contract price for the project. In addition, the Blank Bill of Quantities provided by LiMA explicitly directed bidders to compute and sum the following cost components:

- a. Building Total – [US\$ Amount]
- b. Contingencies and Unforeseen Costs for Building (0.1%) – [US\$ Amount]
- c. Architecture and Engineering Services (0.03%) – [US\$ Amount]

The Panel notes that the BEP total derived sum of BMC Group Construction Company's building cost, inclusive of the contingency and Architectural and Engineering Costs, amounted to US\$3,614,726.49, which surpassed that of RESCO whose total evaluated bid price was US\$3,520,286.26, thereby rendering BMC Group Construction Company's bid financially nonresponsive. Hence, it is worth mentioning that the aggregate of these three cost components constitutes the bidder's Total Contract Price, as required for submission.

It is the opinion of the Panel, that LiMA's action to have included BMC Group Construction Company's contingency and architectural and engineering costs to its building cost, was consistent with the tender document (BoQ), as advertised, procurement best practice, and the PPC Act 2010.

**WHEREFORE AND IN VIEW OF THE FOREGOING FACTS, CIRCUMSTANCES, AND LAWS CONTAINED THERETO, THE COMPLAINANT'S COMPLAINT IS HEREBY DENIED AND THE STAY ORDER LIFTED.**

**AND SO, ORDERED!**



Signed by:

Cllr. Sundaiway E. Nelson Amegashie  
**CHAIRPERSON**

Cllr. Vincent B. Smith  
**MEMBER (CARP)**

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

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

Mr. Ezekiel F. Nyumah  
**MEMBER (CARP)**

Dated this 23<sup>rd</sup> Day of June, A.D. 2025.

NOTE:

THAT DURING THE HEARING OF THE COMPLAINT, CLLR. SUNDAIWAY E. NELSON AMEGASHIE WAS OUT OF THE BAILIWICK OF LIBERIA AND DID NOT PARTICIPATE, WHILE MR. EZEKIEL F. NYUMAH WHO HAD EARLIER RESIGNED, BUT WAS GIVEN THE OPPORTUNITY TO COMPLETE THE HEARING OF SAID CASE, DISSENTED.



## DESCENDING ORDER

### General Information:

Name of Project: Executive Annex Construction of Liberia Maritime Authority Headquarters

Location: Oldest Congo Town Opposite Ellen Johnson Sirleaf Ministerial Complex – Monrovia, Liberia

Identification Number of Contract Package: IFB-No.LIMA/SP/ICB/001/25

Date of Submission: Monday, June 21, 2025

Submitted By: Ezekiel Nyemah – Member of the Panel

### Recommendation:

While opinions may differ, these disagreements typically do not warrant an Award.

From my Independent review of the documentations provided by the Parties including hearing the Parties witnesses provided there is evidence of clear bias or misapplication of the evaluation criteria which is the basis of this descending order, I hereby submit this order to my fellow colleagues for the record since this is not the final place of settlement.

Based on the above, I recommend this activity to be readvertised/relaunch in order that LMA follow standard procurement procedures in accordance with best practices.

### Information:

On the 25<sup>th</sup> of April 2025, BMC Group Construction Company filed a complaint against the Liberia Maritime Authority (LiMA).

Public Procurement and Concessions Commission (PPCC) upon receipt of the complaint forwarded to the complaint to the: Complaints Appeals and Review Panel (CARP).

### Non-Compliance with Mandatory Requirements:

- a) At the Bid Opening, LMA failed to have provided/shared copies of minutes to contesting bidders even though LMA provided a checklist indicating Criteria stipulated within the Bidding Document Issued. BMC Group took its minutes and ensure that each participating Bidder at the Opening including LMA Official in attendance signed of as well stamped their minutes record as evidence of whatever may have transpired during the opening.
- b) At the Opening, LMA Official Read Out the Bid Price as indicated below:
  - a. Amazing Group of Companies US\$2,626,416.50
  - b. RESCO --- US\$3,520,286.26;
  - c. BMC Group ...US\$3,198,873.00

These prices were read out as indicated on the official BID FORM as issued within the Bidding Documents



At the opening process, it is very crucial that minutes are taken and distributed/shared with all participating bidders. The minutes must also be signed and stamped by the Purchasing Agency.

This is the first/preliminary stage at which time the Procurement Department is under obligation to ensure that only bidders meeting the minimum predetermined criteria moves to the next stage -which is the detailed evaluation. Upon thoroughly checking the Bidding documents of RESCO in the presence of all those in attendance, the audited financial statement for 2024 was missing.

LMA Failed to have carry out this activity carefully in accordance with Procurement Standards. Error in Procurement procedures:

- c) Both RESCO and BMC Group bids proposals were forwarded to the Bid Evaluation Panel of LMA – Technically, this was a mis step under the practice of Procurement. Only BMC Group bid proposal should have been considered to advanced to the BEP. The BEP at this stage would have made a decision to either readvertised the bid package due to limited response or technically evaluate the BMC bid etc... Error in Procurement procedures
- d) Having reached the stage of detailed Evaluation, LMA claimed to have seen both Audited Financial Statements of RESCO. It is worth noting that the RESCO 2024 Financial statement that was seen/surfaced at the BEP was not signed by both the auditing firm and RESCO. This means the 2024 financial statement was not a legal instrument to be used by LIMA.
- e) LMA went ahead to carry out the evaluation of bid proposals without primarily considering the Checklist received from the Procurement Department. Upon completion of the evaluation process, BMC Group was notified that they were rejected based on being Financially Non-Compliant.
- f) Upon receipt of the rejection notice by BMC-Group a complaint was filed requesting for Debriefing. LMA accepted to grant the debrief and even promised that they were recording the meeting and would have provided minutes of the debriefing held but failed to provided said minutes of the debrief meeting held even after a reminder from BMS Group. Based on their refusal to share the minutes of debrief with BMC Group, BMC Group filed a complaint to PPCC notifying PPCC that a challenge was up in the stand still period. - this was an Errors in Evaluation Process as far Procurement Best Practices is concern:
- g) LMA disregarded the Stand Still Period of 14 working days and requested PPCC to grant a "NO Objection" which PPCC granted prior to the end of the Stand Still Period. Errors in Evaluation Process as far Procurement Best Practices is concern:



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More importantly, PPCC was requested to provide their checklist that informs their granting of a No Objection to grant a Bidder clearance subpoena duces tecum to proceed with its implementation after their review. This request was based on BMC Group filing for the Compliance Officer /Director Compliance Analysis or Report which must normally review the full documentations coming from the Procuring Agency for stratification prior to PPCC Director's granting the Agency's NO Objection. BMC Group Lawyers did file under their legal terminology or phrase - **subpoena duces tecum** during the hearing. This has not ben seen by me until now.

Signed:

A handwritten signature in black ink, appearing to read "E. J. Pina", written over the word "Signed:".