



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

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May 22, 2012

**Opinion in the case: Monrovia Merchandise Mart (MMM) vs. Liberia National Police (LNP)**

**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) to review/investigate Complaints or Appeals filed by 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 Monrovia Merchandise Mart (MMM) against the Liberia National Police (LNP) of the Government of Liberia, concerning a bid for the procurement of police uniforms that the said Liberia National Police had conducted. The said Complaint was referred to the Panel for investigation.

**Methodology**

The Panel, at its first meeting on April 19, 2012 resolved to proceed with the investigation of the complaint. But, reviewing the case file it observed that except for the complainant's complaint with copies of the procurement committee's letter of award to complainant as winner of the bid, and a letter under the signature of Deputy Inspector General of Police, Rose E. Stryker that nullified the award, all relevant documents and communications relative to the said bid proceedings were absent. These include the bid documents, the invitation to bid for the procurement of police uniforms, the bids evaluation report, the list of participating bidders, the qualification criteria applied, and minutes of the proceedings.

Therefore, the Panel resolved that in order to make further determination in this matter, all documents relating to the Police Uniforms bid proceedings be submitted by the Procuring Entity, the Liberia National Police in line with Section 43, Subsections 1,2,5,7 & 8 of the PPC Act 2010, for examination by the Panel during its deliberations.

**Facts**

In July 2011, the Liberia National Police (LNP) published in major local dailies an invitation to bid for procurement of police uniforms and accessories. Suppliers were invited to participate in the bidding process. Following the submission of proposals, the Bids were evaluated by the Evaluation Panel which resulted in ranking of the bidders. In a letter dated August 26, 2011 signed by the Chairman and members of the entity's Procurement Committee, Monrovia Merchandise Mart was declared winner and authorized to proceed to the LNP's Finance Section for preparation of a contract between it and the LNP.

Complainant alleged that while looking forward to be invited for the drafting and the signing of the contract, it received a letter from Deputy Police Inspector General, Rose E. Stryker dated October 6, 2011 informing that the letter of August 26, 2011 was inadvertently issued by the procurement committee, and that the award letter was therefore nullified.

On December 28, 2011, Monrovia Merchandise Mart addressed a letter of complaint to the Commission by and thru the Executive Director, Mrs. Peggy Varfley Meres. The Commission replied informing complainant to re-direct its complaint to the Head of the LNP as required by Section 125 (2) of the PPC Act, 2010.

Subsequently, on March 13, 2012, the Commission received copy of a letter of complaint addressed to Hon. Chris C. Massaquoi. Having not received redress of his complaint from the Head of the LNP, complainant, on April 3, 2012 filed a complaint informing the Commission that the Head of the LNP 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 LNP.

Careful examination of the documents before it, particularly the documents submitted by both the complainant and the respondent entity, reveals:

- (1) that the LNP has an established Procurement Committee;
- (2) that a bid proceedings was conducted for the procurement of uniforms and accessories;
- (3) that complainant Monrovia Merchandise Mart duly participated in the bid proceedings;
- (4) that the procurement committee in a letter dated August 26, 2011, declared MMM winner of the bid proceedings, and invited her to proceed to the LNP's Finance Section to negotiate a contract;
- (5) that, in a letter dated October 6, 2011 and addressed to Monrovia Merchandise Mart, Deputy Police Inspector General Rose E. Stryker declared that the letter of August 26, 2011 was inadvertently issued by the procurement committee, and that the award letter was therefore nullified;
- (6) that being dissatisfied with the action of Madam Stryker, Monrovia Merchandise Mart filed a complaint to the PPCC requesting redress;
- (7) that Monrovia Merchandise Mart was asked to redirect its complaint to the head of the LNP;
- (8) that Monrovia Merchandise Mart did file a complaint to the head of the LNP and copied the PPCC;
- (9) that after fourteen (14) days of waiting without any decision from the head of the LNP, Monrovia Merchandise Mart requested the PPCC to review the process;
- (10) that, in response to three letters written by CARP requesting copies of all documents relating to the Police uniforms bid proceedings, the Panel received a letter dated May 15, 2012 from Madam Rose Stryker informing that the Panel's letter of April 27, 2012 (second letter), "was reacted to since the 1<sup>st</sup> of May 2012";
- (11) that a review of the said 1<sup>st</sup> of May 2012 letter indicates that it was addressed to the Executive Director of PPCC, Madam Peggy Varfley Meres, essentially narrating reasons for her action of October 6, 2011, but not responsive to the Panel's request as stated in the letters of April 20 and 27, 2012, and May 10, 2012.

**Issues:**

1. Whether or not the nullification by the LNP's Deputy Inspector General of the letter of award issued by the Procurement Committee to the Monrovia Merchandise Mart violated the PPC Act?
2. In the absence of fraud, can a Procuring Entity cancel or nullify a procurement proceeding after the entity's procurement committee issues a notice of award to a bid winner?

**Discussion:**

Under the PPC Act, every Procuring Entity must establish a Procurement Committee whose membership shall be appointed by the Head of the Procuring Entity. For the purpose of this Opinion, we shall restate verbatim, the functions of the Procurement Committee, and the authority to reject or cancel bids or bids proceedings under the PPC Act:

***“Part III, Section 27. Functions of the Procurement Committee***

*The Procurement Committee shall:*

- (a) Review and approve procurement plans in order to ensure that they support the objectives and operations of the Entity and comply with the national budget process;*
- (b) Oversee all the procurement functions of the Procuring Entity set forth in Parts IV and V of this Act;*
- (c) Ensure compliance of the Procuring Entity with this Act and its regulations;*
- (d) Review the activities of the Procurement Unit and the Bid Evaluation Panels and provide advice and direction where necessary to ensure selection of the lowest responsive evaluated bid in accordance with the requirements of Parts IV and V of this Act;*
- (e) Verify that a budget allocation is available under the public financial management law for the expected amount of any contract award and, before giving any approvals pursuant to clause (f) of this Section, ensure that a budget allocation is available in the amount of any bid or proposal recommended by a Bid Evaluation Panel;*
- (f) Receive the reports and recommendations of the Bid Evaluation Panel and reject the award if not consistent with the requirements of this Act, for procurements in excess of the relevant Thresholds contained in Section 7 of the Schedule. The Head of the Procuring Entity shall perform this function for procurements within the Thresholds provided for the Head of the Procuring Entity in Section 7 of the Schedule;*
- (g) Provide the Commission with quarterly reports and as required;*
- (h) Confirm the bid price is reasonable for the items to be procured and is in line with available funds or, otherwise, withhold approval of award as provided in clause (f). The Head of the Procuring Entity shall perform this function for smaller procurements as provided in the Regulations promulgated by the Commission;*
- (i) Oversee contract administration and the applicable financial management laws to ensure compliance with all reporting requirements under this Act;*
- (j) Ensure that stores and assets are disposed of in compliance with the provisions of this Act;*

- (k) Review the activities of each step of the procurement cycle leading to the selection of the lowest responsive evaluated bid by the Procuring Entity; and*
- (l) Give approval to the Bid Evaluation Panel or otherwise to enable the Procuring Entity or Procurement Unit to continue with the procurement process.”***

***“Part IV, 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 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 where 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.***

***(3) Before rejecting all bids or canceling any procurement proceedings, the Procurement Unit shall prepare a written request for approval of the rejection or cancellation for submission to the Procurement Committee, which shall clearly state:***

***(a) Detailed reasons for recommending rejection of all bids or cancellation;***

***(b) The status of the procurement proceedings, including in particular, whether bids have already been opened under bidding methods; and***

***(c) Whether new procurement proceedings (in the case of cancellation) or a request for revised bids (in the case of rejection of all bids) are recommended and, if so, the modifications recommended.***

***(4) The reason for rejecting all bids, or for canceling the procurement proceedings, shall be noted in the record of the procurement proceedings, and promptly communicated to the bidders.***

*(5) A Procuring Entity shall not be liable to a bidder by reason only of rejection of all bids or cancellation of procurement proceedings under subsection (2) of this Section.*

*(6) A Procuring Entity shall not reject all bids and invite new bids on the same bidding and contract documents solely for the purpose of obtaining lower prices.*

*(7) If a decision to cancel the procurement proceedings is taken before the deadline for submission of bids, any bid received shall be returned unopened to the bidder.*

*(8) In the event of cancellation or the rejection of all bids in accordance with subsection (2) of this Section, the procurement shall not be re-bid to the same specifications and contract conditions unless the cancellation of the initial proceeding is for budgetary or other reasons unrelated to the specifications and contract conditions, provided that if the procurement is to be repeated, the reasons for the cancellation of the initial proceeding shall be examined and the technical specifications, contract conditions or both, may be suitably modified prior to re-bidding.”*

When the Deputy Police Inspector General announced the cancellation of the Bid proceedings, she also informed that the requisite procurement procedures were not followed and the bidding not finalized. She further informed that the bidding process was still in the evaluation stage.

There has been no evidence shown that the action of the Procurement Committee to declare MMM as winner of the uniform bid proceedings based on the bids evaluated, and to invite her to proceed to the LNP’s Finance Section to negotiate a contract, contravenes the provisions of the PPC Act.

Furthermore, from the authorities restated above, the authority to reject bids or cancel bid proceedings is vested in the Procurement Committee, if bids or the recommended award are not consistent with the requirements of this Act, in the case of procurements in excess of the relevant Thresholds contained in Section 7 of the Schedule. The Head of the Procuring Entity shall perform this function for procurements within the Thresholds provided for the Head of the Procuring Entity in Section 7 of the Schedule;

Procurement Committee is also authorized under the Act to oversee all the procurement functions of the Procuring Entity set forth in Parts IV and V of the Act and ensures compliance of the Procuring Entity with this Act and its regulations.

### **Ruling:**

After reviewing and analyzing documents submitted by the complainant and the respondent entity, and referencing the applicable provisions of the PPC Act and its regulations, the panel is of the opinion that Madam Rose E. Stryker, Deputy Inspector General of the Liberia National Police (LNP) acted illegally when she nullified complainant’s award as winner of the Police Uniforms bid proceedings. The Panel further rules that the action taken by Madam Rose E. Stryker, Deputy Inspector General of Police is not only in violation of the PPC Act, 2010, as she had no authority under the said Act to nullify a procurement proceedings or the decision reached by the procurement committee of the LNP, but also an attempt to usurp the exclusive authority of the Complaints, Appeals & Review Panel conferred by the Act, as the Panel is the

only one authorized by the Act to review, prohibit or amend unauthorized and incorrect actions or decisions of a Procuring Entity, and provide the appropriate relief.

There being no evidence of corruption, fraud, coercion, collusion, and/or violation of the PPC Act by either the Procurement Committee of the Liberia National Police, or the Monrovia Merchandise Mart, the Panel hereby upholds the complainant's contention that the action taken by Madam Rose E. Stryker, Deputy Inspector General of Police is contrary to the PPC Act 2010 and a violation thereof, and also upholds the decision of the Procurement Committee of the Liberia National Police declaring the Monrovia Merchandise Mart winner of the Police uniforms bid proceeding as being consistent with law.

The Liberia National Police (LNP) is therefore ordered to proceed to award the Police uniforms procurement contract to Monrovia Merchandise Mart, as that was the stage at which the proceeding was when it was wrongfully and illegally interrupted and stopped.

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 22<sup>ND</sup> DAY OF MAY 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** \_\_\_\_\_

\*Note: Mr. Massaquoi M. Kamara, Sr. because he did not participate in the investigation due to his absence from the country. Similarly, and Mr. Martin Kollie did not sign this opinion because he did not participate in the investigation due to his absence from Monrovia.