

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

IN RE:

KINGDOM BUSINESS INC.
by and through its General Manager/CEO
Mr. L. Swansey Fallah..... **COMPLAINANT**

VERSUS

**MINISTRY OF INFORMATION, CULTURAL
AFFAIRS & TOURISM** by and through its
Minister, Hon. Jerolinmek Piah and all those
under his Authority, Capitol Hill, Monrovia
Liberia **DEFENDANTS**

COMPLAINT

**BID CHALLENGE AND REQUEST FOR BID RE-EVALUATION SUBMITTED BY
THE KINGDOM BUSINESS INC. AGAINST THE MINISTRY OF INFORMATION,
CULTURAL AFFAIRS & TOURISM**

1.0 FACTUAL SUMMARY

The complaint before the Complaints, Appeals, and Review Panel (CARP) grows out of a Bid Challenge for which Kingdom Business Inc. is requesting bid re-evaluation process by the Ministry of Information, Cultural Affairs, and Tourism (MICAT) alleging the following:

1. That MICAT issued tender for roofing of its Ministry under IFB No: **MOI/NCB/001/2024** on September 23, 2024, for which kingdom Business Inc. participated as a bidder.
2. That October 2, 2024, was set for the bid submission, while October 7, 2024, was the date set for bid opening and during the bid opening, it was announced that Kingdom Business Inc. and New Galaxy Building Construction were the two companies that submitted bids for the tender mentioned above, with the bid's prices read out as follows: Kingdom Business Inc. US\$ 39,736.00 and New Galaxy Building Construction US\$ 39,859.37.
3. That on October 10, 2024, a letter was issued from MICAT informing Kingdom Business Inc. of their **DISQUALIFICATION** in the bidding process for the following reasons:
 - I. That MICAT Bid Evaluation Panel (BEP) alleged that there was an alteration in the Ministry of Public Works Certificate presented.

- II. That they also alleged Bank Guarantee Bond (Bid Security) submitted was from SIB, while the Bank Statement was from EcoBank.
4. Based on count 3 above, Kingdom Business submitted a letter dated October 14, 2024, to the Director of Procurement stating that they strongly disagreed with the reasons as stated.
5. Two days later, on October 16, 2024, Kingdom Business Inc., wrote the Minister of Information, Cultural Affairs & Tourism, that the decision of the Evaluation Panel was premeditated meant to disenfranchise their company in the bidding process and to damage the good image of their company; therefore, requested that the office of the Minister take seizure of the bidding process and re-evaluate the bids submitted to ensure that all participants are given equal and fair treatment.
6. That on October 31, 2024, Kingdom Business Inc. wrote the Executive Director of the Public Procurement & Concessions Commission outlining the counts previously made for their disqualification and also informing the Executive Director of the letter written to the Honorable Minister contesting outcome of the bid evaluation, thereby seeking his intervention.
7. Further to Count (6), the letter seeking the Minister's intervention was never addressed up to and including October 31, 2024, hence their complaint.
8. That on November 4, 2024, consistent with the PPC Act of 2010, the notice of complaint was published on the PPCC website, and a written notice of assignment was issued on the 8th day of November A.D. 2024, and served on November 8 and 11, 2024, respectively.

At the call of the case on November 14, 2024, parties' representations were made, and the defendant made a submission as follows:

1. That the complainant, having submitted a complaint to MICAT, did not exhaust the statutory period as provided for by the Act before submitting its complaint to the Executive Director of the PPCC for attention to the Complaints, Appeals & Review Panel.

In resistance to the submission made by the defendant, the Respondent/Complainant says the following:

1. That the law provides that once a complaint is filed, it is by statute that you respond within ten (10) days upon receipt of the complaint, and therefore the ten (10) days having elapsed as of the date of the complaint to the MICAT, Kingdom Business Inc. has the right to file its complaint to PPCC.

The parties having rested with the submission and the resistance thereto, were allotted time for argument.

That the argument, having been listened to, there are two issues determinative of this submission:

1. Whether or not the Complainant exhausted the time required by the PPC Act, 2010 to file a complaint to PPCC?
2. Whether or not a procuring entity is estopped from adjudicating procurement complaint(s) in the absence of the Head of Entity?

As to the first issue raised above, the Panel answers in the negative.

As provided for by the PPC Act Sections 125 (6) (a)(b) &(c) states

As follows, that “with respect to a complaint filed pursuant to this section, 125, the Head of the relevant procuring or Concessions entity shall...” (a) *investigate the complaint*; (b) *reach a decision within fifteen days of receipt of the complaint by the procuring or Concessions entity and promptly communicate the decision to the complainant and to any other bidders or prospective bidders who submitted views in writing on the appropriate resolution of the complaint by the electronic mail, facsimile or hand delivery*; and (c) *promptly deliver a copy of the decision to the Executive Director of the Commission*.

In the instant case, a formal complaint was written to the Head of the Procuring entity on October 16, 2024, for investigation. Taking into consideration the period provided for adjudication of complaint at the level of the procuring entity, which is fifteen days for a decision to be reached, Kingdom Business Inc. was initially in line with said provision, however their failure to have exhausted the fifteen days period as provided by the Act before forwarding a complaint to PPCC was in itself a violation, as Kingdom Business exhausted only ten days of the statutory period which did not give them the right to file a complaint with CARP.

On the other hand, MICAT being aware that it was under obligation to investigate Kingdom Business Inc.’s complaint, acknowledged said right but however, argued that it still had jurisdiction over the matter because the statutory period had not elapsed when KBI took flight to PPCC to take seize of the matter.

With arguments pro and con in the matter, MICAT further requested that the matter be sent to back to grant hearing in the matter consistent with statute.

As to the second issue, the Panel answers in the negative.

The PPC Act specifically *Section 28, (Quorum of a Procurement Committee)*. Section 28(3) says that the quorum of a meeting of a procurement committee shall be at least four persons comprising of the Chairperson or the Acting Head of the Entity who shall act as chairperson and at least three other persons.

In the instant case, during argument, MICAT is requesting to hear said complaint based on the statute because the Head of Entity was always out of the bailiwick of the country and therefore could not hear said complaint. Howbeit, as per the law, that should not be ground for not hearing the complaint. Our practice of governance and administration has always been premised on the doctrine of “continuity”, suggesting that in the absence of the principal head, there is always persons designated to act. The Ministry of Information is no exception to this principle of governance and administration as otherwise argued by its representatives. Further, the absence of the Head of Entity did not negate the fact that there was still a quorum that could have ably listen to the complaint of Kingdom Business and decide.

Wherefore and in view of the foregoing facts and circumstances, this Panel says that Respondent/Complainant failed to exhaust the statutory period of filing and hearing of the complaint at the procuring entity before filing same with the PPCC. Hence, said submission by the Ministry of Information, Cultural Affairs & Tourism(MICAT) is hereby granted and the resistance to the submission is hereby

denied. MICAT is hereby ordered to resume jurisdiction into the matter consistent with the PPC Act, 2010.

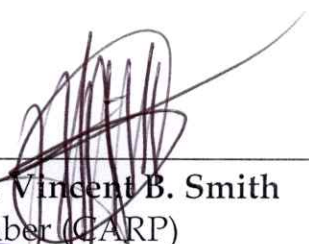
It is hereby so ordered!

GIVEN UNDER OUR HANDS AND SIGNATURES
THIS 15TH DAY OF NOVEMBER, A. D. 2024

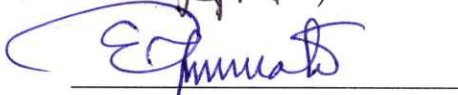
Signed by:



Cllr. Sundaiway E. Nelson Amegashie
CHAIRPERSON (CARP)



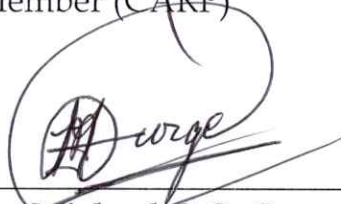
Atty. Vincent B. Smith
Member (CARP)



Mr. Ezekiel F. Nyumah
Member (CARP)



Cllr. Morris M. Davis, Jr.
Member (CARP)



Mr. Michael C.G. George
Member (CARP)