

**No. 5**

Nordic Development Fund - **Complainant**

Vs.

Ministry of Local Government, Rural Development & Environment - **Respondent**

Tender:

*Procurement of Survey Equipment under NDF Credit 307 – Urban V Project*

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**Complaint:**

- Overpricing of Survey Equipment;
- Lack of Value for Money consideration in procurement;
- Possible indications of corruption

**Applicable Provisions of Act 663:**

- Section 64 (2) of the Public Procurement Act, 2003, (Act 663)

**Brief Facts:**

This case concerned Nordic Development Fund (NDF) credit implemented by the Ministry of Local Government, Rural Development and Environment (MLGRDE), the main executing agency, through its Project Support Unit (LGPSU). In or about 2005 an amount of the credit was uncommitted, primarily due to budgetary savings in mapping components coordinated by the Survey Department of Ghana. NDF agreed to extend the credit until 30 June 2006 and to allocate a certain amount of the uncommitted funds for the purchase of various goods for the Survey Department.

Bidding was carried out for four Lots, around the end of 2005 and an Evaluation Report and Recommendations for Contract Awards issued early 2006. Reasons given for the rejection of some of the bids i.e. missing or incorrect bid security, major deviation from specification and incomplete coverage of all items, were accepted by NDF. Based on original budgets and NDF's assessment of prices offered, NDF gave its no objection to the award of contracts for Lots 1, 3 and 4. However in NDF's estimation Lot 2 appeared to exceed its budget by around US\$240,000, and sought clarification from the implementing agency.

The NDF through its Anti-Corruption Committee carried out independent investigations which concluded that a total sum of US\$300,000.00 seemed unverified by the bidder and/or the MLGRDE.

In preparation for a final decision on the matter, the NDF suspended disbursement of the applicable credit and suggested a local investigation into the matter.

**Issue(s):**

The Public Procurement Authority (PPA) examined issues raised by NDF in respect of the following:-

- i. Overpricing of all items in Lot 2;
- ii. Non-presentation of genuine supporting Manufacturer's Authorization for expensive items;
- iii. Changes to essential items permitted after the bid process contrary to procurement principles;
- iv. Request for PPA's independent assessment of market prices for Lot 2;
- v. Request for PPA's independent assessment of fairness and reasonableness of prices for Lot 2 items;
- vi. The comparison of prices of the recommended bid and the 2 rejected bids for same or similar items.

**Arguments:**

NDF agreed that there was no major irregularity in the procurement process itself; however on the question of "value for money" it was of the view that the contract signed by MLGRDE did not meet the requirements of economy and efficiency. Since there was only one responsive bid, the procurement entity should have convinced itself that there was competition. The main indicator of competition would have been that prices were fair and reasonable in comparison to market values.

Though the Evaluation Report had stated that prices were "found to be fair and reasonable" NDF's preliminary investigations indicated that the prices of the recommended bid for Survey Equipment were remarkably higher than market prices of same or similar products, some of which fairer prices were quoted in the rejected bids.

NDF argued that in this case, the procurement entity represented the best local expertise on the concerned equipment and *should have* known the market price levels, yet they recommended a very high priced contract. Having noticed the high prices, the procurement entity should have recommended rejection of all bids and re-bidding based on for example, repackaging of the items in order to enhance competition. Instead, the MLGRDE seems to have provided misleading information on the difference between bid prices and market prices. NDF further noted other minor irregularities in favour of the recommended bidder.

NDF maintained that its reference prices had been reliable enough to indicate that the most important bid prices were far above market prices.

In order to assess the fair market prices of the survey equipment concerned, the PPA relied on the Ghana Institution of Surveyors – the highest professional supervisory body with the technical expertise to conclude such pricing exercise for specialised survey equipment.

In its investigations, the PPA duly noted MLGRDE's observation that NDF's concern seemed premised on the difference between budget estimates prepared by the Survey Department in December 2003 *prior to tendering* and actual tender prices obtained 3 years later, in January 2006. They argued that it was normal practice to give NDF the needed estimate as a guide in determining the quantum of funds needed for this procurement. The fact that later tender prices exceeded this budget estimate was not unusual and did not impute wrongdoing. Moreover, no contract had been signed.

In fact, PPA's assessment revealed price variances depending on the percentage profit margin applied. This could however not necessarily be adduced to fraud or corruption. The PPA observed that it was not uncommon for importers to price customized equipment, not easily bought off-the-shelf, highly, because of various difficulties encountered in importing such items. It however agreed with NDF, that MLGRDE should have conducted some due diligence for likely reference prices of such special equipment *prior to conducting the tender*, to assure value for money.

Indeed, Section 64 (2) of the Public Procurement Act, 2003, (Act 663) requires procurement entities to investigate the cause for a high priced tender when the most responsive bid exceeds budget by a substantial margin - with a view to either cancel the tender or to negotiate the price downwards in consultation with the applicable Tender Review Board.

The PPA affirmed with grave concern, the following procedural irregularities identified by the NDF, which were pervasive challenges that cut across procurement entities:-

- a) Sweeping statements in Evaluation Reports which lead to misrepresentations;
- b) Issues of fair bid pricing (to the extent permitted by market forces);
- c) Non-submission of proper Manufacturer's Authorization for key items;
- d) Permitting changes to specifications of essential items after bidding process;

### **Findings:**

The Authority found as follows:-

1. That the procurement entity (MLRDE/Survey Department) take responsibility to conclude this matter by proceeding as guided by Section 64 (2) of the Public Procurement Act, 2003 (Act 663);
2. Depending on supplier selection in accordance with (1) above, that the NDF consider releasing payment of the amount it estimates as reasonable, with any outstanding balance to be verified and borne by MLGRDE.
3. No evidence of corruption was established.
4. The PPA endorsed the importance of this case as a learning process<sup>1</sup> to all implementing agencies on the care needed in all aspects of procurement, not only in procedural matters, but also in respect of the key procurement principle of "economy and efficiency" and the avoidance of fraud and corruption.

Case decided against the Ministry of Local Government, Rural Development & Environment.

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<sup>1</sup> \*NDF's Anti-Corruption Committee subsequently challenged the price analysis for incorporating duties and taxes in comparing bid prices that did not include same. Assuming correctness of base prices used, the price analysis placed the insurance, freight, overheads and profit component of the recommended bidder's price at about 88% - in its view, an unreasonably excessive rate of profit and overheads in excess of 6500% per single item. The price analysis did not in NDF's estimation satisfactorily establish the market prices of the concerned products in Ghana – several sources could have been used, including the Survey Department's previous procurements of same or similar equipment in recent years.

The Ghana Institution of Surveyors (GhIS) came under scrutiny for not addressing the matter of "value for money" choosing to provide reference prices only in the price analysis exercise. In questioning the role of the GhIS as an "independent professional body", the NDF raised issues of conflict of interest in the alleged involvement of its institutional heads as Purchaser's representatives.

From the foregoing, NDF's Anti-Corruption Committee maintained its stance that the case had strong indications of very high pricing and recommended to the Management of NDF not to issue its "No Objection" for the award of this contract.