

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

IN RE:

ABK INCORPORATED

By and thru its CHIEF EXECUTIVE OFFICER (CEO)
Mr. Alieu B. Kromah
Opposite Sinkor Palace Hotel, Congo Town
Monrovia, Liberia. **COMPLAINANT**

VERSUS

MINISTRY OF PUBLIC WORKS

By and thru its MINISTER,
Hon. **Roland Layfette Giddings** and all those under his
Authority, P.O. Box 9011, South Lynch Street
Monrovia, Liberia..... **RESPONDENT**

COMPLAINT

FINAL RULING IN THE COMPLAINT:

BID CHALLENGE AND REQUEST FOR THE RECALL OF ITS (ABK INCORPORATED) LETTER OF REJECTION AND RE-EVALUATION OF BIDS STRICTLY AGAINST PUBLISHED CRITERIA FROM THE POINT OF DEVIATION SUBMITTED BY ABK INCORPORATED AGAINST THE MINISTRY OF PUBLIC WORKS FOR THE SUPPLY AND DELIVERY OF TWO HUNDRED EIGHTY-FIVE PIECES (285) EARTH MOVING EQUIPMENT AND TWENTY (20) UTILITY PICK-UP TRUCKS

1.0 FACTUAL SUMMARY

The Complainant, **ABK Incorporated**, a Liberian-owned company duly registered under the laws of the Republic of Liberia, participated in a Restricted Bidding (RB) process conducted by the **Ministry of Public Works (MPW)** for the *“Supply and delivery of Two Hundred Eighty-Five (285) Pieces of Earth Moving Equipment and Twenty (20) Utility Pick-Up Trucks.”*

The **Invitation for Bids (IFB)** was issued Friday, June 20, 2025, and eight (8) firms (bidders) namely (ABK Incorporated, American Procurement Services Inc. (APSCO), DITS Logistics Construction, Evergreen Import and Export (LiB)

On June 30, 2025, three firms, (ABK Incorporated, American Procurement Services Inc. (APSCO) and Evergreen Import and Export (LiB) Corporation (EVERGREEN)) submitted their bids. The bids were opened in the presence of representatives of each bidder (firm) and the Ministry of Public Works.

At the conclusion of the evaluation process, the MPW addressed a letter to ABK Incorporated which was dated **August 27, 2025**, and received by ABK Incorporated on **September 15, 2025** as alleged.

In that letter, according to ABK Incorporated, the MPW informed ABK Incorporated that its bid was **unsuccessful** and the reasons are herein stated verbatim. That the proposal *“did meet all of the qualification requirements and specifications required by the Ministry of Public Works as outlined in the Bidding Document and your Financial Proposal (Terms of Payment) is not satisfactory to the Government of Liberia. Therefore, your bid was deemed Not Responsive to the government prefinancing plan according to the Ad-hoc Bid Evaluation Panel and approved by the Road Maintenance Committee and the Public Procurement and Concessions Commission (PPCC) respectively*

The Complainant, ABK Incorporated having been served a loser notification by the MPW on September 15, 2025, filed a formal complaint with the said Ministry rejecting its unresponsiveness.

In its complaint to the MPW, ABK Incorporated alleged the following:

1. That its (ABK Incorporated) bid contains **no material deviation** from stated requirements; rejecting it as **“not responsive”** misapplies Section 62(9);
2. That ABK Inc. provided 100% pre-financing ability, clearly mentioned in its submission on page 16 of its offer, and further included its terms of payment on page 44, quotation commercial terms and conditions (GoL payment voucher);
3. That UBA provided a **“Letter of Comfort”** for ABK Incorporated in a huge financial volume to liquidate its pre-financing capacity during the **285 Equipment** procurement process;

5. With the understanding of the discrepancy dated above, ABK Incorporated alleged that the period of notification violates the PPC Act as compared to the dates issued (August 27, 2025) and the date received (September 15, 2025).

Thereafter, on September 19, 2025, ABK, Incorporated filed a formal complaint to the PPCC for the attention of the Complaints, Appeals and Review Panel (CARP). CARP took seize of the matter and consistent with the PPC Act 2010, published a notice of publication on October 3, 2025 placing same on the PPCC's website. A notice of assignment was subsequently, issued citing the parties to a conference in the matter.

At the call of the Conference, the parties, ABK Incorporated and the Ministry of Public Works made representations. The Complainant was represented by the Heritage Partners & Associates and present at the Conference were Cllrs. J. Awia Vankan, Khadijatu Tall Nasser and Lucia D. S. Gbala along with Mr. Alieu B. Kromah, CEO of ABK Inc. and his coworkers. While the Ministry of Public Works was represented by Cllr. Michael I. Diggs, Legal Counsel.

After parties' representations were noted, the Complainant took the stage and indicated to the Panel that based on the citation served, it believed that the forum was meant for a conference. Hence, the matter was ruled to conference so as to address and resolve the issues. Howbeit, the parties having failed to resolve the matter at conference, the Panel ruled the complaint to full hearing and assigned same for September 22, 2025.

On September 22, 2025, at the call of the hearing, the parties made representations with Cllrs. J. Awia Vankan and Khadijatu Tall Nasser representing the complainant as per record, while the Ministry of Public Works was represented by Cllr. Michael I. Diggs, Legal Counsel.

Following parties' representations, the Complainant paraded three witnesses

Complainant's first witness in person of Alieu B. Kromah testified that he is the General Manager of ABK Incorporated and that his entity participated in the procurement process for the supply of 285 earth moving equipment and twenty utilities vehicles.

That ABK Inc. submitted its bids, subsequently, in response to the Ministry of Public Works invitation to bid. He further testified that ABK Inc. was responsive and compliant with the specifications set forth in the bid documents, and that ABK Inc. possessed all the required qualifications including pre-financing capacity and technical competence.

The Witness further testified that PPCC issued a no objection letter to MPW and that its entity only became aware of such after ABK Inc. had filed its complaint upon receipt of the notification letter. The Witness also testified that the Evaluation Committee did not take into consideration the 15% Margin of Preference and the 0.5% discount offered by ABK Inc. in determining the lowest bid.

The Witness testified to and identified the official invitation to bid issued by the Ministry of Public Works, ABK Inc." bid documents, and correspondence between ABK Inc. and the Ministry of Public Works.

At the close of his testimony, the Witness was discharged with thanks of Panel.

COMPLAINANT'S SECOND WITNESS

Complainant's second witness in person of Nabila Tracy Lakkis testified before the Panel that she is the Marketing Agent of ABK Incorporated. She corroborated the testimony of the first witness, Alieu B. Kromah confirming the documents testified to and identified by Complainant's first witness.

The Witness, having concluded her testimony, was discharged with thanks of Panel.

COMPLAINANT'S THIRD WITNESS

Complainant's third Witness in person of Blamo O. Tweh testified that he is the

portion of the financial proposal for the bid in which ABK Inc. offered 0.5% discount along with a 100% pre-financing arrangement.

The Witness further testified that contrary to the Evaluation Committee's Report that ABK Inc.'s financial proposal was unsatisfactory, ABK Inc.'s submission fully met the requirement of the invitation to bid. The Witness also testified that his firm, ABK. Inc. should have been the lowest responsive bidder had the Ministry applied the 15% margin of preference and the 0.5% discount, to its bid price since it was the only Liberian owned bidder, and therefore was entitled to the statutory margin of preference.

Pursuant to the above, the Witness further testified that ABK Inc. was not invited to post evaluation review as required by the procurement process.

The Witness was discharged and the documents marked were admitted into evidence. The Complainant rested in toto and presented their side of the case for final argument.

The Defendant paraded two witnesses in person of Bobby F. Nyekan and Benjamin Yeidiboe.

DEFENDANT' FIRST WITNESS:

Bobby F. Nyekan, the Defendant's First Witness testified that he is the Director of Procurement at the Ministry of Public Works. He further told the Panel that he participated in the preparation of the bidding documents and was involved in the bid opening. He stated to the Panel that he was not part of the bid evaluation process. The witness was discharged with thanks of Panel.

DEFENDANT' LAST WITNESS:

Defendant's last Witness testified that his name is Benjamin Yeidiboe and a Civil Engineer by profession assigned in the office of the Minister of Public Works. The Witness told the Panel that he served as the Chairman of the Bid Evaluation Committee for the procurement of the Two Hundred Eighty-five (285) earth moving equipment and Twenty (20) utility pick-up trucks.

restricted bidding requirements, and guided the cross-referencing of each bidder's submission with the bid requirements. He stated that he also ensured that the Committee recommended the most responsive bidder based on the evaluation criteria.

The Witness told the Panel that the scope of the Evaluation Committee, among others, was to review and examine all bid submissions received, compare each submission against requirements of the restricted bidding document, evaluate the bids based on the criteria stipulated therein, recommend the bidder that was **most responsive** to both the technical and financial requirements.

With reference to the Evaluation report, the Witness averred that the evaluation report and other related documents were secured and in the Minister's Office. He, however, stated that the Minister was out of the country. The Witness was discharged and the documents marked were admitted into evidence. The Defendant rested in toto and presented their side of the case for final argument.

The parties having rested with oral and documentary evidence, the Panel then requested MPW to submit all documents related to said procurement process to the Panel, and the case was assigned for final argument on 11th Day of November A.D. 2025.

During the final argument, ABK Inc., maintained that their bid contained no material deviations from the stated requirements and that the inclusion of the 15% margin of preference for Liberia-owned business and the 0.5% discount offered, if applied by the Bid Evaluation Committee, they (ABK, Inc.) would have been the most responsive bidder. ABK Inc., further argued that they provided 100% pre-financing ability clearly mentioned in their submission and further included in the terms of payment.

ABK Inc. contended that the bidding process was characterized by procedural errors in contravention of the PPCC Act, 2010. ABK Inc. was specific to those violations when it stated that aligning bids to an undisclosed pre-financing plan after opening, amounts to post bid negotiation which is prohibited by the PPC

Relative to ABK Inc.'s claim that it had the ability to pre-finance the agreement 100% but was denied by the Ministry of Public Works, the Ministry of Public Works argued that even though ABK Inc.'s claim of pre-financing ability was not in dispute, however, the Ministry maintained that ABK Inc. could not have qualified or been declared the most responsive bidder because its bid price in the tone of US\$25,543,044.99 was unreasonable to the point of being higher than the price approved by the Legislature in the 2025 annual budget and the Ministry's approved annual procurement plan.

The Ministry further lamented that ABK Inc's payment plan of requesting 100% upfront (payment) upon delivery of the equipment was not attainable because it did not have the amount (ABK Inc.'s bid price of US\$25,543,044.99) in its approved budget. The Ministry, in strengthening its argument, further contended that assuming it had the capacity to meet ABK Inc.'s demand for upfront payment, it could not have done so, because it would have been inconsistent with the Government of Liberia payment framework, hence ABK Inc.'s rejection.

The Ministry of Public of Works, as part of its argument, maintained that ABK Inc. did not meet the technical specification on the equipment, including spare parts and lubricants.

The Ministry of Public Works argued that they could not apply the requirement (margin of preference) as stipulated in the bidding document especially in the bid data sheet, under ITB 29.1, because said provision violates the PPC Act, 2010. The Ministry further argued that best practice and the PPCC's bid template documents require the factoring of margin of preference in bid documents put forth for tendering.

The Panel, having read the Complainant's complaint, listened to the testimonies of both parties, reviewed documentary evidence and the arguments put forth, says there are three (3) issues determinative of this case:

framework, and the requirements of the bidding documents, notwithstanding ABK Incorporated's claim of 100% pre-financing capacity?

2. Whether or not the Bid Evaluation Committee erred in law by declining to apply the 15% margin of preference for Liberian-owned businesses and the 0.5% discount offered by ABK Incorporated?
3. Whether or not the procurement process was conducted in violation of the PPCA, 2010 by reason of alleged post-bid alignment, delayed notification, non-invitation to post-evaluation review (debriefing), and other claimed procedural defects?

As to the first issue,

the Panel answers in the **AFFIRMATIVE!**

The Panel begins by noting that responsiveness under the PPCA, 2010 is determined by compliance with both the bidding documents and the statutory financial framework governing public expenditure.

In the instant case, while ABK Incorporated asserted that it possessed 100% pre-financing capacity, the evidence shows that its financial proposal required 100% payment upon delivery of the equipment.

From a review of the documents presented and the PPC Act, 2010 and the Public Financial Law, the Panel finds that a bidder's internal financing capacity and, in this case, ABK Inc. is above and beyond Government's approved budgetary authorization. Public procurement is governed not by the bidder's liquidity, but by the Government's ability to lawfully pay.

Section 40 (2) of the PPCA, 2010 expressly provides that *"for each fiscal year the Procurement Unit shall prepare a draft annual procurement plan for goods, works and services for use by the Procuring Entity in the Procuring Entity's budgeting process. Upon budget approval, the Procurement Unit shall prepare an annual procurement plan for goods, works and services in accordance with the Procuring Entity's approved*

entering into any contract that creates obligations beyond approved appropriations, the Panel sees the Ministry's decision in addressing ABK Inc's claim of 100% upfront payment as having legal bearing.

The Ministry of Public Works established that ABK Incorporated's bid price and payment structure exceeded the Ministry's approved budget and procurement plan, and that the demand for full payment upon delivery was inconsistent with the Government of Liberia's payment framework. Acceptance of such a bid would have compelled the Ministry to violate Section 40 (2) of the PPCA 2010 which is expressly forbidden.

Moreover, Section 64 of the PPCA, 2010 prohibits post-bid negotiations that would alter the substance of a bid. The Ministry was therefore legally barred from restructuring ABK's payment terms after bid opening to make them compatible with Government financing capacity.

The Panel therefore holds that the financial unsatisfactoriness of ABK Incorporated's bid constituted a material deviation, rendering the bid non-responsive within the ambit of the herein stated Section.

The Panel is legally of the belief that the Ministry of Public Works did not violate the PPCA, 2010 in declaring ABK Incorporated's bid non-responsive. The rejection was lawful, reasonable, and grounded in accordance with the PPC Act and the Public Financial Management Act 2021.

As to the Second issue raised, the Panel answers in the **NEGATIVE!**

The Panel holds that margin of preference is not automatic and emphasizes that margin of preference under the PPCA, 2010 may only be applied where it is lawfully incorporated and consistent with the PPCA, 2010. Under Section 45(4)(a), where the procurement concerns the supply of goods, the bidder must demonstrate that the goods are **manufactured in Liberia** and that a minimum quantity of inputs, whether material, labor, or both, originate in Liberia.

The Panel says under **Section 45(4)(b)**, in the case of works, services, or consultancies, the bidder must prove that minimum quantities of inputs

adduce evidence establishing that the goods were manufactured in Liberia or that the requisite minimum Liberian inputs were utilized. Ownership status alone is insufficient to trigger entitlement to the Margin of Preference. The Bid Evaluation Committee (MPW) correctly argued that the Bid Data Sheet provision purporting to allow margin of preference was inconsistent with the PPCA, 2010, and therefore unenforceable. The Panel agrees that subsidiary bidding documents cannot override statutory law, and where there is inconsistency, the Act prevails.

Since ABK Incorporated's bid was found non-responsive on financial grounds, the application of margin of preference or discount would have been legally impermissible.

The Panel therefore finds that the Evaluation Committee committed no error in declining to apply the margin of preference and discount to a bid that failed the threshold test of responsiveness.

As to the third issue, the Panel answers in the **NEGATIVE!**

The Panel finds that the Ministry substantially complied with the procedural requirements including invitation to post evaluation (debriefing), post-bid negotiations, delayed notification and other claimed procedural defects as contained in the PPCA, 2010 Sections 38, 62(5), 62(12), respectively.

The PPC Act, 2010, states that "**Debriefing of Unsuccessful Bidders** - *The Procuring Entity shall, upon the request of any unsuccessful bidder, inform the bidder of the reasons for which the bid was unsuccessful.*" From the records before the Panel which clearly indicate that ABK Inc. did not request a debriefing from the Ministry, however, the Ministry on its own, upon receipt of ABK Inc.'s rejection of loser notification challenge, outlined , although the records presented to it that ABK upon receipt of the loser notification from the Ministry of Public Works, never requested for debriefing, however, the Ministry by itself, upon receipt of ABK Inc. rejection of the loser notification

With respect to the allegation of delayed notification, Section 62(12) of the PPCA,

The Act does not render a notification invalid solely because of delayed receipt, in the absence of proof of prejudice or bad faith.

Furthermore, the Panel notes that ABK Incorporated timely exercised its right to complain demonstrating that no substantive prejudice was occasioned by the notification timeline.

Regarding transparency, the Ministry of Public Works complied with the law by submitting the procurement process for PPCC "No Objection" review, which is a statutory safeguard under Section 31 of the PPCA, 2010. The existence of a No Objection confirms that the procurement was subjected to regulatory oversight. The Panel therefore finds that the alleged procedural irregularities do not rise to the level of material violations capable of vitiating the procurement process.

In sum, the Ministry of Public Works acted within the confines of the Public Procurement and Concessions Act, 2010, and its rejection of ABK Incorporated's bid was lawful, reasonable, and justified. The procurement process was conducted in accordance with statutory mandates, fiscal discipline, and principles of transparency and competitiveness.

Accordingly, the Panel finds no legal basis to disturb the Ministry's decision.

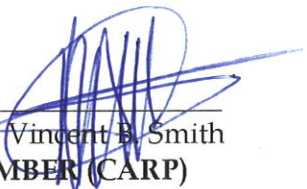
WHEREFORE AND IN VIEW OF THE FOREGOING facts, circumstances and law, the COMPLAINT FILED BY ABK INCORPORATED is hereby DENIED.

AND IT IS HEREBY SO ORDERED.

Signed by:



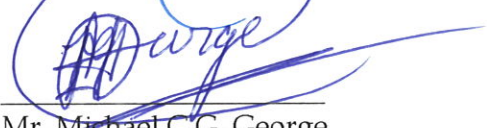
Cllr. Sundaiway E. Nelson Amegashie
CHAIRPERSON



Cllr. Vincent B. Smith
MEMBER (CARP)



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



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

NOTE

PRIOR TO THE FINAL RULING OF THE COMPLAINT, MR. MELVIN NYE DID NOT HEAR THE COMPLAINT. HENCE, HE COULD NOT SIGN THIS RULING!