



## SOLUTION: CASE STUDY, TOBAGO SESSION

No.	Question	Resolution	Reference to Regulation, Legislation and or best practice
1.	Identify all relevant issues within the Case?	1. No subject matter expert (IT expert) was included in the evaluation committee. Inclusion of a subject matter expert in the evaluation committee is critical to the evaluation process.	<p><b>1. The UN Procurement Practitioner’s Handbook states:</b></p> <p>“In order to conduct a fair and unbiased evaluation of offers, the evaluation team should be comprised of a minimum of three members and normally not more than five. The team may include procurement officers, technical experts and requisitioners. Technical experts may include staff from other UN organizations and external consultants hired for this particular purpose.”</p> <p>The General Guideline for the Evaluation of bids issued by the OPR Section 3.3 states:</p> <p>“The composition and mandate of the evaluation committee is critical to an effective procurement process. Experience in the following areas is often required to effectively evaluate the proposals:</p> <ul style="list-style-type: none"> <li>(a) Technical knowledge of the subject matter being procured</li> <li>(b) Applicable law</li> <li>(c) The procurement process</li> <li>(d) In-house technology</li> <li>(e) Commercial acumen”</li> </ul>



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		<p>2. A late bid was evaluated. The late bid should not have been accepted by OISTT. In the case where a late bid is accepted it should be returned unopened to the bidder.</p> <p>3. The correction of an arithmetical error cannot lead to a substantive change in a submission, in particular one that would make an unresponsive submission responsive. Personal's revision of the detailed price schedule should not be accepted and should result in a rejection of the submission by Personal.</p> <p>4. The Approval process was not in keeping with the recommended practice.</p>	<p><b>2. The UN Procurement Practitioner's Handbook states:</b></p> <p>Offers received after the closing date should not be accepted.</p> <p><b>3. Best Practice recommended by the UNCITRAL Model Law: Guide to Enactment requires:</b></p> <p>The procuring entity to correct purely arithmetical errors and requires it in such a case to give notice of such correction to the supplier or contractor that submitted the relevant tender.</p> <p>No further discussion between the procuring entity and supplier or contractor on the corrected arithmetical error: the supplier or contractor concerned can either accept the correction made or its tender will be rejected.</p> <p><b>4. In this case the IT Manager who is the subject matter expert at OISTT should have been included in the evaluation committee.</b></p> <p>The recommendation for award was approved by the Subject Matter Expert and 'Named' Procurement Officer, PDAC objected to award and the 'Named' Procurement Officer proceeded to issue the notice of intention to award without the involvement of the Accounting Officer and without resolving the issues and the objection of PDAC. It is important to</p>

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		<p>5. The request for debriefing, was ignored and the application of the use of urgent public interest to end the standstill period was flawed.</p> <p>The minimum contents of the standstill notice include:</p> <p>(a) the name and address of the supplier or contractor presenting the successful submission;</p> <p>(b) the contract price; and</p> <p>(c) the duration of the standstill period as set out in the solicitation documents.</p> <p>Additionally the OPR's guideline specified additional details to be included in the standstill notice that is :</p> <p>i) criteria and weighting</p> <p>ii) scores of the unsuccessful bidder</p> <p>iii) statement of the reason the tender was unsuccessful</p> <p>iv) precise date and time which the standstill will expire</p>	<p>note that the approval should be in keeping with OISTT's approved delegation of authority and procedures.</p> <p><b>5. Section 35 of the Act states:</b> A procuring entity shall promptly notify each supplier or contractor who presented submissions of its decision to accept the successful submission at the end of the standstill period.</p> <p>(3) The notice referred to in subsection (2) shall contain, at a minimum, the following information:</p> <p>(a) the name and address of the supplier or contractor presenting the successful submission;</p> <p>(b) the contract price; and</p> <p>(c) the duration of the standstill period as set out in the solicitation documents.</p> <p>(4) Subsection (2) shall not apply to awards of procurement contracts where a procuring entity determines that urgent public interest considerations require the procurement to proceed without a standstill period.</p> <p>(5) The decision of a procuring entity that urgent public interest considerations exist and the reasons for the decision shall be included in the record of the procurement proceedings.</p>



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		<p>v) Instructions on how a bidder is to request a debriefing.</p> <p>A debriefing ought to have been provided. Use of the standstill period here would mitigate the risk of legal challenges that may delay a contract for longer than the standstill duration.</p> <p>The standstill period specified in the solicitation document should be applied. The passage of the Procurement Act does not constitute urgent public interest as such the standstill period should apply as specified in the solicitation document.</p>	<p>Urgent public interest considerations refer to issues that can negatively affect the rights of the citizens of Trinidad and Tobago, e.g. the collapse of a bridge which will hinder the free movement of citizens to and from their homes. In that regard, urgent public interest considerations can be applied to the procurement of a short-term solution such as the installation of a temporary bridge, while the details of a long-term solution are being worked out.</p> <p>The scenario specified in the case does not constitute urgent public interest.</p>
2.	Was the procurement process in keeping with the objects of the Public Procurement and Disposal of Public Property Act, 2015? If no identify the objects of the Act that were breached.	No.	<p><b>The following Objects of the Act were breached:</b></p> <p><u>Fairness:</u> Even playing field where all bidders are treated equally.</p> <p><u>Transparency:</u> Appropriate information is placed in the public domain</p> <p><u>Integrity:</u> Avoiding corruption and conflicts of interest</p> <p><u>Accountability:</u> Allows interested party to ensure that the objectives are being achieved.</p> <p><u>Equity:</u> All suppliers/contractors have a fair chance of winning the contract.</p>



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			<p><u>Public Confidence:</u> The Suppliers, who are also considered to be part of the public would not have confidence in the future procurement processes being conducted by the OISTT due to their misconduct during this process.</p> <p>(Definitions were obtained from the Comprehensive Handbook: Procurement, Retention &amp; Disposal of Public Property)</p>
3.	<p>As the 'Named' Procurement Officer of OISTT, what would you have done differently, which company will be recommended for award based on best practice? Provide details of your evaluation/assessment?</p>	<p><b>What would you have done differently?</b> This procurement activity should have been issued using an Invitation to Bid (ITB).  Also, the late submission should not have been accepted, if it was accepted in error, at the opening of the submissions, the Named Procurement Officer should have noticed from the Submission Register, that "Workaholic's" bid was submitted late and at that point, reject their bid and return the unopened submission.  Additionally, the revised bid from Personal should have been disqualified as they submitted a revised bid price when asked to confirm an arithmetical error and did not accept the correction.</p>	<p><b>The UN Procurement Practitioner's Handbook states:</b>  The essential characteristic of the ITB is that the technical requirement can be clearly and completely specified in a qualitative and quantitative manner, and the award is normally made on the basis of lowest cost, among commercially and technically compliant bids, lowest priced substantially compliant or similar criteria.</p>



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		<p>The evaluation committee should have included a subject matter expert.</p> <p>In this scenario the “Named” Procurement Officer should be the person responsible for reviewing the evaluation report and submitting to PDAC for their review and objection or non-objection.</p> <p>In instances where the procurement process was not in keeping with the objects of the Act and internal procedures the procurement file should be returned to the ‘Named’ Procurement Officer for remedial action (with a note indicating same to the Accounting Officer). In this case the Accounting Officer was not involved in the process at all.</p> <p>This procurement activity should have been cancelled considering the issues identified upon review of the evaluation report.</p>	<p>Refer to the Comprehensive Handbook on Procurement and Disposal of Public Property for details.</p> <p><b>Section 33 of the Act</b> - Allows the Procuring Entity the opportunity to Cancel procurement proceedings and details the process for cancellation.</p>



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		<p><b>Which company will be recommended for award based on best practice?</b></p> <p>If best practice was followed, the only compliant bids would have been from “Curious” and “Details”.</p> <p>Based on the evaluation “Curious” having obtained a higher score would have been recommended for award.</p> <p><b>Provide details of your evaluation/assessment?</b></p> <p>Refer to the table below. Based on the points raised previously the only compliant bids should be “Curious” and “Details”. Based on the assessment Curious should be selected for the award of a contract.</p>	
4.	<p><b>What steps would an aggrieved bidder be required to take if he/she wishes to bring challenge proceedings?</b></p>	<p>A supplier or contractor may apply to the Office for review of a decision or an action taken by a procuring entity in the procurement proceedings. In this instance where the standstill period was revoked the aggrieved supplier should submit the application within seven working days after the publication of the</p>	<p><b>In accordance with Part V, Section 49 of the Act:</b></p> <p>49(1) A supplier or contractor may bring challenge proceedings where it is alleged that—</p> <p>(a) a procuring entity made a decision or took action that is not in compliance with this Act; and</p>



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		<p>notice of the decision or action that is taken in accordance with this Act.</p>	<p>(b) the supplier or contractor has suffered or is likely to suffer loss or injury because of the decision or action of the procuring entity.</p> <p>(2) Challenge proceedings may be made by way of an application for review by the Office under section 50.</p> <p>(3) Subject to section 52, all hearings under this Part shall take place in public.</p> <p style="text-align: center;"><b>AND</b></p> <p><b>In accordance with Part V, Section 50 of the Act:</b></p> <p>(1) A supplier or contractor may apply to the Office for review of a decision or an action taken by a procuring entity in the procurement proceedings.</p> <p>(2) Applications for review shall be submitted to the Office in writing within the following time periods:</p> <p>(a) applications for review of the terms of solicitation, pre-qualification or pre-selection or of decisions or actions taken by a procuring entity in pre-qualification or pre-selection proceedings, prior to the deadline for presenting submissions; or</p>



