

**DEPARTMENT OF PUBLIC TRANSPORTATION
MAINTENANCE AND STORES BUILDING****CONTRACT AWARD RECOMMENDATION****1. Scope of Work**

The Department of Public Transportation (DPT) is responsible for providing public transportation service to the island in the form of regular bus service as well as sightseeing and other visitor related services and activities.

The main headquarters for the DPT is located at 24 Palmetto Road, Devonshire and includes office space, the bus maintenance garage and storage for off duty buses.

In recent years the DPT has purchased a number of air-conditioned buses which require regular maintenance to the air-conditioning units. This maintenance is currently performed in the main garage and is not ideal for proper maintenance of the units which should occur in a controlled environment. It also utilizes space required for general maintenance of the bus fleet. There is also a need for adequate storage space for bus parts.

The scope of work includes the design, procurement and construction of a 6600 sq. ft. prefabricated steel framed and clad building on reinforced concrete foundations which will contain maintenance bays, storage space, offices and a training room.

2. Tender Procedure

Tenders were originally invited from suitably experienced contractors earlier this year, following an open tender procedure through advertisements in the Official Gazette. Six contractors collected tender documents.

Only one tender was received which was significantly higher than the budget estimate. A review of the tender was completed and it was determined, based on the cost of several prefabricated buildings which have been recently completed on the island, that the original estimate was reasonable. In order to ensure that a competitive price was obtained, the project was re-tendered.

Tenders were invited a second time from contractors, following an open tender procedure through advertisements in the Official Gazette. The response rate was higher than previous, with ten contractors collecting tender documents.

3. Tender Response

Sealed tenders were received from seven contractors. The tenders were opened by a Ministry of Works and Engineering Purchasing Section Representative, and a member of the Purchasing and Tendering Committee. The tender opening was also witnessed by a project officer and representatives from the various contractors.

The respondents were: -

Davis General Maintenance;
Lawrence Marine Ltd.;
DeCosta Construction Ltd.;
Landmark Construction Ltd.;
Trinity Construction Ltd.;
Central Construction Company; and
GEM Development Ltd.

4. Tender Evaluation

The tender documents requested a lump sum price for the works and the submission of a proposal containing a brief Method Statement including details of the proposed building system, a Schedule of Works, a Health and Safety Plan, a list of potential subcontractors including the proposed building manufacturer, and information on eligibility and qualifications of the company.

The evaluation also included a post-tender meeting with the three lowest tenderers. This meeting was conducted to discuss the companies' submission and to determine whether they had a clear understanding of the works.

Trinity Construction Ltd submitted a partially complete tender and a request was sent to the company asking them to provide the missing information as they were the third lowest tender.

The method statement and further discussions at the post-tender meeting indicated Trinity Construction had an understanding of the requirements to construct the building specifically on the proposed site where space is limited due to activities of the DPT.

The company's experience included construction of nine 5000 sq. ft. prefabricated steel buildings for the Bermuda Land Development Company in Southside. They are currently constructing eight 2500 sq. ft. prefabricated steel buildings in Ferry Reach, of which two were completed in 2005.

A Health and Safety plan that was submitted included the company's safety policy and also highlighted the hazards of working in the area adjacent to the active garage. It noted that construction activities will be kept separate from those of the garage and scheduling large deliveries of materials during periods of lesser activity in the garage.

Based on their experience with prefabricated buildings and the discussions at the post-tender meeting, the Trinity Construction has demonstrated an ability to undertake a project of this type.

Central Construction Company submitted a partially completed tender and as the second lowest tender, additional information was requested to fully evaluate the company's ability to undertake the project.

The method statement provided was brief and indicated the stages of construction, the construction equipment required, possible hazards and the safety controls which would be in place during these stages.

The company has 25 years experience in general maintenance, residential construction and small commercial buildings. The types of projects included eighteen 1000 sq. ft. seniors' residential units in Southside and twelve 1000 sq. ft. condominium units in Happy Valley, Pembroke. The company will be assisted by Steel Elements in the US, who will provide the prefabricated building and construction expertise, and local design and installation subcontractors for the mechanical and electrical elements of the work.

A brief Health and Safety plan was submitted and listed potential hazards and safety equipment that will be utilized for the duration of the project.

The tender submitted by Central Construction Company and the post-tender meeting indicate that the company has experience primarily in residential construction and unlike the other two low tenderers, have not had any specific experience constructing prefabricated buildings. However based on the size and scope of the projects previously undertaken by the company and utilizing the experience of Steel Elements, an experienced prefabricated building manufacturer, the company has the ability to undertake the works.

GEM Development Ltd. submitted a partially complete tender and subsequently as the lowest price tender which was submitted, additional information was solicited to allow the Ministry to complete an evaluation of the submission.

The method statement and post-tender meeting discussions demonstrated an understanding of the works required to complete a project of this type.

The company has 10 years experience in the construction industry in Bermuda and are primarily project managers. They have procured and managed the construction of two 3200 sq. ft. prefabricated building projects in Well Bottom, Southampton. They have also managed the construction of seven 1800 sq. ft. townhouses in Southampton. The company will be partnering with Civil & Environmental Consultants Inc (CEC), an engineering consultant company located in the US. CEC has 16 years of experience in technical consulting for design-build construction services, civil and site development engineering.

The Health and Safety Plan submitted identified potential hazards during construction, the overall scope of work to be completed, protection equipment required for the works, and procedures in the event of an emergency on site.

The tender submission and the post-tender meeting demonstrated that the company have an understanding of the works required to deliver a quality product in the timeframe indicated.

The remaining contractors; Davis General Maintenance, Lawrence Marine Ltd., DeCosta Construction Ltd. and Landmark Construction submitted partially complete tenders. No additional information was solicited from these companies.

The following table indicates the duration of construction for the project by company:-

Contractor	Time to complete
Davis General Maintenance	Not submitted
Lawrence Marine Ltd.	45 weeks
DeCosta Construction Ltd.	52 week
Landmark Construction Ltd.	24 weeks
Trinity Construction Ltd.	40 weeks
Central Construction Company	26 weeks
GEM Development Ltd	24 weeks

5. Cost Evaluation

Tenders were based on a lump sum price for the work. All tenders received were above the pre-tender estimate of \$1,200,000 for the works. GEM Development Ltd. submitted the lowest tender sum. A comparison of the tender prices are as follows:

Contractor	Tender Sum	% Difference
Davis General Maintenance	\$4,748,000.00	294% above estimate
Lawrence Marine Ltd.	\$2,987,924.00	149% above estimate
DeCosta Construction Ltd.	\$2,700,000.00	125% above estimate
Landmark Construction Ltd.	\$2,138,744.00	78% above estimate
Trinity Construction Ltd.	\$1,996,890.00	66% above estimate
Central Construction Company	\$1,600,000.00	33% above estimate
GEM Development Ltd	\$1,494,000.00	25% above estimate

Errors were found in two tenders during an arithmetic check.

GEM Development Ltd. had a tender price breakdown, which totalled \$6,000 less than the total shown on the form of tender (\$1,500,000). The sum of the individual tender items was taken as the more accurate total which reduces the tender sum to \$1,494,000. GEM Development Ltd confirmed that they would complete the work for the lower sum.

Davis General Maintenance's breakdown totalled \$4,728,000. The sum included on the tender documents stated that the total for the works was \$6,000,000. Attempts have been made to contact the company to clarify the tender sum however; they have been unsuccessful thus far as all contact information provided in the tender has been incorrect.

6. Company Principals

The principal of Davis General Maintenance is Randy William Davis.

The principal of Lawrence Marine Ltd. is William Lawrence.

The principal of DeCosta Construction Ltd. is Michael J. DeCosta.

The principals of Landmark Construction Ltd. are Edmund L. Matvey and Brian A. McLeod.

The principal of Trinity Construction Ltd. is Steven Daniels.

The principals of Central Construction Ltd are Victor L. Walters, John H.T. Ming and Paul King.

The principals of GEM Development Ltd. are George Morton Sr. and George Morton Jr..

7. Financial Checks

A Financial Check has been undertaken with the Ministry of Works and Engineering, the Department of Social Insurance and the Office of the Tax Commissioner.

Trinity Construction Ltd. currently has a sum of \$39,449.60 outstanding with the Department of Social Insurance. A sum of \$71.89 is owed to the Office of The Tax Commissioner.

Central Construction Company currently has a sum of \$804.00 outstanding with the Department of Social Insurance. A sum of \$0.00 is owed to the Office of The Tax Commissioner.

GEM Development Ltd. currently has a sum of \$0.00 outstanding with the Department of Social Insurance. A sum of \$1,051.25 is owed to the Office of The Tax Commissioner.

The remaining companies each owed varying amounts to the Department of Social Insurance and the Office of the Tax Commissioner.

8. Conclusion and Recommendation

GEM Construction Ltd. submitted the lowest price and one of the most expeditious schedules for the DPT Maintenance & Stores Building. The tender submission and post-tender meeting showed a clear understanding of the requirements to undertake the project. In addition, the company and its partners have the collective experience to complete the work.

It is therefore recommended that the contract be awarded to GEM Construction Ltd. for the tender sum of \$1,494,000.00.

CABINET MINUTES 43(07)6

NOVEMBER 13, 2007

3.1.3 Maintenance and stores building - Page 22

**What do
Financial
Instructions say?**

“8.2.3 Goods and Services in Excess of \$5,000

- (1) Goods and services with an estimated value in excess of \$5,000 shall be obtained on the basis of at least 3 quotations.
- (2) The range of suppliers requested to provide quotations must be as wide as practicable.
- (3) Accounting Officers are responsible for ensuring that these procedures are followed and may be called upon to justify the tendering process.
- (4) The employee initiating the request shall clearly state all the relevant information necessary to secure an accurate price.
- (5) Quotations must be submitted in writing and retained in accordance with FI Section 22.
- (6) A closing date/time for submission of quotations must be stated and strictly observed.
- (7) The lowest price must be accepted or reasons for not accepting the lowest price must be documented.
- (8) Unsuccessful suppliers should not be allowed to re-submit a lower quotation price - the first quotation must be accepted.
- (9) Successful and unsuccessful suppliers should be notified in writing.
- (10) Where possible, quotations for an annual supply should be sought to obtain quantity discounts.
- (11) When requesting quotations from foreign suppliers, ensure that total landed cost is used to compare to local quotations. Landed cost should include purchase price, exchange, freight, duty and all handling costs.”

“8.3.1 Documentation

Quotations or tenders accepted for the supply of goods or services in excess of \$50,000 must be documented in a written agreement or contract. Once a satisfactory contract is formatted, except for minor amendments, the contract could be used for many other types of supply. Contracts totalling over \$50,000 (including those with multiple payments) must be submitted to the Cabinet for approval before acceptance.”

**What did we
find?**

In 2010, Cabinet’s prior approval for a \$1.6 million contract (awarded to Central Construction Company) for the construction of a Maintenance and stores building was not obtained.

When the original bids were received, W&E staff recommended the lowest bidder (GEM Construction Ltd.) in their Contract Award Recommendation. They concluded that the lowest bidder should have been awarded the contract on the basis of cost, schedules provided in its

submission, the company's clear understanding of the requirements to undertake the project and its collective experience.

However, when the contract was presented to Cabinet, the Minister of W&E voiced concerns about the lowest bidder's ability to achieve the deadline. No evidence to support these assertions was documented in the Cabinet Conclusion.

Cabinet did not approve the award of contract at that time. Instead, Cabinet recommended that consideration of the contract award should be carried over to the next meeting to ensure that the estimate for the works was updated.

We requested confirmation of Cabinet's subsequent approval. However, neither W&E nor the Cabinet Office provided evidence that this contract was in fact returned to Cabinet for approval.

ARISING FROM THE
AUDIT OF THE CONSOLIDATED FUND – ACCOUNTANT GENERAL
FOR THE YEAR ENDED MARCH 31, 2010

CONCERNS AND OBSERVATIONS ARISING FROM
THE AUDIT

REPLIES AND COMMENTS FROM
MANAGEMENT - W&E

3.1.3 OBSERVATION

The contract for the construction of a Maintenance and Stores Building for the Department of Public Transportation was awarded to Central Construction Company for \$1,600,000. The Contract Award Recommendation prepared by W&E concluded that the lowest bidder GEM Construction Ltd. should be awarded the contract for \$1,494,000. The recommendation noted, "*GEM Construction Ltd submitted the lowest price and one of the expeditious schedules for the DPT Maintenance & Stores Building. The tender submission and post tender meeting showed a clear understanding of the requirements to undertake the project. In addition, the company and its partners have the collective experience to complete the work.*" In the Cabinet Conclusion relating to this contract, the Minister of W&E noted that, "*...GEM Construction Ltd. had submitted the lowest price for the construction of the building, however they had performed poorly on previous projects and there was a concern that the required project deadlines would not be achieved.*" No examples of previous projects were noted in the Cabinet Conclusion. The Cabinet agreed that, "*... consideration of this contract award should be carried over until the next meeting to ensure that the estimate for the works was updated.*" However, neither W&E nor the

Cabinet Office could provide any records that this contract ever returned to Cabinet for approval. Despite this, the contract was awarded to Central Construction.

RECOMMENDATION

P.F.A.2002 requires advertised open tender for projects over \$50,000. With regards to the contracts that were not tendered, they also did not meet the criteria to be considered under section 6.11 'Exceptional Circumstances' of P.F.A. 2002. The Department of Works and Engineering must adhere to their required policies for the procurement of goods and services if government is to obtain value for money on capital projects. Furthermore, these policies help to reduce the risk of underperformance, fraud and misappropriation. Contracts should not be entered into and payment certificates should not be paid unless all relevant procurement policies have been followed and Cabinet approval has been obtained. There should be consequences in place for those responsible for not complying with documented policies and procedures and these consequences should be acted upon.

From:
Sent: Monday, September 27, 2010 12:07 PM
To:
Cc: Horton, Robert; Hassell, Thomasina
Subject: FW: 43(07)6(III)(b)
Attachments: 43(07)6(III)(b).doc
Signed By: jhbean@gov.bm

to Note 3 on U.17.1

Mr. , you will note the email exchange below – Neither W&E nor the Cabinet Office records with respect to this matter indicate that it returned to Cabinet after the attached conclusion dated 13th November 2007. jhb

*COAMISA
3.6.2
p. 22*

From: Hassell, Thomasina
Sent: Friday, September 24, 2010 11:58 AM
To: I.
Subject: RE: 43(07)6(III)(b)

Sorry, no luck.

From:
Sent: Thursday, September 23, 2010 5:08 PM
To: Hassell, Thomasina
Subject: FW: 43(07)6(III)(b)

Thomasina, any luck with this one? jhb

From: Horton, Robert
Sent: Monday, September 13, 2010 9:13 PM
To:
Subject: RE: 43(07)6(III)(b)

Judy:

Our search has commenced. We shall get back to you as soon as possible regarding this matter.

RKH

From:
Sent: Monday, September 13, 2010 3:00 PM
To: Horton, Robert
Subject: RE: 43(07)6(III)(b)

Apparently the contract was signed by your Ministry on 11th February and was effective 18th January 2008.

From:
Sent: Monday, September 13, 2010 2:49 PM
To: Horton, Robert
Subject: 43(07)6(III)(b)

PSA, note attached conclusion dated 13th November 2007. This matter had been carried over at the meeting, and the Auditor General's Department is requesting a copy of the conclusion when it was again presented to Cabinet for approval. It did not come back at all for the rest of 2007. Apparently the contract was signed in early December 2007. Does your records reflect that it ever came back please? jhb

*5/10 checked
Ejhb
U.17.8-6*



Government of Bermuda
Ministry of Public Works
OFFICE OF THE PERMANENT SECRETARY

C-1 sheet
Received
Monday
11 July
11:45 am
+ 4 yellow
folders

8th July, 2016

Commission of Inquiry
Attn: Chairman
Box 20
Swan Building
26 Victoria Street
Hamilton
HM 12

Ref: Commission of Inquiry

Dear Chairman,

The following response is provided in reference to your letter date 16th June 2016, in sequence and bold italics below.

1. Commercial Court/Ministry of Finance Renovations contract in 2009 (3.1.2, Report)
 - a. Was the cabinet approval for these projects dated February 10, 2009?
To date, I have been unable to find and have not received a copy of the cabinet approval.
 - i. If not, what was the date of the cabinet approval?
Unknown at this time
 - b. What recommendation did W&E make in relation to the first round of bids?
No W&E recommendation was made.
 - c. Did W&E make recommendations in relation to the second round of bids?
 - i. If so, what was the recommendation?
DeCosta Construction was recommended.

Documents specifically sought:

- (i) copy of cabinet approval;
To date, I have been unable to find and have not received a copy of the cabinet approval.
- (ii) recommendations in relation to the bids; and
Contract award recommendation enclosed.

- (iii) documentation relating to the selection of successful bidder.
Contract award recommendation enclosed.

2. Maintenance and stores building contract in 2010. (3.1.3, Report)
- Was the cabinet approval obtained?
To date, I have been unable to find and have not received a copy of the cabinet approval.
 - What recommendation did W&E make in relation to the bids?
GEM Construction was recommended.
 - Who chose the successful bidder?
Unknown at this time.
 - When was this decision made?
Unknown at this time.

Documents specifically sought:

- copy of cabinet approval;
To date, I have been unable to find and have not received a copy of the cabinet approval.
- recommendations in relation to the bids; and
Contract award recommendation enclosed.
- documentation relating to the selection of successful bidder.
Contract award recommendation enclosed.

3. Purchase of Sand and Rock in 2010 (3.1.4, Report)
- Was the cabinet approval obtained?
To date, I have been unable to find and have not received a copy of the cabinet approval.
 - If so, what was the date of the cabinet approval?
Unknown at this time
 - Was a formal contract entered into for the purchase or only a purchase order?
Having reviewed the documentation on file, I am unable to confirm.
 - Where payments made prior to the receipt of goods?
A pre-payment deposit was made.
 - Where the goods actually received.
Yes.

Documents specifically sought:

- copy of cabinet approval;
To date, I have been unable to find and have not received a copy of the cabinet approval.
- copy of contractual documentation.
To date, I have been unable to find contractual documentation.
- documentation proving sand and rock physically received by department.
Documentation enclosed.

4. Renovation of Department of HR (3.1.5, Report)
- Was the cabinet approval obtained?
To date, I have been unable to find and have not received a copy of the cabinet

- i. If so, what was the date of the cabinet approval?
Unknown at this time
- b. Was the contract put out to tender?
No.
- c. Who chose the successful bidder?
Documentation enclosed.

Documents specifically sought:

- (iv) copy of cabinet approval;
To date, I have been unable to find and have not received a copy of the cabinet approval.
 - (v) recommendations in relation to the bids; and
To date, I have been unable to find and have not received a copy of recommendations related to the bid.
 - (vi) documentation relating to the selection of successful bidder.
To date, I have been unable to find and have not received a copy of recommendations related to the bid.
5. Central Laboratory contract (3.1.6, Report)
- a. Was the cabinet approval obtained?
To date, I have been unable to find and have not received a copy of the cabinet approval.
 - i. If so, what was the date of the cabinet approval?
Unknown at this time
 - b. Was the contract put out to tender?
Yes.
 - i. If so, what is the date of tender process?
Documentation enclosed.
 - c. Who chose the successful bidder?
Documentation enclosed.

Documents specifically sought:

- i. copy of cabinet approval;
To date, I have been unable to find and have not received a copy of the cabinet approval.
- ii. recommendations in relation to the bids; and
Documentation enclosed.
- iii. documentation relating to the selection of successful bidder.
Documentation enclosed.

Please note, I have submitted a request to the Cabinet Office for the decisions and if they are located I will forward them in early course.

Sincerely,



Francis C. Richardson
Permanent Secretary
Ministry of Public Works

Enclosures (5)

SEARCH REPORT

REQUESTED BY: Ben Adamson **File No to Charge:** 353726
CONDUCTED BY: Mark Outerbridge
COMPANY: Central Construction Limited **Registration No:** 29956
DATE: July 1, 2016 **CD&P Company:** No
TIME: Registrar of Companies: 11:40 a.m.
 Supreme Court: 9:00 a.m.

SEARCH OF COMPANY'S FILE AT COMPANIES REGISTRY

Memorandum of Association (MoA):	20/11/00 - scanned copy attached		
Initial Subscribers:	Victor Llewellyn Walters – 13 Sunrise Drive, Hamilton Parish John Henry Thomas Ming – 4 Mingston Lane, Devonshire		
Consent granted:	01/02/01		
Certificate of Deposit of MoA:	Not filed		
Unrestricted Objects:	No -if No, see scanned copy MoA for Objects		
Restrictions on Powers and/or additional Powers:	Yes -if Yes, see scanned copy MoA for Powers		
Exempted Company:	NO - LOCAL		
Limited Liability Company:	Yes		
Limited Duration Company:	No		
Unlimited Liability Company:	No		
Segregated Accounts Companies Act Company:	No		
Private Act:	No		
Certificate of Incorporation:	01/02/01		
Registered Office:			
Date filed (& by whom):	01/08/11		
Address:	"Paddington" 12 Richmond Road Pembroke, HM08 Bermuda		
Alt. Address of Register of Members:	N/A		
Branch Register of Members:	N/A		
Share Capital:			
Minimum Share Capital (if applicable)	US\$ 12,000.00		
Initial Authorised Share Capital	<u>US\$ 12,000.00</u>	Resol	Filed
Increase	US\$		
Present Capital	US\$ 12,000.00		

Certificate of Registration as an Insurer:	No
<u>Other:</u>	
Notice of Warning to be Struck Off:	Yes – Notice No. 772 dated 24/09/13
DISSOLVED Notice:	Yes – Notice No.1052 dated 27/12/13
Striking Off Notice:	No
Notice of Winding-up:	No
Receiver/Liquidator Appointed:	No
Prospectus filed:	No

ANNUAL RETURNS OF SHAREHOLDING

2001

- 1) The Percentage of all issued shares in the Company beneficially owned by Bermudians is 100%
- 2) The Percentage of total voting rights in the Company which can be exercised by Bermudians is 100%
- 3) The number of Bermudian directors expressed as a percentage of the total number of directors is 100%

2002

- 1) The Percentage of all issued shares in the Company beneficially owned by Bermudians is 100%
- 2) The Percentage of total voting rights in the Company which can be exercised by Bermudians is 100%
- 3) The number of Bermudian directors expressed as a percentage of the total number of directors is 100%

2003

- 1) The Percentage of all issued shares in the Company beneficially owned by Bermudians is 100%
- 2) The Percentage of total voting rights in the Company which can be exercised by Bermudians is 100%
- 3) The number of Bermudian directors expressed as a percentage of the total number of directors is 100%

2004

- 1) The Percentage of all issued shares in the Company beneficially owned by Bermudians is 100%
- 2) The Percentage of total voting rights in the Company which can be exercised by Bermudians is 100%
- 3) The number of Bermudian directors expressed as a percentage of the total number of directors is 100%

2006

- 1) The Percentage of all issued shares in the Company beneficially owned by Bermudians is 100%
- 2) The Percentage of total voting rights in the Company which can be exercised by Bermudians is 100%
- 3) The number of Bermudian directors expressed as a percentage of the total number of directors is 100%

CHARGES SCHEDULE