

**EASTERN CARIBBEAN SUPREME COURT
ANGUILLA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

**CLAIM NO. AXAHCV2025/0028
CLAIM NO. AXAHCV2025/0029**

BETWEEN:

**WEBSTER MANAGEMENT GROUP LTD
RB DEVELOPMENT LTD**

Claimants

and

THE PROCUREMENT BOARD

Defendant

Before: His Lordship, The Honourable Justice Ermin Moise

Appearances:

Mr. Thomas Astaphan KC with Mr. Dwight Horsford and Mrs. Tona Simpson-Whyte of counsel for the Claimants.

Mr. Theon Tross for the Defendant.

2025: July 28;
October 3.

JUDGMENT

- [1] **MOISE, J.:** These are two separate claims filed against the Procurement Board for judicial review. The claims involve the decision of the Board denying the claimants' bids for the award of contracts for solid waste collection in various zones on the island of Anguilla. The claims are consolidated for the sole purpose of the court's ruling on an interlocutory issue regarding disclosure. The defendant claims the right to withhold inspection of the report from the Evaluation Committee on the grounds of public interest immunity. The claimants object to this and request full disclosure and inspection of the report.

Brief Overview of the claims

- [2] On 26th June 2024, the Ministry of Finance issued a notice to tender in "*Procurement # 2024/MOFH/DHP/033 Management of waste collection and Recycling services*". By way of this process, the Government of Anguilla was seeking to issue 3-year contracts for the collection of solid waste to successful bidders in 6 separate zones on the island. Webster Management Group Ltd (Webster Management) submitted bids for zones 5 and 6 and RB Development Ltd (RB Development) submitted bids for zones 1, 2 and 3.
- [3] On 30th August 2024, the bids were opened and, due to an irregularity in the opening of bids for zone 1, the bids were suspended for that zone. The bids were opened in the remaining zones. On 28th January 2025, Webster Management was informed that its bid for zone 6 was unsuccessful. It is claimed that at the opening of the bids for zone 6 the only other competitive bidder was Krystal Environmental Ltd. It is contended that this company was determined not to be qualified for failure to meet certain pre-qualification requirements. Webster Management argues that it was the only qualified bidder with a valid bid for a contract in zone 6.
- [4] It is claimed that Webster Management was never notified of the outcome of the bids for zone 5 but became aware that Javier Rental Services was awarded that contract. It is pleaded that Javier Rental Services has only one operational rear end loader truck on island to perform the required services in that zone. Webster Management seeks to challenge this process and seeks various declarations and orders of certiorari quashing the decision of the Procurement Board.
- [5] In response to this claim, an affidavit was filed by Ms. Sierra Richardson, who currently serves as the acting Chief Procurement Officer. There was some debate at the first hearing as to whether Ms. Richardson is best placed to represent the Procurement Board. Be that as it may, Ms. Richardson outlined the procurement process in this particular case. She admits that Webster Management met the criteria in both zones. She states that she is aware that the bids submitted by Webster Management for zones 5 and 6 were deemed qualifying bids. Similarly, she claims that the bid submitted by JLB Services in respect of zone 5 was deemed to be a qualifying bid. Ms. Richardson concedes that the bid tendered by Krystal Enviro Services in respect of zone 6 was not deemed a qualifying bid as they failed to submit a business licence, as was required.

- [6] The bids were then reviewed by the Evaluation Committee and although Webster Management passed the technical phase of the evaluation with a grade of 92% over JBL's 77%, the Evaluation Committee determined that Webster Management's bid for both zone 5 and 6 were outside of the allowable margin of 15% of the pre-tender estimate range. As such, the company did not pass the financial phase of the evaluation. The Evaluation Committee recommended that the bid be awarded to JBL in zone 5. However, as regards zone 6, notwithstanding Webster Management's score on the financial phase of the evaluation, it was nonetheless the recommendation of the Evaluation Committee that the contract be awarded to Webster Management. However, the Procurement Board did not follow that recommendation. Ms. Richardson noted, in her affidavit, that as the variance between the submitted bid price and the pre-tender estimate far exceeded the allowable margin set by the Invitation to Bid, the procurement for zone 6 failed and is set to be retendered in the coming days or week. Since then, month-to-month contracts have been awarded in zone 6 until the bids can be re-tendered.
- [7] Insofar as it relates to the claim by RB Development, this claimant entered bids for zones 1, 2, and 3. All of RB Development's bids were unsuccessful. It is submitted that RB Development tendered a bid for a temporary month-to-month contract in zone 1 in February of 2025. This too was unsuccessful. RB Development claims that the defendant has awarded the contract for Zone 2 to Elmoalis Ltd. It is pleaded that Elmoalis only has only one operational rear end loader truck. It is further pleaded that the Defendant has awarded the contract for zone 3 to JLB Rentals and that JLB, only has one truck on island. RB Development asserts that it possesses the necessary equipment to perform the task
- [8] In response to this claim, Ms. Richardson also filed an affidavit. In essence she concedes that RB Development was qualified to make the bid. However, she stated that this company did not pass the technical evaluation, having scored 74% in circumstances where the pass grade was 75%. On that basis RB Development was not awarded the contract.
- [9] In both claims, the claimants have asserted that the defendant has acted unfairly and unreasonably. It is also submitted that the defendant has acted in breach of various sections of the Public Procurement and Contract Administration Act and, given the clear stipulations in the bid documents

and the technical equipment requirements set out in the criteria, it is apparent in all the circumstances that either the Evaluation Committee (a subcommittee of the defendant) or the defendant itself predetermined the matter of the awards. It is also pleaded, among other things, that defendant could reasonably be suspected by rightminded or fair-minded observers of being biased, and, was indeed biased, for the decision is outrageous in its defiance of logic that no sensible decision-maker seized of the facts and knowledgeable of the essential criteria could have made that decision. The decision is palpably unfair and irrational as to evince apparent bias.

- [10] Having highlighted, in summary, the substance of the pleadings as it now stands, I turn to consider the issues relating to disclosure.

The Evaluation Committee's Report

- [11] In accordance with section 41 of the **Public Procurement and Contract Administration Act**¹, prior to the date for the submission of bids, it is the duty of the Procurement Committee to constitute an Evaluation Committee consisting of at least 3 members. As outlined in section 42 of the Act “[t]he **objective of an Evaluation Committee is to evaluate bids or proposals for large procurements, except emergency procurements, in accordance with objective evaluation criteria set out in the invitation for bids or requests for proposals to determine if the works, goods or services meet the description of what is being procured.**” In the case of *Elmoalis Ltd v The Attorney General of Anguilla*² Pereira CJ outlined the remit of the Evaluation Committee as follows:

“The statutory remit of the Committee is to evaluate bids in accordance with predetermined criteria set out in the request for proposals, and to report its findings to the Procurement Board, pursuant to section 41 the Act, following which the Procurement Board would then accept, reject or otherwise treat with the report prior to making a decision on who is the successful bidder.”

- [12] Essentially, the Evaluation Committee is not a decision maker. The role is to evaluate the bids and to submit its findings to the Procurement Board. In both claims for judicial review, the claimants have

¹ R.S.A. c. P161

² AXAHC VAP 2019/0002

requested specific disclosure as interim relief. They both seek parallel orders for specific disclosure directed to the defendant, to require the defendant to disclose and furnish the court with the Evaluation Committee's findings and report in respect of the assessment carried out on the competitive bids in the relevant zones which were submitted to the defendant in accordance with the provisions of the Act.

[13] In response to this, the defendant has asserted a right to withhold disclosure of the report on the grounds of public interest immunity. In support of this assertion, the defendant filed an affidavit of Mrs. Ludiane Leveret-Richardson. Mrs. Leveret-Richardson is now seconded to an acting post within the Ministry of Finance but is substantively the Chief Procurement Officer. At paragraph 5 of her affidavit, she states that “[t]he central reasons as to why Government asserts that these documents ought to be withheld generally and as a matter of Public Interest Immunity are as follows:-

- *Firstly, the Procurement Board's decision-making process in determining who ought to be awarded a contract is statutorily distinct from the role of the Evaluation Committee in evaluating bids against the criteria contained in the Invitation to Bid;*
- *Secondly, the provision of these documents is likely to impede the requirement of fairness in the impending procurement exercise for Zones 1 and 6; and*
- *, Thirdly, there is an established practice within the Government of Anguilla that the identities of persons appointed to evaluation committees remain confidential both during and after the procurement process.”*

[14] Mrs. Leveret-Richardson goes on further to explain the government's position on the matter in paragraph 21 of her affidavit where she states that “... *that there exists within Government a policy to protect the integrity, independence and fairness of public procurement, and that such is particularly vital given Anguilla's unique small island context, where personal, professional, and community ties are closely interwoven.*” She goes on to state that:

“[The] public policy reasons include the following:

- **Preventing Undue Influence:** Confidentiality protects committee members from lobbying, inducements, intimidation, or other attempts to improperly influence the outcome of the evaluation. Given the size of Anguilla, it is believed that the risk of bidders or their affiliates attempting to make contact with evaluators, either directly or through social connections, exists.
- **Ensuring Candid Deliberations:** Confidentiality allows committee members to assess bids critically, deliberate honestly, and speak freely about the strengths and weaknesses of each submission without fear that their individual views will be singled out, misrepresented, or used against them.
- **Protection Against Retaliation:** Given the closeness of the populous confidentiality is used to ensure that unsuccessful bidders are unaware of the evaluators such that evaluators are not exposed to backlash, threats, or reputational harm long after a contract is awarded. I am aware of several evaluators expressing genuine concern about serving for fear of retaliation.
- **Maintaining Willingness to Serve:** Protecting anonymity is essential to maintain a pool of qualified, impartial individuals who are willing to serve on evaluation committees. The Procurement Unit faces challenges attracting suitable evaluators. Without this protection, the Government's ability to run credible and independent procurement processes would be severely undermined.
- **Reinforcing Collective Responsibility:** Procurement decisions are made by the committee as a collective body, not by any one person. Non-disclosure ensures accountability rests with the institution and the established process, rather than exposing individual officers to blame or personal criticism.
- **Alignment with Good Practice:** This approach aligns with widely recognised good practice for procurement oversight where protecting the independence of evaluators is critical to safeguarding public trust.”

[15] In light of this Mrs. Leveret-Richardson states that “[t]he identities of evaluators are protected, but full records of committee membership, signed declarations, and scoring details are maintained

internally for audit if necessary. This ensures that the process remains fully accountable and defensible, while protecting the individuals involved.”

The Law and Submissions

- [16] Counsel for the defendant submits firstly that, as a general rule, the court will not order the disclosure or inspection of information or a document, although relevant and otherwise admissible, if it would be injurious to the public interest to do so. For that proposition counsel refers to the case of **Conway v. Rimmer**³. Counsel also referred to the case of **Arawak Trust Co. Ltd v. Michael Holden (The Inspector of Banks and Trust Companies)**⁴ where Floissac CJ noted the following:

“That public interest is a public interest of the nation or the public service that departments and organs of central and municipal governments, the police force and statutory boards, authorities and entities should be in positions adequately, efficiently and effectively to perform their statutory and public duties, functions and responsibilities. This means that information essential to such performance should be transmissible without fear or danger of harassment, intimidation or involvement in litigation.”

- [17] Counsel for the defendant accepts that a mere claim to privilege by an agent of the government is not conclusive of the matter. In fact, quite apart from the public interest outlined above, there is an equal and, at times more compelling, public interest which “***demands disclosure on the grounds that non-disclosure will frustrate or do harm to the administration of justice***”. In order to give effect to this specific public interest, the **Civil Procedure Rules** states in rule 28.4 that “[i]f a party is required by any direction of the court to give standard disclosure, that party must undertake a reasonable and proportionate search for and disclose all documents which are directly relevant to the matters in question in the proceedings. In accordance with Rule 28.1(4) a document is considered directly relevant to the matters in question in the proceedings if (a) the party with control of the document intends to rely on it; (b) it tends to adversely affect that

³ [1968] AC 910 at 940

⁴ (1994) 47 WIR 151

party's case; or (c) it tends to support another party's case; but the rule of law known as "the rule in Peruvian Guano" does not apply.

- [18] I observe here that by going as far as to state that the *Peruvian Guano Rule* does not apply, the CPR makes it clear that disclosure is not designed to allow a party to embark on a fishing expedition. Whilst it is important to give effect to the competing public interests which may specifically emerge in judicial review cases, one must not lose sight of the overriding objective in ensuring that time and resources are not spent on matters which are of no relevance to the substance of the dispute between the parties.
- [19] It is also important to highlight the fact that there is a distinction to be drawn between disclosure and inspection of documents. In accordance with rule 28.1(3) of the CPR **"[a] party *'discloses'* a document by revealing that the document exists or has existed."** Inspection of a document is a different creature. This is designed to allow access to the content of the document once it is relevant to the proceedings. In the circumstances of this case, the Evaluation Committee's report has been disclosed in that there is no doubt about its existence. What the defendants wish to do, however, is to withhold inspection of the documents on the grounds of public interest immunity.
- [20] In considering this issue I refer to the case of *Sankey v. Whitlam*⁵, where it was stated that **"public interest immunity may arise in relation to *'the production of a particular document because it would be against the public interest to disclose its contents, or because it belongs to a class of documents which in the public interest ought not to be produced, whether or not it would be harmful to disclose the content of the particular document.'*"** In the circumstances of the present case, the defendant is apparently seeking to withhold the production of the evaluation report on both grounds as outlined in *Sankey v. Whitlam*. The argument is that the procurement process of all of the zones for garbage collection has not been complete, and the production of the information contained in the evaluation report would prejudice this ongoing process. That relates specifically to the content of the document in question. However, in general, there appears to be a policy taken by the government that evaluation reports submitted to the Procurement Board are to be withheld on public interest grounds as outlined in paragraph 13 of this judgment.

⁵ (1978) 142 CLR 1 (Aus HC)

- [21] Either way it must be noted that “[t]he success of the claim to public interest immunity depends on whether the harm which will be done by disclosure outweighs or is greater than the harm which will be done by non-disclosure.”⁶ Counsel for the defendant refers to the case of **Asot Michael v. The Attorney General et al**⁷ in support of the submission that it is the duty of the claimants, who seek disclosure, to prove that the claim for immunity should be dismissed. Counsel also refers to the case of **Elmoalis Ltd v The Attorney General of Anguilla**⁸, where Perriera CJ drew a distinction between the roles of the Procurement Board as decision maker and that of the Evaluation Committee, who operates in an evaluative and advisory capacity. It is clear that the Procurement Board is not bound by the findings of and advice provided by the Evaluation Committee.
- [22] Counsel for the claimants argues that the defendant has misapprehended the learning in the cases of **Asot Michael v Attorney General et al** and **Elmoalis Ltd v The Attorney General of Anguilla**. Counsel argues that the decisions in these cases must be read in light of the more recent decision of the Privy Council in the case of **National Bank of Anguilla (PBT) & Anor v Chief Minister of Anguilla & Ors**⁹ where the following was noted in paragraph 89:

“Judicial review proceedings are not conducted in the same way as ordinary disputes between private parties concerned to protect their competing interests. The supervisory jurisdiction is designed to protect the public interest in the lawful use of the powers conferred under public law, as well as the private interests of those who may be affected by the abuse of those powers. It is intended to secure the constitutional value of the rule of law, to which public authorities, and the other parties to judicial review proceedings, are or should be committed. In consequence, the parties to such proceedings are expected to ensure that the court is in possession of all the information which it requires to decide the case correctly. This places a particular obligation upon parties in situations where it is not possible for the court to assess the merits of an issue that has been raised unless the parties in question

⁶ See judgment of Floissac CJ in *Arawak Trust Company Limited v. Michael Holden (The Inspector of Banks and Trust Companies)*

⁷ HCVAP 2008/0019 (Antigua and Barbuda)

⁸ AXAHCVAP 2019/0002

⁹ [2025] UKPC14

(usually the public authority against whom the claim is brought, but potentially another party to the proceedings) furnish the court with information which they alone are in a position to provide.”

- [23] The claimants have argued that contrary to the claim for public interest immunity, this is in fact a question of whether or not the defendants are circumventing the duty of candour. In the case of ***National Bank of Anguilla (PBT) & Anor v Chief Minister of Anguilla & Ors*** the Privy Council sought to draw a distinction between the information which is required at the leave stage in judicial review proceedings as opposed to what I would consider to be full and frank disclosure at the case management and/or trial stage. At paragraph 92 The Privy Council noted that:

“... the leave stage is not intended to be a full consideration of the application for judicial review: its purpose, as explained earlier, is to filter out cases which are unarguable, or which on other grounds should not be permitted to proceed. Accordingly, depending on the circumstances, what the duty of candour entails at that stage may in consequence be less expansive than it would be at the stage of a full hearing after permission has been given. What the court requires at the initial stage is sufficient information to be able to decide the leave application on an accurate basis. In broad terms, the claimant and the court are likely at that stage to require such information as is necessary to understand why the decision under challenge was made, and to identify the issues which may arise in relation to that decision. In the present case, where a number of public bodies and office-holders were involved in the decision-making process, and the roles which each of them played in that process are unclear, the claimant and the court also require information enabling them to identify the relevant decision-makers at each stage of the process.

- [24] As it now stands in the Eastern Caribbean, there is no longer a need for leave to apply for judicial review. However, it is important to retain what I would consider to be a pre-action duty of candour in order to assist a claimant in determining, in broad terms, the issues which were outlined by the Privy Council in the ***National Bank of Anguilla*** case. However, this must be placed in its proper context. A public authority at this stage is duty bound to assist both the claimant and the court, where the claim has been filed, ***to understand why the decision under challenge was made, and to identify***

the issues which may arise in relation to that decision. In light of this, it is important to understand the context in which this statement was made. Here the Privy pointed out that in that case, ***“where a number of public bodies and office-holders were involved in the decision-making process, and the roles which each of them played in that process are unclear, the claimant and the court also require information enabling them to identify the relevant decision-makers at each stage of the process.”***

- [25] It is my view that in the circumstances of the cases before me there was, and remains, no need for the issues to be complicated. Unlike in the case of ***National Bank of Anguilla (PBT) & Anor v Chief Minister of Anguilla & Ors***, there is no doubt as to who the decision maker was. It is clear that the decision maker is the Procurement Board. There is also no doubt as to what the decisions were. Clearly, the Board made decisions to deny the claimants' bids and, in the cases of some of these zones, to grant the contracts to other bidders. Thirdly, there is some dispute regarding the pre-action engagement between the parties. The claimants have argued that they were not provided with reasons for the decisions and no debriefing was done with them. The defendant, on the other hand, argued that debriefings were offered, albeit sometime later, and that the claimants declined the debriefing due to the fact that claims had already been filed.
- [26] However, affidavits have been filed in this case which highlight two important facts. One is that the defendant has placed clear and unambiguous reasons on record for the decisions which were made. As to whether these stand the test of scrutiny at a full judicial review hearing is another issue altogether. But reasons have been provided. The other issue is that it seems to me that there is no dispute that the decisions of the Procurement Board were clearly influenced by the content of the Evaluation Committee's Reports.
- [27] It seems to me therefore that the issue before the court is really one in which two questions must be determined. One is whether the Evaluation Report is a document which is relevant to the issues in this case. The second is whether there are grounds for withholding inspection of this document on the basis of public interest immunity. I am, therefore, satisfied that there is no lack of candour on the part of the defendant at this stage in the proceedings.

The Court's Conclusions

- [28] It is my considered view that the Evaluation Report is a document which is relevant to the proceedings. The Procurement Board has clearly based its decision on the findings contained in the Evaluation Committee's report. The reports allegedly indicate that the committee evaluated the bids and determined that, in the case of Webster Management, the company did not meet the financial criteria for the bids. In one of those bids, the contract was offered to another bidder. In the other bid, it is pleaded that although the Evaluation Committee recommended that the contract be awarded to Webster Management, the Procurement Board relied on the Evaluation Committee's finding that the company had failed to meet the financial criteria in denying the bid. In the case of RB Developers, the findings of the report clearly formed the basis of the decision which the claimants have argued have breached the legislative powers as well as the principles of unreasonableness and irrationality. The document is therefore relevant.
- [29] It is my view that in considering the two competing public interests here, the court is left in no doubt that the production and inspection of the evaluation report outweigh the public interest immunity claimed by the government in this case. Without full disclosure of the report the claimants, as well as the court, are not fully capable of assessing the representations made by Ms. Richardson insofar as it relates to the reasons for the decision to reject the claimants' bids.
- [30] I have considered the issue from both perspectives outlined in **Sankey v. Whitlam**. I have carefully considered the fact that the bids are not yet complete for zones 1 and 6. However, the defendant has not indicated precisely how the disclosure of the evaluation report will prejudice other bidders if the report is disclosed. In addition to that, the procurement process for these zones was suspended for over a year now and there is no clear reason provided as to why this process has not been complete. Revealing the process of determining the technical and financial basis for evaluating the bids does not appear to me to be a matter of prejudice which outweighs the claimants' right to appreciate the decision-making process in rejecting the bids.
- [31] The second issue is that of the decision of the government that evaluation committee reports and, in particular, the names of persons serving on the Evaluation Committee should remain anonymous. I must state that, for my part, I express some concern here. Firstly, when one examines the facts as outlined in the case of **Elmoalis Ltd v. The Attorney General of Anguilla**, it is apparent that the

evaluation committee's report was disclosed in that case. Counsel for the defendant points out in submissions (although this perhaps ought properly to have been placed in an affidavit) that it was the practice in the past for the report to be disclosed. Whilst Mrs. Leveret-Richardson gave a number of reasons for the broad policy of confidentiality surrounding the report, she has not given any evidence to show that the concerns of the government have ever materialized in practice at a time when the reports were disclosed during court proceedings.

[32] In my view, this is an issue of transparency and accountability. The court is not here pre-determining the issues but merely ensuring that the full plenitude of relevant information needed to interrogate the claimant's case is placed before the it. The court appreciates the distinction drawn in **Elmoalis Ltd v. The Attorney General of Anguilla** that the Evaluation Committee is not the decision maker, but its report is a critical part of the process as required by statute, and its non-disclosure has an overall impact on the general fairness of the judicial review process. It would seem to me therefore that an internal concern within the government is not enough to simply withhold a crucial document in judicial review proceedings without more.

[33] On the issue of non-disclosure of the members of the Evaluation Committee, I again express some concern here. Parliament has passed legislation establishing the role of this committee. I am sure there are regulatory powers which can be given for the passing of secondary legislation to address issues relating to the work of the committee. I express concern that an internal decision, the basis of which appears to be speculative, to create secrecy around those who serve on a committee which is critical to the procurement process, may undermine the spirit of openness and transparency which the very **Public Procurement and Contract Administration Act**¹⁰ is trying to create here. I am not satisfied that this is the correct approach and that inspection of the report should be withheld on those grounds.

[34] I have also considered the issue of the ability of the members of the committee to have full and frank discussions in their own deliberations in the carrying out of their functions. One issue which has arisen more recently is the redaction of certain parts of the report, namely, the names of the members of the committee and their individual scores given to each bid. I agree that there is no general right to the internal minutes and deliberations of the Evaluation Committee. Committees of this nature

¹⁰ R.S.A. c.P161

operate on collective responsibility, and each member is entitled to present their own views leading up to the findings and recommendation without fear of reprisal or being singled out. What is essential is that a report is compiled outlining the issues considered by the committee, its findings and its recommendation. The structure of this report is a matter for the committee itself to decide. However, having complied the report, in the spirit of openness and transparency, the report should be disclosed in the judicial review process.

- [35] In the circumstances, it is ordered that the Evaluation Committee's reports be produced for inspection in these judicial review proceedings. The matters will hereafter take the usual course of case management.

Ermin Moise
High Court Judge



BY THE COURT

REGISTRAR