

**IN THE MATTER OF THE COMMISSION ON HUMAN RIGHTS
AND ADMINISTRATIVE JUSTICE ACT 1993, (ACT 456)**

AND

**IN THE MATTER OF INVESTIGATIONS INTO ALLEGATIONS OF
CONTRAVENTION OR NON-COMPLIANCE WITH ARTICLE 284 OF
THE 1992 CONSTITUTION BY MR. ADJENIM BOATENG ADJEI**

CASE No. 241/2019

**OFFICE OF THE PRESIDENT
JUBILEE HOUSE, ACCRA**

COMPLAINANT

AND

**MR. ADJENIM BOATENG ADJEI
PUBLIC PROCUREMENT AUTHORITY, ACCRA**

RESPONDENT

DECISION

1.0. INTRODUCTION

Article 284 of the 1992 Constitution provides that:

A public officer shall not put himself in a position where his personal interest conflicts or is likely to conflict with the performance of the functions of his office.

Article 287 also provides:

An allegation that a public officer has contravened or has not complied with a provision of this Chapter [Chapter 24] shall be made to the Commissioner for Human Rights and Administrative Justice and, in the case of the Commissioner of Human Rights and Administrative Justice, to the Chief Justice who shall, unless the

person concerned makes a written admission of the contravention or non-compliance, cause the matter to be investigated.

(2) The Commissioner for Human Rights and Administrative Justice or the Chief Justice as the case may be, may take such action as he considers appropriate in respect of the results of the investigation or the admission.

On 22nd August 2019, the President of the Republic, in a letter reference no. OPS. 127/Vol. 3/19/1141, signed by Nana Bediatuo Asante, Secretary to the President, submitted a complaint of conflict of interest against Mr. Adjenim Boateng Adjei, the Chief Executive Officer (CEO) of the Public Procurement Authority, to the Commission on Human Rights and Administrative Justice (the Commission) for investigation.

The submission of the complaint to the Commission by the President followed the airing of a documentary produced by Manasseh Azure Awuni, which not only relates to conflict of interest but also corruption and abuse of power.

1.1 BACKGROUND

On Wednesday, 21st August 2019, Joy TV News Channel of Multimedia Group, aired a documentary produced by Manasseh titled "Contracts for Sale" as the outcome of his investigations. The documentary, among others contained allegations of conflict of interest, abuse of office and corruption by Mr. Adjenim Boateng Adjei, the Chief Executive Officer (CEO) of the Public Procurement Authority (PPA), the Respondent herein.

Following the broadcast, the President suspended the Respondent and subsequently referred the allegations contained in the documentary to the Commission on Human Rights and Administrative Justice (CHRAJ) and the Office of the Special Prosecutor (OSP) for investigation and appropriate action.

Though the Commission has the mandate under the Constitution of the Republic of Ghana (the Constitution) to investigate, among others, “*All instances of alleged or suspected corruption and the misappropriation of public monies by officials...*”, the Commission restricted its investigation to the allegations of conflict of interest since the President of the Republic had referred the allegations of corruption emanating from the same documentary to the Office of the Special Prosecutor.

2.0. THE COMPLAINT

The complaint from the Office of the President, signed by Nana Bediatuo Asante, Secretary to the President, stated as follows:

Dear Commissioner,

**REFERRAL OF ALLEGATIONS OF CONFLICT OF INTEREST
AGAINST THE CHIEF EXECUTIVE OFFICER OF THE PUBLIC
PROCUREMENT AUTHORITY.**

I am directed by the President of the Republic to refer to the Commission on Human Rights and Administrative Justice (CHRAJ) allegations of conflict of interest made against Mr. Adjenim Boateng Adjei, Chief Executive Officer of the Public Procurement Authority, in a documentary titled, “Contracts for Sale”, A Manasseh Azure Awuni Investigation, aired on Joy News TV on 21st August 2019. Mr. Adjenim Boateng Adjei has, meanwhile, been suspended from office pending investigation.

The President would be grateful for expeditious action in this matter.

A copy of the said documentary is enclosed herewith.

Please accept the President’s best wishes.

The particulars of allegations made against the Respondent were contained in the documentary attached to the President's referral letter, and they relate to conflict of interest, corruption and abuse of power, among others.

The allegations include the following:

- i. Talent Discovery Ltd (TDL), a company established by the Respondent in June 2017, a few months after he was appointed CEO of PPA, was awarded contracts from Ministries, Department and Agencies (MDAs) through single source/restricted tendering;
- ii. The respondent is a majority shareholder (60%) and Director of TDL, with his brother-in-law, Francis Arhin owning 40% shares;
- iii. TDL "sells" the contracts awarded to it by the MDAs and other public procurement entities;
- iv. Suppliers and contractors interested in buying those contracts from TDL had to register with TDL by paying a non-refundable fee of GHC 5,000;
- v. TDL uses links at the top to win contracts;
- vi. The Respondent uses information he acquires as the CEO of the PPA to the advantage of TDL;
- vii. The Respondent's role as Chief Executive Officer of the PPA, and shareholder and Director of TDL and other companies placed the Respondent in conflict of interest.

3.0. RESPONDENT'S POSITION

In accordance with article 287(1) of the Constitution, the Commission requested the Respondent, in a letter dated 27th August 2019 to confirm or deny the allegations, and if he denied, to state so expressly.

In a letter dated 5th September 2019 entitled, "RE: ALLEGATION OF CONTRAVENTION OR NONCOMPLIANCE WITH ARTICLE 284 OF THE 1992 CONSTITUTION BY MR. ADJENIM BOATENG ADJIE – REQUEST FOR COMMENTS; ANSWER OF RESPONDENT, ADJENIM BOATENG ADJIE" (hereafter referred to as ANSWER OF RESPONDENT),

signed by his Solicitors, Yaw D. Oppong Esq. of Ampofo, Oppong and Associates, the Respondent elected to submit his written comments, together with preliminary observations/comments.

3.1. Comments of Respondent on the Allegations

The Respondent presented his written Comments under various sub-headings as follows:

- Allegation that Messrs Talent Discovery Limited is engaged in the Sale of Contracts obtained after winning a process of Competitive Tender

The Respondent asserted that the allegation does not impinge on conflict of interest. That a claim of the sale of contracts by TDL after that company had participated in a tender not organized by the Public Procurement Authority (PPA) and it had been declared the successful tenderer not by the PPA but by other entities, has no bearing on a conflict of interest with the duties of our client as a public officer. Further, that Article 284 requires that every allegation of conflict of interest must be measured in terms of the performance of the duty of person as a public officer.

Respondent said that he was unaware of such corporate practices by TDL and that he was neither part of the management of TDL nor one of those alleged in the documentary to have engaged in the sale of government contracts on behalf of TDL. He observed that the documentary identifies a particular officer of TDL, Thomas Amoah, who is alleged to have engaged in the sale of contracts. That he is not Thomas Amoah but he was aware that the specific officer of TDL in question, Mr. Thomas Amoah, is being duly investigated by the Office of Special Prosecutor in respect of his alleged conduct in the sale of a government contract. The allegation against him is thus frivolous and utterly baseless.

The Respondent reiterated that at all material times, he is only a shareholder in TDL, and not part of either the management or Board of Directors of that company. That by a letter dated 5th September 2017, he

resigned from his role as a director of TDL and has at no material time, participated in a Board meeting of TDL. He attached a copy of his resignation letter addressed to the Chief Executive, TDL. It reads as follows:

Dear Sir,

*RESIGNATION AS DIRECTOR AND CHAIRMAN OF TALENT
DISCOVERY LIMITED*

Following my discussion with your good self on the above subject matter, I wish to officially bring to your attention my decision to resign as a director and therefore the Chairman of the board of Talent Discovery Limited effective 5th September, 2017.

The decision has become necessary due to my increasingly busy schedules which will likely affect my availability to attend to the needs of TDL as a director and chairman.

I shall trust upon you to effect the necessary changes by reason of my resignation. Thank you..."

The Respondent disclosed that since the airing of the documentary in which the scurrilous allegations were made against him, he had discovered that TDL had, actually, fully executed by itself four (4) of the six (6) contracts that it won through restricted tendering, and had accordingly been issued with Certificates of Completion in its favour, whilst the other 2 contracts were being executed by TDL. The Respondent annexed three documents being "... copies of 3 Certificates of Completion issued in favour of TDL".

The certificates relate to the following:

- Construction of Small Dams/Dugouts under One Village One Dam, Binduri Constituency
- Renovation of Bungalow No. C 41 Roman Ridge
- Renovation of Bungalow No 3A Church Road, Airport Residential Area

He added that his enquiries further showed that a copy of the fourth certificate was yet to be obtained from the Ministry of Education.

He denied the allegation in the documentary, which suggested that TDL Ltd is affiliated or associated with B-Molie Enterprise.

- Allegation that the Function of the Due Diligence Unit of the PPA Places Respondent in a Conflict of Interest Situation

The Respondent denied the allegation in the documentary that the position of the Chief Executive Officer (CEO) of the PPA, as “head of the Due Diligence Unit (DDU)” of the PPA in conducting due diligence on applications for restricted (tendering or single-sourcing), before forwarding same to the Board for consideration, places the Respondent in a conflict of interest situation. He described that allegation as “...conjectural, spurious and founded on a lack of knowledge or understanding of the role of the DDU and the duty of the Board in the consideration of applications for restricted tendering method of procurement by procurement entities”.

He explained that the conduct of due diligence by the DDU is not one of the steps required by Act 663 in the consideration of application for restricted tendering and single sourcing. The consideration of applications for restricted tendering is the sole prerogative of the Board of the Authority, exercised in accordance with sections 38 and 39 of the Public Procurement Act, 2003 (Act 663) as amended.

He disclosed that prior to the appointment of the Respondent as the CEO of the PPA in March 2017, there was no Due Diligence Unit in the PPA. Applications for single-sourcing and restricted tendering were merely considered in the compass of the provisions in sections 38, 39, 40 and 41 of Act 663. Same were granted, especially in the case of restricted tendering, without the conduct of value for money analysis by PPA.

When Respondent was appointed CEO of the PPA in March, 2017, and purely as a mechanism to boost the efficiency of applications for single-

sourcing and restricted tendering in terms of assuring the reasonableness of prices quoted by procurement entities, he established the DDU (which was originally described as the Due Diligence Committee). He submitted an internal memo dated 16th March 2017, which established the DDU with its membership and terms of reference.

The Respondent stated that from the terms of Reference of the Due Diligence Committee contained in the memo, the mandate of the Committee was essentially to ensure the reasonableness of prices quoted by procurement entities in their applications for adoption of restricted tendering and single sourcing methods of procurement. This would effectively achieve value for money.

He mentioned that the value for money and price reasonableness checks undertaken by the DDU that the Respondent established had led to the State making enormous financial savings from single sourcing and restricted tendering methods of procurement. That over the last 31 months that the DDU was established it had made a saving of **GH¢2,754,925,906.49**, representing money freed for other national development projects.

He gave the breakdown as follows:

2017	-	GH¢797,416,664.82
2018	-	GH¢1,000,164,269.00
2019 (up to July)	-	GH¢793,239,666.82
Total (for 31 months)	-	GH¢2,754,925,906.49

The Respondent submitted that the functions of the DDU do not in any way place the Respondent in a conflict of interest situation. He emphasised that he is not a member of the DDU. He only receives reports of the DDU in his capacity as CEO of the PPA and transmits the reports of the DDU to the Board for its consideration and approval.

He mentioned that even if the Respondent plays a role in the supervision of the work of the DDU, which is denied, that is insufficient to ground an allegation of conflict of interest against him, having regard to the essential facts of the instant case.

He continued as follows:

- a) The price reasonableness or value for money analysis conducted by the DDU, is of prices quoted by procurement entities and not prospective suppliers.
- b) The DDU has no legal mandate to determine the technical, professional or environmental qualifications or otherwise of tenderers in public procurement. Any contention to the contrary is borne out of ignorance of the provisions of Act 663.
- c) Section 22 of Act 663 requires tenderers in public procurement to demonstrate their qualifications. At the point of consideration of an application for restricted tendering by the PPA, there is no tender opened and therefore there would be no tenderer. The duty of tenderers to demonstrate their qualifications obviously does not arise. The PPA will have no capacity in law to determine the qualification or otherwise of tenderers.
- d) Checks done by the DDU, including examination of statutory documents of companies, have a relevance for value for money in relation to the application for restricted tendering.
- e) Further, at the point of consideration of an application for restricted tendering by the PPA, there is no bid or price tendered by prospective tenderers. In fact, a company listed in an application for restricted tendering may not even participate in the tender when same is opened by the entity upon the grant of approval for that method by the Board.
- f) The Board of the PPA, solely vested with the power to consider and grant applications for restricted tendering, in accordance with section 38, evaluates an application and determines whether any

of the grounds set out in that provision has been satisfied in an application.

- g) The grant of an application for restricted tendering does not amount to the award of a contract. Neither does the process for the consideration by the PPA of an application for method of restricted tendering involve the selection of a particular supplier, contractor or consultant mentioned in the application. Same merely constitutes approval for the entity to commence processes for a tender among the listed companies, in accordance with other provisions of the law.
- h) Section 39(3) of Act 663 requires that procurement entities after the grant of approval for restricted tendering, apply all the provisions in Part Five of Act 663 (on competitive tendering), with the exception of section 47, in the conduct of restricted tendering.
- i) Thus, procurement entities are fully responsible for the conduct of a process of tender, evaluation of bids and selection of the winner in accordance with Part Five of Act 663. Neither our client nor the PPA is part of that process.
- j) A successful tenderer is selected by the procurement entity in accordance with section 65 of Act 663, not by either our client or the PPA.
- k) The current Board of the PPA, with the view to strengthening the procedures relating to the grant of restricted tendering applications, has been imposing “further requirements” (not mandated by section 38 of Act 663) on entities, which apply for restricted tendering. These relate to requiring such entities to submit to the PPA a copy of the Evaluation Report, copy of Tender Document and Tenders submitted by tenderers to the PPA, prior to obtaining concurrent approval from the relevant Review Committees.
- l) The above “further requirements” pertained in all the applications by various entities in which TDL was one of the listed companies.

m) It is relevant to note that, pursuant to the “further requirements” imposed by the PPA Board, in respect of a particular application for restricted tendering, the Bank of Ghana (which was the applicant) by a letter dated 8th May, 2019, submitted copies of Evaluation report, Tender Document and Tenders submitted by tenderers to the PPA.

Upon a careful consideration of the documents, and following the discovery of a breach of the rules in favour of TDL, the PPA by a letter dated 28th May 2019 signed by our client, ordered the Bank of Ghana to discontinue with the evaluation process (which has resulted in the TDL being declared a responsive tenderer to move to the next stage of evaluation process). The PPA further ordered a re-evaluation to ensure full compliance with procedure. This resulted in another company eventually emerging the successful tenderer. This material fact showed that our client rather ensured strict compliance with due process and all rules by entities that TDL dealt with.

The Respondent provided copies of the said letters.

The Respondent said that he had taken note of the suggestion in the documentary that as the CEO of the PPA, he “can communicate the prices” contained in applications in which TDL has been listed for that company to win a tender. He argued that the suggestion is “*a rather simplistic fashion, relies on his conjecture and imagination of what is possible. The author fails to furnish any evidence whatsoever of the occurrence of such a situation or a likely perpetration of such a potentially contumacious act...*” He added that to the extent that this allegation impinged on the integrity of the Respondent, the author, Manasseh Azure Awuni owed a duty to furnish such proof. He concluded that, “*Relying on conjectures is simply dangerous and reckless*”, and urged the Commission to disregard same as “*speculative, specious and purely imaginary*”.

- Allegation as a result of the prior information by TDL on prices quoted by entities, enables TDL to quote prices very close to those provided by entities

The Respondent stated that

“If the allegation referred to in the preceding paragraph is anything to go by, it would imply that no successful tenderer pursuant to an application for restricted tendering, ought to be deemed legitimate. This is because every successful tender is always below or equal to the budget for the procurement activity. As a matter of law, the award of a procurement contract by an entity in excess of the budget for the contract is prohibited. To surmise wildly, as Manasseh Azure Awuni dangerously does in his documentary, that because TDL on one occasion tendered an amount of GH¢1,999,600.00 for a contract and the contract sum was GH¢2 million, and therefore conflict of interest should be inferred against our client, is bizarre, preposterous and clearly motivated by an uncanny desire to mislead the nation”.

He continued that, the conjectural suppositions in the documentary would imply that on occasions where TDL had been shortlisted among other firms to engage in restricted tendering method of procurement, and approval for same had been granted by the PPA, TDL won all such applications. *“The truth which Manasseh Awuni ether neglected to probe or deliberately refused to disclose in his documentary, is that, TDL lost 7 of the 15 tenders, won 6 and 2 are still ongoing. 4 out of the 6 resulting contracts have been fully executed and 2 are still being executed by TDL.”*

He submitted that,

“a conflict of interest allegation must be examined in the light of clear facts which support a conclusion that a public officer’s personal interest conflicts with or is likely to conflict with the performance of the functions of his or her office. The interest ought to be financial or otherwise, direct or indirect, which must ultimately be clearly proven”. [Okudzeto Ablakwa (N02) & Another v Attorney General & Obetsebi-Lamphey (No2) (2012) 2 SCGLR 845].

He argued that the law makes no room for mere conjecture, suspicion or imagination in a claim of conflict of interest. That *“the documentary, apart from drawing inferences and wildly speculating, did not allude to, show or establish any facts cognisable as relevant and contemporaneous to the award of the consideration of the applications for restricted tendering by the PPA in which TDL was listed, that remotely showed that our client compromised on the rules simply because TDL had been mentioned in an application by an entity.”*

The Respondent further submitted that there is no evidence of any act or omission on his part to support an allegation that his personal interests interfered with the performance of his duties and functions. Further, no personal or private benefit was derived by the Respondent. Simply put, the Respondent has not contravened article 284 of the Constitution.

- Allegation that our Client’s Position as a Board Member Puts Him in a Conflict of Interest Situation

The Respondent denied this allegation and stated that it is *“...misleading and betrays a complete ignorance of or disregard for the actual function of the Board of the PPA in applications for restricted tendering”*. He explained, he already did (supra), that applications for restricted tendering are filed at the PPA after the entities in question have already identified and shortlisted companies to participate in the restricted tendering process.

The Board of the PPA, of which the Respondent is a member, is not responsible for shortlisting companies. Further, in terms of the provisions of Act 663, the Board has no mandate to determine the professional, technical and environmental qualifications of companies to participate in restricted tendering. Same is the lawful duty of procurement entities. The rationale for this stipulation in Act 663 is that, at the point where the Board of the PPA is considering applications for restricted tendering, there would be no tender for suppliers, contractors or consultants to demonstrate their

qualifications. The law thus makes it the duty of procurement entities through their relevant entity tender committees to consider and assess the qualifications of tenderers.

The Board of the PPA is primarily responsible for considering the validity of applications for the method of restricted tendering in terms of the grounds set out in section 38 of Act 663 as amended. After grant of such application, section 39 enjoins the entities to conduct a tender in accordance with the rules on competitive tendering set out in Part five of the Act. The entities evaluate bids by companies, select the successful tenderer and award the contract in accordance with section 65.

The Board of the PPA does **not** play a role in such processes, save where complaints of violations of the procedure are made to it, pursuant to the powers of administrative review conferred on the Board by Part Seven of Act 663.

He said that it is amply clear from the above, and the Respondent will contend that, at the particular point where the Board of the PPA in accordance with section 38 of Act 663, considers an application for the use of a method of restricted tendering by an entity and not the evaluation of tenderers or selection of bids by prospective suppliers and contractors, the issue of conflict of interest does not arise at all.

Be that as it may, the Respondent continued, it is relevant to say that, notwithstanding the foregoing, on the occasion of the first application for restricted tendering involving TDL coming before the Board of the PPA, the Respondent, in the spirit of transparency, disclosed his interest in that company. The Board of the PPA required the Respondent to recuse himself from a consideration of the application, even though as stated above, the application before the Board did not involve an evaluation of a bid by TDL or selection of TDL as a supplier or contractor. In fact, at that point there had been no tender opened and TDL had not had the opportunity to

present a bid. The Board thus became fully aware of the interest of the Respondent in TDL and subsequently took notice. He attached a copy of a "Resolution" by the Board of PPA which provides:

"...WHEREAS at the 8th Board Technical Meeting held on Wednesday 17 January 2018, the Chief Executive, Mr. Adjenim Boateng Adjei, disclosed that he has an interest in a company called Talent Discovery Ltd., and wanted the Board to take note of this and subsequent applications that may come up for consideration; and

WHEREAS Mr. Adjei Subsequently recused himself from discussions on the application concerned.

WHEREAS he went further to state that as and when he becomes aware of any application made by an entity, which includes the company in question he will recuse himself from both the assessment of the application and the Board consideration.

Now therefore, the Board duly took note of this declaration and disclosure and resolved that having declared his interest in the company Talent Discovery Ltd., Mr. Adjei be duly recused from consideration of this application, all other subsequent applications and the assessment of such applications..."

The Respondent reiterated that the disclosure was not out of a recognition of a conflict of interest situation, but purely out of abundance of caution and in the spirit of transparency. He urged the Commission to take due cognizance of the specific duties and functions of the Board of the PPA and the relevant times for the discharge of such functions in order to do effective justice to the instant complaint and the parties hereto.

He contended that the results of the various tender processes in which TDL participated further demonstrates the lack of influence of the Board of the PPA over restricted tendering processes conducted by entities. That enquiries he conducted, consequent upon the airing of the rather deceptive and deprecatory documentary, have revealed that, in point of fact, TDL

lost a significant majority of the tenders in which it participated after the grant of restricted tendering applications by the Board. TDL lost seven (7) out of the 15 tenders; won 6 and 2 are still on going.

He mentioned that it "...is mindboggling and questionable why the "investigative journalist" would not know these material facts, or simply ignore these material facts in his documentary". The Respondent submitted that same could only be attributable to a malicious motive to mislead the public and that the results of tenders conducted after the approval of the use of the method of restricted tendering by the PPA, show the absence of any influence of the PPA over the conduct of tenders by entities.

Further, he said, most materially, as stated above, pursuant to the "further requirements" imposed by the PPA Board, in respect of a particular application for restricted tendering, the Bank of Ghana by a letter dated 8th May, 2019, submitted copies of Evaluation Report, Tender Document and Tenders submitted by tenderers to the PPA. Upon a careful consideration of the documents and following the discovery of breach of the rules in favour of TDL, the PPA by letter dated 28th May 2019 signed by the Respondent, ordered the Bank of Ghana to discontinue with the evaluation process (which had resulted in the TDL being declared the winning tenderer). The PPA further ordered a re-evaluation to ensure full compliance with procedure.

He stated that the action taken by Respondent in the case of the Bank of Ghana, showed the absence of any motive on the part of Respondent to favour TDL, and for that matter, the absence of any conflict of interest. That to all intents and purposes, the Respondent rather ensured compliance with due process by TDL and entities TDL was dealing with. Therefore, the Respondent said he was surprised that the "investigative journalist" did not notice this material fact or did not bring it to the attention of the public.

The Respondent concluded his comments by stating:

“On account of all of the above, we submit that there is no evidence of any act or omission on the part of our client supporting an allegation of having discharged his duties as a public officer for the benefit of a company he has an interest in. Complainant has not demonstrated how our client’s personal interests interfered with the performance of his duties and functions. For him, the documentary was carefully constructed to negatively taint the diligent work and accomplishments by our client in service to the nation as one of the most successful CEOs of the PPA in the history of Ghana”.

The “allegations in the documentary against our client are simply anchored on assumptions and conjectures, and betray gross unfamiliarity with the laws on public procurement in Ghana. Same should be dismissed as unmeritorious”.

3.2. Preliminary Observations/Comments

As noted above, Counsel for the Respondent had made preliminary observations/comments as part of his written comments to the Commission. In his preliminary observations, Counsel argued as follows:

- 1. We note that no particulars of conflict of interest whatsoever were made out in your letter to our client. Neither did your letter indicate with any clarity the specific matters contained in the letter by His Excellency the President or the documentary by Manasseh Azure Awuni constituting conflict of interest.*

Regulation 2(1) (c) and (d) of the Commission on Human Rights and Administrative Justice (Investigations Procedure) Regulations, 2010 (C. I. 67) requires particulars of a complaint or the nature of injustice perpetrated as a result of the action, inaction or omission of the body, organization or person against whom the complaint is made, to be set out in a petition. Regulation 2(3) and (4) of C.I. 67 mandates the Commission to request additional information from the complainant, before transmitting the complaint to the “Respondent” in accordance with Regulation 3. This is

part of the duty of the Commission to assess if “complainant” satisfies the requirements of the law, before calling upon a “Respondent” to answer.

We respectfully observe that your Commission neglected to either provide particulars of conflict of interest in the letter to our client, or request for additional information from the “complainant”.

- 2. Further, your letter alludes to “a letter of complaint from His Excellency the President Nana Addo Dankwa Akufo-Addo”. We note that the said “letter of complaint” also refers to allegations by Manasseh Azure Awuni, an investigative journalist.*

In the circumstances, the identity of the complainant is not sufficiently made clear.

- 3. Notwithstanding the failure to set out particulars of conflict of interest in the letter to our client and the lack of clarity about the identity of the complainant, our client elects to deliver a response to the allegations levelled against our client.*
- 4. The decision of our client to respond to the allegations against him, the above flaws in the letter to him notwithstanding, is motivated by a desire to achieve a swift and efficient determination of the claims against him. Our client takes note of, and is concerned by, the negative publicity and grave harm to his reputation caused by the false and erroneous allegations against him contained in the documentary by Manasseh Azure Awuni”.*

Although the Commission gave its ruling on the preliminary observations dismissing same as misplaced, the Commission nonetheless deems it appropriate to reaffirm its ruling in this decision.

The Commission’s investigations are governed by the:

- Constitution;
- Commission on Human Rights and Administrative Justice Act, 1993 (Act 456); and

- Commission on Human Rights and Administrative Justice (Investigation Procedure) Regulations, 2010 (C.I. 67).

The Commission's letter *No. CHRAJ/241/2019/259* dated 27th August, 2019, which invited the Respondent to either admit or deny the allegations made it clear that the request is made under Article 287 of the 1992 Constitution, the complaint having been made under Articles 284 and 287(1). Counsel for Respondent, however, made reference to Regulations 2(1) (c) & (d); (3) and (4) of C.I.67, in support of his claim that the ...*Commission neglected to either provide particulars of conflict of interest in the letter to our client (Respondent), or request for additional information from the "complainant"*.

Regulation 2 of C.I.67 provides as follows:

Contents of complaint

- (1) A person who lodges a complaint with the Commission shall include...**
- (c) particulars of the complaint together with copies of relevant documents;**
- (d) the nature of injustice perpetrated as a result of the action, inaction or omission of the body, organisation or person against whom the complaint is made;**
- (3) The Commission shall determine the time frame within which a complainant shall receive a response to a complaint lodged with the Commission.**
- (4) A complainant shall provide additional information requested by the Commission in respect of a complaint within three months after receipt of the request in writing from the Commission".**

On the claim of "*no particulars of conflict of interest made out*", the Commission is of the view that particulars of the allegations of conflict of

interest are sufficiently discernible as per paragraph 4 of letter No. CHRAJ/241/2019/259 of 27th August 2019 which stated that: *“In substance, the complaint makes reference to allegations contained in a recent documentary produced by investigative Journalist Manasseh Azure Awuni headlined “Contracts for Sale”, which was aired on Joy Prime TV on Wednesday August 21, 2019. A copy of the said documentary is contained in the USB Drive herein enclosed”*.

The statement by the Counsel for the Respondent at page 4 of the Answer of Respondent dated 5th September, 2019 under the heading: *“Allegation that the function of the Due Diligence Unit of the PPA places our Client, A.B. Adjei in a Conflict of Interest Situation”*, supports the Commission’s position on this matter that the allegations of conflicts of interest were sufficiently discernible from paragraph 4 of its letter dated 27th August, 2019.

Similarly, on page 10 of the Answer of Respondent to the Commission, Counsel further confirmed that the particulars of allegations of conflict of interest were sufficiently discernible in this fashion: *“allegation that our client’s position as a board member puts him in a conflict of interest situation”*.

The question is, how did Counsel and/or Respondent obtain particulars of the above two conflict of interest situations since Counsel says the Commission’s letter to his client contains no such particulars? The answer is not far-fetched: The Respondent and/or his Counsel must have watched the video documentary as directed in paragraph 4 of the Commission’s letter numbered CHRAJ/241/2019/259 dated 27th August 2019.

The admissions in paragraphs 10 and 11 of Counsel’s response/answer indicate clearly to the Commission that there is no doubt in the mind of the Respondent as to the allegations of conflict of interest made against him in the documentary contained in the USB Drive attached to the Commission’s letter No. CHRAJ/241/2019/259 of 27th August, 2019.

Under the rules of evidence on admissions, the issue of whether or not “*no particulars of conflict of interest made out*” in the Commission’s letter No. CHRAJ/241/2019/259 dated 27th August 2019 is no longer in contention. Black’s Law Dictionary, 7th edition, page 48, defines admission in law as “*a voluntary acknowledgement of the existence of facts relevant to an adversary’s case*”. Additionally, Justice S. A. Brobbey (JSC), in his book, Essentials of the Ghana Law of Evidence, 2014, at page 112 states that: “*The importance of admissions lies in the fact that the court [Commission emphasis added] can act on them without proof of the facts constituting the admissions.*” In the circumstances the Commission is satisfied that the Respondent is aware of the particulars of conflict of interest made against him.

The Commission notes that Regulation 2(4) of C.I. 67 as set out above is a general provision that grants discretion to the Commission to request and obtain additional information from a Complainant whenever the Commission is not satisfied that the information on the complaint lodged is inadequate and that additional information is necessary to aid further investigations into that given complaint. This regulation does not in any way make it mandatory that the Commission should, at all times, request for additional information from Complainants on receipt of a complaint as suggested by Counsel for the Respondent.

In the instant case, the Commission was satisfied with the particulars of the allegations of conflict of interest in the complaint and so did not need to invoke its powers to request additional information under Regulation 2 (4) of C.I. 67.

Regarding preliminary observation/comment (ii), **it is the considered view of** the Commission that the identity of the Complainant is not in doubt. The Secretary to the President, Nana Bediatuo Asante, on the letterhead of the Office of the President, Republic of Ghana, Jubilee House, Accra, No. OPS 127 Vol.3/19/1141 of 22nd August 2019 (as already set out above), requested the Commissioner of the Commission to investigate

allegations of conflict of interest made against the Respondent, who is an appointee of the President.

The letter in question is quite clear that the person referring the allegations of conflict of interest against the Respondent to the Commissioner is the President of the Republic of Ghana. The address of the President of the Republic of Ghana including a digital address and the telephone numbers, were provided. Thus, the identity of the person submitting the allegations and requesting the Commissioner to investigate them is H.E. Nana Addo Dankwa Akufo-Addo, President of the Republic of Ghana. This fact is not in doubt because we do not have two persons as Presidents of the Republic of Ghana at the time the Commission received the complaint and same submitted to the Respondent for his comments.

The Commission further holds that Counsel ought to know who is the President of the Republic of Ghana, particularly when our letter No. CHRAJ/241/2019/259 of 27th August, 2019 stated in paragraph 1 that: *“The Commission on Human Rights and Administrative Justice (the Commission) has received a letter of complaint together with a video recording from the President of the Republic of Ghana, His Excellency Nana Addo Danquah Akufo-Addo (the Complainant), which contains allegations of conflict of interest made against you, Mr. Adjenim Boateng Adjei (the Respondent), which conduct if proven would be in contravention of Article 284 of the 1992 Constitution (the Constitution)”* .

We further hold that the procedures for invoking the investigative machinery of the Commission under Chapter 24 of the Constitution was settled in the case of **Republic v High Court (Fast Track Division) Ex parte, Commission on Human Rights and Administrative Justice (Interested Party, Richard Anane) [2007-8] SCGLR 213** (the Anane Case). In this case the Supreme Court held that there must be an identifiable complainant, be he/she an individual or body of persons or even bodies corporate before the Commission. The identifiable complainant, who need not be the victim, must file a complaint, which might be in writing or even if it was given orally to a representative in the region or the district, such

representative should reduce it into writing and sign it and the complainant should also sign or thumbprint it.

Nevertheless, the Commission can on its own initiative conduct investigations into allegations of corruption or suspected corruption, including suspicions of corruption that may have come to its notice through various sources including the media: The Anane case (*supra*).

In respect of preliminary observations/comments (iii) and (iv), the Commission accepted Counsel for the Respondent's election "*to deliver a response to the allegations levelled against*" the Respondent, who actually delivered a 33-paragraphed answer in response to our request for comments. Having reviewed the preliminary observations/comments of the Respondent, the Commission was left in no doubt that the preliminary observations were misplaced, and accordingly dismissed them and continued with the investigations.

4.0 MANDATE OF THE COMMISSION

4.1. 1992 Constitution

The Commission was established pursuant to article 216 of Chapter 18 of the 1992 Constitution of the Republic of Ghana. Article 218 of the Constitution provides for the functions of the Commission to include the following:

(a) investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his official duties;

(b) investigate complaints concerning the functioning of the Public Services Commission, the administrative organs of the State, the Armed Forces, the Police Service and the Prisons Service in so far as complaints relate to the failure to achieve a balanced structuring

of those services or equal access by all to the recruitment of those services or fair administration in relation to those services...”

(e) investigate all instances of alleged or suspected corruption and the misappropriation of public monies by officials and to take appropriate steps, including reports to the Attorney-General and the Auditor-General, resulting from such investigations;

(f) educate the public as to human rights and freedoms...

(g) report annually to Parliament on the performance of its functions”

The Commission is also mandated to investigate an allegation that a public officer has contravened or has not complied with the Code of Conduct for Public Officers under Chapter 24 of the Constitution (Articles 284-288).

Chapter 24 of the Constitution provides as follows:

Article 284 Conflict of interest

A public officer shall not put himself in a position where his personal interest conflicts or is likely to conflict with the performance of the functions of his office.

Article 287 Complaints of Contravention

(1) An allegation that a public officer has contravened or has not complied with a provision of this Chapter [Chapter 24] shall be made to the Commissioner for Human Rights and Administrative Justice and, in the case of the Commissioner of Human Rights and Administrative Justice, to the Chief Justice who shall, unless the person concerned makes a written admission of the contravention or non-compliance, cause the matter to be investigated.

(2) The Commissioner for Human Rights and Administrative Justice or the Chief Justice as the case may be, may take such action

as he considers appropriate in respect of the results of the investigation or the admission.

4.2. Commission on Human Rights and Administrative Justice Act, 1993 (Act 456)

Section 7 of Act 456 restates the functions and powers of the Commission as provided under Articles 218 and Chapter 24 of the Constitution (supra).

Section 7(1) provides that:

(1) In accordance with article 218 of the Constitution, the functions of the Commission are:

(a) to investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his official duties;

(b) to investigate complaints concerning the functioning of the Public Services Commission, the administrative organs of the State, the Armed Forces, the Police Service and the Prisons Service in so far as complaints relate to the failure to achieve a balanced structuring of those services or equal access by all to the recruitment of those services or fair administration in relation to those services...

(e) to investigate an allegation that a public officer has contravened or has not complied with a provision of Chapter Twenty-four (Code of Conduct for Public Officers) of the Constitution

(f) investigate all instances of alleged or suspected corruption and the misappropriation of public monies by officials and to take appropriate steps, including reports to the Attorney-General and the Auditor-General, resulting from such investigations;

The Commission's mandate in respect of allegations of contravention of Chapter 24 of the Constitution has received judicial pronouncement by the Supreme Court in *Okudzeto Ablakwa (No. 2) & Another v. Attorney-General & Obetsebi-Lampitey (No.2)* [2012] 2 SCGLR 845, that article 287 of the 1992 Constitution makes it mandatory that complaints under Chapter 24 of the 1992 Constitution are to be investigated exclusively by the Commission on Human Rights and Administrative Justice. Brobbey JSC giving the lead opinion of the court held as follows:

*"The issue of conflict of interest raised here can easily be resolved by recourse to the 1992 Constitution. Article 287 mandates that complaints under Chapter 24 of the 1992 Constitution are to be investigated exclusively by the Commission for Human Rights and Administrative Justice...since specific remedy has been provided for investigating complaints of conflict of interest, the plaintiffs were clearly in the wrong forum when they applied to this court to investigate complaints relating to conflict of interest involving those Public officers. This was the decision of this court in *Yeboah vs Mensah* [1998-1999] SCGLR 492 which endorsed similar decision of the court in *Edusei vs Attorney General* [1998-1999] SCGLR 753".*

In the same case, Atuguba (JSC) also stated:

*"It is settled law that where a special remedy has been provided for a matter, only that remedy must be resorted to unless there is anything to the contrary, see *Ghana Bar Association vs Attorney General and Justice Abban* [2003-2004] SCGLR 250, *Yeboah vs J.H Mensah* [1998-1999] SCGLR 492.*

On the procedure for invoking the investigative machinery of the Commission under Chapter 24 of the Constitution, it has been held in *Republic v High Court (Fast Track Division) Ex parte, Commission on Human Rights and Administrative Justice (Interested Party, Richard Anane* [2007-8] SCGLR 213 (the Anane Case), that there must be an

“identifiable complainant, be he an individual or body of persons or even bodies corporate before the Commission. The identifiable complainant, who need not be the victim, must file a complaint, which might be in writing or even if it was given orally to a representative in the region or the district, such representative should reduce it into writing and sign it and the complainant should also sign or thumbprint it”.

As already indicated, the complaint was submitted by the President of the Republic of Ghana, through the Secretary to the President, Nana Bediatuo Asante, on the official letterhead of the Office of the President, an identifiable complainant, to the Commission for investigations. The complaint was duly signed. The complaint identified the Respondent who is the Chief Executive Officer of the PPA, a public officer. The complaint alleged conflict of interest under the Chapter 24 of the 1992 Constitution. Therefore, the Commission is satisfied that its mandate has been properly triggered.

5.0. APPLICABLE CONSTITUTIONAL, LEGAL AND POLICY FRAMEWORK

The Commission was guided in its investigation by the overarching values and principles espoused in the 1992 Constitution, as well as the legal, regulatory and policy framework relating to the proper conduct of public officers who have been entrusted with the functions of state, as well as others dealing with the subject matter under investigation. The relevant provisions of the Constitution and the applicable legislation and policy framework are provided below.

5.1. The 1992 Constitution

The Preamble to the Constitution, inter alia, solemnly declares and affirms Ghana’s commitment to freedom, justice, probity, and accountability, and the rule of law.

Article 35(8) provides thus:

The State shall take steps to eradicate corrupt practices and abuse of power.

Article 219 (1) provides:

“The powers of the Commission shall be defined by Act of parliament and shall include the power –

(a) to issue subpoenas requiring the attendance of any person before the Commission and the production of any document or record relevant to any investigation by the Commission;

(b) to cause any person contemptuous of any such subpoena to be prosecuted before a competent court;

(c) to question any person in respect of any subject matter under investigation before the Commission;

(d) to require any person to disclose truthfully and frankly any information within his knowledge relevant to any investigation by the Commissioner.

Article 284 of the 1992 Constitution provides that:

A public officer shall not put himself in a position where his personal interest conflicts or is likely to conflict with the performance of the functions of his office.

Article 287 Complaints of Contravention

(1) An allegation that a public officer has contravened or has not complied with a provision of this Chapter [Chapter 24] shall be made to the Commissioner for Human Rights and Administrative Justice and, in the case of the Commissioner of Human Rights and Administrative Justice, to the Chief Justice who shall, unless the person concerned makes a written admission of the contravention or non-compliance, cause the matter to be investigated.

(2) The Commissioner for Human Rights and Administrative Justice or the Chief Justice as the case may be, may take such action as he considers appropriate in respect of the results of the investigation or the admission.

Article 288 on Interpretation

In this Chapter, unless the context otherwise requires, “public officer” means a person who holds a public office.

Article 295(1) of the Constitution defines public office to include:

“an office the emoluments attached to which are paid directly from the Consolidated Fund or directly out of the moneys provided by Parliament.”

5.2 Company’s Act, 1963 (Act 179)

Section 180 – Number of directors

(1) A company incorporated after the commencement of this Act shall have at least two directors.

(3) If at any time the number of directors is less than two in a breach of subsection (1) or subsection (2), and the company continues to carry on business for more than four weeks after that time, the company and every director and member of the company who is in default is liable to a fine not exceeding [twenty-five penalty units] for every day during which it so carries on business after the expiration of four weeks without having at least two directors.

(4) Every director and every member of the company who is cognizant of the fact that it is carrying on business with fewer than two directors are jointly and severally liable for the debts and liabilities of the company incurred during that time.

(5) Subject to this section, the number of directors shall be fixed by, or in accordance with, the company’s Regulations.

Section 197- Registration of particulars of directors and secretaries

- (2) A company incorporated after the commencement of this Act shall include the particulars specified in the register in the statement required to be sent to the Registrar in accordance with section 27.
- (3) A company shall, within twenty-eight days of a change occurring among its directors or in its secretary or in any of the particulars contained in the register, other than those required under paragraph (e) of subsection (2) of section 196 send to the Registrar for registration notification in the prescribed form of the change, specifying the date of the change.
- (4) Where a company defaults in complying with subsection (1) or (3) , the company and every officer of the company who is in default is liable to a fine not exceeding (twenty-five penalty units) for every day during which the default continues.
- (5) A director or secretary who resigns from office shall be deemed to be in default unless notification of the resignation is duly given to the Registrar in accordance with subsection (3) of this section.

The same provisions are repeated under Sections 171 and 216 of the new Company's Act, 2019 (Act 992).

5.3. Public Procurement Act, 2003 (Act 663) (as Amended)

The Public Procurement Act, 2003 (Act 663) (as Amended) by Act 914 which is the principal legislation that regulates the PPA's operations provides in the following sections as follows:

Section 2 on Object of the Board

The object of the Authority is to harmonize the processes of public procurement in the public service to secure a judicious, economic

and efficient use of state resources in public procurement and ensure that public procurement is carried out in a fair, transparent and non-discriminatory environmentally and socially sustainable manner.

Section 3 on Functions of the Board

In furtherance of its object the functions of the Authority shall include:

- (d) monitor and supervise public procurement and ensure compliance with statutory requirements;
- (e) have the right to obtain information concerning public procurement from contracting authorities;
- (i) advise Government including Metropolitan, Municipal and District Assemblies on issues relating to public procurement;
- (o) maintain a register of procurement entities and members of and secretaries to tender committees of public procurement entities;
- (p) maintain a data base of suppliers, contractors and consultants and a record of prices to assist in the work of procurement entities.

Section 6 of Act 663 "Meetings of the Board" provides:

- (1) The Board shall meet at least once every three months for the dispatch of business at the times and places determined by the chairperson.
- (2) The chairperson shall preside at meetings of the Board and in the absence of the chairperson the vice-chairperson shall preside and in the absence of both, the members shall elect one of their number to preside.
- (3) The quorum for a meeting of the Board is five including the chief executive officer.
- (4) The Board may co-opt a person to act as adviser at a meeting of

the Board but a co-opted person does not have the right to vote on a matter before the Board for decision.

(5) The validity of the proceedings of the Board shall not be affected by a vacancy among its members or by a defect in the appointment or qualification of a member.

(6) Except as otherwise expressly provided, the Board shall determine the procedure for its meetings.

Section 7 on Committees of the Board

The Board may for the performance of its functions appoint committees of the Board comprising members of the Board or non-members or both and may assign to a committee a function of the Board as determined by the Board, but a committee composed entirely of non-members may only advise the Board.

Section 8. Secretariat of the Authority

(1) The Authority shall have a secretariat with the divisions and structures determined by the Board as may be necessary for the effective execution of its functions.

(2) The Authority shall have an officer to be designated the secretary who shall perform the function of keeping accurate records of proceedings and decisions of the Board and any other functions directed by the chief executive officer.

(3) The Authority may engage the consultants and advisers who it may require for the proper and efficient performance of the functions of the secretariat.

Section 9. Chief Executive of the Authority

(1) The chief executive officer of the Authority shall be appointed by the President in accordance with article 195 of the Constitution.

(2) The chief executive officer shall hold office on the terms and conditions specified in the letter of appointment to office.

(3) Subject to the general directions that the Board may give, the

chief executive officer is responsible for the day-to-day administration of the secretariat of the Authority and the implementation of the decisions of the Board.

(4) The chief executive officer may delegate a function of the office of the chief executive officer to an officer of the secretariat but is not relieved of the ultimate responsibility for the performance of the delegated function.

Section 92. *Offences relating to procurement*

(1) A person who contravenes a provision of this Act commits an offence and where a penalty is not provided for the offence, that person is liable on summary conviction to a fine not exceeding two thousand five hundred penalty units or a term of imprisonment not exceeding five years or to both the fine and the imprisonment.

(2) The following also constitute offences under this Act:

(a) directly or indirectly influencing in any manner or attempting to influence in any manner the procurement process to obtain an unfair advantage in the award of a procurement contract; and

(d) request for clarification in a manner not permitted under this Act

(3) Despite anything to the contrary in an enactment, a person who contravenes a Regulation made under this Act is liable on summary conviction to a fine of not more than two thousand five hundred penalty units or a term of imprisonment not more than five years or to both.

Section 93. *Corrupt practices*

(1) Entities and participants in a procurement process shall, in undertaking procurement activities, abide by the provisions of article 284 of the Constitution.

(2) An act amounts to a corrupt practice if so construed within the

meaning of corruption as defined in the Criminal Offences Act, 1960 (Act 29).

5.4. Code of Conduct for Public Officers of Ghana and Guidelines on Conflict of Interest

The Code of Conduct for Public Officers of Ghana (the Code) contains minimum standards of conduct for public officers as provided for in Chapter 24 of the Constitution. The Code seeks to promote integrity, probity and accountability, dedicated and faithful service to the Republic of Ghana.

The minimum standards of conduct in the Code provide, among others, that public officers shall not put themselves in a conflict of interest situation. To assist public officers, identify, manage and resolve conflicts of interests, guidelines were also issued, titled “Guidelines on Conflict of Interest to Assist Public Officials Identify, Manage and Resolve Conflicts of Interest” (the Guidelines).

Both the Code and the Guidelines were issued as administrative and operational framework/guidelines for implementing the intendment of Chapter 24 of the Constitution.

The Guidelines provides in the following clauses as follows:

Rule 3.1- “Conflicting Financial Interests”:

A public official shall not participate in an official capacity in any particular matter which to his knowledge:

- i. he/she has a financial interest; and*
- ii. any person whose interests are imputed to him in any way has a financial interest if the particular matter will have a direct effect on that interest.*

Rule 3.2 - Self-dealing:

A public official shall not take an action in an official capacity which involves dealing with himself/herself in a private capacity and which confers a benefit on himself/herself.

Rule 3.5.1. - Use of Public Office for Private Benefit

“A public official shall not use his public office for his/her own private benefit, for the endorsement of any product, service or enterprise, or for the private benefit of friends, relatives, or persons with whom the public official is affiliated in a private capacity, including political parties, non-profit organizations of which he/she is an officer or member, and persons with whom the public official has to seek employment or business relations”.

Rule 3.5.3. Use of Non-Public or Confidential Information

Public officials owe it a duty to respect and protect non-public or confidential information to which they have access in the course of their official duties. As such, public officials should not disclose to others, or use to further their personal interest, such information acquired by them in the course of their official duties.

Rule 4.0 - Dealing with conflict of interest situations

As soon as conflict of interest situation is foreseeable, the public official must take all appropriate steps to extricate himself/herself from the situation. Such steps may include:

- i. reporting the conflict of interest situation and its circumstances to his/her superior officer, or*
- ii. removing himself/herself from the conflict of interest situation.*

Rule 4.2. - Disclosure of Conflicting Interests

Whenever a conflict of interest situation occurs or is likely to occur, the public official must make a disclosure of the situation as provided by law or as follows:

What to disclose: Assets and liabilities, gifts, conflicting interests, outside employment, and NGO activities.

How to disclose: In writing, verbal and surrendering the item.

When to disclose: As soon as a conflict of interest situation occurs or is likely to occur, and when in doubt.

To Whom: CHRAJ, superior officer/head of institution; ethics committee or compliance officer or a similar set up within the institution.

6.0. ISSUES IDENTIFIED FOR THE INVESTIGATION

The following were identified as the key issues for determination:

- 1) Whether or Not the Respondent Established Talent Discovery Limited (TDL) a Few Months after he was Appointed CEO of PPA;
- 2) Whether or Not the Respondent had Resigned as Director of TDL at all Material Times;
- 3) Whether or Not Contracts Awarded to TDL by Ministries, Departments and Agencies (MDAs) and other Public Procurement Entities between June 2017 and August 2019 were mainly through Single Source and Restricted Tender;
- 4) Whether or Not TDL was involved in the sale of State contracts awarded to it;
- 5) Whether or Not the Respondent used his office improperly for the benefit of TDL and other companies affiliated to him;
- 6) How does the Respondent explain the volume of Cash that passed through his Bank Accounts between March 2017 and August 2019 (Unexplained Wealth); and

7) Whether or Not the Respondent put Himself in a Position where his Personal Interest Conflicted or was Likely to Conflict with the Performance of the Functions of his Office.

7.0. THE INVESTIGATION

The Commission employed several methods in conducting the investigations. The methods included review of comments, request and review of documents, review of the documentary on the “Sale of Contracts”, interview of witnesses, and inspection of sites, among others. The Commission interviewed over 20 witnesses including the following:

- Mr. Adjenim Boateng Adjei, Respondent
- Manasseh Azure Awuni, Investigative Journalist
- Frank Mante, Ag. CEO, PPA
- Prof. Douglas Boateng, Board Chair, PPA
- Stephen Nkrumah Dampare, Chief Manager, Materials
- Hubert Osei-Wusuansah, Acting Director, Hydrological Services Department, (HSD)
- Hon. Hawa Koomson, Minister, MSDI
- Thomas Amoah, Administrative Manager, TDL (also sometimes described as Project Manager or General Manager or Group Manager of TDL)
- Kennedy Kludjeson, the Volta Regional Director of Hydrological Services Department (HSD)
- Nicholas Adjei, K. Adjei Enterprise
- Opoku Agyemang, Asst. Headmaster, Administration, Collins SHS, Agogo
- Mr. Edward Labi-Kumi , Headmaster, Collins SHS, Agogo
- Chief Adamu Mohammed Naa Annabi (Hausa Chief), Oda
- Mr. Francis Cofie Onai, Head of Works Department of the Birim Central Municipal Assembly, Akim Oda

- Hon. Victoria Adu, the Municipal Chief Executive, Birim Central Municipal Assembly, Akim Oda
- Bismark Addae, Building, Construction Tutor, Tuobodom SHS/Technical School, Techiman
- Charles Agyapong, Headmaster, Tuobodom SHS/Technical School, Techiman
- Mohamed Akalifah, Municipal Coordinating Director (MCD) of the Bimbilla Municipal Assembly
- Mr. Abdulai Yakubu, the MCE, Bimbilla
- Francis Arhin, CEO, TDL
- Alhassan Yakubu, the Binduri District Coordinating Director
- Alhaji Mohamadu Assibi Azoko, the Upper East Regional Coordinating Director,
- Mr. Alhassan Ibrahim, the Upper East Regional Economic Planning Officer,
- Ms. Paulina Patience Abayage, the Upper East Regional Minister

The Commission also obtained over 100 documents from a number of the institutions and sources, including the following:

- Registrar-General's Department;
- Financial Intelligence Centre;
- Ministry of Works and Housing;
- Hydrological Services Department;
- Public Procurement Authority;
- Ghana Ports and Harbours Authority;
- Bank of Ghana;
- Ghana Cocoa Board;
- Ministry of Education;
- Ministry of Inner Cities and Zongo Development;
- Ministry of Special Development Initiatives, and
- Ghana Water Company Limited.

The Commission also visited locations where TDL was alleged to have been awarded contracts, among them, Akatsi in the Volta Region, Agogo in the Asante Akim North, Ashanti Region, Tuobodom Senior High/Technical School at Techiman, Bimbilla in the Savanna Region, Oda in the Eastern Region and Binduri in the Upper East Region.

8.0. SUMMARY OF EVIDENCE

8.1. Interviews

Article 219 (1) provides:

“The powers of the Commission shall be defined by Act of parliament and shall include the power –

(c) to question any person in respect of any subject matter under investigation before the Commission;

(d) to require any person to disclose truthfully and frankly any information within his knowledge relevant to any investigation by the Commissioner.

- **Adjenim Boateng Adjei (Respondent)**

On 12th and 16th June 2020, the Commission met with the Respondent and his Solicitors, Mr. Oppong and Mr. Francis Baah.

Before the interview commenced, the Solicitors for the Respondent made two observations. The first was to stipulate that since they were privy to the content of the video, it should not be replayed in order to save time for the Respondent to respond to issues pertaining to the allegations.

For the second observation, Counsel rehashed of the preliminary observations made in the Respondent’s written comments to the Commission dated 5th September, 2019 and invited the Commission to rule on their preliminary observations, which the Commission duly obliged per its letter number CHRAJ/241/2019/25 dated 6th July, 2020.

At the interview with the Commission, the Respondent admitted that he incorporated Talent Discovery Limited (TDL) together with his brother-in-law, Francis Kwaku Arhin. He said he was one of the shareholders and a Director of TDL. He indicated that he has a 50% shareholding, but noted that during the registration an error occurred and the records reflected that he was the majority shareholder with 60% of the shares. Mr. Adjei said he doubled as the Chairman of TDL, but on 5th September 2017 he resigned as a Director and Chairman of the company. But this has not reflected in the records at the Registrar-General's Department.

The Respondent explained that TDL was incorporated in June 2017, three (3) months after he assumed office in March 2017 as the Chief Executive Officer (CEO) of the Public Procurement Authority (PPA).

On the "genesis" of the incorporation of TDL, the Respondent said:

"... this is a brother-in-law who decides to relocate from London to Ghana. So, when he came because we have been communicating over years because of the relationship we have, and I knew him that he was a contractor in the UK. So, he came and said he wants to settle down. So, can we do something together and I said why not. But let me put it this way, we would put the company together, but you would run it.

*At the time of establishing this company, I was about to turn to the year **fifty-nine (59)**. So, I said, you could have this company, we can have it together, but you run it, so when I leave public office, then I can come fully and join you. So, with that understanding, that company was established..."*

He said other companies he incorporated later were limited liability companies and not subsidiaries. Although the signage of TDL describes it as a "Group", Mr. Adjei indicated that the signage was a misplacement and that there was no company called TDL Group Limited. He mentioned that TDL Transport and Logistics, TDL Freight Forwarding, and TDL Agro and Chemical Industries are some of the limited liability companies, and that

anything TDL was between him and Francis Arhin. Besides that, he established Frosty Ice with his wife.

Regarding the allegation that TDL wins government contracts and sells them, Mr. Adjei said that could not be true. According to him, when he took over office the Board and the various Committees had been dissolved, meanwhile, various entities continued to submit applications for consideration and approval to award contracts. However, the mandate to give approval is vested in the PPA Board and not the CEO. As a result, he wrote to the Ministry of Finance (MoF) to give him a Power of Attorney to carry on business pending the reconstitution of the Board. He said after the approval was given, he set up a Management Team to consider the numerous applications for subsequent ratification by the Board of PPA. According to him, a Board for PPA was put in place in September 2017.

Mr. Adjei stated that on 31st January 2018 he saw the first request from an Entity with TDL listed. He said he duly declared his interest in TDL to the Board and accordingly recused himself. He said that the Board commended him and said any time something like that happens, he should declare. He stressed that it could, therefore, not be true that TDL was set up by him ostensibly to win government contracts and sell them.

The Respondent denied being a director in any other company apart from TDL and those companies he mentioned earlier. However, when names of companies he listed while registering TDL in 2017 were read out to him, the Respondent finally admitted having Directorship in them.

He said he used to work with one of the subsidiaries of Zoom Lion which bought shares in Aqua Safari Resort where he was made a Director. Mr. Adjei said in his lifetime he had registered many companies and admitted being a Director in the following companies, some of which he said are currently not operating: Beachfront Stevedoring Co. Ltd.; Best Brain Gh. Ltd.; Bestman Offshore Ghana; Diligent Cover Limited; Holidays Hills Resort Limited; Runway View Association (Resident Association of where

he lives); Springfield Resource Development; Talent Movers Ghana Ltd.; and AAC Financial Services Ltd.

Mr. Adjei further stated that he used to receive Director's fees at Aqua Safari Resort but because he has not attended meetings for the last 4 or 5 years, he has not received anything from the company. However, the only company from which he currently receives any payments is Beachfront Stevedoring Company Limited.

The Commission, having studied the trend of transactions on the Respondent's accounts at Stanbic Bank, Airport City Branch, which he opened the month after his appointment as the Chief Executive Officer of the PPA in March 2017, found that one Faustina Mildred and one Christabel had been depositing large cash into the accounts, asked the Respondent if he knew them. The Respondent confirmed that Faustina Mildred and Christabel were his Relations Officers at Stanbic. Asked about the cash payments by Faustina Mildred and Christabel, he said that he often carried the cash to them to make the deposits.

In respect of the Due Diligence Unit (DDU) and its functions, Mr. Adjei said that when he assumed office, he set up the DDU to help operationalise the PPA mandate to approve Restricted Tendering (RT) and or Single Source (SS) procurement in accordance with section 40 of the Public Procurement Act, 2003 (Act 663). According to him, there was the need to conduct due diligence into projects on application to ensure value for money and to protect the public purse. He explained that the task of the DDU is to consider background of companies or suppliers to ensure they are qualified according to law and review the prices quoted for the projects. He said that the reports and recommendations of the DDU is submitted to him for onward submission to the Board for consideration.

Regarding the process through which applications pass, Mr. Adjei said that he receives the applications from the Procurement Entities, and he minutes on them to the Chair of the DDU for due diligence assessment. After the DDU has finished its work, it reports to him and he in turn submits the

report to the Board for consideration. He explained that the DDU is not a Board Committee.

The Respondent explained further that the Board has several Committees including the Board Technical Committee (BTC), a five-member Committee that sits and considers applications for restricted tender or single source procurement, although in practice other members could attend the BTC meetings.

The Respondent said that the BTC Report must be approved by the Board. He indicated that the approval from the Board is a conditional approval. Thus, where the Board gave approval and requested an entity to provide further information, upon the receipt of the said information, it did not go to the Board again for consideration.

On why the DDU passed TDL, when its minimum number of directors fell short of the minimum number of two, after he (Adjei) had resigned as director of TDL, he said that he communicated the decision of his resignation to TDL, but was not in the position to know if the said changes had been effected and his directorship replaced. He could not also indicate who the signatories for the returns filed by TDL are. He stressed that he had resigned per his letter to the TDL.

In conclusion, the Solicitors for the Respondent drew the Commission's attention to a disclaimer issued by Solicitors of B-Molie Ltd in the 5th September 2019 edition of the Daily Graphic, distancing itself from both TDL and Mr. Adjei. Solicitors for the Respondent asked if they could bring a response in that regard. They were told that a response was not necessary.

The Respondent was requested to furnish the Commission with a copy of the letter he wrote to the Ministry of Finance for a Power of Attorney to set up the Management Committee. Respondent said a copy would be on file at PPA but failed to make copy available to the Commission.

Respondent was also requested to provide the Commission with a soft copy of his letter of resignation as Director and Chairman of TDL. He said a soft copy of the required letter was not available. Moreover, he said the issue is a private one.

- **Manasseh Azure Awuni,**

The Investigative journalist whose documentary triggered the complaint and the present investigation, met with the Commission on 12th September 2019 at the invitation of the Commission to assist the Commission in its investigations.

Manasseh disclosed that he did the investigation with the assistance of an undercover agent, named Richard Kumadrah, having obtained information that the Respondent's company was involved in the sale of contracts it had won from MDAs and other procurement entities of State. That he used a company named K-Drah (non-existent), supposedly owned by Richard Kumdrah's brother in London.

Richard Kumadrah contacted TDL ostensibly to purchase a contract and recorded his conversation with Thomas Amoah, the General Manager of TDL. With the recording, Manasseh then contacted the Respondent, the PPA, TDL and others mentioned in the recording for their comments or reaction.

Manasseh reiterated the following at the interview, which were also found in the documentary:

- i. Richard Kumadrah went to TDL, where he met Thomas Amoah, the General Manager (GM), and expressed interest in buying contracts. The GM told Richard that the Company gives the contracts to outstanding buyers because the terms were very favourable and offered to sell a contract worth 158,900 Cedis to Richard. The GM showed Richard the award letter to TDL dated 20th June 2019, which was a contract for the supply of column lift for the Ghana Ports and Harbours Authority (GPHA).

- ii. Though the GM showed Richard the award letter for the contract, he would not hand over the documents to Richard until an agreement was reached and payment of a “commitment” fee of 5,000 Cedis was made;
- iii. The GM further informed Richard that TDL had “Suppliers and Contractors’ Registration Form” and that any contractor they engage [TDL engages] pays a fee of 5,000 Cedis to register with TDL. In the words of the GM, *“When that amount is paid, any time there is an award of a project, we open up to the supplier or contractor to hear from him if the supplier is interested. There are cases they can come into negotiations on percentage wise and even use the company’s details for a direct contract award. That is what they do so once a contractor registers with us, we are good to give any information we have to enable him to work”*;
- iv. The GM insisted that without the registration, no information would be given unless Richard was prepared to purchase the contract “outright”, following which Richard made a payment of 5,000 Cedis to Thomas to register and was provided a receipt of payment. Richard also paid 10,000 Cedis as deposit for a contract;
- v. On payment of both the registration fee and the deposit, the GM called Abigail, a Secretary at TDL, to bring the documents on the Santa Maria drainage contract and the Column Lift contract from Ghana Ports and Harbours Authority (GPHA), which she did;
- vi. The GM made the following remarks in respect of the Santa Maria drainage Contract to TDL, *“...I actually sold it to somebody. The person does not have the funds to carry out the project. That is what is happening so I have agreed with the person, I will sell it to another person who has funds and give him his refund, the initial deposit he paid. He has agreed so that side we don’t have issues’*;
- vii. Still on the sale of contracts, the GM told Richard: *“...and then I have secured another dormitory project at Agogo which I am going to take site possession tomorrow. That one is also there. And there is another two-storey*

dormitory at Savelugu also in the pipeline coming. So there are a couple of projects. Mobile column lift is also there. Somebody came to pay a deposit of 5,000 instead of 25,000... The whole thing, we were looking at 30k but as of yesterday, the amount was revised because we realised that even in the market, we can get it around 60k. So we are now looking at 50k. So if the person does 25k upfront, the balance 25k will be paid when the mobilisation funds come in. There's a mobilisation of 63,000 Cedis which I have put in a requisition because the contract sum is 158,000 Cedis, that is 40%";

- viii. Richard also told the GM that his brother's "company", K-Drah, has no experience in construction and wondered how it would deal with consultants and other people when they came on site. In his own words, the GM said, *"The consultants, we will take care of them. When they come on site, they are only coming to inspect. But before they come on site, they will call us";*
- ix. Providing more information on Santa Maria, the GM said the Ministry of Works and Housing had written to TDL to change the site from Santa Maria to Teshie without varying the contract sum. *"...it is the same parameters. The secret is that we will be the same people to do Santa Maria. The Santa was divided into two. There are two different contractors because the site is big, the Teshie Drainage-Hydro. So when the Santa was awarded, Dr. Okoe Boye was also on us that he needed to do theirs first so the Hydro people gave us a letter to do it the same length and specification as the Santa Maria";*
- x. The change from Santa Maria to Teshie, according to Manasseh, is more profitable to them [TDL] because the work at Teshie is less than Santa Maria but the cost of the contract remained fixed [same];
- xi. Manasseh further disclosed that an Emergency Senior High School Project contract, awarded by the Ministry of Education to be completed in six months, had delayed because TDL was still looking for a buyer one (1) month into the award of that contract. On this contract, when Richard said to the GM that they could move to site, he reiterated the urgency of the project in the following words, *"If they are going for the Agogo project, I wish the three weeks would be long*

for them to go on site. But if they clear site, they take time to prepare themselves, so that the Ministry can know that there is work in progress. Even if they take one month to go on site, and start nobody has issues with them’;

- xii. Another project whose completion had also delayed is the 22.5 km Wulensi-Chamba road awarded to B-Mole Ltd, described by the TDL General Manager as a sister company. The GM said “...I have a feeder roads project in front of me. It was awarded to another sister company. Yeah, it is our sister company. But that one, we are looking at 15% of the contract sum instead of 18% the usual %. The contract sum is 22 million Cedis. It is bitumen surfacing in the Northern region [agreement signed on 1st June 2018 by Department of Feeder Roads]”;
- xiii. The GM explained that TDL applied part of the 15% to pay officials of the ministries and departments that award the contracts to TDL. He says, “...18%, by the time we pay, ‘den you see say’ the one left for the company coffers be little...” else your payment ‘no go go through’. ‘The place you for pass all, you for sort them’. That is why when people work, some are paid, some are not paid. Because those who have not paid, you go and buy project somewhere and then payment becomes an issue. That’s the whole thing...”
- xiv. The GM told Richard that he gives the contracts to outstanding buyers because the terms are very favourable. He offered to sell a contract worth 158,900 Cedis to Richard. Thomas showed Richard the award letter to TDL dated 20th June 2019, which was a contract for the supply of column lift for the Ghana Ports and Harbours Authority (GPHA).

Manasseh provided copies of receipt for payment of GH¢5,000.00, which Richard made to TDL as registration fee in order to do business with TDL as well as a receipt for payment of GH¢10,000.00, as initial deposit for the purchase of a contract.

He explained that the sale of the contracts takes various forms, including outright sale, percentage share, and the use of a company's details to bid directly using TDL's political connections, among others. He noted that there were other contracts involving huge sums of money that TDL won, but he could not afford to enter into negotiation with the General Manager, Thomas Amoah, for the sale of those contracts to him.

Regarding the allegation of conflict of interest, he stated that during his investigations, he discovered that Talent Discovery Limited (TDL), a company which has the Respondent as a shareholder and director was awarded several contracts by public entities through restricted and or single source procurement.

He stated that public institutions are required to apply to the Public Procurement Authority (PPA), headed by the Respondent, for approval to use restricted or single source procurement for certain contracts.

According to Manasseh, the Respondent uses the information contained in the applications through the DDU to the advantage of TDL. He also said that in analysing the bids submitted by TDL and other competitors, he found that TDL's tenders were usually very close to those approved/or provided by the procurement entities. He gave the Santa Maria Concrete Drains contract as an example to buttress his point.

He said that the Ministry of Works and Housing estimated the Santa Maria project to cost GHC2,000,000.00 per the award letter, and TDL submitted a bid for GHC1,999,600.45, that is, only GHC399.55 less than the estimated cost. He added that most of the contracts awarded to TDL were either through restricted or single source procurement.

He indicated that the Respondent participated in decisions on applications by procurement entities to use restricted or sole source method of tendering involving TDL. That the content of the applications including estimated cost, were known to only the procurement entities and the Respondent as CEO of the PPA, who receives or on whose behalf the applications are received.

He further stated that the Respondent set up the Due Diligence Unit (DDU) to which he directs the applications to use single source or restricted tendering methods in the award of certain contracts, including applications where the Respondent's companies, TDL Group, had interest in.

Manasseh informed the Commission that before making the documentary public he wrote as "A Freelance Journalist" to TDL requesting for its comments on some of the issues relating to TDL that were raised in the documentary and which he intended to publish. His letter is reproduced below:

*"THE CEO
TALENT DISCOVERY LIMITED
SPINTEX, ACCRA*

Dear Sir,

REQUEST FOR RESPONSE

I write to request your response to some issues I want to publish about your company, Talent Discovery Limited.

I have been investigating allegations that your company is engaged in the sale of government contracts. Through undercover methods, I have the General Manager of the TDL Group, Thomas Amoah, on record demanding and receiving an amount of GHC5, 000 for the registration to do business with Talent Discovery Limited. He also received a deposit of GHC10, 000 in respect of a contract which the business I presented through a third party, was interested in. Receipts for the payment were demanded and received on the official letter heads of TDL.

I am by this letter giving you the opportunity to respond to or comment on the issues raised above.

Thomas also said in the recorded interactions with my undercover agent that Talent Discovery Limited had "links" at the top, when he was asked how TDL found it easy to get contracts. I will be happy to have explanations of

what exactly he meant by “links at the top”? Is it because the company is linked to the CEO of the Public Procurement Authority and Chairman of the TDL Group, Mr. Adjenim Boateng Adjei?

Also of interest to the story is what licenses and certification TDL has from the Works and Housing Ministry and the Roads and Highways to undertake construction.

Finally I will want to know if TDL has the permission of any of the Ministries, Departments and Agencies to sell their contracts to third parties.

I will be grateful to have an interview with a designated official of your company by the close of the week, Friday August 16, 2019. You may also submit a hard copy of a written response or send an electronic copy to azureachebe2@gmail.com. I can be reached on 0262784767.

I look forward to your timely cooperation to enable me to do a fair and accurate report...”

Solicitors of TDL, SIMA, responded that the GM, Thomas Amoah, acted on his own as he was not sanctioned to do what was captured on the video. The letter to Manasseh dated 19th August 2019 and signed by David K. Amatefe, Esq, for SIMA Consultancy, and copied the CEO, TDL, states:

“...Dear Sir,

RE: REQUEST FOR RESPONSE

We act as Counsel for Talent Discovery Limited (TDL) whose instructions we have to respond to your letter on the subject dated 14th August, 2019 as follows:

- 1. That our client is not in the business of selling government contracts. Mr. Thomas Amoah is an employee of our client and had no authority to do what your investigation allegedly revealed for which reason he is deemed to have acted purely on his own and has committed a grave misconduct and liable for the appropriate sanctions from the company,*

therefore. Already, disciplinary measures have been initiated in accordance with the Company's policies.

- 2. That our client (TDL) has no such thing as "LINKS at the top" since it operates in the market and competes for jobs like other players. That being the case, any such attribution to Mr. Adjenim Boateng Adjei is diversionary. You are to note specifically that Mr. Adjenim Boateng Adjei, a one-time Promoter and Director of TDL no longer holds such positions as he had since long resigned.*
- 3. That TDL has all relevant licenses and/or certificates from the ministry to which your request relates, which information is available on request.*
- 4. That your question whether our client had the permission of any of the MDAs to "sell their contracts to third parties" is moot and speculative in view of the earlier statements herein. Further, with regards to your question whether TDL sells contracts, we wish to repeat that TDL is not in the business of selling contracts. However, subletting is a permissible general contract term provided for in all contracts. TDL has not entered into any subletting contract and it is not in negotiations with any entity to do same. To this end, the employee of the Company who allegedly sought to engage another entity to participate in the execution of contracts in the name of TDL was on the frolic of his own and had no authority to make any such representations on behalf of the company,*

We hope the response herein would satisfy your purpose. The appropriate officer of TDL is standing by to grant you audience any time, at your convenience. Thank you...."

Manasseh also provided the Commission an unedited copy of the interview with Mr. Adjenim Boateng Adjei (the Respondent) and copies of the following documents that he obtained in the course of his investigation:

- i. The Ministry of Education Contract with Talent Discovery Limited in relation to:

- a. Construction of 1No. Single Storey Dormitory Block at Collins SHS in the Asante Akim North District; and
 - b. 1No. 12 Seater Toilet Block at Tuobodom SHS in the Techiman North District dated July, 2019;
- ii. Ministry of Works and Housing Contract with Talent Discovery Limited in relation to the Construction of Concrete Drains at Santa Maria;
- iii. Ministry of Roads and Highways Contract with B-Molie Enterprise Ltd for the Construction of Wulensi-Chamba Road;
- iv. Ghana Ports and Harbours Authority Contract award letter for Talent Discovery Limited for the Supply of Mobile Column Lift at the Takoradi Port; and
- v. A copy each of Registrar General's Department Search Results on:
 - a. Talent Discovery limited;
 - b. ABM Logistics Limited;
 - c. Frosty Ice Mineral Water Limited, and
 - d. TDL Freight Forwarding

The Commission reviewed the documents Manasseh provided as against those submitted to the Commission by those institutions concerned and found that they are similar.

TDL's Written Response:

TDL, in a written response signed by its Solicitors Kwaku Owusu-Agyemang Esq. of K-Archy & Company, stated that Mr. Francis Kwaku Arhin, the CEO of TDL, had been at the forefront engaging procurement entities and making a case for why TDL should also be listed to participate in competitive tendering for possible award in the event that it is considered to be the most successful evaluated responsive bidder. That pursuant to his efforts, TDL was shortlisted among other firms on 15 occasions by procurement entities in Ghana to participate in restricted competitive tendering which by law the entities are required to seek prior

approval from PPA in accordance with Sections 38 & 39 of Act 663 as amended.

According to TDL, PPA by its mandate only assesses the statutory requirement of the entity and justification provided by the procurement entities to grant them approval or otherwise to enable the procurement entities undertake the necessary procurement processes.

It described as preposterous the allegation in the documentary that on one occasion, TDL's bid was so close to the contract price that it could only have been because procurement information was released by Mr. Adjenim Boateng Adjei to TDL. TDL then stated that a study of the evaluation Report on the 25 lots in that particular contract would show that there were several other close offers from about 75 bidders. That, it could not be the case that Mr. Adjenim Boateng Adjei disclosed information to all the other bidders who gave close bids.

TDL further stated that it was obvious that the PPA has no influence in the award of contracts by the procurement entities.

On the allegation that because of the disclosure of information by Adjenim Adjei to TDL, that led TDL to win high volume contracts, even though it was less than 3 years old, it said that the complainant did not define what a high-volume contract is and it also does not state how many years a company must be in existence to win such contracts and that the highest contract ever won by TDL is about GHC1.9 million and others were as low as GHC77,000.

Regarding the allegation that "the companies that Mr. Adjenim Boateng Adjei established allegedly subletted, subcontracted or "sold" contracts awarded them by procurement entities of State without the consent of the said entities", TDL submitted that no such subletting, subcontracting or selling of contract had occurred and that is the reason why no evidence can be adduced by the Complainant to substantiate its claim. In respect of the call to investigate the officials of TDL and procurement entities for their involvement in corruption in the award of contracts to TDL and the "sale"

of those contracts, TDL said that such an allegation of corruption has no basis. It explained that none of its officials has been involved in any corrupt activity for the award of contract and none of its officers has sold any contract awarded the company.

TDL disclosed that it was awarded 6 contracts out of the 15 occasions the company was shortlisted. Certificates of completion on 4 out of the 6 contracts had been issued to TDL which it exhibited as “TDL 1”, “TDL 2”, “TDL 3” and “TDL4” being contract completion certificates issued by procurement entities to TDL for the completion of the contracts. Two of the contracts, according to TDL, were still under execution.

In respect of the allegation that “by the subletting, subcontracting or “selling” the contracts to other contractors and suppliers, Mr. Adjenim Boateng Adjei enriched himself illegally”, TDL described it as baseless. It went on to explain that *“The allegation could only be considered if the Complainant was able to show that any contract was subletted, subcontracted or sold and for how much. ... the Complainant has failed to show that any contract was subletted, subcontracted or sold and so the issue of whether Mr. Adjenim Boateng Adjei has enriched himself cannot arise unless the Complainant is able to answer the requests...”* to provide evidence.

TDL further argued that even though Mr. Adjenim Boateng Adjei at the inception of the company was both a director and a shareholder of TDL, per a letter dated 5th September, 2017, he resigned from his position as director and notified the Chief Executive Officer of TDL citing reasons of his busy schedule as the CEO of PPA. It continued: *“From the inception of the company up to date, Mr. Adjenim Boateng Adjei has not taken any active part in the running of the affairs of the company and has also not received any financial benefit from the company in any shape or form be it by way of salary, allowance or dividends.”*

On the allegation that TDL, being a company of less than 3 years old could not have won and “sold” contracts without the involvement of some public officers in those institutions whose contracts TDL won and “sold”, the

Solicitors argued that it is “the weakest link in the chain of unsubstantiated claims against our client” and that the allegation is an “...empty and baseless accusation against it”. TDL reiterated that in all its business dealings it had conducted its affairs in accordance with the laws that regulate its activities and it had not sought to unlawfully influence any government official in its business dealings. The Solicitors further argued that at all material times, their client had acted like any other company in the Republic of Ghana in its pursuit for business and contracts and at no point in time had it sidestepped any requirements in order to win any contracts or gain any undue benefits.

Having responded to the allegations brought against TDL, it turned its attention to the documents presented by the Complainant, stating as follows:

“It appears that the complainant bases its complaint on a supposed investigative documentary by one Manasseh Azure Awuni which has also been attached to the documents presented with the Complaint. We have watched the entire documentary and we regret to say that no matter how much one stretches the issue one cannot find anything in the said documentary that would support the allegations made. Nowhere in the said documentary can it be inferred that a contract awarded to TDL had been sold to any person. In fact, in the said documentary it could be seen that contract belonging to another company, B-Molie Limited, was the subject matter of discussion between the undercover agent and Mr., Thomas Amoah, the Administrative Manager of TDL. The question therefore is what has a discussion of a contract belonging to B-Molie Ltd got to do with TDL and its officials. TDL and B-Molie Ltd are completely unknown to TDL and so upon what basis can one link B-Molie Ltd. to TDL? ... We say that but for the present issues, the existence of B-Molie Ltd. was completely unknown to officials of TDL”.

The Solicitors continued “We also note that the said documentary contains portions in which the Administrative Manager of TDL, Mr.

*Thomas Amoah was seen having discussions with an undercover agent. The discussions centred on prospects of the undercover agent participating in the execution of a contract belonging to B-Molie Ltd. Furthermore, the documentary would also show that Mr. Amoah sought and obtained GHC15,000 as registration fee and deposit towards any future project. The said officer was queried for his conduct which the company found not to be satisfactory. The query letter and his response have been attached herein as **Exhibit 6** **Exhibit 7** respectively. It would be obvious that Mr. Amoah at all material times was on his own frolic and had no authority to be engaged in the discussions he had.*

*Be that as It may, there is nothing in documentary that suggests that Mr. Amoah was selling contracts awarded to TDL. As it is the normal practice in many businesses, TDL keeps a list of suppliers that are called upon when their services are required. Mr. Amoah acted within his powers when he sought to register the supposed Joseph Kumadrah as a contractor. It would be obvious even from the document attached by the Complainant that the "Contractors Registration Form" (herein attached as **Exhibit 8**) is not a form that has been designed for the purpose of selling contracts by TDL to others. This conclusion is irresistible when one considers the statements found under the heading 'Declaration' on the last page of the form. The document is clearly seen to be a Suppliers Register. We submit that there is nothing untoward or illegal for TDL to set out and design a form that prospective provider of suppliers or services are needed. To suggest, as was the case in the documentary that merely filling the forms was in preparation for the sale- of non-existent contract is ridiculous because the form itself is clear on its face that it is a Suppliers Register.*

We also state that even when though Mr. Amoah has admitted that at the time he was speaking to the undercover agent, he was seeking to find partners for the execution of the B- Molie contract, a wholly private pursuit, the mere fact that he engaged in that conversation does not mean that he was selling contracts belonging to TDL. As already stated, B- Molie Ltd has no relationship whatsoever with TDL. In addition, the discussion between Mr.

Amoah and the undercover agent with respect to any of TDL's contracts was done without any authority from the Chief Executive Officer of the TDL and clearly above the powers of Mr. Amoah. As already stated, the contracts awarded to TDL has been fully executed at the time of the said conversation and so there cannot be a contract that was purportedly available for sale assuming TDL was even in the business of selling contracts. We submit that there is still no proof that TDL or any of its officials have sold any contract to any person.

We take note of the fact that the Complainant also alleges that some contracts have been subletted or subcontracted without the authority of the institutions that awarded those contracts. First of all, subcontracting or subletting are not illegal activities under the laws of Ghana provided same is done in accordance with the laws and terms governing the contracts. In fact, in most standard contracts, provisions are made for subcontracting and subletting subject to certain conditions such as seeking the consent of the employer. We submit that TDL has not subletted or subcontracted any contract to any entity or person. In the circumstances, we demand strict proof from the complainant on the contracts which are subletted or subcontracted without the consent of the employers. We further demand proof of any employer to the effect that a contract it awarded to TDL had been subletted or subcontracted without their consent.

Our client takes note of the fact the present complaint is brought pursuant to chapter 24 of the 1992 constitution. Having regard to the totality of the complaint before the Commission, it is obvious that the complaint is cognizable under Article 284 and Article 286. It is furthermore deducible as far as our client is concerned, that it is only affected by the alleged breach of Article 284 of the 1992 constitution in the sense that it is alleged by the Complainant that Mr. Adjenim Boateng Adjei has placed himself in a conflict of interest situation when as the CEO of the PPA, a company in which he had interest, TDL was awarded contracts by the state agencies and so our client would have benefitted from the alleged breach of the said article by Mr. Adjenim Boateng Adjei. Our client shall contend that in all of its

business pursuits, Mr. Adjenim Boateng Adjei has never placed himself in any conflict of interest situation that has resulted in our client getting a contract. This conclusion is unavoidable given that Mr. Adjenim Boateng Adjei has no authority in his capacity as CEO of PPA to influence the processes leading to the award of contracts at the various government agencies especially when the restricted tender process is the preferred procurement method. In such instances the Board of the PPA merely considers the application for the use of that method and also check if the shortlisted companies meet the minimum criteria set out in the law. The burden of the Complainant in this regard is show that in some instances TDL did not match the minimum requirement and yet Mr. Adjenim Boateng Adjei failed to disqualify them because of his personal interest.

*We would further contend that Mr. Adjenim Boateng Adjei never placed his personal interest ahead of his duties as the CEO of PPA. In fact, we have been apprised of an instance when he wrote to a procurement entity to disqualify TDL in a tender process in which TDL had participated but had not presented a responsive offer having regard to the specifications of that particular contract. We attach herein as **Exhibit 9 & Exhibit 10** letters under the hand of Mr. Adjenim Boateng Adjei in his capacity as the CEO of PPA, to the Bank of Ghana in which he questioned the said institution as to why TDL had been shortlisted to proceed to the next stage of a tender process when its offer was not responsive to the minimum specifications stated in the tender documents. This bears testimony to the unassailable integrity of Mr. Adjenim Boateng Adjei and the fact that he would never sidestep the requirements of the law simply because TDL was involved. Mr. Adjenim Boateng Adjei without more, refused to bend the rules in favour of TDL. We call on the Complainant to also provide an instance in which the rules were bent by Mr. Adjenim Boateng in favour of TDL. In the absence of any such instance we submit that the contention that Mr. Adjenim Boateng Adjei was in breach of Article 284 cannot hold and must be dismissed.*

We shall conclude by referring the Commission to the dictum of Brobbey JSC in the case of Okudjeto Ablakwa (No 2) & Another v Attorney General & Obetsebi Lamptey (No2) [2012]2 SGCLR 845 thus.

“The Plaintiff’s reliefs failed in so far as they were based on cronyism, arbitrariness, capriciousness, discrimination or conflict of interest. I have had the benefit of reading in advance the opinion of my brother Atuguba JSC, the President of this panel. He dismissed the claims of the plaintiffs in respect of conflict of interest, cronyism, discrimination, arbitrariness, capriciousness and corruption. What that implies is that this panel is unanimous in dismissing the claims of the plaintiffs based on, cronyism, discrimination, arbitrariness, capriciousness, corruption and conflict of interest... this is a Court of law, a court of equity and a court of justice. As a court of law we are governed by rules...our rule and regulations mandate that people who invite the court to condemn others for the wrong doing should be in a position to justify what they call on the courts to do”.

We submit that based on the case above, the Commission ought to make a determination of the issues presented by the Complainant having regard to the rules and regulations on procurement practices in Ghana, the specific roles of the Board of PPA, the authority of Mr. Adjenim Boateng Adjei in his capacity as CEO of PPA in the procurement process and also establish in what manner he put himself in a conflict of interest situation in order to favour our client. The present matter shall not admit of conjectures, assumptions and half-baked facts and so the Complainant is put to strict proof of the allegations to which our client has responded. We respectfully submit”.

Interview with Francis Arhin

In an interview at the Commission on 12/06/2020, Mr. Arhin, Chief Executive Officer (CEO) of Talent Discovery Limited (TDL), in the company of his Lawyer, Kwaku Owusu Agyemang Esq of K-Archy & Company, mentioned that TDL was incorporated in June, 2017 as a private

limited liability company, with himself as shareholder, Director and Secretary, while Adjenim Boateng Adjei (Respondent) is Director and shareholder. Mr. Arhin disclosed that subsequently Adjenim Boateng Adjei gave the company “a documented intent to step down as co-Director and Chairman”, although records at the Registrar-General’s Department remain the same.

According to Arhin, he had experience in facility management having worked in the UK from 2002 to 2017 in facility management. He then decided to replicate same in the country. As a result, he decided to incorporate TDL ostensibly to facilitate private and public facilities and property management in the country.

He stated that he was the brain behind the incorporation of TDL and personally went to register it at the Registrar-General’s Department. Mr. Arhin, therefore, dismissed as false, the allegation that the Respondent incorporated TDL after assuming office at the PPA.

Furthermore, Mr. Arhin stated that the shares allotted and issued to the Respondent were not based on merit, but an appreciation of the support he had and would derive from the Respondent. He said that on record, the Respondent is still a Director and shareholder, but at the company level, he has since resigned as Director but remains a shareholder.

Mr. Arhin said that at the time of incorporating the Company, one Kwame Appau was doing all the administrative and secretarial duties but he had since left the company.

According to Mr. Arhin, TDL Group does not exist as a company and that it was only used as an abbreviation for its website. He again said the inscription of “TDL Group Ltd” on the company’s signage was, thus, a mistake.

On the subsidiaries of TDL, Mr. Arhin listed the following, among others, as the subsidiaries of TDL:

- TDL Freight Forwarding.
- TDL Transport and Logistics

- TDL Agro Business

He indicated that TDL Freight and Forwarding was an anomaly which occurred on one of its invoices to the Ghana Water Company by its staff. The correct rendition is TDL Freight Forwarding

On employees of TDL, Mr. Arhin said that the company had four (4) employees engaged on temporary basis, namely:

- Francis K. Arhin, CEO;
- Thomas Amoah (aka Thomas Clifford Amoah), Administrative Manager;
- Abigail Darfur, Office Secretary; and
- Ebenezer Nyarko, Security

He further said that there were instances where the company had to source consultants in areas of specialty such as accountants. For instance, he mentioned an accountant for such purpose as one Victor, but indicated he was “on and off”, engaged on temporary basis, but could not readily provide their names, and promised to furnish the Commission with a list of such Consultants, he did not.

He said that the company sometimes received persons for either internship or National Service and such persons may have included, Faustina Mildred and Adu Kwame Okyere, in response to the question whether he knew those persons.

Regarding the number of employees stated on the SSNIT Clearance Certificate presented to procurement entities as two (2) by TDL, he stated that though they were temporary employees, he was advised to present them on the SSNIT certificate since they had been engaged beyond six (6) months.

Mr. Arhin averred that all decisions with regard to the company are taken by him although there is a Board for TDL, comprising:

- Francis Kwaku Arhin, CEO
- James O. Arhin, his senior brother

- Abraham, a cousin domiciled in the UK

The company records with the Registrar-General, however, list only Francis Arhin and the Respondent as directors of TDL.

Mr. Arhin was emphatic that Adjenim Boateng Adjei was not a Member of the Board of TDL and he was also not related to the latter. He said he is only married to a cousin of Adjenim Boateng Adjei.

With regard to the number of tenders TDL had participated in, Mr. Arhin said that he believed TDL might have participated in over 300 competitive tendering, but was shortlisted for 15 contracts out of which it won six (6), executed four (4) and two outstanding. He mentioned the following as contracts executed by TDL:

- *Binduri 1V1D*: Lots 2 & 3; each consisting of 2 dams making a total of 4 dams for the two lots. He said that he had visited Binduri at least five (5) times and was there to cut the sod. When he was asked to provide the names of the communities or villages where the said dams were being constructed as well as the name of the Consultant, he could not provide. Mr. Arhin indicated that one of the dams at Binduri had been completed and certificate raised and paid. He mentioned one Magid Sulley who lives in Navrongo as the Local Representative for the said dams.
- Renovation of Bungalows one at Ridge and the other at Airport Residential Area

He mentioned the following as the contracts under execution:

- Santa Maria, which site was later changed to Teshie-Nungua at same cost
- The Construction of Dormitory Blocks for MoE at Agogo. He indicated that the project was 40% complete. He said due to lack of funds work stalled in September, 2019 but it has re-organised itself to continue the works on site. He identified one Mantey as the local representative for TDL. Arhin stated that it had no contract at Tuobodom.

When he was asked if TDL was awarded a contract for works at Akatsi since it was not listed in TDL response to the allegations or mentioned during the interview, he said it was an oversight.

On the Akatsi Contract, which was desilting works, Arhin said the contract was valued at GHC77, 000.00 and that TDL, and not anyone else, carried out the works. He denied that someone else had carried out the works.

When he was told that the Commission's investigations revealed that the contract was executed by one Mr. Nicholas Adjei of K. Adjei Enterprise, he said that TDL only rented an excavator from Nicholas for an amount of GHC45, 000.00 which sum was given to Thomas Amoah, the project manager, to pay Nicholas.

When he was shown a copy of the agreement TDL executed with Nicholas Adjei he admitted that the signature on the document was his, but denied signing such an agreement. He mentioned that Thomas Amoah was in charge of the supervision of this project and was the one who brought Nicholas to assist with the execution of the desilting.

As to whether, a certificate has been raised for payment, Arhin said that the certificate delayed because, as he understood, the Entity Consultant failed to visit site to inspect the work done and to issue certificate for work done. When he was asked again if TDL had all the relevant documents to enable it have the certificate raised, he said he would consult Thomas Amoah.

Mr. Arhin stated that TDL was never awarded the following contracts:

- Construction of Blocks at Savelugu SHS
- Supply and Installation of Column Lift at the Takoradi Ports. He indicated the contracts were two: Printing of ID Cards and the Column Lift. It was awarded the Printing of ID Cards; which has been cancelled due to the exposure
- Supply and Installation of Industrial Air Purifier for the Bank of Ghana Vaults
- Supply and Installation of Coins Sorters for the Bank of Ghana

On his assertion that the respondent, Mr. Adjenim Adjei, had not benefitted financially from TDL, he was asked if he ever paid any monies into the respondent's account in the last two years, which he denied. He said "no", no"". When he was confronted with evidence that he paid \$10,500 into the respondent's USD account number 9040002473180 at Stanbic Bank Airport Branch on 17th August, 2018, Mr. Arhin changed his response and admitted that he did pay that amount of dollars into the respondent's account but that it was his own contribution towards the purchase of a truck for Agro Business.

- **Frank Mante**

Frank Mante is the Deputy CEO of the PPA in charge of Technical and Operations. At the time of the interview with him, he had been appointed Acting Chief Executive Officer of the PPA. After submitting comments requested by the Commission from PPA, the Acting CEO of the PPA met with the Commission on 24 September, 2019 with some governing board members to assist with the investigations.

Regarding the work of the Due Diligence Unit (DDU), Frank Mante explained that the unit reviews applications from procurement entities and makes recommendations to the Board for consideration. He also stated that the reports of the DDU are what form the basis of the Board's decisions as the Board does not generate different reports from those submitted by the DDU. He further explained that the reports of the DDU are referred to the Technical Committee of the Board that reviews the DDU reports for approval by the Board. He admitted that the CEO of PPA is the one that receives the reports of the DDU and transmits same to the Board for consideration at its meetings.

He agreed to furnish the Commission with the following information requested by the Commission:

- i. Minutes of single source procurement and restricted tendering for the period of June 2017 to August 2019;

- ii. Reports of single source procurement and restricted tendering for the period of June 2017 to August 2019;
- iii. List of applications for contracts from the MDAs in which the TDL participated from June 2017 to August 2019 (either won or submitted);
- iv. A summary list of all contracts in respect of single source procurement and restricted tendering from June 2017 to August 2019;
- v. List of the Due Diligence Unit (DDU) members (past and present indicating their contact details).

- **Professor Douglas Boateng**

Prof Douglas Boateng is the Board Chair of the Public Procurement Authority (PPA). He met with the Commission on 24th September 2019. He was accompanied by the following persons:

- Mr. Kofi Owusu, PPA Board Member
- Dr. Emmanuel Boakye, PPA Board Member
- Mrs. Lesley Dadoo, PPA Board Secretary

After explaining the difficulty of providing the Commission with copies of documents on restricted tendering/sole sourcing (RT/SS) procurement for the period 2017-2019, Prof Boateng said that applications to use single source or restricted tendering by procurement entities are submitted to the PPA addressed to the CEO. The applications are then referred to the DDU for technical and financial audit and reports are submitted to the CEO for onward transmission to the Board for consideration and necessary action.

Regarding the procedures, he explained that the procurement entities submit a list of firms with attached documents to the PPA for approval to use single source and restricted tendering. The PPA on receipt of the applications assesses qualification of the firms and value for money of the contracts. The PPA then communicates its decision to the procurement entity. Where approval is granted, the procurement entity is expected to write to the shortlisted firms to submit bids on the contracts. The bids are

evaluated and a report on the evaluation submitted to the PPA and the contract subsequently awarded to the firm which won.

He stressed that the information does not include the bids submitted by the company or the tender evaluation report as that is done after the approval of the PPA.

On challenges of the said procurement process, he said that some firms do not know that they have been shortlisted for application for Single Source and Restricted Tendering by the respective procurement entities. This is because they might have been picked from the contractors' or suppliers' database.

He concluded that the financial and technical capacities of the firms are not known to PPA but the procurement entity.

- **Mr. Osei-Wusuansah**

Mr. Osei-Wusuansah is the Acting Director, Hydrological Services Department, (HSD) under the Ministry of Works and Housing. HSD appears in the contracts that the Ministry of Works and Housing awarded to TDL as the Consultants to the projects. He met with the Commission on 31st August, 2019.

According to him, MoWH implements the National Flood Control Programme (NFCP) under which the Ministry undertakes drainage construction and desilting works to curb the perennial flooding across the country. He said that the HSD through its offices across the country provides the Ministry with list of flood prone areas with estimated cost for appropriate action.

Mr. Osei-Wusuansah further said that the records show that MoWH awarded two contracts under the NFCP to TDL for desilting and drainage construction works in Akatsi and Santa Maria respectively. He submitted reports with attachments each on Akatsi and Santa Maria works, which he said provide details of the projects awarded to TDL as well as the tender documents of the three companies that participated in the tender.

According to Mr. Osei-Wusuansah, MoWH usually seeks for Commencement Warrant or Certificate from the Ministry of Finance (MoF) on its projects, which cost forms part of the Ministry's budget. After approval is obtained for the warrant, MoWH identifies a number of contractors who are selected for each project for consideration for the award of the contracts.

He indicated that the process of award of contracts under RT follows two stages. First, MoWH forwards to HSD list of selected contractors on each project. HSD then invites each contractor to submit company profile indicating technical and financial capabilities to execute the contract. HSD forwards the responses of the contractors to MoWH, which applies to the PPA for consideration and approval. This stage is the pre-qualification stage. Thereafter, MoWH forwards to HSD any approval from the PPA with instruction to invite the contractors to submit bids on the projects for consideration and award of the contract. HSD evaluates the bids submitted by the contractors and submits reports on the evaluation to the MoWH Ministerial ETC for consideration and approval. When the report is approved by the ETC, MoWH then instructs HSD to issue the award letters to successful contractors.

Mr. Osei-Wusuansah said that he did not know the status of the Akatsi channel improvement project or the desilting works, but he was aware that no work had commenced on the concrete drainage at Santa Maria in the Greater Accra Region.

- **Hon. Hawa Koomson**

Hon. Hawa Koomson is the Minister, Special Development Initiatives (MSDI). She met with the Commission on 9th March, 2020.

She stated that 560 dams/dugouts were being constructed nationwide under the President's Special Initiative Projects: One-Village One-Dam (1V1D), coordinated by the MSDI.

Hon. Koomson said that the MSDI did all the procurement processes for the 1V1D projects, except the approval of the Tender Evaluation Report (TER) which was done by the Entity Tender Committee (ETC) at the Office of the President (OoP). This was because at the time of awarding the contracts, MSDI had not constituted its ETC. So, the minutes of ETC in which Talent Discovery Limited (TDL) was recommended for the award of contracts (Lots 2 and 3) in respect of the construction of the dams/dugouts, are with the ETC at the OoP. She further explained that no specific qualification was used for the selection of the contractors. Contractors were invited to submit proposals and based on the suitability of the proposals contracts were awarded.

Hon. Koomson also said that MSDI adopted the Restricted Tendering (RT) method of procurement for the 1V1D as it was considered as priority projects of the Government which needed to be fast-tracked. Also, there was no one Specific design and or Specification for the dams and that the Consultants for the contracts determine the suitability of the site and design for the construction depending on the location.

She further said that each Metropolitan, Municipal and District Assembly in the targeted areas submitted a list of ten (10) communities, which was considered for the 1V1D project. She said that she is aware that contracts were awarded to TDL for the construction of dams in certain communities, but these did not include Bimbilla as per the document submitted to the Commission.

According to Hon. Koomson, initially the contractors' Certificates of Payments for work done were to be endorsed by the Regional Planning Office and same forwarded to the MSDI, but that responsibility has now been given to the Development Authorities (Northern and Coastal Development Authorities), agencies under the Ministry. This is to expedite the approval processes involved in preparing Certificates for Payment. She added that the Development Authorities (DAs) are expected to collaborate with the Regional and Planning Officers of the Assemblies to monitor the

implementation and execution of the projects. She also said that after the award of the contracts from Accra, it is the Assemblies that hand over the sites to the contractors and as part of their oversight responsibilities, monitor and report on the projects.

She said that payment for work done was made through the Ghana Integrated Financial Management Information System (GIFMIS) and that a Certificate was raised by Beever Associates Consult Ltd, Consultant, on behalf of TDL, has been cleared through the GIFMIS system. She indicated that payment was delayed following the pendency of the matter before the Commission but was later paid at the end of last year, 2019.

Hon. Koomson again said that the construction of the dams or dugouts were at various levels of completion and that none had been completed. She said that for a dam to be considered “complete”, the contractor must cultivate cover grass along the embankment, which had not been done at any of the site during her last visit and subsequent monitoring reports on the status of the dams. She provided the status of construction of dams at Binduri Constituency following a report she received from Beever Associates Consult Ltd working for the Northern Zone: Tuba 90%, Boko 80% and Zawse 80%. She concluded that until the airing of the Manasseh documentary, she did not know that the said TDL was owned by Adjenim Boateng Adjei.

- **Mr. Kennedy Kludjeson**

Mr. Kennedy Kludjeson is the Volta Regional Director of Hydrological Services Department (HSD), and the Project Manager on the Akatsi Drainage contract. He mentioned that he recommended the project site as a flood-prone area to the HSD Head Office, and submitted a report to the HSD Head Office in Accra, after which a contract was awarded for the desilting of the site. Mr. Kludjeson said that he was then invited to the HSD Head Office and given a copy of the Contract document, which indicated

that TDL had been awarded the contract. Subsequently, he went to the site for an initial survey.

While on the site, he met Mr. Nicholas Adjei, the excavator operator and some workers who said they were employees of TDL. He also got to know by phone one Thomas who described himself as the project manager who was said to have brought Nicholas and his boys to the project site.

According to Kludjeson, Thomas informed him that he worked with TDL, and that he engaged Nicholas Adjei and three others to work on the project.

Mr. Kludjeson said that Nicholas Adjei made several follow-up calls to him on whether he, as Project Manager, had completed his part of the work in order that TDL could pay him his outstanding balance.

Mr. Kludjeson said that the project was completed somewhere in May 2019 and his assessment was that the project was successfully completed by the same company that was awarded the contract. Mr. Kludjeson further stated that, usually the contractors come along with a copy of the contract document as evidence of the award of the contract; and that Nicholas gave him a copy of the contract document, which tallied with the one obtained from HSD Head Office.

- **Mr. Nicholas Adjei**

Mr. Nicholas Adjei owns K. Adjei Enterprise, which is located around Dzorwulu Junction, Accra. Nicholas informed the Commission that he executed the Akatsi Drainage contract. He said Thomas Amoah of TDL called and informed him that TDL needed an Excavator for a job. He was then called to TDL Office at Osu and given the work to execute. He was also told that they could not pay everything upfront, but they will pay part and pay the rest after completion of the work. TDL made an initial payment of GH¢20,000 before commencement of work and agreed to pay GH¢25,000 after completion. The money was paid in cash after signing an agreement with TDL.

Nicholas said Amoah gave him Mr. Kludjeson's number; and "...when we met, Mr. Kludjeson asked me whether I did not come along with any document. Then I went back to Amoah and brought him a copy of the contract document." According to Nicholas, he took six (6) days to execute the project, which was supervised by Mr. Kludjeson and Mr. Nicodemus Okyerefo (Technical Officer). They were both around for all the 6 days: Mr. Okyerefo was always around but Mr. Kludjeson's presence was intermittent. Nicholas said that he had three other workers with him; and that even though he completed the work for more than 9 months at the time of the visit, he was yet to be paid his outstanding balance.

Nicholas disclosed that the first time he demanded payment of his outstanding balance, Amoah told him that the individual who was to make the payment (i.e. the Accountant) had travelled. Subsequently, Thomas had been telling him that the money has not yet come.

Nicholas said that though he took pictures of the project site before, during, and after, the excavation works he refused to provide Amoah the pictures because there was a verbal agreement for him to submit copies of these pictures upon payment of the outstanding balance. Nicholas does not remember whether HSD Officers (Kludjeson or Okyerefo) also took some pictures; and he did not give his copies to either Mr. Kludjeson or Mr. Okyerefo. Nicholas further informed the Commission that he never registered nor paid any money to TDL before executing the work.

- **Mr. Edward Larbi-Kumi,**

Mr. Edward Larbi-Kumi, Headmaster of Collins SHS, stated that somewhere in April 2019 the Boys' Dormitory got burnt and Dr. Adu-Twum, Deputy Minister of Education, and some other government officials came to the School and promised to get them a new Dormitory. Then somewhere in July 2019 one gentleman brought a letter that he had been given a contract to construct a single storey dormitory for the school. Initially, Mr. Larbi-Kumi could not remember the name of the individual

who brought him the letter, but when he checked through his records he found the business card of that person, which bore the name of one Ing. Thomas Clifford, Group Manager, TDL GROUP. Ing. Clifford and three other persons came to Collins SHS twice. The project was started somewhere in August 2019; and work was abandoned somewhere in November 2019.

There was a gentleman acting like a foreman. When work was commenced, *“I tried but unsuccessfully to meet the actual person who was said to be working on the project. I never saw the ‘contractor’ physically. One Mr. Asante’s name was given to the Assistant Headmaster Academic as the main man.... I called him several times until one day he picked up the call, and I told him that I wanted to meet him and he responded that he had been informed about my efforts to meet with him in person and that he will try and meet me; but he never showed up. When work was stalled somewhere in November 2019, I called him again and he told me to have patience for him. Again, he never showed up”*.

Mr. Labi-Kumi said that his impression about the Contractor was that he had no capacity to do the work assigned him and that he tried unsuccessfully to reach Ing. Thomas Clifford as his calls to him went unanswered and/or received messages such as ‘can I call you latter’ but he never returned any of his calls.

- **Hon. Victoria Adu**

Hon. Victoria Adu, the MCE of the Birim Central Municipal Assembly, Akim Oda, intimated that she was aware of the Greening of Parks project, at the Oda Zongo. She also said that the Community was not satisfied with the work of the contractor which led to a Community demonstration against the poor execution of the contract.

Together with the MCE, the Zongo Chief and others, the Commission went round the park to see the extent of work that had been done. Thereafter, the Commission met selected members of the Community where the

project is sited and had an interview with Chief Adamu Mohammed Naa Annabi (Hausa Chief) and representative of the Zongo Community.

- **Mr. Zuk**

Mr. Zuk, the Mason who built the store, toilet and bath rooms as part of the project said no toilet bowls were fixed. Zuk further said that the one he reported to was one Albert (the 'Engineer') from Accra. Zuk used about 20 days to undertake the exercise. He was engaged on per-day basis and has since been fully paid in cash.

On the Borehole, the group stated that its purpose was to water the park after planting the green grass, which never was. The borehole was also not completed. The Community had to contribute money to buy 'pipe cocks'. The contractor bought and fixed the meter for the pumping machine, but the pipes that were supposed to extend the water to the pitch were not fixed. The contractor fixed only one tape.

- **Mr. Francis Cofie Onai**

Mr. Francis Cofie Onai, Head of Works Department, Birim Central Municipal Assembly, Akim Oda, said he was transferred to his current office in September 2019; and had knowledge of the project somewhere in October 2019 when some areas around the project site got flooded. He got the information from the Municipal NADMO Office. He went to the flooding site with the MCE and the Municipal Security Council. On the question of whether there were any records of the project on the files of the Assembly, he answered in the negative: *"I have seen no records of this particular project since I assumed office."*

Mr. Onai indicated that sometimes projects are implemented in Districts without the knowledge of the Head of Works Department or even the District Assembly where such projects were awarded directly from Accra. In a response to a question, whether this type of practice was normal, Mr. Onai said that by policy, no project should take place within any District

Assembly without the knowledge of the Assembly within which such project is being undertaken and for that matter the Works Department.

- **Alhassan Yakubu**

Alhassan Yakubu, the Binduri District Coordinating Director, said that the district had been allocated 10 dams including the one at Zawsu.

Regarding the identity of the contractors, he said that the Assembly had no records of the contracts and did not know who the contractors or the consultants were. That everything was done in Accra by the MSDI which did not also provide the Assembly the information the Team was looking for.

He said that because the Assembly monitors projects being executed by the central government including the one-village one-dam within its catchment area. The Assembly, during its regular monitoring visits found that most of the dams the monitoring covered were at various levels of completion.

The DCD then invited the District Planning Officer to provide the Team with a report on the dams, which he did. The report contains the list of the beneficiary communities and the progress of work on each of the dams as follows: Agumsi (90%), Atuba (50%), Boko (90%), Gumyoro (70%), Nayoko No. 1 (20%), Zawsu (10%), Bansi (20 %), Narango (0%), Poayamire (0%) and Aniisi (0%).

- **Alhaji Mohamadu Assibi Azonko,**

Alhaji Mohammadu Assibi Azonko, the Upper East Regional Coordinating Director, said that the Regional Coordinating Council (RCC) was not involved in the award of the said contracts because the Ministry of Special Development Initiative (MSDI) awarded them. As such, the contractors after being awarded the contracts proceeded to the sites without passing through the RCC.

According to him, the RCC got to know one of the consultants when he raised a certificate of payment for endorsement. Even then, the MSDI had requested RCCs to not endorse certificates raised by consultants working on the 1V1D dams any longer and that the endorsement was the preserve of the Development Authorities, and in the case of the Upper east Region, Northern development Authority. A copy of the letter is attached. This directive of the Minister further alienated the RCC from better monitoring the construction of the dams in the region.

Regarding how the RCC obtains information on the 1V1D, he said the RCC gets information on the projects either through reports from the Assemblies, or through its projects monitoring team and during tours undertaken by the Minister.

On the status of the dams, he said that none of the projects had been completed. He explained that though, the RCC did not have the contract documents, it was his understanding that a completed dam should have plant cover grass around the embankment which, according to him, had not been the case with any of the dams under construction in the Region. On the identity of the contractors working on the dams, he disclosed that he was shown a letter signed by the current Regional Minister, in which he identified one Dr. Tanimu, a native of Yendi who prepared the certificate in his capacity as the Consultant for Talent Discovery Limited (TDL). The said consultant was present during the launch of the 1V1D Initiative by His Excellency the President at Bongo.

- **Mr. Alhassan Ibrahim,**

Mr. Alhassan Ibrahim, the Upper East Regional Economic Planning Officer, informed the Team that monitoring of government projects being undertaken in the region formed part of his schedule of work. He is therefore expected to have records of the various projects being undertaken in the Region. But in terms of the dams being constructed under the 1V1D initiative, the RCC does not have any record on them such

as cost, details of contractors, terms of the contract and consultants, among others. The contracts were awarded in Accra by the MSDI, which did not provide the Region with copies of the contract documents to enable effective monitoring of those dams. He said that the MSDI made the contractors to commence work at the locations without recourse to the RCC or MMDAs.

On the dams at Binduri, he said that he and a Team from Accra were there on Thursday 13th February 2020 to monitor projects including the dams. He found some of the dams to be good; others were still under construction. According to him, the Boko dam had been completed, though he could not tell whether the construction met the required specifications in the 1V1D contracts or not.

Mr. Alhassan mentioned that it was difficult for the Regional Economic Planning Unit of the RCC to ascertain status or progress of implementation of the said dams without the contract specifications and that since it was the duty of his Unit to monitor, his office had to rely on the consultants for information, which was sometimes skewed to favour the contractors. He cited an instance where he had a disagreement with a consultant by name Dr. Tanimu Osman, when he brought a certificate for endorsement in favour of Talent Discovery Limited. The disagreement concerned the amount on the payment certificate as compared to the work executed at site. In the process, when his Unit requested for further information on the contract, the consultant refused to provide the information and rather accused him of placing impediments on his way.

Mr. Alhassan also disclosed that the MSDI had written a letter to the RCCs informing them that henceforth the RCCs should not endorse certificates in relation to the 1V1D and that the Northern Development Authority (NDA) is the institution mandated to coordinate all such projects including endorsement of certificates raised in relation to them.

According to the Planning Officer, most of the contractors were not helping the nation with the kind of work that some of them do; shoddy work and delays. The worst of it is where the contract is not locally awarded, the contractors think that they could do anything and get away with it. This, he said, was affecting professionalism, local participation and value for money.

- **Ms. Paulina Patience Abayage,**

Ms. Paulina Patience Abayage, the Upper East Regional Minister informed the Commission that her involvement in the 1V1D Initiative was minimal, as everything was done from Accra by the Ministry of Special Development Initiatives (MSDI). She stated that her predecessor queried the practice of not involving the RCCs in the award of contracts and or monitoring the execution of the said contracts and the Minister, MSDI, promised to provide details of the contracts to assist with monitoring, but she had since not done so.

Regarding the letter she signed approving the payment certificate in favour of TDL for GHC404,008.11, the Minister said that all that she did was to forward the request with the attached documents to the Minister, MSDI for necessary action, based on information provided her by the Planning officer of the Region. The certificate was in relation to Lot 2 (Binduri). The dams are located at Atuba and Boko Communities.

She stressed that she did not know who the contractor or the consultant on the project were but that once she obtained the technical advice from the schedule officers, she signed and forwarded the application for payment to the Minister, MSDI for her consideration.

She further stated that it is one of her biggest problem in the region as contractors come into the region to execute contracts within the region without the knowledge of the Office of the Regional Minister. The contractors also have no courtesy to notify the RCC and or the relevant MMDAs of their presence or mission in the communities where the

projects are located. As such her office had no idea on how the contracts were awarded and whom in relation to the 1V1D in the region.

Further investigations by the Commission revealed that one Benjamin Njoswine of Amechen Construction Ltd, P.O. Box 15009, Accra-North was the contractor actually executing the work on the Boko community dam. It is same contractor who had other projects including Navrongo stadium, Nayoko Dam (completed) and Ponyameri dam (almost completed) in the Binduri District. He is also known as “Accra Mason”. Thus, though certificates were raised for TDL Ltd, Amechen Construction Ltd, Accra, is said to have done the actual construction.

8.2. Consideration of Documents

Article 219 (1) provides:

“The powers of the Commission shall be defined by Act of parliament and shall include the power –

(a) to issue subpoenas requiring the attendance of any person before the Commission and the production of any document or record relevant to any investigation by the Commission;

Set out below are the relevant portions of documents obtained in the course of the investigation by the Commission.

8.2.1. Records from the Registrar General’s Department

At the request of the Commission, the Registrar-General provided information on the following companies alleged to have been incorporated by the Respondent:

- 1) Talent Discovery Limited (TDL);
- 2) TDL Agro Industry;
- 3) TDL Freight Forwarding;
- 4) TDL Transport and Logistics Services;
- 5) Frosty Ice Natural Mineral Water Ltd; and

6) ABM Logistics (GH) Limited

Talent Discovery Limited (TDL)

TDL was incorporated as a private company limited by shares on **19th June 2017** to carry on business as Manufacturers Representatives, Imports and Exports of General Goods, Logistics and Transportation Services, General Merchants, Procurement Consultancy, Management Consultancy, Financial Engineering Consultancy.

The Directors of TDL are Adjenim Boateng Adjei (Respondent) and Francis Kwaku Arhin with shares of 30,000 and 20,000 each respectively at one Ghana Cedi per share.

TDL Agro Industry

TDL Agro Industry was incorporated on **15th May 2018** with registration number SN002832018 and TIN C0008677492. The nature of business of the company is Farming, Cultivation of Cassava and Export of Starch. TDL is listed as its parent Company and the Representative of the parent company is Francis Kwaku Arhin (brother-in-law of the Respondent)

TDL Freight Forwarding

This company was incorporated on **15th May 2018** with registration number SN002842018 and TIN C0008677492. Its nature of business is Transportation Services and Haulage Services. The parent Company is TDL and the parent company representative is Francis Kwaku Arhin.

Frosty Ice Natural Mineral Water Limited

This company was incorporated on **29th January 2019** as a private company limited by shares with its authorised business being the production of mineral water. The registration number is CS026432019 with TIN C0021653607. It commenced business on 29th January 2019. The company was to be registered with 600,000 shares of no par value.

The Directors of company are Adjenim Boateng Adjei (Respondent) who holds 500 shares and Mercy Adjei (Respondent's spouse) who also holds 500 shares.

ABM Logistics (GH) Limited

It was initially registered under the Registration of Business Names Act, 1962 (No. 151) as ABM Logistics on 30th July 2003, but commenced business on 16th July, 2003 as General Merchant, Import & Export Services, Exporters of Salt, and Transport Haulage. Logistics Consult (GH) Limited was entered as its corporate name.

It was converted under section 27 and 28 of the Companies Act, 1963 (Act 179) on 13th November, 2007 to ABM Logistics (GH) Limited with registration number CA-39,789 and TIN 524V028360. After incorporation, a resolution was passed on 3rd August, 2015 to add to the business buying and selling and exportation of gold.

The directors are Adjenim Boateng Adjei and Mercy Adjei with each holding shares of 70,000,000 and 30,000,000 respectively at one Ghana Cedi pere share.

From the information, TDL is described as "*parent company*" in:

- TDL Transport & Logistics Services;
- TDL Freight Forwarding, and
- TDL AGRO Industry

Frosty Ice Natural Mineral Water Limited and ABM Logistics do not have such a description in their registration documents.

Directorship in other Companies

The records also show that the Respondent is a director in the following companies:

- i. ABM Logistics (GH) Limited;
- ii. Ada Safari Resort Limited;

- iii. Aqua Safari Resorts Limited;
- iv. Beach Front Stevedoring Company Limited;
- v. Bestblend GH Limited;
- vi. Bestblend West Africa Limited;
- vii. Bestman Offshore Gh Limited;
- viii. Diligent Cover Limited;
- ix. Holiday Hills Resort Limited;
- x. Ocean View Amusement Limited;
- xi. Rosefield Oil Ghana Limited;
- xii. Runway View Association;
- xiii. Springfield Resource Development Limited;
- xiv. Supply Chain Support Services Centre Limited;
- xv. Talent Movers Gh Limited;
- xvi. AAC Financial Services Limited;
- xvii. Canduns International Limited;
- xviii. CFR Ghana Limited, and
- xix. TDL Pay Ghana Limited

8.2.2. Records from Financial Intelligence Centre

Information received from the Financial Intelligence Centre (FIC) in CD ROM show that the Respondent, apart from his directorship and shareholding interests in TDL, and TDL related companies, has directorships in 13 companies as well as several bank accounts, both foreign and local currency, in a number of banks in the country including Stanbic Bank, Ecobank, Republic Bank and UMB.

The companies where the respondent is either a shareholder or director or both, include:

- i. Aqua Safari Resorts Limited
- ii. Beach Front Stevedoring Company Limited
- iii. Bestblend GH Limited
- iv. Bestblend West Africa Limited
- v. Bestman Offshore Gh Limited

- vi. Diligent Cover Limited
- vii. Holiday Hills Resort Limited
- viii. Rosefield Oil Ghana Limited
- ix. Runway View Association
- x. Springfield Resource Development Limited
- xi. Talent Movers Gh Limited
- xii. AAC Financial Services Limited
- xiii. CFR Ghana Limited

Respondent's Bank Accounts and Other financial interests:

Stanbic Bank, Airport City Branch: The Respondent has three accounts at Stanbic Bank, Airport City Branch, which he opened the month after his appointment as the Chief Executive Officer of the PPA in March 2017.

In respect of his **USD account** number 9040002473180, the Respondent opened it on 03-04-2017, within a month after his appointment with an opening balance of \$5, 000. Four months after opening the account, significant cash amounts had been deposited into that account, including the following:

Cash Deposits: From 01-08 -2017 to 08-09-2017, cash amounts totalling over \$125, 000 was deposited by Faustina Mildred and Christabel into the Respondent's Account. The Respondent withdrew \$30,000 and \$10,000 cash from his account in a day. On that same day (08-09-2017), Christabel deposited cash amount of \$15,000 into the account.

The respondent again made a cash withdrawal of \$40,000 on 27-09-2017 and about a week later, he made a cash deposit of \$50,000. Earlier, Christabel made a cash deposit of \$40,000.

On 15-02-18, Faustina Mildred made a cash deposit of \$50,000 and another \$100,000 on 21-03-18. Five days after that, one Kofi Appiah Dwomoh made a cheque payment of \$100,000 into the account.

As of 28-08-19, Respondent had \$516,225.00 to his credit and his debits stood at \$504,607.87.

Regarding his **Cedi Account** no. 9040002313337 at the same bank, it was opened on 21-01-2017 (before his appointment) with an amount of GHC30,000. Subsequently, various cash amounts have been deposited regularly into the account, predominantly by Faustina Mildred, sometimes described as Faustina Mildred Cronze or Faustina Tachie Menson, Christabel (“RO”) and Aisha, since the Respondent was appointed CEO of PPA.

As of 29-08-19 respondent’s Cedi account had over GHC3.83 million credit with an over GHC3.81 million debit.

The Respondent’s **EURO Account** is the third account at Stanbic Bank, - Airport City Branch. As of 29-08-19, his balance at on the Euro Account stood at EU54,500.00 (credit) and EU37,333.00 (debit).

The Respondent confirmed that he hand-delivers the cash to Faustina and Christabel, whom he described as his relations officers at the Stanbic Bank, to pay the monies into his account.

UMB Account: The account at UMB is a Dollar account with Account Name as “428872”. The Transaction summary indicates the following:

Booking date	Description	Credit
20-12-2018	Check payment by OAB Adjei RKP	\$60,000
21-12-18	Check payment by OAB Adjei RKP	\$60,000
02-01-19	Check payment by OAB Adjei RKP	\$50,000
11-03-1	House cheque credit	\$48,000

8.2.3. Ghana Ports and Harbours Authority

The GPHA in response to the Commission's request for information to assist in the investigation, provided documents that show that TDL was short listed to tender for the award of a number of contracts based on restricted tendering method of procurement (RT) in the period 2017-2019.

These are:

- i. Supply of Mobile Column Lifts (Qty 1) Takoradi Port;
- ii. Rehabilitation of James Town Lighthouse Facilities-Accra;
- iii. Supply, Installation and Commissioning of 30 Meter High Mast Poles Complete with Lantern Carriageway at Tema Port;
- iv. Factor Correction and Energy Demand Reduction Equipment at the Reefer Container Terminal-Tema Port.

Contract for the Supply of Mobile Column Lifts (Qty. 1) Takoradi Port:

The GPHA made a request for Approval to procure the supply of a Mobile Column Lift for the Mechanical Department of Takoradi Port through restricted tendering.

In its letter to the DirectorG of the GPHA, Ref: DG/HQ/C.3/Vol.4/819, dated 13th November 2018, writes:

The Ghana Ports and Harbours Authority intends to seek your authorisation to procure a Mobile Column Lift for the Takoradi Mechanical Engineering Department (Column Lift) through restrictive tendering. The equipment would be used for lifting heavy duty equipment at the Mechanical Workshop.

Accordingly, GPHA is seeking your authorisation to invited (sic) the underlisted eligible firms to submit tenders for the above mentioned project:

1. TALENT DISCOVERY LIMITED
2. DEGRILLION TECHNICAL SUPPLIES
3. BERENERGY GHANA LIMITED
4. WHITE COWRY W/A LIMITED

The estimated cost of the project is GHC 160,000...” and documents of the shortlisted firms were provided the CEO.

The documents attached to the request by GPHA to PPA included the incorporation and other documents of the eligible firms: incorporation information from the Registrar-General’s Department, SSNIT and Tax clearance certificates, among others.

The CEO received the application by the GPHA and forwarded same to the DDU for its consideration. Subsequently, the PPA Board at the Board Technical Committee Meeting no 20 of 13 December 2018 considered the request for the supply of the Colum Lift.

The minutes of the Board Technical Committee Meeting no. 20 (020/2018) referenced in the PPA letter had the following members present:

- Mrs. Ernestina Swatson Eshun - Chairperson
- Mr. Adjenim Boateng Adjei - CEO/Member
- Dr. Emmanuel Yaw Boakye - Member
- Hon. Godfred Dame - Member

The 20th Meeting considered among others Minutes of the 9th Emergency Meeting held on Friday 30th November, 2018 as well as 49 (Forty-nine) Single Source (SS), Restricted Tendering (RT), supplementary applications and responses to queries raised, which were presented in a Summary Table.

The meeting commenced at 10:30pm after a short prayer by the CEO (Respondent).

On the Summary Table is Application No. 18, Re: DG/HQ/C.3/VOL. 4/819 dated 13/11/18 in relation to the Column Lift and received by the PPA on 16th November, 2018:

Summary of the Application: GPHA is requesting for approval from PPA to use Restricted Tendering Method for the procurement of Mobile Column Lift for the Takoradi Port at a cost of GHC160,000.00.

Justification and Relevant Clause provided by the Entity: The Ghana Ports and Harbour Authority intends to procure Mobile Column Lift for the Takoradi Mechanical Engineering Department. The equipment would be used for lifting heavy duty equipment at the Mechanical Workshop. Below are the Four (4) shortlisted firms:

- i. M/S Talent Discovery Limited
- ii. M/S Bernegy Ghana Limited
- iii. M/S Degrillion Technical Supplies
- iv. M/S White Cowry W/A Limited

The GPHA's application did not have any justification or relevant Clause.

Board Decision: Approved as recommended that *"...the Board grants approval to GPHA under section 38 (b) of Act 663 as amended. GPHA should ensure the winning tender submit current SSNIT and Tax Clearance Certificate"*

"The Chairperson called on the CEO to arrange for another meeting the following week in view of the backlog over the holidays...."

The Respondent, writing as the CEO of the PPA, in a letter dated 17th December 2018, Ref: PPA/CEO/12/2209/18, writes:

*".... At the Board Technical Committee Meeting no. 20 (020/2018) held on Thursday 13th December 2018, the Board granted approval to the **Ghana Ports and Harbours Authority** in accordance with Section 38 (b) of Act 663 as amended, to use Restricted Tendering Method to invite the under listed companies to tender for the procurement of a Mobile Column Lift for the Takoradi Mechanical Engineering Department at an estimated cost of GHC160, 000:*

1. TALENT DISCOVERY LIMITED
2. DEGRILLION TECHNICAL SUPPLIES
3. BERNERGY GHANA LIMITED
4. WHITE COWRY W/A LIMITED..."

On receipt of the approval by the PPA to proceed to invite the shortlisted companies, the GPHA invited the companies to submit tenders and eventually awarded the contract no. IND.338/MECH.ENG/TD 18 to TDL, which was contained in a Notification of Intention to Award Letter to TDL dated 20th June 2019, ref. no. DG/HQ/C.3/VOL.7/373.

Mast Poles: GPHA request to use RT for the Supply, Installation and Commissioning of 30-Meter-High Mast Poles (Poles) was considered at the 21st Meeting of the PPA Board Technical Committee Meeting held on 23rd January 2019.

The Minutes of that meeting show that four (4) members including the Respondent were present. The Respondent said a short prayer at the commencement of the meeting.

The Committee considered 76 (seventy-six) Single Source (SS), Restricted Tendering (RT), applications and responses received to queries on earlier applications at its 21st Meeting, as per a Summary Table.

The Poles application appears at 37. Application No.: RT/22/12/18, received by the PPA on 10/12/18, GPHA ref. No. DG/HQ/C.3/VOL.5/876 dated 29/11/18:

Estimated Contract Cost- GHC2,065, 000.00

Summary of Application: GPHA is seeking approval from PPA to use the Restricted Tendering Method for the supply, installation of 30-Meter-High Mast Poles Complete with Lantern Carriageway at the Tema Port at an estimated cost of GHC2,065,000.00. The following firms have been shortlisted to participate in the tendering process:

- i. Powastysystem Eng. & Electrical Service Ltd
- ii. Power Factor Limited
- iii. Technolights Limited
- iv. Pro Distro Global Ltd
- v. Ba-Iseng Enterprise Limited

vi. Talent Discovery Limited

Justification and Relevant Clause Provided by Entity: NIL

Consultant/Contractor/Suppliers Qualification: All shortlisted companies are registered in Ghana and possess valid statutory documents.

Conclusion: We recommend that the Board grant under section 38 (b) of Act 663 as amended to enable the GPHA to undertake the procurement activity. GPHA should be advised to revise the estimated cost downwards by some 15% to enhance the achievement of value for money.

Decision: Approved as Recommended with 10% discount as opposed to the proposed 15% discount.

Following the 21st Meeting, the CEO, in a letter dated 24th January 2019, ref. No. PPA/CEO/01/102/19 conveyed the decision of the Board at its 21st Meeting to approve the request of the GPHA for the Poles:

*“At the Board Technical Committee Meeting No. 21 (021/20180 held on Monday, 23rd January 2019, the Board granted approval to Ghana Ports and Harbours Authority (GPHA), in accordance with section 38 (b) of Act 663 as amended, to use Restricted Tendering Method to invite the under listed companies to tender for the supply, installation and commissioning of a 30-meter-high Mast Poles complete with Lantern Carriageway at Tema Port at a total estimated cost of **GHC350,000.00;***

Messrs. POWASTYSYSTEMS ENG. & ELECTRICAL SERVICE LTD

Messrs. POWER FACTOR LIMITED

Messrs. TALENT DISCOVERY LIMITED

Messrs. TECHNOLIGHTS LIMITED

Messrs. PRO DISTRO GLOBAL LTD

Messrs. BA-ISENG ENTERPRISE LIMITED...”

The GPHA did not provide any justification/reasons why it was seeking to use RT in its application.

James Town Lighthouse Facilities Contract:

The records show that GPHA requested for approval from the PPA to use RT method of procurement in a letter ref. DG/HQ/C.3/Vol.5/872, dated 29 November 2018. The companies listed were:

1. Grovtex Ventures Limited
2. Canduns International Ltd
3. Talent Discovery Limited
4. Abitjack Contruction Works Ltd

OUR REF: DG/HQ/C.3/VOL.5/115

11TH FEBRUARY, 2019

THE CHIEF EXECUTIVE
PUBLIC PROCUREMENT AUTHORITY
PRIVATE MAIL BAG 30
MINISTRIES –ACCRA

Dear Sir,

**RE: REQUEST FOR APPROVAL FOR RESTRICTED TENDERING –
PROCUREMENT OF WORKS AT PORT OF TEMA-
REHABILITATION OF JAMES TOWN LIGHTHOUSE FACILITIES –
ACCRA**

We make reference to your memorandum No. PPA/CEO/01/58/19 dated 22nd January, 2019 in respect of the above mentioned subject matter.

Please find attached:

1. The Priced bills of Quantity for the project

Ministry of Works and Housing Classification Certificate and other statutory documents for **Canduns International Limited** could not be obtained.

Thank you for your usual understanding and cooperation.

Yours faithfully,

FOR: GHANA PORTS & HARBOURS AUTHORITY

Signed

MICHAEL A. LUGUJE

AG. DIRECTOR-GENERAL

JUSTIFICATION AND RELEVANT CLAUSE PROVIDED BY ENTITY		
CONSULTANT/ CONTRACTOR/SUPPLIERS QUALIFICATION	All four (4) shortlisted companies are registered in Ghana and possess valid statutory and other relevant documents.	
TECHNICAL CAPABILITIES	Per the MWH classification certifications provided, the shortlisted companies possess the requisite expertise to undertake the works.	
PRICE REASONABLENESS	We found the price estimates provided in the Priced BOQ to be reasonable with the exception of the General Items which is found to be high and should be revised downwards by 10%.	
	We recommend Approval by the Board in accordance with Section 38	

CONCLUSION	(b) of Act 663 as amended. GPHA should however be advised to revise the estimate for the General Items downwards by 10% to achieve Value for Money.	
BOARD DECISION	Approved as recommended.	

69. Application No.: RT/15/12/18 Date Received: 10th DECEMBER, 2018
Ref: DG/HQ/C.3/VOL.5/872 dated 29/11/18

NAME OF ENTITY	GHANA PORTS AND HARBOURS AUTHORITY	REMARKS
TYPE OF PROCUREMENT (goods/works/services)	WORKS –REHABILITATION OF JAMES TOWN LIGHTHOUSE FACILITIES – ACCRA	Decision of the Board communicated to GPHA vide Letter no. PPA/CEO/03/511/19 of 25 th March 2019
STATUS	NEW APPLICATION –RT	
SOURCE OF FUNDS	IGF	
ESTIMATED CONTRACT COST	GHC400,000.00	
WARRANT	N/A	
SUMMARY OF APPLICATION	GPHA is seeking approval from PPA to use the Restricted Tendering Method for the rehabilitation of James Town Lighthouse facilities	

	<p>– Accra at an estimated cost of GHC 400.00.00. The following firms have been shortlisted to participate in the tendering process:</p> <ol style="list-style-type: none"> 1. GROVTEX VENTURES LIMITED 2. CANDUNS INTERNATIONAL LTD 3. TALENT DISCOVERY LIMITED 4. ABITJACK CONSTRUCTION WORKS LTD 	
--	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

Response from PPA

Our Ref. No. PPA/CEO/03/511/19

25 March, 2019

**RE: REQUEST FOR APPROVAL FOR RESTRICTED TENDERING
PROCUREMENT OF WORKS AT PORT OF TEMA –
REHABILITATION OF JAMES TOWN LIGHTHOUSE FACILITIES –
ACCRA**

We make reference to your letter No. DG/HQ/C.3/VOL.5/115 dated 11th February, 2019 in response to our letter No. PPA/CEO/01/58/19 dated 22nd January, 2019 on the above mentioned subject.

At the Board Technical Committee Meeting No. 23 (023/2018) held on Friday, 15th March 2019, the Board noted from the Bill of Quantities submitted that, the estimated cost for rehabilitating James Town Lighthouse is GHC 278,981.02 and not GHC400,000.00 as stated in your letter.

GPHA is therefore kindly requested to explain the discrepancy in the two Cost to enable the Authority process your request.

We count on your usual co-operation.

Signed

AB ADJEI
CHIEF EXECUTIVE

THE DIRECTOR GENERAL
GHANA PORTS AND HARBOURS AUTHORITY
TEMA

ATTN: MR. MICHAEL A. LUGUJE

Response of GPHA to PPA letter No. PPA/CEO/03/511/19 of 25 March, 2019

OUR REF: DG. HQ/C.3/V.7/276

12TH APRIL, 2019

THE CHIEF EXECUTIVE
PUBLIC PROCUREMENT AUTHORITY
PRIVATE MAIL BAG 30
MINISTRIES –ACCRA

Dear Sir,

**RE: REQUEST DOR APPROVAL FOR RESTRICTED TENDERING –
PROCUREMENT OF WORKS AT PORT OF TEMA-REHABILITATION
OF JAMES TOWN LIGHTHOUSE FACILITIES – ACCRA**

Reference is made to your letter PPA/CEO/O3/511/19 dated 25th march 2019 seeking clarification in the amounts earlier submitted with respect to the above subject matter.

The initial amount of GHC 400,000.00 was lifted from our 2018 annual budget which was more of high projections of maintenance needs for the structure at that time against a more detailed assessment of the scope of work.

Moreover, our in-house maintenance team had to respond to an emergency situation for the celebration of the Homowo festival by carrying out some works on the lighthouse, hence the reduction in the scope and cost.

We hope our explanation should be able to address the discrepancy in the two cost to fast track our approval request.

Counting on your usual cooperation.

Yours faithfully,

For: GHANA PORTS & HARBOURS AUTHORITY

Signed

MICHAEL A. LUGUJE
DIRECTOR-GENERAL

CC: General Manager, Engineering, Headquarters
Ag. Procurement Manager, Headquarters

Our Ref. No. PPA/CEO/05/936/19

15 May, 2019

RE: REQUEST FOR APPROVAL FOR RESTRICTED TENDERING
PROCUREMENT OF WORKS AT PORT OF TEMA –
REHABILITATION OF JAMES TOWN
LIGHTHOUSE FACILITIES –ACCRA

We make reference to your letter No. DG.HQ/C.3/V.7/276 dated 12th April, 2019 in response to our letter No. PPA/CEO/02/511/19 dated 25th March, 2019 on the above subject.

At the Board Technical Committee Meeting No. 23 (023/2019) held on Friday, 15th March 2019, the Board decided that, upon submission of satisfactory information as requested by the Authority, PPA may proceed to convey approval to Ghana Ports and Harbours Authority.

We have reviewed the additional information submitted and find it satisfactory. Accordingly, and in line with Section 38 (b) of Act 663 as amended, we convey approval to *Ghana Ports and Harbours Authority* to use Restricted Tendering Method to invite the underlisted companies to tender for the rehabilitation of James Town Lighthouse facilities in Accra at an estimated cost of **GHC400,000.00**:

1. **GROVTEX VENTURES LIMITED**
2. **CANDUNS INTERNATIONAL LTD**
3. **TALENT DISCOVERY LIMITED**
4. **ABITJACK CONTRUCTION WORKS LTD**

Please ensure that the shortlisted companies are duly registered on the PPA Supplier database.

This approval is subject to submission of a copy of Evaluation Report, copy of Tender Document and Tenders submitted by Tenderers to PPA, prior to obtaining concurrent approval from the relevant Review Committee.

Please ensure that all documentation regarding this procurement is appropriately kept to facilitate future procurement and tax audits and also you are reminded to post the contract award notice on Public Procurement Website: www.ppagana.org.

We count on your usual cooperation.

Signed
AB ADJEI
CHIEF EXECUTIVE

PUBLIC PROCUREMENT AUTHORITY
MINUTES OF THE 23RD TECHNICAL COMMITTEE MEETING
HELD ON WEDNESDAY 15TH MARCH 2019 AT THE PPA BOARD ROOM 6TH
FLOOR, SSNIT EMPORIUM, AIRPORT CITY

1.0 ATTENDANCE

1.1 PRESENT

- | | | |
|-----------------------------------------|---|-------------|
| 1. Mr. Samuel R. Nee Baidoo
Chairman | - | Member/Vice |
| 2. Mr. Adjenim Boateng Adjei | - | CEO/Member |
| 3. Dr. Emmanuel Yaw Boakye | - | Member |

1.2 APOLOGIES

- | | | |
|---------------------------------|---|-------------|
| 1. Mrs. Ernestina Swatson Eshun | - | Chairperson |
| 2. Hon. Godfred Dame | - | Member |

2. IN ATTENDANCE

- | | | |
|------------------------------------------|---|--------------------|
| 1. Mrs. Lesley Dodoo | - | Board Secretary |
| 2. Wilhelmina Asabea Bampoe
Secretary | - | Assistant Board |
| 3. Mr. Abdul Kaadri Zigani | - | Due Diligence Unit |

2.0 AGENDA

2.1 Opening

2.2 Confirmation of Minutes and SSRT Table of the 22nd SSRT Meeting held on Wednesday 20th February, 2019.

2.3 Consideration of responses received to earlier Applications.

2.4 Consideration of New SSRT Applications.

2.5 Any Other Matters

1.0 OPENING

The Mr. Baidoo welcomed all to the 23rd Board Technical Committee meeting. He informed members that he would Chair the meeting on behalf of the Chairperson who had travelled on official duty.

The meeting commenced at 10:00 am after a short prayer by the CEO.

2.0 CONSIDERATION AND CONFIRMATION OF MINUTES AND SUMMARY TABLES OF 22ND SSRT MEETING HELD ON WEDNESDAY 20TH FEBRUARY, 2019

Members considered the Minutes and Summary of Tables of the 22nd SSRT meeting held on Wednesday 20th February, 2019 and the various actions taken.

The Chairman called for move for acceptance of the Minutes in the absence of corrections and amendments. Dr. Emmanuel Boakye moved for the acceptance of the Minutes as a true reflection of the day's proceedings and same was seconded by CEO.

2.1 CONSIDERATION OF RESPONSES RECEIVED TO EARLIER APPLICATIONS

The Chairman called on the CEO to lead briefing on the responses received from Entities on applications earlier queried or for which additional satisfactory documents and information were requested.

The CEO took members through the responses attached and the recommendations on same as well as steps taken by Management in light of the responses.

2.2 CONSIDERATION OF NEW APPLICATIONS – REQUEST FOR SOLE SOURCE & RESTRICTED TENDERING (SSRT)

Members considered the 82 (Eighty-Two) Single Source (SS), Restricted Tendering (RT), supplementary applications and responses received to queries issued on earlier applications, as per the Summary Table attached. The CEO led the presentation of applications and gave technical clarifications to Members as required.

3.0 SSNIT APPLICATION FOR RATIFICATION

Members observed that this was a precarious situation. Though the contract of service had been done it was not a good contract. Members noted that the amount involved was now part of judgement debt and therefore granted permission for SSNIT to proceed and pay to avoid judgement debt pending investigations earlier authorized.

4.0 CONCLUSION

In the absence of any further business, the Chairman called for a motion to close the meeting. CEO moved for closure of the meeting and was seconded by Dr Emmanuel Boakye.

The meeting ended at 1:00 pm and was duly adjourned.

SIGNED:

.....

MR. SAMUEL NII BAIDOO (MR.)
For: CHAIRPERSON
BOARD TECHNICAL COMMITTEE

.....

LESLEY DODOO (MRS.)
BOARD SECRETARY

From the records, the Technical Committee of the PPA Board at its meeting No. 023 (023/2018) held on Friday, 15th March 2018, requested that GPHA provides satisfactory explanation as to discrepancy in cost. The GPHA responded with an explanation that the contract sum had been reduced to GHC 278, 981.02 because their in-house maintenance team carried out some works on the light house in response to an emergency situation for the celebration of the Homowo festival. The Committee did not meet again

on this issue after the GPHA submitted the additional information requested for by the 23rd meeting of the Board Technical Committee, before the 15th May, 2018 letter by the Respondent was issued.

In the said letter, the Respondent communicated to the GPHA that:

At the Board Technical Committee Meeting No. 23 (023/2019) held on Friday, 15th March 2019, the Board decided that, upon submission of satisfactory information as requested by the Authority, PPA may proceed to convey approval to Ghana Ports and Harbours Authority.

*We have reviewed the additional information submitted and find it satisfactory. Accordingly, and in line with Section 38 (b) of Act 663 as amended, we convey approval to **Ghana Ports and Harbours Authority** to use Restricted Tendering Method to invite the underlisted companies to tender for the rehabilitation of James Town Lighthouse facilities in Accra at an estimated cost of **GHC400, 000.00**:*

Reefer Container Terminal Equipment: The GPHA applied for approval in its letter Ref. DG/HQ/C.3/VOL.5/875, dated 29th November 2018, to The Chief Executive Officer, PPA seeking “...authorisation to invite the under listed eligible contractors to tender for ...the Supply, Installation and Commissioning of an Automatic Power Factor Correction and Energy Demand Reduction Equipment at the Reefer Container Terminal at Tema Port (Equipment):

- i. POWER WORLD LIMITED*
- ii. POWER FACTOR LIMITED*
- iii. KENPONG CONSTRUCTION LIMITED*
- iv. BA-ISENG ENTERPRISE LIMITED*
- v. TALENT DISCOVERY LIMITED*
- vi. NEL SUPPLIES LIMITED*

The GPHA also attached the relevant documents for the contractors (listed above) for the perusal and action of the CEO (Respondent). On receipt of

this request from the GPHA (as was being done to such requests), the Respondent minuted on the letter to the chair of the DDU for action.

The 21st Meeting of the Board of 23rd January 2019 considered the following application:

No. 36: Application No. SR/21/12/18, Date Received: 10TH December, 2018, Ref: DG/HQ/C.3/VOL.5/875 dated 29/11/18.

Members present at this meeting included Mr. Adjenim Boateng Adjei (Respondent) CEO-member (Respondent). The Chairperson welcomed all to the first meeting of the year and wished members a happy new year. The meeting commenced after a short prayer by the CEO.

Members considered Minutes and Summary table of the 20th SSRT Meeting held on 13th December 2018 and in the absence of any errors or amendments, the Chairperson called for acceptance of the minutes as the true reflection of the day's proceedings. Dr. Boakye moved the motion to accept the minutes and was seconded by the CEO, Mr. A.B. Adjei.

It considered 76 single source (SS), restricted tendering (RT) applications and responses received to queries on earlier applications, as per a Summary Table attached.

Extract from the Table attached:

Estimated Contract Cost – 350,000

Summary of Application: *GPHA is seeking approval from PPA to use the Restricted Tendering Method for the Supply Installation and Commissioning of an Automatic Power Factor Correction and Energy Demand Reduction Equipment at the Reefer Container Terminal at the Tema Port at an estimated cost of GHC350,000. The following firms have been shortlisted to participate in the tendering process:*

- 1. Power World Limited*
- 2. Power Factor Limited*
- 3. Talent Discovery Limited*

4. *Kenpong Construction Limited*
5. *NEL Supplies Ltd*
6. *Ba-Iseng Enterprise Limited*

Justification and Relevant Clause Provided By Entity: Nil

Consultant/Contractor/Suppliers Technical Qualification: All shortlisted companies are registered in Ghana and possess valid statutory documents

Price Reasonableness: The price is fairly reasonable

Conclusion: We recommend that the Board grants approval under section 38 (b) of Act 663 as amended to enable the GPHA to undertake the procurement activity.

Decision: Approved as recommended

The Respondent was present at the 21st Meeting of the PPA Board Technical Committee. The minutes show that the deliberations related to request for approval by GPHA for companies to tender under RT method. The shortlisted companies include TDL. Some of the documentation provided included the company's profile. TDL's profile which was presented at that meeting had the Respondent's name as Director and Shareholder. The Respondent did not recuse himself during the meeting.

The CEO of the PPA conveyed the decision of the Board in letter Ref. No. PPA/CEO/01/101/19, dated 24 January 2019 that

*"...At the Board Technical Committee Meeting No. 021 (021/2018) held on Monday, 23rd January 2019, the Board granted approval to Ghana Ports and Harbours Authority (GPHA... to use Restricted Tendering Method to invite the under listed companies to tender for the supply, **Installation and Commissioning of an Automatic Power Factor Correction and Energy Demand Reduction Equipment at the Reefer Container Terminal-Tema Port at a total estimated cost of GHC350,000:***

1. *Messrs. Power World Limited*

2. *Messrs. Power Factor Limited*
3. *Messrs. Talent Discovery Limited*
4. *Messrs. Kenpong Construction Limited*
5. *NEL Supplies Limited*
6. *Messrs. Ba-Iseng Enterprise Limited*

From the minutes of the Board Technical Committee Meeting No. 021 (021/2018), it is stated under “price reasonableness” thus:

“...The price is slightly high. GPHA must be advised to revise the cost downwards by 15%. “Board Decision”-Approved as recommended with 10% discount as opposed to 15% discount.”

TDL was among the companies shortlisted to participate in tendering processes for 1) Column Lift at GHC160,000; 2) the Supply Installation and Commissioning of 30 Meter High Mast Poles complete with Lantern Carriageway at the Tema Port at an estimated cost of GHC2,065,000, 3) the Supply Installation And Commissioning Of An Automatic Power Factor Correction And Energy Demand Reduction Equipment at the Reefer Container Terminal at the Tema Port at an estimated cost of GHC350,000

The Respondent did not disclose his interest in TDL or recuse himself during the proceedings.

8.2.4. Bank of Ghana

Industrial Air Purifiers: The Commission found that the CEO of the PPA, in a letter Ref. No. PPA/CEO/02/266/19 dated 8th February, 2019, granted approval to the Bank of Ghana to use Restricted Tender Procurement Method for the Supply and Installation of Industrial Air Purification Equipment for Currency Processing Centres and Vaults of Bank of Ghana at an estimated cost of GHC14, 900,000.00.

In the said letter, the CEO stated that the PPA had advised that the amount be revised downward by 15% and thus approved GHC12,665,000.00.

The list of companies in respect of which the BOG sought the approval in Bank of Ghana letter No.: SF/ORG/7/2019/7 of 24th January, 2019 were the following:

- i. M/S Westin Intelligence Solutions Ltd
- ii. M/S Unicell Ghana Ltd
- iii. M/S Sancron Ghana Ltd
- iv. M/S Talent Discovery Ltd

Coin Sorters: The Bank of Ghana, again, requested for approval to use Restricted Tender Method of Procurement for a contract for the Supply and Installation of Coin Sorters. The minutes of the Board Meeting that considered this request is not provided but the Respondent in a letter No. PPA/CEO/01/40/19 dated 18 January 2019 conveyed the Board approval to the request as follows:

“...RE: REQUEST FOR APPROVAL TO USE RESTRICTED TENDER PROCUREMENT METHOD FOR THE SUPPLY AND INSTALLATION OF COIN SORTERS FOR BANK OF GHANA

We make reference to your letter no SF/ORG/7/2019/1 of 11th January, 2019 in response to our letter No. PPA/CEO/11/1782/18 dated 2nd November, 2018 on the above subject.

At the Board Technical Committee Meeting No. 8 (018/2018) held on Thursday, 1st November 2018, the Board decided that, upon receipt of satisfactory information as requested by the authority, approval should be conveyed to the Bank of Ghana.

We find the additional information submitted satisfactory and accordingly convey our approval to Bank of Ghana in accordance with Section 38 (b) of Act 663 as amended, to use the Restricted Tendering Method to invite the under listed companies to tender for the procurement of Five (5) coin sorters for the Bank at an estimated cost of €400,000.00

- i. M/S TALENT DISCOVERY LIMITED
- ii. M/S ALSALE SERVICES LIMITED
- iii. M/S SUZOHAPP (SCAN COIN AB)
- iv. M/S SUSZOU KOBOTECH TRADING CO. LTD
- v. M/S RIBAO TECHNOLOGY

This approval is subject to submission of a copy of Evaluation Report, copy of Tender Document and Tenders submitted by Tenderers to PPA, prior to obtaining concurrent approval from the relevant Review Committee...”

The BOG duly obliged the PPA with an Evaluation Report and Tender documents. The CEO of the PPA, in a letter Ref. No. PPA/CEO/05/1093/19 dated, 28th May, 2019 stated

“...please refer to your letter with reference number SF/ORG/7/2019/25 DATED 8th May, 2019 which you submitted Evaluation Report, Tender submitted and Tender Document issued to Tenderers as requested by our letter with reference no. PPA/CEO/01/40/dated 18th January, 2019....

(a) Talent Discovery offer made of March 9th does not meet the minimum Technical Specification and yet it was passed to proceed to the next stage evaluation as a responsive tender...”

Then again, the CEO of the PPA wrote:

RE-SUBMISSION OF EVALUATION REPORT AND OTHER RELATED DOCUMENTS ON THE SUPPLY AND INSTALLATION OF COIN SORTERS FOR BANK OF GHANA

Please refer to your letter with reference number SF/ORG/7/2019/25 dated 8th May,2019 by which you submitted Evaluation Report, Tenders submitted and Tender Document issued to Tenderers as requested by our letter with reference no. PPA/CEO/01/40/19 dated 18th January, 2019.

The review team made these observations and presented below:

- a) *Talent Discovery offered model of Mach 9e Wave which does not meet the minimum Technical Specifications and yet it was passed to proceed to the next stage of the evaluation as a responsive tender;*
- b) *Search on the PPA Supplier Data Base showed no results for Sozuhapp/scan Coin AB as at 1:00pm, 23rd, 2019, the company provided the Registration Form as proof of registration and evaluation panel failed in their duty to flag the misrepresentation which is an infraction to Section 22 (5) of Act 663 as amended; The email sent by Hamza Sawyer on 14th February, 2019 in answering the clarifications sought by Sozuhapp/Scan Con AB reiterated in paragraph 2, third line that “All companies certificate of registration as part of the process as stated in the RFP”.*

In view of the above, PPA cannot grant BoG approval to continue with the evaluation process and further directs BoG to do re-evaluation of the tenders using its pre-disclosed criteria and ensure full application of your minimum specification requirements. You are requested to re-submit your re-validated request to the Authority for our review and necessary action?

Bank of Ghana had requested for approval to use RT/SS for the procurement of: 1) Supply and Installation of Industrial Air Purification Equipment for Currency Processing Centres and Vaults of Bank of Ghana at an estimated cost of GHC14, 900,000.00, and 2) Supply and Installation of Coin Sorters.

8.2.5. Ministry of Education

The Ministry of Education (MoE) in a letter to the Commission dated 16th October 2019, Ref. No. DA240/355/01 provided information/documents which indicates that the MoE shortlisted TDL for the award of contracts for the Construction of structures in selected Senior High Schools across the country using restricted Tendering Method under its project “ADDITIONAL STRUCTURES IN SELECTED SENIOR HIGH SCHOOLS ACROSS THE COUNTRY.” The contracts for which TDL was shortlisted are:

- a Single Storey Dormitory Block at Collins SHS, Agogo in the Asante Akim North District in the Ashanti Region;
- ii) 1 No. 12-Seater Toilet Block at the Tuobodom SHTS at the Techiman North District of in Bono East Region, and
- I No. Two Storey Dormitory Block at Savelugu SHS, Northern Region

Tuobodom and Collins SHS: The Tuobodom and Collins SHS projects fell under an application by the MoE to the PPA requesting for approval to use restricted tendering method to procure contractors for the construction of structures in selected senior high schools across the country. It was contained in a letter signed by the Minister, Dr. Matthew Opoku Prempeh, Ref No. FA 101/331/01, dated 28th February, 2019. It is stated:

“...The introduction of Free Senior High School Policy by the Government of Ghana has resulted in increased enrolment in Senior High Schools (SHS) across the country. This has resulted in the Ministry running a double track system to accommodate the increased enrolment. In view of this, the Ministry of Education has received funds from the Ghana Education Trust Fund (GET Fund) under the Emergency Senior High Schools Project to construct structures in selected SHS to eliminate double track system for second year students in those schools in September 2019.

Given the short time at our disposal, the Ministry of Education, therefore wishes to seek the approval of the Public Procurement Authority under section 38 (b) of the Procurement Act, 2003 (663) as amended to use Restricted Tendering Method to select companies from the attached list of Contractors who have been assessed and found to have the capacity to construct the structures within the time schedule.

It is noted that this approach will enable the Ministry save time and cost in the examination and evaluation of large tenders.

Please find attached a table showing the name of school, structure type, estimated cost, proposed tenderers (extract presented below) ...Also find attached are the Tenderers Business documents...”.

<i>S/No</i>	<i>Name of Company</i>	<i>School/Community</i>	<i>Facility</i>	<i>Budget (GHC)</i>
25.	<i>Talent Discovery Ltd</i>	<i>Collins SHS, Agogo</i>	<i>Dormitory</i>	<i>1,298,000.00</i>
	<i>Canduns International Ltd</i>		<i>12-Seater WC</i>	<i>160,000.00</i>
	<i>AbitJack Construction Ltd</i>	<i>Tuobodom SHS</i>	<i>Toilet</i>	

The MoE provided justification for the request to use RT/SS as “...Given the short time at our disposal, ...will enable the Ministry save time and cost in the examination and evaluation of large tenders...”

The 23rd Technical Committee Meeting held on Wednesday 15th March, 2019 considered the application by the MoE which had the following members present:

- Mr. Samuel R. Nii Baidoo - Member/Vice Chairman
- Mr. Adjenim Boateng Adjei - CEO/Member
- Dr. Emmanuel Yaw Boakye - Member

The meeting commenced at 10:00am after a short prayer by the CEO.

The Chairman called for a motion to adopt the minutes of the 22nd Meeting and in the absence of corrections and amendment, Dr. Emmanuel Boakye moved the motion to adopt the minutes and same was seconded by the CEO.

Under new applications, the Chairman called the CEO to lead the briefing on the response received from entities on applications earlier queried or for which additional satisfactory documents and information were requested.

The CEO took members through the responses attached and the recommendations on same as well as the steps taken by Management in the light of the response.

Members considered the 82 (Eighty-Two) single Source (SS), Restricted Tendering (RT), supplementary applications and responses received to

queries issued on earlier applications, as per a summary Table attached. The CEO led the presentation of the applications and gave technical clarifications to Members as required.

In the absence of any further business, the Chairman called for a motion to close the meeting. CEO Moved for the closure of the meeting and was seconded by Dr. Emmanuel Boakye.

The application by the MoE is recorded on the Summary Table as “46. Application No.: RT/19, Date Received: 5th March, 2019, Re: FA101/331/01 dated 28/02/19.

Extracts of the Summary table:

Type of Procurement (goods/works/services): Works-Construction of Structures in Selected SHS across the Country

Status: New Application (RT)

Estimated Contract Cost: GHC42, 441,956.77

Summary of Application: MoE is requesting for approval to adopt the Restricted Tendering procurement method in accordance with section 38 (b) of Act 663 as amended, to engage contractors for construction of various structures in selected Senior High Schools (SHSs) across the country.

Justification and Relevant Clause Provided by Entity: The introduction of the Free Senior High School Policy by the government has resulted in increased enrolment in SHSs across in the country. This has resulted in the Ministry running double track system to accommodate the increased enrolment. The Ministry has received funds from GET Fund under the Emergency SHS Project to construct structures in selected SHSs to eliminate the double track system for second year students in those schools in September, 2019.

The Project has been grouped into twenty-five (25) lots with three (3) shortlisted construction companies for each lot.

Consultant/Contractor/Suppliers Qualification: The shortlisted construction companies are registered in Ghana. Most of the statutory documents (SSNIT and Tax Clearance Certificates, and MW & H Certificates) provided expired and need to be renewed.

Technical Capabilities: The shortlisted companies have the capability to execute the Project. However, we observed that the companies shortlisted for lot 24 (M/S Hallwort Ghana Ltd, M/S Regent House Ltd, and M/S Phenopia Ltd) have common shareholders or beneficiaries. It is therefore advisable that they are replaced to ensure proper competition in the tendering process.

Price Reasonableness: We found the estimated cost for each lot to be reasonable.

Conclusion: We recommend the Board grants approval to the request under section 38 (b) of Act 663 as amended. MoE should be advised to replace the shortlisted companies for lot 24 to enhance competition and also ensure that valid documents are obtained from each company during tendering.

Decision: Approved as recommended

The CEO of the PPA (Respondent) wrote a letter ref. No. PPA/CEO/03/547/19 of 15th March, 2019 conveying the approval of the Board to the MoE, that:

"...We make reference to your letter your letter no. FA101/331/01 dated 28th February, 2019 on the above mentioned subject.

At the Board Technical Committee Meeting No. 23 (023/2018) held on Friday, 15th March 2019, the Board granted approval to the Ministry of Education in accordance with section 38 (b) of Act 663 as amended, to use Restricted Tendering Method to invite the under listed companies to tender for the procurement of Contractors to undertake the construction of various structures in selected Senior High Schools (SHSs) across the country at a total estimated cost of GHS42, 441,956.77 as per the attached list.

MoE is however advised to replace the shortlisted companies for Lot 24 to enhance competition and ensure that valid documents are obtained from all the shortlisted firms during the tendering process.

You are also required to ensure that all shortlisted firms duly register on the PPA supplier database...”

Savelugu SHS: A request by the MoE to the PPA to use Restricted Tendering Method, in a letter dated 8th April 2019 which reads:

REQUEST FOR APPROVAL TO USE RESTRICTED TENDERING METHOD TO ENGAGE CONTRACTORS FOR THE CONSTRUCTION OF ADDITIONAL STRUCTURES IN SELECTED SENIOR HIGH SCHOOLS ACROSS THE COUNTRY”

“The introduction of the Free Senior High School Policy by the Government of Ghana has resulted in increased enrolment in Senior High Schools (SHS) across the country. This has resulted in the Ministry running a double track system to accommodate the increased enrolment.

The Ministry of Education has received funds from the Ghana Education Trust Fund (GET Fund) under the Emergency Senior High School Project to construct additional structures in selected SHS in line with the elimination of the double track system by September 2019”

*Given the short time at our disposal, the Ministry therefore wishes to seek approval of the Public Procurement Authority under section 38 (b) of the Public Procurement Act 2003 (663) as Amended to use the Restrictive Tendering Method to select companies from the attached list of contractors who have been assessed and found to have the **capacity** to construct the structures within the time schedule”*

The Ministry’s letter contains a list of 104 LOTS, numbered RST 01-104 with the type of structure to be constructed, the location, name of school, names of the contractors it had shortlisted and the estimated cost.

At RST 55 is the Savelugu SHS contract where three companies were shortlisted by the MoE. The companies are: Canduns International Ltd, Talent Discovery Limited and ABITJACK Construction Limited.

On receipt of the MOE's request dated 8th April 2019, No. FA101/331/01, the CEO of the PPA in a letter dated 6 May 2019 (under the signature of the CEO), ref. No. PPA/CEO//05/842/19, titled "RE: REQUEST FOR APPROVAL TO USE RESTRICTED TENDERING METHOD TO ENGAGE CONTRACTORS FOR THE CONSTRUCTION OF ADDITIONAL STRUCTURES IN SELECTED SENIOR HIGH SCHOOLS ACROSS THE COUNTRY" addressed to the Hon. Minister, Ministry of Education, Accra. ATTN: DR. MATTHEW OPOKU PREMPEH (MP), wrote:

"At the Board Technical Committee Meeting no 25 (025/2019) held on Friday, 3rd May 2019, the Board decided that the Ministry of Education should furnish us with the cost breakdown for each LOT of the proposed structures to be constructed to facilitate the processing of your request..."

The minutes of the Board Technical Committee Meeting no 25 (025/2019) held on Friday, 3rd May 2019 show that seven members of the Board including the Respondent were present. The rest were:

- i. Mrs. Ernestina Swatson Eshun - Chairperson
- ii. Mr. Samuel R. Nii Baidoo - Member
- iii. Hon. Godfred Dame - Member
- iv. Mrs. Stella Williams - Member
- v. Dr. Yaw Boakye - Member
- vi. Mr. Kofi Owusu - Member

The meeting commenced at 10:30am after a short prayer by the CEO.

The Chairperson Ernestina Eshun welcomed all to the 25th Board Technical Committee meeting. She welcomed the two additional Board Members to the meeting, which is now a full Board meeting as directed by the Board Chairman and no longer the Board Technical Sub-Committee.

It confirmed the Minutes and RT/SS Table of the 24th RT/SS Meeting held on Wednesday 5th April, 2019, on the motion of Dr. Emmanuel Boakye, which was seconded by the CEO (Respondent).

The Chairman called on the CEO to lead the briefing on the responses received from Entities on application earlier queried or for which additional documents and information had been requested. The CEO took members through the responses and the recommendations on same as well as the steps taken by Management in light of the responses.

Members considered 61 Single Source (SS), Restricted Tendering (RT), supplementary applications and responses received to queries issued on earlier applications, as per a summary table attached.

The CEO led the presentation of applications and gave technical clarifications to Members as required. The Board requested management to communicate the decisions taken to the various applicant entities.

In the absence of any further business, the CEO, Mr. A.B. Adjei, moved for closure of the meeting and was seconded by Mr. Kofi Owusu.

This request by the MOE is recorded in the Summary Table as “...26. *Application No.: SS/04/19 Date Received: 11/04/19, Re: FA101/331/01 dated 8/04/19*”

Extract of the Summary of Table:

Type of Procurement (goods/works/services): Works-Construction of Additional Structures in Selected SHSs across the Country

Status: New Application (RT)

Estimated Contract Cost: GHC191,632,350.00

Summary of Application: MoE is requesting for approval to adopt the Restricted Tendering procurement method in accordance with section 38 (b) of Act 663 as amended, to engage contractors for construction of various structures in selected Senior High Schools (SHSs) across the country as part of the process of eliminating the double track system by September, 2019.

The project has been divided into 104 lots with three (3) construction companies shortlisted for each lot.

Justification and Relevant Clause Provided by Entity: *The introduction of the Free Senior High School Policy by the government has resulted in increased enrolment in SHSs across in the country. This has resulted in the Ministry running double track system to accommodate the increased enrolment. The Ministry has received funds from GET Fund under the Emergency SHS Project to construct additional structures in selected SHSs in line with elimination of the double track system.*

Given the short time at the Ministry's disposal, it is imperative to adopt the Restricted Tendering process to selected companies found to have the capacity to construct the structures within the time schedule.

Consultant/Contractor/Suppliers Qualification: *All the shortlisted construction companies are registered in Ghana. However, the Works and Housing classification for most has expired.*

Technical Capabilities: *We identified that some of the companies shortlisted for some lots seem to have the same ownership: Canduns International Ltd, and Talent Discovery Limited-Have same address and were competing in same lot (lot55). Same Ownership.*

Price Reasonableness: *We found the estimated cost to be reasonable. However, some of the projects have also been stated in the Ashanti Regional Coordinating Council's request for approval. The two Agencies need to be advised to liaise with each other and sort out the project to avoid duplication of projects and or payments.*

Conclusion: *MoE should be advised to:*

- Replace the companies identified/suspected to have the ownership and are competing in the same lots to enhance competition.*
- Liaise effectively with the Ashanti Regional Coordinating Council in the execution of some of the projects in the region to prevent*

duplication of projects at the expense of other schools in other parts of the country.

Board Decision: *Approved granted subject to Management's recommendation above.*

On 8th May 2019, the CEO of the PPA, in a letter to the Hon Minister, Ministry of Education, ref. No. PPA/CEO/05/842/19, with the heading "RE: REQUEST FOR APPROVAL TO USE RESTRICTED TENDERING METHOD TO ENGAGE CONTRACTORS FOR THE CONSTRUCTION OF ADDITIONAL STRUCTURES IN SELECTED SENIOR HIGH SCHOOLS ACROSS THE COUNTRY" stated:

"We make reference to your letter No. FA 101/331/01 dated 8th April 2019 on the above subject.

At the Board Technical Committee Meeting no 25 (025/2019) held on Friday, 3rd May 2019, the Board noted the content of your letter. However, the Board observed that, some of the shortlisted companies seem to have the same ownership as tabled below...", among others:

Lot No.	Companies Involved	Issues identified	Our Suspicion
55	<i>Canduns International Ltd, and Talent Discovery</i>	<i>They have the same address and are competing in the same Lot (no. 55)</i>	<i>Same Ownership</i>

"This letter supersedes our letter No. PPA/CEO/05/842/19 dated 6th May 2019 on the subject above.

*MOE is therefore advised to **replace the companies identified/suspected to have the same ownership and are competing in the same Lot to enhance competition...***

By letter to the Chief Executive of PPA, dated 14 May 2019, ref. no. FA101/331/01, titled "RE: REQUEST FOR APPROVAL TO USE RESTRICTED TENDERING METHOD TO ENGAGE CONTRACTORS FOR

THE CONSTRUCTION OF ADDITIONAL STRUCTURES IN SELECTED SENIOR HIGH SCHOOLS ACROSS THE COUNTRY”, the MOE writes:

“...We make reference to your letter No. PPA/CEO/05/842/19 dated 8th May 2019 requesting the Ministry to replace companies identified/suspected to have same ownership and are competing in the same Lot.

“In response to your request, the Ministry has replaced the identified/suspected companies with different companies to enhance competition.”

Please find attached a list of the companies and their statutory documents...”

List:

<i>Lot</i>	<i>MMDA</i>	<i>Structure</i>	<i>Name of School</i>	<i>Company Name</i>	<i>Estimated Cost</i>
55	Savelugu-Nanton	2-Storey Dormitory Block	Savelugu Senior High School	Prolus Investments Limited	2,600,000
				Doemens Limited	
				Talent Discovery	

The companies listed in the 8th April letter as suspected as having same ownership in respect of LOT 55 are CANDUNS International Limited and Talent Discovery Limited”. The PPA Board directed that the two companies be replaced.

The CEO’s letter, dated 24th May 2019, ref. No. PPA/CEO/05/1082/19, conveying the decision of the Board under the heading, “RE: REQUEST FOR APPROVAL TO USE RESTRICTED TENDERING METHOD TO ENGAGE CONTRACTORS FOR THE CONSTRUCTION OF ADDITIONAL STRUCTURES IN SELECTED SENIOR HIGH SCHOOLS ACROSS THE COUNTRY”, is as follows:

“We make reference to your letter No. FA 101/331/01 dated 14th May 2019 on the in response to our letter No. PPA/CEO/05/842/19 dated 8th May 20-19 on the above subject

At the Board Technical Committee Meeting no 25 (025/2019) held on Friday, 3rd May 2019, the Board decided that, upon submission of satisfactory information as requested by the Authority, PPA may proceed to convey approval to the Ministry of Education...to use restricted Tendering Method to invite the under listed companies in 104 LOTS to undertake the construction of various structures in selected Senior High Schools across the country....as per the attached list”

Per the attached PPA approved list:

<i>Lot</i>	<i>MMDA</i>	<i>Structure</i>	<i>Name of School</i>	<i>Company Name</i>	<i>Estimated Cost</i>
55	Savelugu-Nanton	2-Storey Dormitory Block	Savelugu Senior High School	Prolus Investments Limited Doemens Limited Talent Discovery	2,600,000

TDL Tender Form to the MoE in respect of the Emergency Senior High School Project for the Construction of 1No. Single Storey Dormitory Block at Collins SHS in the Asante Akim North District & 1No. 12-Seater Toilet Block at the Tuobodom SHTS in the Techiman North District with Contract Lot: EMRG/RT/AS10 and IFT No: MOE/FPMU/RT/WKS/001/2019 is dated 17th April, 2019

Then, the MoE, in a letter No. MOE/PFMU/EMRG/AS10 dated 5th July, 2019, notified TDL of the award of the contract to TDL (Notification of Award), following which the contract between the MoE and TDL was signed on 22nd July, 2019

8.2.6. Ministry of Works and Housing

The Ministry of Works and Housing (MoWH) letter to the Commission in a letter dated 9th September 2019, Ref. No. SCR/MQ.173/256/01 containing a list of contracts it awarded to TDL and others on RT between 2017-2019.

Ministry of Works and Housing requested for approval from PPA to use Restricted Tendering Method for the procurement to execute 19 (Drain) works in LOTS under the 2018 National Flood Control (Construction) Programme at a cost GHC30,800,000.00. Three (3) firms will bid for each LOT with 30 constructions firms in total under the “WORKS-2018 EMERGENCY NATIONAL FLOOD CONTROL PROGRAMME”

The PPA Board Technical Committee Meeting 20th Meeting of December 2018. As already noted, present at that meeting were:

- i. Mrs. Ernestina Swatson Eshun (Chair)
- ii. Mr. Adjenim Boateng Adjei
- iii. Dr. Emmnuel Yaw Boakye
- iv. Hon. Godfred Dame

Appearing at “43. Application No.: Date Received: 11/12/18, Re: RT/23/12/18, is the application of the MoWH.

Extract from the Summary table:

Type of Procurement (goods/works/services): Works-2018
Emergency National Flood Control Programme

Status: New Application

Estimated Contract Cost: GHC30,800,000.00

Summary of Application: Ministry of Works and Housing is requesting for unconditional approval from PPA to use Restricted Tendering Method for the procurement to execute 19 (Drain) works in LOTS under the 2018 National Flood Control (Construction) Programme at a cost GHC30,800,000.00. 3 firms will bid for each LOT with 30 constructions firms in total.

Justification and Relevant Clause Provided by Entity: MoWH has not been able to undertake any flood control works in the Accra-Tema Metropolis and selected areas across the country for the past year. As a result, most of the drains have become silted with all kinds of waste materials. The monsoon rains this year has begun and created serious flooding in most of the flood-prone areas within the Metropolis and other parts of the country. Apart from the significant cost and number of property lost, a number of death cases have been recorded in the recent spates of rainstorm disasters particularly in the Capital City. One plausible means of mitigating this dreadful occurrence is the removal of silt, the widening of channels and constructions of culverts to allow free flow run-offs.

The Ministry of Finance has provided Commencement Certificate for the National Flood Control Programme to the tune not exceeding GHC194,500,000.00 which expires on the 31st December, 2018.

MoWH has so far presented 2 applications totalling (82,900,000.00 + 26,000,000.00 + 38,300,000.00) = GHC147,200,000.00 which the Board approved previously.

MoWH has so far presented 3 applications (including this one) totalling (82,900,000.00 +26,000,000.00 +38,300,000.00 +30,800,000.00) = GHC178,000,000.00. Remaining balance as at now is GHC16,500,000.00).

Consultant/Contractor/Suppliers Qualification: Company Profile and all the requisite documents were provided for all the shortlisted firms.

Technical Capabilities: All the shortlisted companies have the technical capabilities to undertake the assignment.

Price Reasonableness: The RT process will yield further saving on the Engineer's estimate provided-hence we are inclined to accept the price as reasonable. The estimate provided should not vary much

from the final value submitted on the evaluation report that will come to PPA for final approval.

Conclusion: We recommend that the Board grant approval to the Ministry of Works and Housing under section 38 (1) (b) of Act 663 as amended and the firms are not allowed to win more than 2 LOTS to ensure the work can be completed within MoF deadline for submission of payment of 31st December, 2018.

Decision: Approved as Recommended

The CEO of the PPA wrote conveying the approval of the request at the 20th Meeting of the Board in his letter Ref. No. PPA/CEO/04/725/19, dated 8th April, 2019:

“...RE-2018 EMERGENCY NATIONAL FLOOD CONTROL
PROGRAMME-CONSTRUCTION OF CONCRETE DRAINS: RE-
SUBMISSION OF TENDER EVALAUTION REPORTS

Please refer to your letter with reference number SCR/KQ.141/173/02(H) dated 28th March, 2019 by which you re-submitted the Evaluation Reports, Tender Documents and Tenderers for the following three (3) Lots for review as requested by our letter with reference no.

PPA/CEO/01/137/19 dated 31st January, 2019:

Lot 2-Construction of Concrete Drain at Kumasi Tafo Mile 4;

Lot 3-Construction of Concrete Drain at Santa Maria (Plus FM Area); and Construction of Concrete Drain at Teshie Greda Estate.

The review shows that for all the three (3) Lots:

- *The Ministry of Works and Housing (MWH) invited the PPA approved companies to tender and all of them submitted tenders;*
- *MoWH used the appropriate PPA Standard Tender Document and Evaluation Report;*
- *The winning Tender Prices are within the PPA approved cost estimates;*

- *The Tender Securities submitted for Lot 5-Teshie Greda Estate were insurance bonds in the required amounts;*
- *The Tender Forms in the copies of the re-submitted Tenders for Lots 2 and 3, Kumasi and Santa Maria (Plus FM Area) are signed.*

Approval is therefore granted for the Ministry of Works and Housing to proceed with the Restricted Tender process..."

The Hydrological Services Department of the MoWH then awarded a contract to TDL for the Construction of the Concrete Drains at the Santa Maria per letter No. HSD/HQ/CONF2/D390, dated 20th March, 2019.

TDL accepted the offer in a letter 21st March 2019 and proceeded to sign an agreement with the MoWH of 19th April 2019 (Thomas Amoah, as the Project Manager of TDL, witnessed for TDL.

Another contract for which the MoWH made a request to the PPA for approval to use RT method of procurement to execute 8 (Drain) works with 18 constructions firms in total, was also considered at the 20th Meeting of the Board in 2018 (supra) and recorded on the Summary Table at "44. *Application No.: Date Received: 12/12/18, Re: RT/32/12/18"*

Extract of the Summary Table:

Type of Procurement (goods/works/services): Works-2018 Emergency National Flood Control Programme

Status: New Application (RT)

Estimated Contract Cost: GHC16,500,000.00

Summary of Application: Ministry of Works and Housing is requesting for unconditional approval from PPA to use Restricted Tendering Method for the procurement to execute 8 (Drain) works in LOTS under the 2018 National Flood Control (Construction) Programme at a cost

GHC16,500,000.00. 3 firms will bid for each LOT with 18 constructions firms in total.

Justification and Relevant Clause Provided by Entity: MoWH has not been able to undertake any flood control works in the Accra-Tema Metropolis and selected areas across the country for the past year. As a result, most of the drains have become silted with all kinds of waste materials. The monsoon rains this year have begun and created serious flooding in most of the flood-prone areas within the Metropolis and other parts of the country. Apart from the significant cost and number of property lost, a number of death cases have been recorded in the recent spates of rainstorm disasters particularly in the Capital City. One plausible means of mitigating this dreadful occurrence is the removal of silt, the widening of channels and constructions of culverts to allow free flow run-offs.

The Ministry of Finance has provided Commencement Certificate for the National Flood Control Programme to the tune not exceeding GHC194,500,000.00 which expires on the 31st December, 2018.

*MoWH has so far presented 2 applications totalling (82,900,000.00 + 26,000,000.00 + 38,300,000.00 +30,800,000.00) = **GHC194,200,000.00** which the Board approved previously.*

*MoWH has so far presented 3 applications (including this one) totalling (82,900,000.00 +26,000,000.00 +38,300,000.00 +30,800,000.00 +16,500,000.00) = **GHC194,500,000.00**. Remaining balance as at now is GHS0.00*

Consultant/Contractor/Suppliers Qualification: *Company Profile and all the requisite documents were provided for all the shortlisted firms.*

Technical Capabilities: *All the shortlisted companies have the technical capabilities to undertake the assignment.*

***Price Reasonableness:** The RT process will yield further saving on the Engineer's estimate provided-hence we are inclined to accept the price as reasonable. The estimate provided should not vary much from the final value submitted on the evaluation report that will come to PPA for final approval.*

***Conclusion:** We recommend that the Board grant approval to the Ministry of Works and Housing under section 38 (1) (b) of Act 663 as amended and the firms are not allowed to win more than 2 LOTS to ensure the work can be completed within MoF deadline for submission of payment of 31st December, 2018.*

***Decision:** Approved as Recommended*

On the renovation of renovation of Bungalow No. C41 Roman Ridge, Accra, a Practical Completion Payment Certificate was raised by TDL in the total sum of GH¢100,990.00 only, "...being value of work done to date as per the Certificate..."

On the other contract for renovation, which is, the Renovation of Bungalow No. 3A, Church Road, Airport Residential Area, Accra, a similar Practical Completion Payment Certificate was presented to the MoWH by TDL for payment.

The Tender Document on the Akatsi Channel Improvement contract, dated January, 2019 contains the award of contract letter no. HAS/CONF.2/1010 dated 24th December 2018 as well as the agreement on same dated 12th February 2019.

8.2.7. Ministry of Inner City and Zongo Development

In terms of the contracts awarded to TDL by the Ministry of Inner City and Zongo Development (MICZD), documents submitted by the PPA show that the MICZD requested for approval to use Restricted Tendering (RT) for various projects (works) within Zongo Communities in Ghana as part of Government Policy to develop the Zongos, under the Ministry of Inner-City and Zongo Development, for a number of projects including:

- Greening of Parks and digging of Boreholes;
- Construction of Football Parks (Artificial Turf Football Park);
- Rehabilitation of School;
- Construction of drains and Alley Pavements.

The MICZD in a letter dated 22nd December, 2017 Reference No. MICZD/PPA/001/17 and addressed to the CEO of PPA, sought approval from the PPA to use RT "for various projects (works)" which stated in part as follows:

"Subsequent to our previous request of 5th September, 2017 which was approved on the 29th September, we write for supplementary approval for Restricted Tendering to procure the services of the under listed firms to execute projects in the sum of GHC4.4 Million..."

The CEO of the PPA in a letter dated 19th January, 2018 conveyed the decision of "...the Board Technical Committee Meeting No. 8 (008/2018) held on 17th January 2018, to grant approval to Ministry of Inner-City and Zongo Development.

The estimated cost of works on the project submitted to the PPA was GHC480,488.17 as per Application letter dated 5th September, 2017 indicating the Consultants bills of works.

It was further provided that:

"...Bidders may bid for all lots but no Single Bidder should be awarded more than two (2) Lots of the Contracts. This approval is further subject to submission of a copy of the Evaluation Report, a copy of the Tender Document and proposals submitted by Tenderers to PPA, prior to award of the Contract."

The list of firms for which approval was given included TDL for Lot 3, for "Greening of Parks at Oda plus Borehole" at the cost of GHC480,488.17, which it won. The cost of 480,488.17 consisted of Consultancy Fees (14%) of GHC59,007.32 and Estimated Value of Works of GHC421,480.85 and TDL submitted the exact amount of 421,480.85 that the entity provided PPA.

The Tender Evaluation Report (TER) dated November, 2017 with the Contract No.: IFT No. GR/MICZD/WKS/003/2017, shows that there were six (6) Lots in all; Lot 1 for Rehabilitation Works while Lots 2 to 6 for Greening of Parks and Boreholes.

Three (3) firms, namely TDL, Extra Tactics Ltd, and Kel Yen Company Ltd took part in the tender as indicated below.

Talent Discovery Limited (TDL) submitted bids for Lots 2, 3, 5 and 6, quoting the same price for all. It was proposed for the award of Lot 3 to TDL at the amount of GHC421, 480.85.

Table 2: Procurement of Works-Greening of Parks-Oda

S/No.	Name of Firm	Tender Price (GHC)	Rank	Remarks
4	Talent Discovery Ltd	421,480.85	1	Recommended
5	Extra Tactics Ltd	432,629.14	2	Recommended
6	Kel & Yen Company Ltd	436,093.62	3	Recommended

MICZD submitted to the Commission a document on a Contract to TDL Ref. No. GR/MICZD/WKS/001/2018 dated April, 2018 on the Greening of Parks and 1No. Borehole at Oda in the Eastern Region.

This document contains Notification of Award of Contract Letter No. WB49/111/01 dated April, 2018 for the "*Greening of Parks Plus 1No. Borehole at Oda at GHC421,480.85*" and the Contract Agreement dated 19th April, 2018) signed between the Ministry and TDL. It also has in it the TDL Acceptance Letter No. TDL/MICZD/001/18 dated 23 April, 2018.

8.2.10. Ministry of Special Development Initiative:

The Ministry of Special Development Initiative (MSDI) in a letter No. DB403/533/01 dated 17th March, 2020 to the Commission which contains Contract Documents related to the contract for the construction of dams in Binduri and Bimbilla. The relevant portion reads as follows:

"In the letter under reference, we indicated that Talent Discovery had two contracts with the Ministry to construct small dams in Binduri and Bimbilla. The two contracts with Talent Discovery is for Lot 2 and 3 which are all in Binduri, Upper East Region.

Each lot has two sites. They are as follows:

- *Lot 2: Boko and Atuba*
- *Lot 3: Narango and Aniiifi*

.... please find attached copies of the two contracts for Lot 2 and Lot 3 in Binduri respectively..."

The contract documents for both Lots 2 &3 contains the Notification of Award of Contract Letter No. MSDI/IPEP.1V1D/02.18 dated 11th April, 2018 and Contract Agreement dated 30th April, 2018 between the MSDI and TDL.

Part of the Notification of Award of Contract for Lot 2 read as follows:

"M/S TALENT DISCOVERY LTD

CONSTRUCTION OF SMALL DAMS AND DUGOUTS UNDER THE ONE VILLAGE, ONE DAM INITIATIVE AS PART OF THE INFRASTRUCTURE FOR POVERTY ERADICATION PROGRAMME (IPEP) NOTIFICATION OF AWARD OF CONTRACT

We are pleased to inform you that approval has been granted for your company M/S Talent Discovery Ltd, to be awarded a contract at the price of Five Hundred and Forty-Three Thousand, Seven Hundred and Thirty-Five Ghana Cedis and Fifteen Pesewas (GH¢543,735.15) for the construction of No.2 Small Dams/Dugouts for Lot 2 in the Binduri Constituency in the Upper East Region.

The project shall be completed within four (4) calendar Months from the date of site possession".

The Notification of Award of Contract for Lot 3 had similar provisions. **Contracts TDL was shortlisted for, awarded, executed and not yet executed**

According to Francis Kwaku Arhin, the Chief Executive Officer (CEO) of TDL, the company had participated in over 300 tendering involving MDAs, but was shortlisted for 15 contracts out of which it won six, and executed four with two outstanding. Our independent investigation, however, showed the following:

Table 1: *Number of Contracts TDL was short listed, awarded, executed and not yet executed*

S/No.	Description	No. of Contracts
1	No. of Contracts Short Listed	32
2	No. of Contracts awarded	10
3	No. of Contract executed	3
4	No. of Pending Execution	7

Table 2: *Procurement Entities and No. of Short listing, Awards, Executed Contracts and those Not Executed*

S/No	Procurement Entity	No. of Short Listing	No. Awarded	No. Executed	No. Not Executed
1	Ministry of Works and Housing	9	4	3	1
2	Ministry of Education	3	2	0	2
3	Ministry of Inner-City and Zongo Development	8	1	0	1
4	Ministry of Special Development Initiative	4	2	0	2
5	Ghana Ports and Harbours Authority	4	1	0	1
6	Department of Feeder Roads	4	0	0	0
	Total	32	10	3	7

The details are as follows:

1) Ministry of Works and Housing (MoWH)

The evidence shows that from 2017 to 2019, the MoWH short listed TDL for the following nine contracts:

- i. Construction of Concrete Drain at Santa Maria, Greater Accra Region;
- ii. Channel Improvement Works at the Akatsi, Volta Region;
- iii. Renovation of Bungalow No. C41 Roman Ridge, Greater Region;
- iv. Renovation of Bungalow No. 3A Church Road-Airport Residential, Greater Region;
- v. Construction of Concrete Drain at Ashanti Nsuta;
- vi. Construction of Concrete Drain at Amanful-Atwereboana;
- vii. Construction of Concrete Drain at Apirede, Ashanti Region;
- viii. Construction of Concrete Drain at Sunyani Chiramanfo; and
- ix. Construction of Concrete Drain at Jaman North.

TDL was awarded four contracts, namely the Santa Maria, Akatsi, and renovation of Bungalows Nos. C41 and 3A at Roman Ridge Area, and Church Road, Airport Residential area respectively in the Greater Accra Region.

On the status of the projects, three out of the four contracts had been completed leaving the Santa Maria project.

2) Ministry of Education (MoE)

The evidence show that TDL was short listed for the following contracts:

- i. Construction of 1No. Single Storey Dormitory Block at Collins SHS at the Asante Akim North District, Ashanti Region;
- ii. Construction of 1No. 12-Seater Toilet Block at the Tuobodom SHTS at the Techiman North District, Bono Region; and

iii. Construction of 1 No. Two-Storey Dormitory Block at the Savelugu Senior High School, North East Region.

The MoE awarded the Collins SHS and Tuobodom SHTS contracts to TDL, which are pending execution.

3) Ministry of Inner-City and Zongo Development (MICZD)

MICZD short listed TDL for the following eight (8) contracts:

- i. Rehabilitation of School, Salaga;
- ii. Greening of Parks plus Borehole at Salaga;
- iii. Greening of Parks plus Borehole, Oda;
- iv. Greening of Parks plus Borehole, Yeji;
- v. Greening of Parks plus Borehole, Tafo;
- vi. Greening of Parks plus Borehole, Bolgatanga;
- vii. Constriction of Drains & Demolition and Alleys ways, Madina, and
- viii. Construction of Drains, Asawase.

TDL was awarded the contract for the Greening of Park and 1 No. Borehole at Oda, Eastern Region.

4) Ministry of Special Development Initiative (MSDI)

MSDI awarded two contracts to TDL for the construction of Dams/Dugouts in the Binduri Constituency, Upper East Region, under the government Flagship programme; One-Village-One Dam (1V1D).

None of the dams/dugouts have since been completed. They are at various levels of completion.

5) Ghana Ports and Harbour Authority (GPHA)

GPHA had short listed TDL for the award of four (4) contracts.

- i. Supply and Installation of a Mobile Column Lift for the Takoradi Ports, Western Region;

- ii. Supply, Installation and Commissioning of 30-Meter-High Mast Poles, Tema Port; and
- iii. Rehabilitation of James Town Lighthouse Facilities, and
- iv. Supply, Installation and Commissioning of an Automatic Power Factor Correction and Energy Demand Reduction Equipment at the Reefer Container Terminal-Tema Port.

The records show that TDL was awarded the contract for the Supply and Installation of Mobile Column Lift.

6) Department of Feeder Roads (DFR)

The evidence available to the Commission shows that the DFR shortlisted TDL for the award of the following four (4) contracts:

- i. Bitumen Surfacing of Abetifi Town Roads and Access Roads to selected Schools in the Kwahu East District;
- ii. Bitumen Surfacing of Gushie-Adayilli Feeder Roads, Northern Region;
- iii. Bitumen Surfacing of Vittin-Dakpemyilli-yong Feeder Roads, Northern Region; and
- iv. Bitumen Surfacing of Datoyilli-Golinga-Chanayilli Feeder Roads, Northern Region

It could not be independently established whether TDL was awarded any of the above contracts.

The investigation further found that other procurement entities engaged TDL Freight Forwarding, a subsidiary of TDL, which the Respondent has interest, for some jobs as indicated below:

Ghana Cocoa Board (COCOBOD):

- Clearing of 1024 Jute Sacks from the Ports to COCOBOD Ware House, Tema

Ghana Water Company Limited (GWCL):

- i. Clearing of 45*20' Containers STC of Aluminum Sulphate
- ii. Clearing of 20*20' Containers STC of Aluminum Sulphate
- iii. Clearing of 7*20' Containers STC of Aluminum Sulphate

From the evidence above, TDL was awarded ten contracts whilst TDL Freight Forwarding received four. The 10 contracts awarded to TDL were through restricted tender.

8.3 Site Visits

As part of investigation into the allegation of conflict of interest (COI) against Mr. Adjenim Boateng Adjei, Team of Investigators visited projects sites of contracts awarded to Talent Discovery Limited (TDL). These are:

1. Collins SHS in the Asante Akim North District of the Ashanti Region;
2. Tuobodom SHS in the Techiman North District of the Bono East Region;
3. Binduri Constituency in the Upper East Region
4. Bimbilla in the Northern Region,
5. Oda in the Eastern Region; and
6. Akatsi, in the Volta Region.

Findings:

1. For the Collins SHS in the Asante Akim North District of the Ashanti Region and Tuobodom SHS in the Techiman North District of the Bono East Region, the evidence show that the Contracts were awarded to TDL on 5th July, 2019 for the Construction of 1No. Single Storey Dormitory Block at Collins SHS at Agogo and 12-Seater Toilet Block at Tuobodom SHTS in the Techiman North District at an estimated cost of GHC1, 409,262.03. The Contract duration of was eight (8) months.

i. Collins SHS:

- The contractor was not known to school authorities, although some work had started.
- The work was being executed on behalf of TDL by another person; TDL was not directly engaged in the execution of the contract.
- the work had not progressed much (it was at the foundation level), and work had stalled at the time of the visit.
- Work was behind schedule

ii. Tuobodom Senior High/Technical School

At Tuobodom SHS/Tech School, no 12-seater toilet facility was found. Indeed, an inspection of the available toilet facilities at the School showed that the only toilet facilities constructed within the period 2017-2019 are 2No. 10-seater toilets for both the male and female students, which formed part of the dormitories projects constructed for the students.

The Investigators also found two (2) 20-seater toilet facility (old ones) each for the male and female students at the dormitories, constructed by the end of 2016.

Another toilet facility constructed in 2019, is a ten (10) seater toilet facility for use by both the male and female students and it was constructed by a firm called Jedirock Enterprise, owned by one Mr. Yankah domiciled in Kumasi. Authorities at the School said that the construction of the ten-seater toilets by Jedirock commenced in March, 2019 and completed in six-seven months.

It was also found that due to the increase in enrolment, the school had to construct a KVIP [toilet] for use by the day students as one of the boys' toilet was no more in use because the sewage system got blocked and was yet to be fixed.

Sources at the School categorically stated that the school had no 12- Seater toilet facility and that they were yet to see a contractor by name "Talent Discovery Limited".

2. Construction of One-Village One-Dam - Binduri:

- The Ministry of Special Development Initiatives (MSDI) per an award letter dated 11th April, 2018, awarded to TDL contracts to construct 2No. dams/dugouts for Lots 2 and 3 at an estimated cost of GHC543,735.15.
- However, the contract details were not available at the Binduri District Assembly as well as the Upper East Regional Coordinating Council.
- A visited to one of the dams at Zawse in the Constituency showed an almost dried up stream, which was blocked by the contractor with sand as described as dam.
- The contract duration was four (4) calendar months, but as at 13th February 2020, work had not been completed per the specification of the dams and the contractor had left site.
- Also, the Consultant of the projects of TDL had raised certificate for the payment of some moneys for work done.

3. Channel Improvement Works at Akatsi:

The Ministry of Works and Housing per a letter dated 24th December, 2018 awarded to TDL contract for Channel Improvement works at Akatsi at the cost of GHC99, 943.00.

- TDL subletted the contract to Nicholas Adjei at a cost of GHC45,000.00 per subcontract agreement.
- The contract had since been executed by Nicholas Adjei of K. Adjei Enterprise, Dzorwolu, Accra.

4. Greening of Parks and Borehole at Oda:

The Ministry of Inner-City and Zongo Development awarded to TDL at an estimated cost of GHC421, 480.85.

- Contract was awarded to TDL in April, 2018 and scheduled for completion in eight Months.
- Work had not been completed;
- The limited work done was described by the project beneficiaries as shoddy.
- There were no records of the project at the Birim Central Municipal Assembly, Akim-Oda.

9.0. ANALYSIS OF EVIDENCE, CONSIDERATION OF THE ISSUES AND CONCLUSIONS

9.1. Whether or not the Respondent established Talent Discovery Limited (TDL) a few months after he was appointed CEO of PPA

One of the allegations contained in the documentary is that the Respondent established Talent Discovery Limited (TDL) three (3) months after he was appointed Chief Executive Officer (CEO) of the PPA. In the documentary, the Respondent initially denied that TDL was his company though he said he knew TDL. We reproduce the following conversation that transpired between Manasseh and the Respondent:

Manasseh: "Do you know of a company called Talent Discovery Limited?"

AB Adjei: "I do."

Manasseh: Is it your company?

AB Adjei: "No."

Manasseh: "So, how do you know this company?"

AB Adjei: "It's a Cousin of mine."

Manasseh: "What is the name of the cousin?"

AB Adjei: "I wouldn't disclose it. You can have it if you want it."

Manasseh: "We have done our checks and it is not your cousin but your name is on the registration document."

AB Adjei: "It is not my cousin; it is my brother in-law."

Manasseh: "What is his name?"

AB Adjei: "I would not disclose it."

Manasseh: "Francis Arhin."

AB Adjei: "Yes"

As noted earlier, Records obtained from the Registrar-General's Department on the Company Registration Information and or Company Profile by the Commission dated 14th October 2019 confirms that TDL was incorporated as a Private Limited Liability Company with registration No. CS173942017 on 19th June, 2017. The Directors of TDL are Adjenim Boateng Adjei and Francis Kwaku Arhin. Its shareholders are Adjenim Boateng Adjei, 30,000 shares and Francis Kwaku Arhin, 20,000 shares, making the Respondent the majority shareholder.

At the interview with the Commission on 16th June 2020, the Respondent admitted that TDL was established in June 2017, three months after his appointment as CEO of the PPA. He further disclosed that the idea to establish TDL was brought up by Mr. Arhin, his brother-in-law, and together they established the company. He described how TDL was incorporated in the following manner:

"... this is a brother-in-law who decide to relocate from London to Ghana. So, when he came because we have been communicating over years because of the relationship we have, and I knew him that he was a contractor in the UK. So he came and said he wants to settle down. So can we do something together and I said why not. But let me put it this way, we would put the company together, but you would run it.

At the time of establishing this company, I was about to turn to the year fifty-nine (59). So, I said you could have this company, we can have it together, but you run it, so when I leave public office, then I can come fully and join you. So with that understanding that company was established”.

From the Respondent’s own mouth, his personal objective or reason for establishing TDL is quite evident, namely, to help his brother-in-law settle in Ghana after a long stay in the UK, and to prepare for his own retirement from public office as he was then about 59 years. The brother-in-law, Francis Arhin, who became the CEO of TDL, substantially corroborates the Respondent’s account of the objective/reason for the establishment of TDL.

The evidence also shows that the Respondent is shareholder and director in six companies, namely:

- 1) Talent Discovery Limited (TDL);
- 2) TDL Agro Industry;
- 3) TDL Freight Forwarding;
- 4) TDL Transport and Logistics Services;
- 5) Frosty Ice Natural Mineral Water Ltd, and
- 6) ABM Logistics (GH) Limited

Respondent and his brother-in-law, Francis Arhin, own the first four companies, whilst he owns the last two with his wife, Mercy Adjei.

The evidence further shows that of the six companies Respondent admitted being a shareholder and director with either his in-law or wife, all were established after his appointment as CEO of PPA except one, ABM Logistics (GH) Limited, with some of the companies established as recently as 2019.

Although Respondent admitted that he is a director and shareholder of Talent Discovery Limited, he insisted that he had resigned as director and chairman of TDL since 5th September 2017, contrary to the evidence available. Furthermore, the documents submitted by TDL to procurement

entities confirm that TDL was incorporated on 19 June 2017 and the Respondent and Francis Arhin are both directors and shareholders of TDL. We shall revisit the question of the Respondent's resignation later in this Decision.

From the available evidence, the Commission finds as a fact that Talent Discovery Limited was incorporated on 19 June 2017, three months after the Respondent was appointed CEO of PPA in March 2017, by the Respondent and his brother-in-law Francis Kwaku Arhin, the Respondent being the majority shareholder.

9.2. Whether the Respondent had resigned as Director of Talent Discovery Limited at all material times

The Respondent has denied being a director of Talent Discovery Limited, insisting that he resigned as director on 5th September 2017. In a letter dated 19 August 2019, his solicitors, SIMA Consultancy, wrote to Manasseh stating:

"...You are to note specifically that Mr. Adjenim Boateng Adjei, a one-time Promoter and Director of TDL no longer holds such positions as he had since long resigned."

"Our client hereby reiterates that at all material times, he is only a shareholder in TDL, and not part of either the management of Board of Directors of that company."

The Solicitors attached a copy of Respondent's resignation letter as Director. It was addressed to the Chief Executive Officer with a copy to the Secretary, TDL, who is one and the same person, Francis Arhin, his brother-in-law. The letter reads:

"...RESIGNATION AS DIRECTOR AND CHAIRMAN OF TALENT DISCOVERY LIMITED

Following my discussion with your good self on the above subject matter, I wish to officially bring to your attention my decision to resign as a director effective 5th September, 2017.

*The decision has become necessary due to my increasingly busy schedules which will likely affect my availability to attend to the needs of TDL **as a director and Chairman.***

I shall trust upon you to effect the necessary changes by reason of my resignation. Thank you.

*Yours faithfully,
signed
AB ADJEI*

*CC: The Company Secretary
Talent Discovery Ltd"*

Again, in his written response to the Commission dated 5th September, 2019 on this issue, the Respondent, through his solicitors, Ampofo, Oppong and Associates, stated that:

*"Our client hereby reiterates that at all material times, he is only a shareholder in TDL, and **not part of either the management or Board of Directors of that company.** ... Our client has at no material time, participated in a **Board meeting of TDL.**"*

During the interview with the Commission, the Respondent confirmed that Francis Arhin is the Chief Executive Officer (CEO) of TDL but denied that he (Respondent) is director and Chairman of TDL. However, the Respondent's own letter dated 5th September 2017 already referred to, which communicated his alleged resignation as director of TDL to the CEO of TDL, reads in part:

"The decision has become necessary due to my increasingly busy schedules which will likely affect my availability to attend to the needs of TDL as a director and Chairman."

The Company Registration Information and Company Profile on TDL from the Registrar-General's Department dated 14th October 2019 show that the Respondent is shareholder and director of TDL, contrary to the claims that he resigned as director TDL per a letter dated 5th September, 2017. The company records at the Registrar-General's Department list two persons as directors and shareholders, namely, Adjenim Boateng Adjei and Francis Kwaku Arhin, holding 60% and 40% shares respectively.

The Financial Intelligence Centre (FIC) also in a Letter No. AF136/FIC/V.2/713, dated September 27, 2019 submitted to the Commission provided information on the Respondent including financial transactions from eight (8) different banks. Records from the Zenith Bank Limited, Spintex Road, in respect of an account opened by TDL dated 19th April 2019 has the signatories of the Account to be Adjenim Boateng Adjei and Francis Kwaku Arhin who are described as directors of TDL. Both signatories are to sign at all times to give effect to a transaction.

The question that arises naturally is, how can the person who claims that he has resigned as director, be listed both as a director and a signatory to the TDL account at Zenith Bank, Spintex Road. Further, why will a person who has purportedly resigned as director of his retirement project for reasons that the demands of his office as CEO of PPA would not allow him to play his role as director and chairman effectively, subsequently open more companies with similar arrangements where there are only two directors listed for each company, i.e. he and his brother-in-law as the only directors, or he and his wife.

Further, how come the same person is able to maintain his other directorship positions in 19 other companies including the following:

- i. AAC Financial Services Limited;
- ii. ABM Logistics (GH) Limited;
- iii. Ada Safari Resort Limited;
- iv. Aqua Safari Resorts Limited;
- v. Beach Front Stevedoring Company Limited;
- vi. Bestblend GH Limited;
- vii. Bestblend West Africa Limited;
- viii. Bestman Offshore Gh Limited;
- ix. Canduns International Limited;
- x. CFR Ghana Limited, and
- xi. Diligent Cover Limited;
- xii. Holiday Hills Resort Limited;
- xiii. Ocean View Amusement Limited;
- xiv. Rosefield Oil Ghana Limited;
- xv. Runway View Association;
- xvi. Springfield Resource Development Limited;
- xvii. Supply Chain Support Services Centre Limited;
- xviii. Talent Movers Gh Limited, and
- xix. TDL Pay Ghana Limited

Why would the Respondent be insistent that he was no longer a director of TDL when all the evidence point to the contrary? Supposing we are to accept at face value that the Respondent really had intended to resign per his letter dated 5th September 2017 addressed to the CEO and copied to the Company Secretary, that would be even more problematic.

The Companies Act, 1963 (Act 179), one of the relevant laws applicable to this investigation, provides as follows:

Section 180 – Number of directors

(1) A company incorporated after the commencement of this Act shall have at least two directors.

(3) If at any time the number of directors is less than two in a breach

of subsection (1) or subsection (2), and the company continues to carry on business for more than four weeks after that time, the company and every director and member of the company who is in default is liable to a fine not exceeding [twenty-five penalty units] for every day during which it so carries on business after the expiration of four weeks without having at least two directors.

(4) Every director and every member of the company who is cognizant of the fact that it is carrying on business with fewer than two directors are jointly and severally liable for the debts and liabilities of the company incurred during that time.

Section 197- Registration of particulars of directors and secretaries

(3) A company shall, within twenty-eight days of a change occurring among its directors or in its secretary or in any of the particulars contained in the register, other than those required under paragraph (e) of subsection (2) of section 196 send to the Registrar for registration notification in the prescribed form of the change, specifying the date of the change.

(4) Where a company defaults in complying with subsection (1) or (3) , the company and every officer of the company who is in default is liable to a fine not exceeding (twenty-five penalty units) for every day during which the default continues.

(5) A director or secretary who resigns from office shall be deemed to be in default unless notification of the resignation is duly given to the Registrar in accordance with subsection (3) of this section.

In August 2019, a new Companies Act (Act 992) came into effect. The new Act, however, continued in existence the above quoted provisions of the repealed Act (Act 179) in Sections 171 and 216 respectively.

Going by these provisions a company must have a minimum of two directors at any point in time. The question is, how did a company that claims that one of its two directors had resigned leaving only one director, who also doubled as the company secretary, qualify under the law to participate in restricted tender, not to talk of winning a number of them under the eagle eyes of the Respondent CEO of PPA? Further, why did the Respondent fail to ensure due diligence in respect of applications from Procurement Entities that listed TDL, when he ought to know as the majority shareholder of TDL and purported former director and chairman, that the company was left with only one director after his resignation, who also doubled as the company secretary, and therefore did not qualify under Section 180 and 197 of the Company's Act, 1963 (Act 179) [or Sections 171 and 216 of the new Company's Act, 2019 (Act 992)] to participate in public tender?

As has been demonstrated from the records of the Registrar-General and other available documents including bank records of TDL, the Commission finds that there has not been any resignation properly so called filed with the Registrar-General. We find that at every material time the Respondent was and remained a director of TDL, and that his purported resignation letter has no probative value whatsoever.

9.3. Whether contracts awarded to TDL by MDAs and other public procurement entities between June 2017 and August 2019 were mainly through Single Source and Restricted Tender

One of the narratives in the documentary claimed that:

"There is a group of companies at the Manet Junction of the Spintex Road in Accra called TDL Group. Talent Discovery Limited is its Flagship Company. ... Talent Discovery Limited is alleged to use its political connection to win government contracts..."

*"The company has contracts with the Ghana Water Company Limited, Ghana Cocoa Board, and the Ghana Ports and Harbour Authority. It also has contracts with the Ministry of Education, Ministry of Works and Housing, and four contracts with the Ministry of Special Development initiative to construct dams under the Government One-Village-One Dam projects...
...checks from Ghana Water Company and COCOBOD confirmed that TDL was indeed doing business for them as a clearing agent.*

Manasseh then alleged that TDL won most of its contracts through restricted tender, ostensibly through the instrumentality of Respondent. In response to the above narrative, the Respondent submitted in his written response to the Commission dated 5th September, 2019, that:

"...TDL has, actually, fully executed by itself four (4) of the six (6) contracts that it won through restricted tendering and has accordingly been issued with Certificates of Completion in its favour. The other 2 are currently being executed by TDL

...The truth which Manasseh Awuni either neglected to probe or deliberately refused to disclose in his documentary, is that, TDL lost 7 of the 15 tenders, won 6 and 2 are still ongoing. 4 out of the 6 resulting contracts have been fully executed and 2 are still being executed by TDL.

...TDL lost a significant majority of the tenders in which it participated after the grant of restricted tendering applications by the Board..."

The Chief Executive Officer (CEO) of TDL also submitted that TDL might have competed in over three hundred (300) tenders, but was shortlisted on 15 occasions for contracts out of which it was awarded six (6) contracts, out of which it executed four (4) and two were outstanding. According to him:

"... TDL was awarded 6 contracts out of the 15 occasions the company was shortlisted. Out of the six contracts, 4 have been fully executed by TDL and certificate of completion have been issued to TDL. ...Two of the contracts are still under execution. "

Both the Respondent and the CEO listed those contracts that had been executed for which payment certificates had been raised, as:

- Construction of Small Dams/Dugouts under the One Village One Dam at Binduri Constituency in the Upper East;
- Renovation of Bungalow No. C41 Roman Ridge, and
- Renovation of Bungalow No. 3A Church Road-Airport Residential Area.

The records show that the Ghana Ports and Harbours Authority, the Ministry of Education, Ministry of Works and Housing, the Ministry of Special Development Initiatives and the Ministry of Inner City and Zongo Development, awarded contracts to TDL. The institutions confirmed that the contracts were awarded through restricted tendering method (RT). All the institutions applied to the PPA Board for approval to use RT in the award of various contracts in accordance with the provisions of Act 663 in relation to the use of restricted tendering method (RT) and single source procurement rules.

Ghana Ports and Harbours Authority: The GPHA made a request for approval to procure the Supply of a Mobile Column Lift for the Mechanical Department of Takoradi Port through restricted tendering method in letter Ref: DG/HQ/C.3/Vol.4/819, dated 13th November 2018. The PPA Board Technical Committee Meeting No. 20 of 13 December 2018, considered the request and approved it. The GPHA invited the shortlisted companies, which included TDL to submit tenders and eventually awarded the contract No. IND.338/MECH.ENG/TD 18 to TDL, in its award letter dated 20th June 2019, ref. no. DG/HQ/C.3/VOL.7/373.

The records further show that GPHA also applied for approval to invite shortlisted companies to participate in tendering processes for the award of the under listed contracts:

- i. Rehabilitation of James Town Lighthouse Facilities-Accra: The Respondent in a letter dated 15 May 2019, ref. PPA/CEO/05/936/19, sought to convey the approval by the 23rd meeting of the PPA Board Technical Committee, held on Friday, 15th March 2019.
- ii. Supply Installation and Commissioning of 30-Meter-High Mast Poles complete with Lantern Carriageway at the Tema Port at an estimated cost of GHC2,065,000: This application was approved by the PPA Board at the 21st Meeting of the PPA Board Technical Committee Meeting held on 23rd January 2019).
- iii. Supply Installation and Commissioning of an Automatic Power Factor Correction and Energy Demand Reduction Equipment at the Reefer Container Terminal at the Tema Port at an estimated cost of GHC350,000: This request was also approved at the PPA Board Technical Committee Meeting No. 021 (021/2018) held on Monday, 23rd January 2019 and the approval was conveyed to GPHA by the Respondent in letter Ref. No. PPA/CEO/01/101/19, dated 24 January 2019

TDL were shortlisted and eventually won the contracts.

Ministry of Education: The MoE applied to the PPA Board requesting for approval to use restricted tendering method to procure contractors for the construction of structures in selected senior high schools across the country, under its project *“Additional Structures in Selected Senior High Schools across the Country.”* It was contained in a letter signed by the Minister, Dr Matthew Opoku Prempeh, Ref No. FA 101/331/01, dated 28th February 2019.

The contracts for which TDL was short listed to participate are:

- Construction of a Single Storey Dormitory Block at Collins SHS at the Asante Akim North District in the Ashanti Region;
- 1No. 12-Seater Toilet Block at the Tuobodom SHTS at the Techiman North District in the Bono East Region, and
- 1 No. Two Storey Dormitory Block at Savelugu SHS, Northern Region.

The 23rd Technical Committee Meeting held on Wednesday 15th March, 2019, considered the application by the MOE to use RT for the award of contracts for the Construction of 1) a Single Storey Dormitory Block at Collins SHS at the Asante Akim North District in the Ashanti Region; and 2) 1No. 12-Seater Toilet Block at the Tuobodom SHTS at the Techiman North District in the Bono East Region and approved it in a letter ref. No. PPA/CEO/03/547/19 of 15th March 2019.

TDL submitted a Tender Form to the MOE in respect of the Emergency Senior High School Project for the i) Construction of 1No. Single Storey Dormitory Block at Collins SHS in the Asante Akim North District & 2) 1No. 12-Seater Toilet Block at the Tuobodom SHTS in the Techiman North District with Contract Lot: EMRG/RT/AS10 and IFT No: MOE/FPMU/RT/WKS/001/2019 dated 17th April, 2019.

Subsequently, the MoE notified TDL of the award of the contract to TDL (Notification of Award), in a letter No. MOE/PFMU/EMRG/AS10, dated 5th July 2019, following which an Agreement dated 22nd July, 2019, was signed between the MoE and TDL.

It is thus obvious that TDL was also awarded the contract for the construction of 1No. 12-Seater Toilet Block at the Tuobodom SHTS in the Techiman North District with Contract Lot: EMRG/RT/AS10 and IFT No: MOE/FPMU/RT/WKS/001/2019 dated 17th April 2019.

Ministry of Works and Housing: The Ministry of Works and Housing requested for approval from PPA to use Restricted Tendering Method for the procurement of the following: 19 Drains/Works (in LOTS) under the 2018 National Flood Control Programme at a cost of GH¢30,800,000.00.

Three (3) firms were shortlisted to bid for each LOT with 30 construction firms in total under the “WORKS-2018 EMERGENCY NATIONAL FLOOD CONTROL PROGRAMME.”

The CEO of the PPA wrote conveying the approval of the request by the PPA Board Technical Committee at its 20th Meeting, in his letter Ref. No. PPA/CEO/04/725/19, dated 8th April, 2019.

Following the approval, the Hydrological Services Department of the MoWH then awarded a contract to TDL for the Construction of the Concrete Drains at the Santa Maria in its letter Ref. No. HSD/HQ/CONF2/D390, dated 20th March 2019. TDL accepted the offer in a letter 21st March 2019 and proceeded to sign an agreement with the MoWH on 19th April 2019.

Another contract for which the MoWH made a request to the PPA for approval from the PPA Board to use Restricted Tendering Method is for the procurement to execute 8 (Drain) works in LOTS under the 2018 National Flood Control (Construction) Programme at a cost GHC16,500,000.00. Three (3) firms were to bid for each LOT with 18 construction firms in total. This request was also approved at the 20th Meeting of the PPA Board.

The award of the contract for the Akatsi Channel Improvement Works, was also based on RT. The Tender Documents on the said contract dated January 2019 contains the award of contract letter no. HAS/CONF.2/1010 dated 24th December 2018 and the contract/ agreement dated 12th February 2019.

Ministry of Special Development Initiatives: The MSDI awarded contracts to the TDL for the construction of No.2 Small Dams/Dugouts each for Lots 2 and 3 in the Binduri Constituency in the Upper East Region, in letter Ref. No. MSDI/IPEP.1V1D/02.18, dated 11th April, 2018. The contracts, valued at Five Hundred and Forty-Three Thousand, Seven Hundred and Thirty-Five Ghana Cedis and Fifteen Pesewas

(GH¢543,735.15) for each lot were both signed between the MSDI and TDL, dated 30th April, 2018. The awards were through restricted tender.

Ministry of Inner City and Zongo Development: The Ministry of Inner City and Zongo Development (MICZD) requested for approval to use RT for various projects (works) within Zongo Communities in Ghana as part of Government's policy to develop the Zongos in its letter dated 22nd December 2017 Ref. No. MICZD/PPA/001/17. The projects include, Greening of Parks and digging of Boreholes; Construction of Football Parks (Artificial Turf Football Park); Rehabilitation of Schools; and Construction of drains and Alley Pavements.

The CEO of the PPA conveyed the decision of "...the Board Technical Committee Meeting No. 8 (008/2018) held on 17th January 2018, to grant approval to Ministry of Inner-City and Zongo Development in a letter dated 19th January 2018. Subsequently, MICZD awarded the contract to TDL, which it accepted in letter No. TDL/MICZD/001/18 dated 23 April 2018.

Apart from the awards to TDL, TDL Shipping Ltd and TDL Freight Forwarding also won contracts from State institutions.

Ghana Water Company Ltd: The Ghana Water Company Ltd awarded four (4) contracts to TDL Shipping Ltd, described as a subsidiary of TDL to clear various goods from the Port. These are:

Seven (7) Containers of STC Liquefied Chlorine Gas: TDL Shipping awarded on 23 October 2018, per letter by the Deputy Managing Director, OPS, Jacob Z. Yendor, GWCL, ref. No. MD 411V.18/57.

45 containers of Aluminium Sulphate: awarded on 8th January, 2019, per letter by the Deputy Managing Director, F/A, ref. No. MD 411V.18/217.

20 Containers of Aluminium Sulphate awarded on 8th April, 2019, per letter by the Managing Director, ref. No. MD 411V.19/20.

46 containers of Aluminium Sulphate awarded on 18th June 2019, per letter by the Deputy Managing Director, (OPS), ref. No. MD 411V.19/68.

Ghana Cocoa Board: The Ghana Cocoa Board (COCOBOD) disclosed to the Commission in a letter No. DLS/LM/V.1/148 dated 29th October, 2019 that it awarded a contract for "CLEARING AND TRANSPORTING OF 1024 BALES OF JUTE SACKS" to TDL Freight Forwarding, another company considered a subsidiary company of TDL and in which the Respondent has interest.

The evidence available to the Commission show that the following contracts were awarded to TDL and its subsidiaries:

1. The Ministry of Works and Housing (MoWH) awarded the following contracts to TDL between 2017-2019:
 - i. Construction of Concrete Drain at Santa Maria, Greater Accra Region.
 - ii. Channel Improvement Works at Akatsi, Volta Region.
 - iii. Renovation of Bungalow No.C41 Roman Ridge, Greater Accra Region.
 - iv. Renovation of Bungalow No. 3A, Church Road-Airport Residential, Greater Accra Region.
2. The Ministry of Education (MoE) awarded the following contracts to TDL:
 - i. Construction of 1No. Single Dormitory Block at Collins SHS in the Asante Akim North District, Ashanti Region.
 - ii. Construction of 1No. 12-Seater Toilet Block at the Tuobodom SHTS in the Techiman North District, Bono Region.
3. The Ministry of Inner-City and Zongo Development (MICZD) awarded to TDL a contract for Greening of Park and 1No. Borehole at Oda in the Eastern Region.

4. The Ministry of Special Development Initiatives (MSDI) awarded two contracts to TDL for the construction of four (4) Dams/Dug Outs at the Binduri Constituency, Upper East Region.
5. The Ghana Ports and Harbour Authority (GPHA) awarded TDL a contract for the Supply and Installation of a Mobile Column Lift for the Takoradi Ports, Western Region.
6. Ghana Cocoa Board (COCOBOD) for Clearing of 1024 Jute Sacks from the Ports to COCOBOD Ware House, Tema, to TDL Freight Forwarding, described in its incorporation documents as a subsidiary of TDL and in which the Respondent has interest.
7. The Ghana Water Company Limited (GWCL) awarded the following contracts to TDL Shipping Ltd, another company described in its incorporation documents as a subsidiary of TDL and in which the Respondent has interest:
 - i. Clearing of 45*20' Containers STC of Aluminium Sulphate
 - ii. Clearing of 20*20' Containers STC of Aluminium Sulphate
 - iii. Clearing of 7*20' Containers STC of Aluminium Sulphate

From the evidence available to the Commission, TDL was awarded at least ten contracts, whilst TDL Shipping and TDL Freight Forwarding, were also awarded five contracts by MDAs and other public procurement entities between June 2017 and 22 August 2019. The ten contracts awarded to TDL were through restricted tender. From the above records therefore, the evidence supports the allegation that TDL won contracts through restricted tender. However, the evidence does not support the allegation of sole sourcing.

9.4 Whether TDL was involved in the sale of contracts awarded to it by public procurement entities

The publication that kick-started this investigation is the documentary titled “Contracts for Sale”. The Commission had the benefit of accessing the unedited version of the recording and reviewing it.

Responding to the allegation that TDL has been selling some of the government contracts they have won, and attempted to sell contracts to K-Drah Enterprise, the company, through its solicitors, wrote:

“It appears that the complainant bases its complaint on a supposed investigative documentary by one Manasseh Azure Awuni which has also been attached to the documents presented with the Complaint. We have watched the entire documentary and we regret to say that no matter how much one stretches the issue one cannot find anything in the said documentary that would support the allegations made. Nowhere in the said documentary can it be inferred that a contract awarded to TDL had been sold to any person. In fact, in the said documentary it could be seen that contract belonging to another company, B-Molie Limited, was the subject matter of discussion between the undercover agent and Mr. Thomas Amoah, the Administrative Manager of TDL. The question therefore is what has a discussion of a contract belonging to B-Molie Ltd got to do with TDL and its officials. B-Molie Ltd are completely unknown to TDL and so upon what basis can one link B-Molie Ltd. to TDL? ... We say that but for the present issues, the existence of B-Molie Ltd. was completely unknown to officials of TDL”.

“We also note that the said documentary contains portions in which the Administrative Manager of TDL, Mr. Thomas Amoah was seen having discussions with an undercover agent. The discussions centred on prospects of the undercover agent participating in the execution of a contract belonging to B-Molie Ltd. Furthermore, the documentary would also show that Mr. Amoah sought and obtained GH¢15,000 as registration fee and

*deposit towards any future project. The said officer was queried for his conduct which the company found not to be satisfactory. The query letter and his response have been attached herein as **Exhibit 6 and Exhibit 7** respectively. It would be obvious that Mr. Amoah at all material times was on his own frolic and had no authority to be engaged in the discussions he had.*

*Be that as It may, there is nothing in documentary that suggests that Mr. Amoah was selling contracts awarded to TDL. As it is the normal practice in many businesses, TDL keeps a list of suppliers that are called upon when their services are required. Mr. Amoah acted within his powers when he sought to register the supposed Joseph Kumadrah as a contractor. It would be obvious even from the document attached by the Complainant that the “Contractors Registration Form” (herein attached as **Exhibit 8**) is not a form that has been designed for the purpose of selling contracts by TDL to others. This conclusion is irresistible when one considers the statements found under the heading ‘**Declaration**’ on the last page of the form. The document is clearly seen to be a Suppliers Register. We submit that there is nothing untoward or illegal for TDL to set out and design a form that prospective provider of suppliers or services are needed. To suggest, as was the case in the documentary that merely filling the forms was in preparation for the sale- of non-existent contract is ridiculous because the form itself is clear on its face that it is a Suppliers Register.*

We also state that even when though Mr. Amoah has admitted that at the time he was speaking to the undercover agent, he was seeking to find partners for the execution of the B- Molie contract, a wholly private pursuit, the mere fact that he engaged in that conversation does not mean that he was selling contracts belonging to TDL. As already stated, TDL has no relationship whatsoever with B-Molie Ltd. In addition, the discussion between Mr. Amoah and the undercover agent with respect to any of TDL’s contracts was done without any authority from the Chief Executive Officer of the TDL and clearly above the powers of Mr. Amoah. As already stated, the contracts awarded to TDL has been fully executed at the time of the said

conversation and so there cannot be a contract that was purportedly available for sale assuming TDL was even in the business of selling contracts. We submit that there is still no proof that TDL or any of its officials have sold any contract to any person.

We take note of the fact that the Complainant also alleges that some contracts have been subletted or subcontracted without the authority of the institutions that awarded those contracts. First of all, subcontracting or subletting are not illegal activities under the laws of Ghana provided same is done in accordance with the laws and terms governing the contracts. In fact, in most standard contracts, provisions are made for subcontracting and subletting subject to certain conditions such as seeking the consent of the employer. We submit that TDL has not subletted or subcontracted any contract to any entity or person. In the circumstances, we demand strict proof from the complainant on the contracts which are subletted or subcontracted without the consent of the employers. We further demand proof of any employer to the effect that a contract it awarded to TDL had been subletted or subcontracted without their consent.

As stated above, the Commission has had opportunity to review the documentary as well as the original unedited recordings. In the documentary, Thomas Amoah, the Administrative Manager (the AM) of Talents Discovery Ltd (who is also described variously as General Manager, Project Manager and Group Manager of TDL), is seen on video discussing a transaction with one Richard Kumadrah in respect of State contracts won by TDL through restricted tender. Kumadrah characterized himself as a representative of K-Drah Enterprise, and that his company was interested in doing business with TDL. Thomas Amoah is heard and seen on the video offering to sell State contracts awarded to TDL through restricted tender to Kumadrah. Excerpts of the conversation relevant to the allegation of sale of contract are reproduced below:

- *"There have been people interested in the projects, actually some have dropped cheques. But I am keen to people that I give projects to because if it goes wrong, it will tarnish the image of my company. So, there are*

outstanding buyers because the terms on it are very favourable and everybody will like to do it."

The AM is then seen presenting to Kumadrah copy of a contract awarded to TDL by GPHA dated 20th June 2019 to look through. The contract sum was GH¢158,900.00. After examining the contract document Kumadrah asked the AM whether he can have a copy when he is leaving. The response of the AM was that it can only be done after K-Drah Enterprise had registered with TDL.

- *"That is if we sign all the necessary agreements, because somebody is actually interested and wants to pay today. I am still open. I keep saying that everybody can say "I am interested" but the one to commit himself is the one I will deal with."*
- *"For us we have something we call suppliers and contractors' registration form and any contractor we engage pays a fee of 5000 cedis to register with us. What happens is that when that amount is paid, anytime there is an award of a project, we open up to the supplier or contractor to hear from him if the supplier is interested. There are cases we can come into negotiation on percentage wise and even use the supplier's company details for a direct contract award so that is what we do. So once the contractor registers with us, we good to give any information we have to be able to enable him work."*
- The AM was quite emphatic that without the payment of registration fee *"...we cannot proceed further, unless of course you have the outright purchasing amount."*

Subsequently, Kumadrah offers to pay GC10, 000 as deposit in addition to the GC5, 000 registration fee, indicating that:

"I am just going to give a deposit so that when we make a decision on which of the contracts we want to execute then we can do the top up, and then we finalize..."

Kumadrah handed over a brown envelope and asked the AM to check the amount. He looked inside the envelope, remarked “*I trust you*”, and placed the envelope in a tray. On receipt of the envelope, the AM gave a registration form to Kumadrah and proceeded:

“The registration form is quite detailed. I don’t know if you want to send it home or you want to fill it here. It will depend on you. Now that I know I have an engagement with you, I can open things up. [He called out to the secretary] Abigail please get me a copy of this Santa Maria Drainage and then the Mobile Column Lift from the Ghana Ports.

If you have funds, that is if you have, it’s urgent. The Ministry is on my neck. There is a project, it was awarded to us to go and do, Santa Maria drains. But Dr. Oko Boye (MP) wants us to tackle his end, that is Teshie. I have gone to check the site. So, any contractor who comes in. I actually sold it to somebody. What is happening is that the person doesn’t have funds to carry out the project....so I have agreed with that person I will sell it to another person who has the funds and give him his refund; the initial deposit he paid. He has agreed so that side, we don’t have issue. And then I have secured another dormitory project at Agogo, which I am going to take site possession...There is another two-storey dormitory at Savelugu also in the pipeline coming, so there are a couple of projects. The Column Lift is also there and somebody came to deposit GHC5000 instead of 25,000. The whole thing we were looking at 30,000, but as of yesterday, the amount was revised because we realised that even in the market, we can get around 60,000, so we are now looking at 50,000. So, if the person pays 25,000 upfront, the balance 25,000 would be paid when the mobilisation funds come in. Because there is mobilisation of GHC63,000. I have put in a requisition. I’m doing it with Stanbic Bank...Because the contract sum is 158,900.00.”

“We used to be doing them. But we have a lot in our hands. We do clearing for Ghana Water and COCOBOD. What we do is when we sell

some of these projects, we use this same money to be doing the clearing else demurrage will...”

Contrary to the position taken by TDL that the contracts under discussion were not TDL contracts, we see Mr. Thomas Amoah, Administrative Manager of TDL, confidently discussing public contracts awarded to TDL that are available for sale with Mr. Richard Kumadrah. When the AM spoke of the B-Molie contract, he made it clear that that contract belonged to a sister company.

The AM did not know or suspect that he would be recorded, and so there was no pressure to be cautious, defensive or lie. The contracts that featured in the discussion include Mobile Column Lift, Santa Maria and Agogo, contracts awarded to TDL by GPHA, MWH and MOE through restricted tender. Indeed, the first contract document given to Richard Kumadrah to look through was that awarded to TDL by GPHA. And what better evidence than evidence from the horse's own mouth. When the AM is heard saying on the video that *“What we do is when we sell some of these projects, we use this same money to be doing the clearing else demurrage will...”*, we accept it as a true reflection of what the company does.

On the argument that the AM was on a frolic of his own, we find the argument tenuous and self-serving. TDL has only four (4) staff members, namely, Francis Arhin (CEO), Thomas Amoah (variously described as Administrative Manager, General Manager, Project Manager and Group Manager), Abigail Darfur (Office Secretary) and Ebenezer Nyarko (Security).

How is it possible for the AM of TDL to offer to sell contracts awarded to the TDL without the knowledge of the CEO, when the contract documents are executed by the CEO? How would the AM be able to offer to sell contracts on Mobile Column Lift, Santa Maria and Agogo School projects and others, contracts which are supposedly being executed by TDL, without the knowledge of company officials?

The evidence shows and the Commission accordingly finds as fact that officials of TDL were clearly seen and heard in the documentary offering to sell contracts awarded to it by MDAs and other public procurement entities through restricted tender.

9.5 Whether Respondent used his Office improperly for the Benefit of TDL and other Companies affiliated to him?

The documentary alleged that the Respondent used his position as CEO of PPA improperly for the benefit of TDL during applications for the award of contracts through restricted tender.

The Respondent denied the allegation. He then referred to some commendable practices he had introduced at the PPA, portions of which are reproduced below:

The current Board of the PPA, with the view to strengthening the procedures relating to the grant of restricted tendering applications, has been imposing “further requirements” (not mandated by section 38 of Act 663) on entities, which apply for restricted tendering. These relate to requiring such entities to submit to the PPA a copy of the Evaluation Report, copy of Tender Document and Tenders submitted by tenderers to the PPA, prior to obtaining concurrent approval from the relevant Review Committees.

It is relevant to note that, pursuant to the “further requirements” imposed by the PPA Board, in respect of a particular application for restricted tendering, the Bank of Ghana (which was the applicant) by a letter dated 8th May, 2019, submitted copies of Evaluation report, Tender Document and Tenders submitted by tenderers to the PPA.

Upon a careful consideration of the documents, and following the discovery of a breach of the rules in favour of TDL, the PPA by a letter dated 28th May 2019 signed by our client, ordered the Bank of Ghana to discontinue with the evaluation process (which has resulted in the TDL being declared a

responsive tenderer to move to the next stage of evaluation process). The PPA further ordered a re-evaluation to ensure full compliance with procedure. This resulted in another company eventually emerging the successful tenderer. This material fact showed that our client rather ensured strict compliance with due process and all rules by entities that TDL dealt with.

Be that as it may, it is relevant to say that, notwithstanding the foregoing, on the occasion of the first application for restricted tendering involving TDL coming before the Board of the PPA, the Respondent, in the spirit of transparency, disclosed his interest in that company. The Board of the PPA required the Respondent to recuse himself from a consideration of the application, even though as stated above, the application before the Board did not involve an evaluation of a bid by TDL or selection of TDL as a supplier or contractor. In fact, at that point there had been no tender opened and TDL had not had the opportunity to present a bid. The Board thus became fully aware of the interest of the Respondent in TDL and subsequently took notice. He attached a copy of a "Resolution" by the Board of PPA which provides:

"...WHEREAS at the 8th Board Technical Meeting held on Wednesday 17 January 2018, the Chief Executive, Mr. Adjenim Boateng Adjei, disclosed that he has an interest in a company called Talent Discovery Ltd., and wanted the Board to take note of this and subsequent applications that may come up for consideration; and

WHEREAS Mr. Adjei Subsequently recused himself from discussions on the application concerned.

WHEREAS he went further to state that as and when he becomes aware of any application made by an entity, which includes the company in question he will recuse himself from both the assessment of the application and the Board consideration.

Now therefore, the Board duly took note of this declaration and disclosure and resolved that having declared his interest in the

company Talent Discovery Ltd., Mr. Adjei be duly recused from consideration of this application, all other subsequent applications and the assessment of such applications...”.

These are certainly commendable, and we do commend the Respondent for the commendable practices he introduced at PPA.

Nonetheless, this investigation abounds with evidence of many instances of the Respondent not disclosing his interest or recusing himself during Board meeting in respect of applications from procurement entities for restricted tendering where TDL is visibly shortlisted.

Firstly, we see from the excerpts from the Board minutes many instances where the Respondent did not disclose his private capacity interest or recuse himself when the Board was considering applications for restricted tender where TDL had been listed. Nowhere in the minutes of the Board do the minutes reflect that the Respondent disclosed his interest or recused himself, even though the Board’s resolution referred to above specifically required him to do so.

Secondly, we also see from the documents set out above evidence of the Respondent altering the decision of the Board in favour of TDL. We see from the minutes of the Board evidence of the Board directing that Canduns International Limited and TDL should be replaced for reasons of suspected same ownership. We reproduce extracts of the Minutes No. 25 dated 3rd May 2018 below:

Extract of the Summary of Table:

Type of Procurement (goods/works/services): Works-Construction of Additional Structures in Selected SHSs across the Country

Status: New Application (RT)

Estimated Contract Cost: GHC191,632,350.00

Summary of Application: MoE is requesting for approval to adopt the Restricted Tendering procurement method in accordance with section 38 (b) of Act 663 as amended, to engage contractors for construction of various

structures in selected Senior High Schools (SHSs) across the country as part of the process of eliminating the double track system by September, 2019. The project has been divided into 104 lots with three (3) construction companies shortlisted for each lot.

Justification and Relevant Clause Provided by Entity: *The introduction of the Free Senior High School Policy by the government has resulted in increased enrolment in SHSs across in the country. This has resulted in the Ministry running double track system to accommodate the increased enrolment. The Ministry has received funds from GETFund under the Emergency SHS Project to construct additional structures in selected SHSs in line with elimination of the double track system.*

Given the short time at the Ministry's disposal, it is imperative to adopt the Restricted Tendering process to selected companies found to have the capacity to construct the structures within the time schedule.

Consultant/Contractor/Suppliers Qualification: *All the shortlisted construction companies are registered in Ghana. However, the Works and Housing classification for most has expired.*

Technical Capabilities: *We identified that some of the companies shortlisted for some lots seem to have the same ownership: Canduns International Ltd, and Talent Discovery Limited-Have same address and were competing in same lot (lot55). Same Ownership.*

Price Reasonableness: *We found the estimated cost to be reasonable. However, some of the projects have also been stated in the Ashanti Regional Coordinating Council's request for approval. The two Agencies need to be advised to liaise with each other and sort out the project to avoid duplication of projects and or payments.*

Conclusion: *MoE should be advised to:*

- ***Replace the companies identified/suspected to have the ownership and are competing in the same lots to enhance competition.***

- *Liaise effectively with the Ashanti Regional Coordinating Council in the execution of some of the projects in the region to prevent duplication of projects at the expense of other schools in other parts of the country.*

Board Decision: Approval granted subject to Management's recommendation above.

On 8th May 2019, acting upon the decision of the Board, the Respondent, in a letter to the Hon Minister, Ministry of Education, ref. No. PPA/CEO/05/842/19, with the heading "RE: REQUEST FOR APPROVAL TO USE RESTRICTED TENDERING METHOD TO ENGAGE CONTRACTORS FOR THE CONSTRUCTION OF ADDITIONAL STRUCTURES IN SELECTED SENIOR HIGH SCHOOLS ACROSS THE COUNTRY" stated:

"We make reference to your letter No. FA 101/331/01 dated 8th April 2019 on the above subject.

At the Board Technical Committee Meeting no 25 (025/2019) held on Friday, 3rd May 2019, the Board noted the content of your letter. However, the Board observed that, some of the shortlisted companies seem to have the same ownership as tabled below...", among others:

Lot No.	Companies Involved	Issues Identified	Our Suspicion
55	<i>Canduns International Ltd, and Talent Discovery</i>	<i>They have the same address and are competing in the same Lot (no. 55)</i>	<i>Same Ownership</i>

"This letter supersedes our letter No. PPA/CEO/05/842/19 dated 6th May 2019 on the subject above.

MOE is therefore advised to replace the companies identified/suspected to have the same ownership and are competing in the same Lot to enhance competition...

By letter to the Chief Executive of PPA, dated 14 May 2019, ref. no. FA101/331/01, titled “RE: REQUEST FOR APPROVAL TO USE RESTRICTED TENDERING METHOD TO ENGAGE CONTRACTORS FOR THE CONSTRUCTION OF ADDITIONAL STRUCTURES IN SELECTED SENIOR HIGH SCHOOLS ACROSS THE COUNTRY”, the MOE writes:

“...We make reference to your letter No. PPA/CEO/05/842/19 dated 8th May 2019 requesting the Ministry to replace companies identified/suspected to have same ownership and are competing in the same Lot.

“In response to your request, the Ministry has replaced the identified/suspected companies with different companies to enhance competition.”

Please find attached a list of the companies and their statutory documents...”

List:

<i>Lot</i>	<i>MMDA</i>	<i>Structure</i>	<i>Name of School</i>	<i>Company Name</i>	<i>Estimated Cost</i>
55	Savelugu-Nanton	2-Storey Dormitory Block	Savelugu Senior High School	Prolus Investments Limited	2,600,000
				Doemens Limited	
				Talent Discovery	

The companies listed in the 8th April letter as suspected to have same ownership in respect of LOT 55 are CANDUNS International Limited and Talent Discovery Limited”. The PPA Board directed that the two companies be replaced.

The CEO’s letter, dated 24th May 2019, ref. No. PPA/CEO/05/1082/19, conveying the decision of the Board under the heading, “RE: REQUEST FOR APPROVAL TO USE RESTRICTED TENDERING METHOD TO

ENGAGE CONTRACTORS FOR THE CONSTRUCTION OF ADDITIONAL STRUCTURES IN SELECTED SENIOR HIGH SCHOOLS ACROSS THE COUNTRY”, is as follows:

“We make reference to your letter No. FA 101/331/01 dated 14th May 2019 on the in response to our letter No. PPA/CEO/05/842/19 dated 8th May 20-19 on the above subject

At the Board Technical Committee Meeting no 25 (025/2019) held on Friday, 3rd May 2019, the Board decided that, upon submission of satisfactory information as requested by the Authority, PPA may proceed to convey approval to the Ministry of Education...to use restricted Tendering Method to invite the underlisted companies in 104 LOTS to undertake the construction of various structures in selected Senior High Schools across the country....as per the attached list”

Per the attached PPA approved list:

<i>Lot</i>	<i>MMDA</i>	<i>Structure</i>	<i>Name of School</i>	<i>Company Name</i>	<i>Estimated Cost</i>
55	Savelugu-Nanton	2-Storey Dormitory Block	Savelugu Senior High School	Prolus Investments Limited	2,600,000
				Doemens Limited	
				Talent Discovery	

TDL or Talent Discovery (however described) could not by any stretch of imagination be considered as having fallen within the ambit of *“upon submission of satisfactory information as requested by the Authority”*, having been specifically disqualified or excluded from that particular tender. However, we see the Respondent, in his capacity as the CEO of PPA, altering the decision of the Board to qualify Talent Discovery to participate in that very tender which it had been disqualified.

Thirdly, we again see from the records, the Technical Committee of the PPA Board at its meeting No. 023 (023/2018) held on Friday, 15th March 2018, requested that GPHA provides satisfactory explanation as to discrepancy in the cost of the earlier application putting the cost of the

James Town Lighthouse rehabilitation at GHC400,000. The GPHA responded with an explanation that the contract sum had been reduced to GHC278,981.02 because their in-house maintenance team carried out some works on the light house in response to an emergency situation for the celebration of the Homowo festival. The Committee did not meet again on this issue after the GPHA submitted the additional information requested for by the 23rd meeting of the Board Technical Committee, before the 15th May, 2018 letter by the Respondent was issued.

In the said letter, the Respondent communicated to the GPHA that:

At the Board Technical Committee Meeting No. 23 (023/2019) held on Friday, 15th March 2019, the Board decided that, upon submission of satisfactory information as requested by the Authority, PPA may proceed to convey approval to Ghana Ports and Harbours Authority.

*We have reviewed the additional information submitted and find it satisfactory. Accordingly, and in line with Section 38 (b) of Act 663 as amended, we convey approval to **Ghana Ports and Harbours Authority** to use Restricted Tendering Method to invite the underlisted companies to tender for the rehabilitation of James Town Lighthouse facilities in Accra at an estimated cost of **GHC400, 000.00**.*

Finally, based on his own assertion, we expect that the Respondent would be aware, following his purported resignation as a director of TDL, that TDL lacked the capacity to participate in public procurement, more so restricted tender.

These, we find, are sufficient evidence that the Respondent used his office improperly to the benefit of TDL, a company in which he has personal (financial and relational) interest.

9.6 How does the Respondent explain the Volumes of Funds that passed through his Bank Accounts between March 2017 and August 2019 (Unexplained Wealth)?

The documentary alleged that the Respondent has been taking advantage of his office to improperly enrich himself, to which the Respondent strenuously denied through his solicitors.

However, we can see from the records received from the FIC of the bank accounts of the Respondent that he handled large volumes of cash exceedingly in excess of his known income as CEO of PPA.

The Respondent opened **USD Account Number 9040002473180** at the Stanbic Bank on 03 April 2017, after his appointment as CEO of PPA. As of 28 August 2019, a total amount of USD 516,225 had been credited to the account, and his debits stood at USD 504,607.87.

In respect of his **Cedi Account No. 9040002313337** at the same bank, opened on 21 January 2017 before his appointment, a total of 3.83 million Cedis was credited, and 3.81 million Cedis debited, to the account between the date of his appointment as CEO and 29 August 2019.

His Euro Account at the same bank also had EU54,500.00 credited and 37,333 debited for the same period, in addition to his **UMB USD Account No. "428872"** which had seen cash flow of over 110,000 USD between December 2018 and March 2019 alone.

When confronted with the evidence of the sheer volume of cash that passed through his accounts the Respondent indicated that Frosty Ice Natural Mineral Water Ltd does not have a bank account and that proceeds from the sales of the water is lodged in his account. Frosty Ice Natural Mineral Water Ltd is the company the Respondent owns with his wife, Mercy Adjie. He also claimed that he receives money from other family businesses but could not name the family businesses.

The records from the Registrar-General show that Frosty Ice Natural Mineral Water Ltd was incorporated on 29th January 2019. So how could a company established in 2019 accumulate so much revenue in 2017 and 2018, before its establishment? Even though, the Respondent is a director of over 19 companies, he himself claims that he did not receive director's fee from any of those companies except Beachfront Stevedoring Company Limited.

We find that the Respondent's explanation completely unsatisfactory, and that he could not explain the source of the large volumes of excess wealth that passed through his bank accounts between March 2017 and August 2019 (unexplained wealth). We will revisit the matter in our recommendations.

9.7 Whether or not the Respondent has put himself in a position where his personal interest conflicts or is likely to conflict with the performance of his office

As noted earlier, the Respondent is a public officer, having been appointed by the President of the Republic of Ghana in March 2017 as CEO of PPA in accordance with section 9(1) of Act 663, as amended.

Article 284 of the Constitution places a constitutional injunction on a public officer putting himself in a position where his personal interest actually conflicts or is likely to conflict with the exercise of his public duties. It provides that:

“A public Officer shall not put himself in a position where his personal interest conflicts or is likely to conflict with the performance of the functions of his office.”

The 1992 Constitution, inter alia, declares and affirms Ghana's commitment to freedom, justice, probity, and accountability and the principle that all powers of government spring from the sovereign will of the people (see Preamble). Article 35(8) of the Constitution provides thus:

“The State shall take steps to eradicate corrupt practices and abuse of power”

Chapter 24 of the Constitution provides the minimum standards of conduct in public office to the effect that private and personal interest of public office holders are subordinate to public duty, and where a public officer puts himself in a position where his personal interest conflicts or is likely to conflict with the performance of the functions of his office, that public officer shall be dealt with in accordance with law.

Pursuant to its mandate under Articles 284 and 287 of the Constitution, the Commission in 2006 issued Guidelines on Conflict of Interest to assist public officials to whom Article 284 applies to identify, manage and resolve conflicts of interest. In addition, the Commission, pursuant to its mandate under Chapter 24 of the Constitution, issued a generic Code of Conduct for Public Officers to guide public officials on compliance with Chapter 24 of the Constitution.

Thus, the Code of Conduct for Public Officers in chapter 24 of the 1992 Constitution and as elaborated in the Code of Conduct for public officers of Ghana, 2009, (the Code) developed and issued by the Commission, contains minimum standards of conduct applicable to all public officers, including elected, non-elected or appointed, who are to ensure that the basic values and principles provided in the Constitution and the Code are adhered to. The Code seeks to promote integrity, probity and accountability, dedicated and faithful service to the Republic of Ghana. These standards include “Guidelines on Conflict of Interest to Assist Public Officials Identify, Manage and Resolve Conflicts of Interest” (the Guidelines). The Code and the Guidelines were issued as administrative and operational framework for implementing the Constitutional intendment underpinning Chapter 24 of the Constitution. It has to be emphasized that these standards and values are now contained in the Code of Conduct Bill (CoPO) currently pending passage into law before Parliament until which event the administrative framework of the Code

and Guidelines provides the basis for the assessment and exercise of discretion by the Commission of its functions in chapter 24 of the Constitution.

The Guidelines define conflict of interest as “a situation where a public officer’s personal interest conflicts with or is likely to conflict with the functions of his/her office.” Similarly, the Organisation for Economic Co-operation and Development (OECD) defined conflict of interest in the public sector as “a conflict between the public duties and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities.”¹ Black’s Law Dictionary (9th ed.) also defines conflict of interest as “a real or seeming incompatibility between one’s private interests and one’s public or fiduciary duties”.

“Private interest” is defined in the Guidelines to include:

A financial or other interests of the public officer and those of:

- i. Family members, relatives*
- ii. Personal friends*
- iii. Clubs and associations*
- iv. Persons to whom the public officer owes a favour or is obligated*

- ***Official functions of the Respondent as a Public Officer***

In accordance with Section 9(3) of Act 633, as amended, Respondent’s public/official functions are provided as:

“Subject to the general directions that the Board may give, the Chief Executive Officer is responsible for the day-to-day administration of the Secretariat of the Authority and the implementation of the decisions of the Board”.

¹<https://www.dgaep.gov.pt/media/0602010000/Paperguidelinesconflictsofinterest.pdf-27/07/2020>

The Respondent's official functions in respect of the above enactment are broadly twofold. That is, Respondent is responsible for: (a) the day-to-day administration of the Secretariat of the Authority and (b) the implementation of the decisions of the Board. The **third** official function of the Respondent is derived from his membership of the Board provided under Section 4(1) (d) of Act 663 as:

“The governing body of the Authority is a Board consisting of nine persons... (d) the chief executive officer of the Authority.”

By Section 98 of Act 663:

- **Authority** means the Public Procurement Authority; and
- **Board** means the governing body of the Authority.

The Respondent's official functions relating to the day-to-day administration of the Secretariat of the Authority are gleaned from Section 8(1) of Act 663 as:

The Authority shall have a Secretariat with the divisions and structures determined by the Board as may be necessary for the effective execution of its functions.

The first two official functions of the Respondent regarding “*the day-to-day administration of the Secretariat of the Authority*” and “*the implementation of the decisions of the Board*” are designed to have no direct relationship with the approval of Applications on restricted tendering procurements submitted by procurement entities to the Board pursuant to Section 38(1) of Act 663. However, the third function of the Respondent as member of the Board has direct relationship with the approval process of such Applications. By Section 38 (1) of Act 663, the approval of restricted tendering applications is the sole function of the Board. This provision provides that:

A procurement entity may for reasons of economy and efficiency and subject to the approval of the Board engage in procurement by means of restricted tendering: -

- a) if by reason of the highly complex and specialised nature goods, works or services are available only from a limited number of suppliers or contractors;
- b) if the time and cost required to examine and evaluate a large number of tenders is disproportionate to the value of the goods, works or services to be procured.

Where the requesting procurement entity is successful and obtains the required approval from the Board to engage in procurement by means of restricted tendering, that procurement entity is further enjoined to go through specified processes outlined in Section 39 of the same Act as follows:

“(1) where a procurement entity engages in restricted tendering on the grounds referred to in Section 38(a), it shall:

- a) invite tenders from the suppliers and contractors who can provide the goods, works or services;
- b) select in a non-discriminatory manner, a number of suppliers or contractors to ensure effective competition;

(2) where the procurement entity engages in restricted tendering, it shall cause a notice of the selective-tendering award to be published in the Public Procurement Bulletin.

(3) the provisions of Part Five but not Section 47, shall apply to selective-tendering proceedings, except to the extent that those provisions are varied in this section.”

From the forgoing, it is clear that the power to grant or decline to grant approval to any Application submitted by any procurement entity to engage in procurement by means of restricted tendering is vested in the

Board. By the provisions of Section 4(1) (d) of Act 663, the Respondent is statutorily a member of the PPA Board.

Secondly, the Respondent by virtue of his position as Chief Executive Officer of the PPA and in accordance with Section 9(3) of Act 663, is also responsible for “the implementation of the decisions of the Board”. Thus, the Respondent is the person required to implement the decisions of the Board, including communicating the outcome of the Board’s decisions on any given application on restricted tendering to the applicant institution. It is the performance of these functions of the CEO that the Respondent is required by law **not** to put himself in a conflict of interest situation.

- *Private Capacity Interest of the Respondent in this matter*

The Respondent submitted in paragraph 4 of his written comments to the Commission dated 5th September, 2019 that “*he is only a shareholder in TDL, and not part of either the management or Board of Directors of that Company*”, and that he “*resigned from his role as director of TDL effective 5th September 2017*. He also told the Commission on 12th June 2020 that he and his brother-in-law, Francis Arhin, established TDL.

Narrating the circumstances leading to the establishment of TDL, the Respondent said:

“...this is a brother-in-law who decided to relocate from London to Ghana. So, when he came because we have been communicating over years because of the relationship we have, and I knew him that he was a contractor in the UK. So he came and said he wants to settle down. So can we do something together and I said why not. But let me put it this way, we would put the company together, but you would run it.

*At the time of establishing this company, I was about to turn to the year **fifty-nine (59)**. So, I said you could have this company, we can have it together, but you run it, so when I leave public office, then I can come fully and join you. So with that understanding that company was established”.*

The Respondent admitted that he was still the majority shareholder of TDL. He insisted, however, that he was no more a Director of TDL, although documentary evidence obtained from the Registrar General's Department indicates that the Respondent is both a shareholder and director of the following companies:

- Talent Discovery Limited (TDL),
- TDL Freight Forwarding,
- Canduns International Ltd,
- Frosty Ice Natural Mineral Water Ltd, and
- ABM Logistics (GH) Ltd.

Even if the Respondent had resigned from TDL as Director as he alleges, he remained a majority shareholder which makes his resignation a non-issue for purposes of determining the extent of his private capacity interest.

The Respondent also admitted in an interview session with the Commission that Mercy Adjei and Francis Kwaku Arhin are Respondent's spouse and brother-in-law respectively.

Again, the official records obtained from the Registrar-General's Department dated 14th October, 2019 indicate that whereas Francis Kwaku Arhin (brother-in-law of the Respondent, A.B. Adjei) is a shareholder, director and Chief Executive Officer of TDL, Mercy Adjei (Spouse of the Respondent, A.B. Adjei) is a shareholder and director of Frosty Ice Natural Mineral Water Ltd and ABM Logistics (GH) Ltd.

The foregoing evidence leads to one and only one conclusion that the Respondent has direct (personal), indirect (relational), pecuniary and non-pecuniary interests in TDL, TDL Freight Forwarding, TDL Agro Ltd, TDL Transport and Logistics, Frosty Ice Natural Mineral Water Ltd and ABM Logistics (GH) Ltd, among others.

- *Respondent's public duty as CEO and Board Member of PPA and conflict of interest*

By section 38(1) of Act 663, any procurement entity intending to engage in procurement by means of restricted tendering is required to seek approval from the PPA Board before undertaking that process. Again, it is the sole responsibility of the Board to either grant or refuse approval for such Applications requesting approvals to engage in procurement by means of restricted tendering method of procurement.

Evidence available to the Commission shows that some procurement entities have variously applied for and obtained approval from the PPA Board to engage in restricted tendering method of procurement. Some of the Applications shortlisted either TDL and/or other companies that the Respondent has interest in as shareholder and/or director at the time the Respondent was the incumbent CEO and Board member of the PPA. The Ministry of Inner City and Zongo Development (MICZD), Ministry of Works and Housing (MoWH), Ghana Ports and Harbours Authority (GPHA), and Ministry of Education (MOE) are some of the procurement entities that submitted applications for the PPA Board's approval to engage in procurement by means of restricted tendering where TDL was shortlisted as prospective contractor or supplier.

By a Memo dated 16th March 2017, the Respondent set up a three (3) member Due Diligence & Value for Money Audit Committee. The Terms of Reference of this Committee included but not limited to:

- *The determination of the reasonableness or otherwise of all Sole Source applications as it relates to the appropriate provisions of Act 663 and 914.*
- *The Committee shall conduct value for money audit to establish price reasonableness or otherwise of the estimated contract sums quoted by Entities'*
- *Submit Reports to the CEO in a template to be designed by the Committee and approved by the CEO, not later than 5 days upon receipt of an application.*

The Committee was subsequently converted into a Unit within the PPA named as the Due Diligence Unit (DDU). In the interview with the Respondent on 12th and 16th June, 2020, he restated that he set up the DDU to help operationalise the PPA mandate to approve restricted tendering and or single source procurement in accordance with section 40 of Act 663, as amended. According to him, there was the need to conduct due diligence on the applications to ensure value for money. He explained that the task of the DDU was to *consider background of companies or suppliers to ensure that they are qualified according to law and also review the prices quoted for the projects*. The Respondent explained that the DDU is distinct from the Committees of the Board. Per the terms of reference, the DDU reported to the Respondent who in turn forwarded the due diligence reports of the DDU to the Board for consideration.

The evidence show that Respondent was present at and participated in the meetings of the PPA Board Technical Committee that considered applications for restricted tender which had shortlisted TDL. Below are extracts from some of the meetings:

20th Meeting: Board Technical Committee Meeting no. **20 (020/2018)**, the Respondent was present. The meeting commenced at 10:30pm after a short prayer by the CEO (Respondent). That meeting considered a request by the GPHA for approval from PPA to use Restricted Tendering Method for the procurement of Mobile Column Lift for the Takoradi Port at a cost of GHS160, 000.00. TDL was among the Four (4) shortlisted firms. The minutes of that meeting did not show that Respondent recused himself from deliberations of the applications by the Board neither did the minutes disclose that he declared his interest at the meeting.

At the 21st Meeting of the PPA Board Technical Committee Meeting held on 23rd January 2019 to consider **an application by the GPHA** to use RT for the Supply, Installation and Commissioning of 30-

Meter-High Mast Poles (Poles), Tema Port at an estimated cost of GHS2, 065,000.00, the Respondent who was present, said a short prayer at the commencement of the meeting. The shortlisted firms presented for approval included Talent Discovery Limited. The minutes did not state that Respondent recused himself neither did he declare his interest at the meeting.

23rd meeting: The GPHA request for approval for restricted tendering procurement of works at Port of Tema, for the Rehabilitation of James Town Lighthouse Facilities-Accra, was considered at the 23rd Meeting of the PPA Board Technical Committee meeting held on Friday, 15th March 2019. The Minutes of the Meeting No. 023 (023/2018), show that the Respondent and two other members were present. He seconded a motion by Dr. Emmanuel Boakye for the acceptance of the minutes of the previous meeting of the Board. The CEO again "...took members through the responses and the recommendations on previous applications that the previous meeting considered as well as the steps taken by Management in the light of the response".

At that meeting, Members considered the 82 (Eighty-Two) single Source (SS), Restricted Tendering (RT), supplementary applications and responses received to queries issued on earlier applications, as per a summary Table attached. Grovtex Ventures Limited, **Talent Discovery Limited**, **Canduns International Ltd** and Abitjack Construction Works Ltd, the shortlisted firms presented for approval. Canduns International Ltd is another company in which the Respondent is associated with.

The Respondent led the presentation of the applications and gave technical clarifications to Members as required. All along, TDL was involved. Nowhere is it in the minutes that the Respondent declared his interest or recused himself from the discussions. The CEO (the

Respondent) moved for the closure of the meeting and was seconded by Dr. Emmanuel Boakye.

In that meeting, the Board Technical Committee decided that the Respondent should request for clarification of a discrepancy as to the cost estimates of the rehabilitation of James Town Lighthouse; whether it is ₦278, 981.02 or ₦400, 000, for a decision. The GPHA wrote back explaining that as a result of emergency work done prior to the Homowo festival, the cost estimates of the rehabilitation of James Town Lighthouse had reduced to ₦278, 891.02. The PPA Board Technical Committee did not meet again to consider the explanation of the GPHA. Although the GPHA had explained that the estimates had reduced to ₦278, 891.02 because of some works carried out, the Respondent wrote on 15 May 2019, ref. PPA/CEO/05/936/19, giving approval to GPHA to proceed with the restricted tender at ₦400,000, claiming that it was the decision of the 23rd meeting of the Board Technical Committee.

The Respondent also participated in the 22nd meeting of the PPA Board Technical Committee. In all of these, the Respondent did not declare his interest, neither did he recuse himself from the meetings which were to consider applications in which TDL and Canduns International Ltd were companies in which the Respondent is a director and shareholder.

The Respondent argued that he is not involved in the process of short-listing companies for restricted tendering. He stated that:

“We rely on the particulars of paragraphs 15(d) to (n) and 16 to 23 above, and further assert that, applications for restricted tendering are filed at the PPA after the entities in question have shortlisted companies to participate in the restricted tendering process. The Board of the PPA, of which our client is a member, is not responsible for short listing companies. Further, in terms of the provisions of Act 663, the Board has no mandate to determine the professional, technical and environmental qualifications of companies to participate in restricted tendering. Same is the lawful duty of procurement entities. The rationale for this stipulation in Act 663 is that, at the point

where the Board of the PPA is considering applications for restricted tendering, there would be no tender for suppliers, contractors, or consultants to demonstrate their qualifications. The law thus makes it the duty of procurement entities through their relevant entity tender committees to consider and assess the qualifications of tenderers.

The Board of the PPA is primarily responsible for considering the validity of applications for the method of restricted tendering in terms of the grounds set out in section 38. After grant of such application, section 39 enjoins the entities to conduct a tender in accordance with the rules on competitive tendering set out in Part Five of the Act. The entities evaluate bids by companies, selects the successful tender and awards the contract in accordance with section 65.

*The Board of the PPA does **not** play a role in such processes, save where complaints of violations of the procedure are made to it, pursuant to the powers of administrative review conferred on the Board by Part Seven of Act 663."*

The Commission agrees with the Respondent that the Board of the PPA, of which Respondent is a member, is not responsible for shortlisting companies. Same is the lawful duty of procurement entities. The law makes it the duty of procurement entities through their relevant entity tender committees to consider and assess the qualifications of tenderers. However, that is not the issue at stake here. The issue is about the Respondent's public capacity role as CEO and Board Member participating in a decision-making process on applications involving companies he has significant private capacity (financial and relational) interest in as shareholder without disclosing his interest or recusing himself.

The Respondent himself admitted in an interview with the Commission that the purpose of incorporating TDL was that:

"... this is a brother-in-law who decide to relocate from London to Ghana. So, when he came because we have been communicating over years because of the relationship we have, and I knew him that he was a contractor in the

UK. So he came and said he wants to settle down. So can we do something together and I said why not. But let me put it this way, we would put the company together, but you would run it.

At the time of establishing this company, I was about to turn to the year fifty-nine (59). So, I said you could have this company, we can have it together, but you run it, so when I leave public office, then I can come fully and join you. So with that understanding that company was established”.

This undoubtedly is unequivocal testimony from the Respondent himself of a private capacity interest in TDL that is likely to improperly influence him or interfere with the objective determination of the applications that had shortlisted his company, and for which he had a duty to disclose and recuse himself from the decision making of the Board on the applications in which TDL is shortlisted.

Again, the Respondent argues in paragraphs 27 and 28 of his written response that:

*“...at the particular point where the Board of the PPA in accordance with section 38 of Act 663, considers an application for the use of a method of restricted tendering by an entity and **not** the evaluation of tenderers or selection of bids by prospective suppliers and contractors, the issue of conflict of interest does not arise at all”.*

*“Be that as it may, it is relevant to say that that, notwithstanding the foregoing, on the occasion of the first application for restricted tendering involving TDL coming before the Board of the PPA, our client in the spirit of transparency, disclosed his interest in that company. The Board of the PPA required our client to recuse himself from a consideration of the application, even though...the application before the Board did **not** involve an evaluation of a bid by TDL or selection of TDL as a supplier or contractor. In fact, at that time there had been no tender opened and TDL had not had*

the opportunity to present a bid. The Board thus became fully aware of the interest of our client in TDL and subsequently took notice”.

The Respondent’s disclosure of his interest in TDL and recusal from deliberations of the Board in respect of that particular Application involving TDL is supported by an extract of the Minutes of the 8th Board Technical Committee Meeting Held on 17th January, 2018 at the PPA Board Room 6th Floor SSNIT Emporium, Airport City as follows:

“(iv): Item 45 SSRT Table -Ministry of Inner Cities and Zongo Development (MICZD)-

During consideration of this application, the CEO [Respondent] informed Members of his interest in one of the companies listed as contractors for the various projects. He therefore recused himself from the meeting and consideration of that application.

The decision by the Respondent to disclose his interest in TDL to the Board as one of the shortlisted companies by the MICZD and further recuse himself from participating in the deliberations of that Application is duly acknowledged. The disclosure of his interest in TDL to the Board and further recusing himself from deliberations of that application was a legal remedy for resolving the conflict of interest situation that was likely to arise in the given circumstances, and we commend the Respondent for that.

Indeed the Minutes of the 8th Meeting continued as follows:

In ensuing discussions, the Board Chairman lauded the initiative, advising that in dealing with conflict of interest situations, it was necessary to declare one’s interest when it comes to decision making. He indicated that in laying out guidance on how to proceed in situations of conflict of interest, an organisation should not only lay out clear rules, but also introduce the flexibility needed to put members at ease to confidently declare business interests, for the appropriate steps to be taken.”

The Respondent is undoubtedly an expert in public procurement and an astute person who knows the legal requirement for disclosure and recusal

in a situation where you find yourself having to participate in an official capacity in a matter which is likely to affect your private capacity interest. Indeed, the Board also understood the legal requirement for disclosure and recusal when it passed the “Resolution” which provided as follows:

“...WHEREAS at the 8th Board Technical Meeting held on Wednesday 17 January 2018, the Chief Executive, Mr. Adjenim Boateng Adjei, disclosed that he has an interest in a company called Talent Discovery Ltd., and wanted the Board to take note of this and subsequent applications that may come up for consideration; and

WHEREAS Mr. Adjei Subsequently recused himself from discussions on the application concerned.

WHEREAS he went further to state that as and when he becomes aware of any application made by an entity, which includes the company in question he will recuse himself from both the assessment of the application and the Board consideration.

Now therefore, the Board duly took note of this declaration and disclosure and resolved that having declared his interest in the company Talent Discovery Ltd., Mr. Adjei be duly recused from consideration of this application, all other subsequent applications and the assessment of such applications...”.

As it turned out, the Respondent failed to disclose his interest or to recuse himself in the many other Applications that came before the Board that involved either TDL or one of the other companies that the Respondent has personal interest in.

Rule 3.1 on Conflicting Financial Interest provides that:

A public official shall not participate in an official capacity in any particular matter which to his knowledge:

- i. he/she has a financial interest; and*

- ii. *any person whose interests are imputed to him in any way has a financial interest if the particular matter will have a direct effect on that interest.*

Rule 3.2 on Self-Dealing also provides that:

A public official shall not take an action in an official capacity which involves dealing with himself/herself in a private capacity and which confers a benefit on himself/herself.

The rules are unequivocal that a public officer cannot perform a public capacity function in such situations without violating Article 284 prohibiting conflicts of interest. In such situations, Article 284 prohibits the public officer from performing your official duties, as to do so would put the public officer in a position where his/her private interest conflicts or is likely to conflict with the performance of the functions of his/her office.

The Supreme Court has held that, *“a conflict of interest allegation must be examined in the light of clear facts which support a conclusion that a public officer’s personal interest conflicts with or is likely to conflict with the performance of the functions of his or her office. The interest ought to be financial or otherwise, direct or indirect, which must ultimately be clearly proven”*. [Okudzeto Ablakwa (N02) & Another v Attorney General & Obetsebi-Lamphey (No2) (2012) 2 SCGLR 845].

In other words, the actions of the Respondent, as seen above, in participating in decision making processes of the Board on applications from procurement entities for restricted tendering in which TDL and other companies in which Respondent has significant private interest are involved without disclosing his interest or recusing himself were in violation of the conflicts of interest rules on conflicting financial interest and self-dealing.

From the foregoing, the Commission finds as a fact that the Respondent has put himself in a position where his personal interest (financial and relational) conflicted with the performance of the functions of his office.

10.0. SUMMARY OF KEY FINDINGS OF THE INVESTIGATION

The following constitute the key findings of the investigation:

- Talent Discovery Limited (TDL) was incorporated on 19 June 2017, three months after the Respondent was appointed CEO of PPA in March 2017, by the Respondent and his brother-in-law Francis Kwaku Arhin, the Respondent being the majority shareholder. The Respondent is both a director and shareholder of TDL and Francis Arhin, Respondent's brother-in-law, is a director, shareholder and CEO of TDL. In effect, the Respondent has personal interest in TDL (financial and relational).
- Although the Respondent claimed that he had resigned as director of TDL by reason of letter dated 5th September, 2017 addressed to the CEO and Company Secretary of TDL, all the relevant official records of the company showed that he remained a director of TDL at all material times, and that his purported resignation letter had no probative value whatsoever.
- The evidence supports the allegation that TDL participated in a number of restricted tenders, which applications came before the Respondent in his capacity as CEO of PPA and member of the Board of PPA for approval. TDL was awarded 10 contracts through restricted tender between June 2017 and 22 August 2019. However, the evidence did not support the allegation of award of contracts through sole sourcing.
- The Respondent participated in the decision-making process on restricted tender applications that had TDL shortlisted without disclosing his private capacity (financial and relational) interest in the

company or recusing himself, except on one occasion, in violation of the Board's resolution on the matter and Article 284 of the Constitution.

- The evidence further showed that the Respondent, on at least two occasions, used his office as CEO of PPA improperly by altering the decision of the Board to the benefit of TDL, a company in which he has personal (financial and relational) interest.
- Officials of TDL (Thomas Amoah, Administrative Manager, who is also sometimes described as General Manager, Project Manager or Group Manager, and Abigail, the Office Secretary), the company in which the Respondent is majority shareholder and director, were clearly seen and heard in the documentary offering to sell contracts awarded to TDL by public procurement entities through restricted tender.

The evidence also established a pattern of movement of large volumes of cash through the Respondent's Bank Accounts between March 2017 and August 2019, far in excess of his known income (Stanbic Bank: USD Account - \$516,225.00; Cedi Account - GH¢3.83 million; Euro Account - EU54,500; UMB Bank: \$110,000). The Respondent could not offer satisfactory explanation to the source of that huge volume of cash that passed through his bank account between March 2017 and August 2019 (unexplained wealth).

- The totality of the evidence showed that the Respondent had put himself in a position where his personal interest (financial and relational) conflicted with the performance of the functions of his office as CEO and Board Member of PPA.

11.0. DECISION

Having found as facts that Respondent has put himself in several positions where his personal, relational, and pecuniary interest in TDL and other companies actually conflicted with the performance of the functions of his

office as CEO and Board Member of PPA, the Commission holds that the Respondent has contravened article 284 of the 1992 Constitution.

Article 287(2) provides that:

The Commissioner for Human Rights and Administrative justice or the Chief Justice as the case may be, may take such action as he considers appropriate in respect of the results of the investigation or admission (emphasis supplied).

In the exercise of its power under Article 287(2), the Commission has held in previous cases it investigated under Chapter 24 of the Constitution that the appropriate action taken in respect of the results of any investigation must be proportionate to the magnitude of the contravention complained of.

The Respondent, being the CEO of PPA, the Regulator of the procurement sector, the Commission is of the strong and considered view that he has gravely abused his high office of trust, and the appropriateness and proportionality of any action to be taken by the Commission must be commensurate with the gravity of the abuse.

In addition to the constitutional provision on conflicts of interest, the Public Procurement Act, 2003 (Act 663) as amended, the parent law which the Respondent is obliged to comply with in the course of his duties, specifically provides under Sections 93 and 92 as follows:

93: (1) Entities and participants in a procurement process shall, in undertaking procurement activities, abide by the provisions of article 284 of the Constitution, which provides: "A public officer shall not put himself in a position where his personal interest conflicts or is likely to conflict with the performance of his functions".

Section 92 (1) and (2) of same Act also provides:

(1) "A person who contravenes a provision of this Act commits an

offence and where a penalty is not provided for the offence, that person is liable on summary conviction to a fine not exceeding “two thousand five hundred” penalty units or a term of imprisonment not exceeding five years or to both the fine and the imprisonment.”

(2) The following also constitute offences under this Act:

(b) directly or indirectly influencing in any manner or attempting to influence in any manner the procurement process to obtain an unfair advantage in the award of a procurement contract;

Further, Article 23 of the Constitution provides:

Administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed on them by law and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a court or other tribunal.

The above provisions demonstrate the gravity the law attaches to conflicts of interest in the procurement industry, and which the Respondent himself was heard on the documentary espousing. All these go to show that the Respondent did not act out of ignorance. He knew that the conduct was prohibited under the Constitution and the PPA Act, and yet chose to do it because of the personal benefits he gained from it.

Given all the circumstances, including the overwhelming evidence and Respondent’s explanation and spirited defence, the commission considers the following actions as appropriate and proportionate having regard to the result of this investigation:

- 1. The Commission has determined that the Respondent is unfit to hold public office and is therefore disqualified from holding any**

public office for a period of five years. Accordingly, it is hereby directed that no appointing authority of the State should engage or appoint the Respondent (Mr. Adjenim Boateng Adjei) into any public office howsoever described for the said five (5) year period beginning from the date of this Decision.

- 2. Consequent upon the above determination His Excellency the President of the Republic of Ghana, as the appointing authority of Respondent, should terminate the appointment of the Respondent as CEO of the PPA.**

12.0. RECOMMENDATIONS

Section 18(1) of Act 456 mandates the Commission to make recommendations that it thinks fit after an investigation. It would therefore be remiss on the part the Commission, in view of the evidence that has come to its attention, if it did not make appropriate recommendation and consequential directives to address the irregularities identified.

1) Section 86 of Act 663 Provides that:

(1) The Board shall, with the approval of the Minister, compile and publish a code of conduct that shall apply to each official of a procurement entity, the members of an evaluation panel, members of a tender review committee, members of the Board as well as tenderers, suppliers, contractors and consultants.

(2) The code of conduct shall address:

(a) conflicts of interest in procurement;

(b) measures to regulate matters concerning personnel responsible for procurement;

(c) declarations of interest in particular procurements;

**(d) screening procedures and training requirements;
and**

**(e) any other matter related to the ethics of
procurement.**

**(3) The code of conduct shall promptly be made accessible to
the public and shall be updated regularly as directed by the
Board.”**

**4) The Board of PPA should see to it that the procurement
entities strictly comply with the lay down procedures in
restricted and single sourcing tendering stipulate in section
38 to 41 of Act 663 as amended.**

The results of this investigation has reinforced the wisdom behind the legislative intendment of Parliament in Section 86 of the PPA Act as amended. The Commission therefore directs the Board of the PPA to as a matter of urgency see to the compilation and publication of the code of conduct envisaged under Section 86 of Act 663, and have it ready for use not later than six (6) months from the date of this decision.

2) Sections 34A and 38 (1) of Act 663 requires that procurement entities that decide to use the restricted tender method must apply to the PPA for approval and must justify why they had decided the use that method of procurement.

The evidence available to the Commission show that except the Ministry of Education which provided specific reasons for its application to the PPA Board, many of the applications for restricted tender between March 2017 and August 2019 from procurement entities reviewed in the course of this investigation did not provide any justification, and yet the same were approved by the PPA Board. The PPA Board is directed to pay closer attention to this irregularity and ensure the practice does not recur.

3) As noted above, the Commission came across evidence of inordinately large volumes of cash passing through the Bank Accounts of the Respondent far in excess of his known income, and for which he could not provide satisfactory explanation (unexplained wealth). Besides the excessive nature of the volumes of cash, the pattern of the deposits and withdrawals also raised suspicions about the nature of the transactions. Accordingly the Commission is referring the suspicious transactions in the Respondent's Bank Accounts to the Economic and Organized Crimes Office (EOCO) for further investigation under the Anti-Money Laundering Act, 2008 (749) as amended.

4) Primarily, this investigation was initiated on the basis of conflicts of interest allegations. In the course of the investigation, however, the Commission came across evidence of seeming unethical practices by the company TDL, the company owned by the Respondent and his brother-in-law. In the circumstances the Commission is constrained to refer the evidence of the seeming unethical practices of TDL to the Registrar of Companies and the PPA for further investigation and appropriate action.

Commendation

The Commission would like to commend H.E the President for promptly submitting the complaint together with the documentary and requesting expeditious investigations into the allegations of conflict of interest against the Respondent.

This is the second time in the history of the Commission that a sitting President has brought a complaint before the Commission in respect of his own appointees. The first was former President Jerry John Rawlings in the mid-1990s.

We are encouraged by this exemplary conduct of the Office of the President and look forward to more of such commendable practices of using appropriate designated investigation bodies of State.

The Commission equally commends Manasseh Azure Awuni for the public spiritedness and industry that went into the documentary he produced that kick-started this investigation as well as his cooperation with the Commission.

The Commission would also like to commend the Ministry of Works and Housing for its timely submission of information to the Commission as well as the Respondent and his Counsel and all the witnesses who attended upon the Commission and provided evidence either oral and/or documentary for their cooperation.

DATED THIS 27TH DAY OF OCTOBER 2020 AT THE COMMISSION ON HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE, OLD PARLIAMENT HOUSE, JOHN EVANS ATTA MILLS HIGH STREET, ACCRA.



Joseph A. Whittal
Commissioner