

**CNLCC-CONAC /South West Region**

**Report on the Result and Findings of the Arbitration Meeting between  
PERRY- CAM Enterprise, CHARIOT Company and the Lord Mayor**

**Tinto Council, Manyu Division**

**Submitted to**

**National Anti-Corruption Commission (CONAC)**

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## Introduction

The issues disclosed in this report envelopes two main concerns: the application of irregular procedures by the Tinto Council Tender Board and Technical Sub-committee for Analysis of Bids and widespread corrupt practices in the award of public contract: 007/ONIT/TC/TCTB/MAN/SWR/2012 for the maintenance of earth roads and opening of tracks in Tinto Town. The core actors involved in the conduct of corruption that undermined the objectivity of the contract award exercise in Tinto Town include:

- The Lord Mayor of Tinto
- The Technical Sub-committee for Analysis of Bids
- Perry-Cam Enterprise Tiko
- Chariot Company Limited Buea
- ARMP representative for Tinto

The Civil Society Representative for the South West Region of the National Anti-Corruption Coalition under CONAC (CNLCC-CONAC/SWR) participated in the Arbitration Meeting conducted by ARMP Buea for the purpose of hearing the complains that led to a standoff between the Lord Mayor of Tinto Council, the Tinto Tender Board and Perry-Cam Enterprise. During this meeting, which took 8 long hours, original copies of bids of the two enterprises, tender files, minutes of opening of bids, minutes of award of proposal, report of the sub-commission for analysis and publication of results were examined. Independent findings by CNLCC-CONAC/SWR, during the arbitration hearing and after are contained in this report together with its opinion and recommendation.

I draw your attention to the recommendation that perpetrators of public contract corruption whether enterprises or people's representatives be sanctioned with applicable laws, to serve notices to those who seek to use public resources and offices, for interest that do not benefit the wider community for which, such resources are intended and which do not ensure the common good of the poor in our society as emphasized by government.

## Hearings during the Arbitration Meeting

The arbitration meeting started at 10:00 am on Monday 16<sup>th</sup>, April, 2012 at the office premises of Agency for the Regulation of Public Contracts (ARMP)-South West Region. The Regional Delegate for ARMP-SWR, the Representative CNLCC-CONAC-SWR, Lord Mayor of Tinto, the Chair of the Tinto Council Tenders' Board, the Secretary of the Tenders' Board, the Technical Sub-committee for analysis of bids, ARMP Buea representative for the Tinto Council area, and other ARMP sub staff, the Director of Chariot Company as well as the representative of Perry-Cam Company, participated in the working sessions of the arbitration meeting organized by ARMP Buea in its conference room.

### A. The Technical Sub-committee for Analysis of Bids

During the session to hear complains of irregular procedure in the award of tender 007/ONIT/TC/TCTB/MAN/SWR/2012, the chairperson of the technical sub-committee for analysis of bids, whose committee's report, the Lord Mayor of Tinto Council considered unfounded, explained the criteria with which, the bids were examined by his committee following its submission by the President of the Tender Board.

The technical subcommittee for analysis of bids composed of the Divisional Delegate for Housing and Urban Development, Divisional Delegate of Public Works and Divisional Delegate of Water and Energy Resources in Manyu, make up the subcommittee for analysis of bids. A composition designated by the President of the Tinto Council Tenders' Board through service note of 21<sup>st</sup> March, 2012. In pursuance of the bids' technical analysis, the subcommittee nominated as its President; the Divisional Delegate of Public Works: Secretary, the Divisional Delegate of Urban Development and Housing, and as member, the Divisional Delegate for Water and Energy. The subcommittee for technical analysis met on 23<sup>rd</sup>, March, 2012 at the Tinto Council. John Wung, Jang Evaristus Eketuoh and Tambe Cyril Agbor sat for their respective delegates while, Mouyep Felicite Nicole attended as the independent observer.

A **YES** or **NO** score criteria was adopted for analysis and stood out as the main evaluation criteria. The areas examined were numbered seven (7) and outlined as follows:

1. General Presentation of file
2. Personnel
3. Technical equipment
4. Enterprise references
5. Understanding of project
6. General information
7. Pre-financing capacity

Following the technical subcommittee analysis, Chariot Company Buea score a total of 7/7 -YES, while Perry Cam Enterprise had a 6/7 score of -YES as presented in this outline.

SN	Criteria	Chariot Company	Perry Cam Enterprise
1	General Presentation of file	YES	YES
2	Personnel	YES	YES
3	Technical equipment	YES	NO
4	Enterprise references	YES	YES
5	Understanding of project	YES	YES
6	General information	YES	YES
7	Pre-financing capacity	YES	YES
	Total	7	6

**Source:** Minutes of Technical subcommittee for analysis Tinto Council Tender Board signed by Jang Evaristus (Secretary) and Tambe Cyril Agbor (Member) and John Wung Chu (President)

In consonant with the aforementioned analysis, and in line with the evaluation criteria adopted, the files of both Chariot Company and Perry Cam Enterprises were forward to the Tenders' Board Committee for a decision and consequent preparation of an Award Proposal which was advanced to the Lord Mayor of Tinto. Looking at the document for analysis of offer (DAO), which was adopted by the Board a candidate needed two (2) NOs to be disqualified and for the file to be withdrawn from moving to the next stage. Unfortunately, gazing at the results above, and contextualizing the same, within the criteria for evaluation in the DAO, none of the candidates could have been withdrawn from advancing to the next stage. Although Chariot Company had a 7/7 score up against Perry Cam Enterprise which had a 6/7 score, the evaluation criteria adopted in the DAO allows for both enterprises to advance to the next stage in a state of affairs were the score of the other ( in this instance PerryCam Enterprise) was less than two (2) NOs.

#### **Technical Fault Line Identified by ARMP-Buea and CNLCC-CONAC /SWR**

The subcommittee for analysis created a problem for the Tenders Board by failing to include more detailed qualification criteria for which a candidate should be advanced to the next level or dropped off. Notwithstanding the facts thereof, that Perry Cam Enterprise had a score of 6/7, the enterprise could not be eliminated from the process because it did not score the two NOs required to eliminate it. In this instance, both passed and were advanced to the next level of the exercise. Please note that Perry Cam Enterprise scored a NO at the level of TECHNICAL EQUIPMENT (a subject on which the Lord Mayor's argument was constructed).

#### **The Cameroon Public Contracts Code**

Article 33 (1) a of the Public Contracts Code spells out that;  
*"Subject to the respect of the conditions for conformity of tenders"* (which both companies passed by their scores marked by the subcommittee for analysis:

- a) *"The award of works and supplies contracts shall be done on the basis of the lowest bids to the tenderer fulfilling the technical and financial conditions required resulting from so-called essential criteria, or those that are eliminatory". Pg 33: Public Contracts Code Art. 33(1)a*

Going further to analyzing the financial bids, Perry Cam Enterprise had the lowest bids of Fifty Four Million Five Hundred and Eight One FCFA (54,000,581 FCFA) as against Chariot Company Limited which had a rather higher financial bid of Fifty Nine Million, Two Hundred and Eighty Four Thousands, Two Hundred and Sixty One FCFA (59,284,261 FCFA).

In accordance with the prescriptions of the Tender File and provision of the Code above, the Tinto Tenders' Board made an award proposal to the Lord Mayor of Tinto, to award the contract to Perry Cam Enterprise who according to the criteria in the tender document was qualified and also, the lowest bidder. The award proposal categorization letter sent to the Lord Mayor of Tinto attached herewith, classified PerryCam enterprise with the 1<sup>st</sup> position and Chariot Company Limited with the 2<sup>nd</sup>.

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Source: Chairman Tinto Tenders' Board forward letter to the Lord Mayor of Tinto dated 24<sup>th</sup>, March, 2012 on the award (attached).

### **B. The Lord Mayor of Tinto Council's Complain of Contradictory Evaluation**

During the second session for the hearing of complains of irregular procedure in the award of tender 007/ONIT/TC/TCTB/MAN/SWR/2012, the Lord Mayor of Tinto Mme. Egbe Sabina E, complained that;

*"the work of the technical subcommittee for analysis of bids was not properly done and as such, considered their conclusion and proposal of Perry Cam Enterprise as the winner of the award as not reflecting the content of the files submitted for their appraisal and most especially, the National Invitation NO.007/ONIT/TC/TCTB/MAN/SWR/2012 for the maintenance of earth roads and opening of tracks in Tinto Town".*

The Lord Mayor insisted;

1. that after evaluation, the subcommittee for analysis concluded that Chariot Company had satisfied all seven (7) points essential criteria, while Perry Cam Enterprise satisfied only six (6)
2. that the essential criterion not satisfied by Perry Cam Enterprise is the technical equipment needed for the execution of the job.
3. that considering also, the understanding of the overall project together with its timeframe for execution, it is misleading for her to accept the proposition of PerryCam Enterprise as suggested by the technical subcommittee for analysis for an award. She went further to stress that; the work is about maintenance of earth roads and opening of tracks in Tinto Town as described and contained in the tender file on page 25. That methodology of work proposed by PerryCam Enterprise does not correspond with the tender description. Questioning therefore, role of carpenter, metal technician, electrician and painter included in PerryCam's work file. For this reasons the Lord Mayor of Tinto Council, concluded that she cannot award the contract to PerryCam.

### **C. Regional Delegation for the Regulation of Public Contracts (ARMP) SWR-Delegate**

Prior to the arbitration meeting, the ARMP Regional Delegate for Buea, had issued a reply letter (attached herewith) to the Lord Mayor of Tinto who had already published the results of the award. The response of the ARMP Delegate was based on complains advanced by the Mayor as narrated above. The ARMP Delegate insisted in his letter that the law of the Public Contract Code has to be applied and followed, citing Article 33 (1) a, of the Public Contracts Code which states that:

*"Subject to the respect of the conditions for conformity of tenders"* (which both companies passed by their scores marked by the subcommittee for analysis:

- a) *“The award of works and supplies contracts shall be done on the basis of the lowest bids to the tenderer fulfilling the technical and financial conditions required resulting from so-called essential criteria, or those that are eliminatory”.* **Pg 33: Public Contracts Code Art. 33(1)a.**

During the ARMP arbitration meeting in Buea, the Lord Mayor of Tinto Council maintained her position and previous argument as aforementioned, nevertheless the ARMP Regional Delegate for SW insisted, that considering that the Lord Mayor’s arguments were founded the law demands that **article 126 (2 and 3) of the Contracting Code be applied which affirms that:**

*“where the Contracting Authority or Delegated Contracting Authority does not approve the proposal, he shall be bound to request a re-examination of the file by the Board, stating his reservations within a period of seven (7) days as from the date of receipt of the proposal made by the Board concerned.*

*Following such re-examination, the Chairperson of the Tenders Board shall inform the Contracting Authority or Delegated Contracting Authority of the outcome of the fresh proceedings”.*

#### **Technical Fault line in the Mayor’s Management of the Issue identified by ARMP Buea and CNLCC-CONAC /SWR**

The Lord Mayor, did not act as mandated by the Contracting Code, which was to forward the file back to the Tinto Tenders Board, requesting a re-examination of the file by the Board following her disapproval. Rather the Lord Mayor awarded the contract to Chariot Company Buea and published the results as highlighted in the Complain Report by PerryCam Enterprise to the Prime Minister contesting the decision taken by the Lord Mayor of Tinto (see letter subject: Contestation de Resultats de OA N0.007/ONIT/TC/TCTB/MAN/SWR/2012 of April 3<sup>rd</sup>, 2012 send to the PM).

Although, the technical subcommittee for analysis participating in the meeting, suggested that the files be re-examined with the total exclusion of all old committee members, the Regional Delegate for ARMP rejected the proposal on the count that ARMP does not have the competence to do so and cannot change the evaluation criteria that has already been adopted by the Tinto Tenders Board. On its part, the ARMP Delegate proposed a suspension of the process while awaiting the decision from the technical team for analysis at the PM’s office.

#### **D. PerryCam Enterprise and Chariot Company Limited**

When the moment came to listen to the complains and opinion of the contractors, both managers were asked to comment on the tender process. While both companies expressed satisfaction with the procedure up to the opening of bids, the representative of PerryCam Enterprise insisted that the procedure adopted in the examination of the tender files was also regular and in it, the subcommittee for analysis found PerryCam Enterprise qualified administratively, technically and financially, and that the Law of the Public Contract Code should be adopted to separate them.

The Director of Chariot Company maintained his silence after saying that, whatever conclusion that is taken on the issue his company will put up with.

## **Undisclosed Factors: the Corruption that Ruined the Management of the Tender Files Process in Tinto**

In the course of the meeting, a standoff ensued between the Lord Mayor of Tinto, the President of the Tinto Tenders Board and the Technical subcommittee for analysis. The disagreement paved the way for unearthing and unveiling of alarming corrupt practices that are considered to have contributed significantly, in defiling the transparency and objectivity of the entire tender exercise in Tinto. At some stage in the standoff, the Lord Mayor of Tinto, acknowledged that PerryCam Enterprise attempted to corrupt her to wave the bids in their company's favor, by proposing a bribe which was enveloped in a letter handed to Mr. Tambe Cyril (a member of the technical committee for analysis) and which she rejected (this has been re-affirmed in a letter from the Lord Mayor of Tinto addressed to Mr Tambe Cyril dated 12<sup>th</sup>, April, 2012 attached herewith). Noting equally, that it came to be known by her that Mr Cyril had accepted bribe from PerryCam.

Mr. Cyril denied the allegations dismissing all the Lord Mayor's claim that the technical subcommittee received bribe from PerryCam Enterprise to tilt the examination in their favor (this position has been re-affirmed in a reply letter from Mr Tambe Cyril to the Lord Mayor of Tinto addressed to Mr Tambe Cyril dated 12<sup>th</sup>, April, 2012 attached herewith).

Corrupt practices have an enormous potential of undermining objectivity, neutrality and fairness of procedure, on the part of the party that has been corrupted or the one who received bribe. In so doing acts of corruption in the award of contract, can play a significant role in obstructing justice and undermining meritocracy. It is therefore vital, for the reason of abating extortion of money or favors from those who are in position to award public contracts or determine its outcome, that the Tinto allegations which, according to our finding is founded, be measured and sanctioned by those charged with the responsibility of chastising deceit, trickery, sham, dishonesty and fraud in the public contract domain where, kick backs, complicity, extortion, conflict of interest and discriminatory practices have become a widespread and acceptable malaise in the public service domain of Cameroon.

We have observed that, the persistent free flow of corrupt practices in the public contract domain by both contractors, tenders board members and contracting authorities, is intrinsically linked to the growing distrust of public service agents and wide spread public rage against corruption which citizen experience day to day in the public contract domain, whether, in the form of a poorly completed contract or in the loss of a potential development opportunity or project stemming from porous contracting processes to theft of public funds.

### **Conclusion**

There is a strong need for (complementary) external monitoring of the contracting processes in the South West Region, by agencies not linked with the government and also, field scrutiny and examination of the execution and completion of public contracts in distant village communities and sub divisions by the same, were these practices show their true shape. It is amazing that all the distortion and fighting for private gain in Tinto is happening without the villagers and ordinary citizens of Tinto being aware.

The Cameroon government on its part, mindful of the need to maintain earth roads and opening of new tracks in Tinto etc, has allocated in the Public Investment Budget for the South West Region, huge sum of money for the realization of this important demand. Consider that bribe is given to ensure that a contract is awarded out of merit and qualification, to the contractor who per se, bribed the most, and the executing contractor now left with inadequate funds at its disposal after payment of bribes and kick backs, fails to realize the project in good condition or poorly executes the project; there is no doubt in saying that these acts of bribery, kick back and extorting (corruption) which emerged in the process, can fundamentally undermine the capacity and motivation of the actors involved, to either complete the project in good condition or apply rigorous efforts to ensure that the project is not abandoned or cancelled.

Mindful of the fact that the Tinto contract process for the maintenance of earth roads and opening of new tracks, was poorly facilitated and consequently compromised, by the actors involved in the process, and following, the overarching reverberation of corrupt practices and outright misconduct in applying the Public Contract Code, we suggest that, the Lord Major of Tinto, the President of the Tinto Tenders Board, the Chairperson of the subcommittee for analysis of bids, the Contractor of Chariot Company and PerryCam, be given convocation by the National Anti-Corruption Commission (CONAC) in Yaoundé to appear in person and elaborate on the role each played not just in contributing to a failed award process but also, in allowing corruption and fraud to undermine the objectivity and fairness of the entire process.

In the mean time, the tender process could be suspended as recommended by the Regional Delegate for ARMP Buea, while the Prime Minister, who is the main Contracting Authority, can ask for a re-examination of the entire process of the bids by new examiners. The Lord Major of Tinto, the President of the Tinto Tenders Board, the Chairperson of the subcommittee for analysis of bids, the Contractor of Chariot Company and PerryCam should be used to set an example regarding government's fight against corruption and promotion of objectivity and transparency in the contracting process, in the South West Region in particular. In the event were neither of them is able to substantially justify the reason for his or her supposed misconduct, the guilty party should be sanctioned in accordance with applicable laws.

Please see annexed for supporting documentation.

Done in Buea, April, 23<sup>rd</sup>, 2012

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