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TOPIC: Ombudsman concludes Systemic Investigation into the tendering and awarding process of the Solid Waste Collection 2021-2026

PHILIPSBURG, Ombudsman Gwendolien Mossel recently concluded the Systemic Investigation into the tendering and awarding process of the Solid Waste Collection 2021-2026. After providing a Preliminary Findings Report (PFR) on 11 April 2022, the Final Report (FR) was submitted on 27 June 2022 to the Minister of Public Housing, Spatial Planning, Environment, and Infrastructure (VROMI).

Shortly after the awarding process of the Solid Waste Collection 2021-2026, complaints were filed with the Ombudsman against the Minister of VROMI by multiple bidders that participated in the collection of solid waste tender, who expressed concerns regarding the credibility, reliability, and transparency of the process. Considering the complaints/concerns received, and the importance of transparency of procurement procedures and policies of government, the Ombudsman decided to conduct a Systemic Investigation in the general interest of the public.

The main question that the Ombudsman sought to answer with this investigation is: Was the tendering and awarding process of the solid waste collection 2021-2026, as well as the pertinent procedures and policies followed by the evaluation committee, fair and transparent? The preparations for the tender process for the solid waste collection did not start in a timely manner. This perhaps contributed to the deficient quality of the terms of reference. In this regard, the adage ‘haste makes waste’ rings true. The department of Infrastructure Management acknowledged that they were under enormous pressure to complete the tender on time. That resulted in the approval of an insufficiently vetted terms of reference and quickly putting an evaluation committee together. The committee was instantly met with challenges in terms of the interpretation and execution of certain critical provisions in the terms of reference, which led to arbitrary decision-making, infighting and ultimately resignations, whereby four (4) of the seven (7) committee members distanced themselves from the results of the tender. The Ombudsman concludes based on the findings that the tendering and awarding process was neither fair nor sufficiently transparent. The application of certain provisions in the terms of reference, particularly the requirement of the original business license based on the scope of the work tendered, and the pricing component



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disproportionally affected some contractors, while at the same time advantaged others. The end result is that the bidding process was mismanaged whereby some contractors were, more than six months after the start of the contracts, unable to live up to the requirements in the ToR/contract, resulting in poor execution of the works. The minister refused to provide critical information (signed individual evaluation sheets for the completeness of tender documents and signed internal findings reports). The Ombudsman was therefore unable to make a complete assessment and determination regarding the transparency of the tendering and awarding process, as such the Ombudsman concludes that the process was not sufficiently transparent. As contractors could not compare the final results of their respective bids with their competitors, due to the ministries refusal to provide an evaluation report when queried, the Ombudsman therefore concludes that, based on fundamental procurement principles, the procedures and policies followed by the evaluation committee were also not sufficiently transparent.

Based on the investigation, the Ombudsman has identified bottlenecks and challenges in the preparation of the Terms of Reference, evaluation, and selection as well as the post awarding phase of the procurement process.

Lack of a comprehensive Tender Procurement policy

There is no comprehensive Tender Procurement policy. The Ministry of VROMI has recently published a Tender Procurement Policy. This newly established policy can only be considered as a modest begin and does not fulfill the obligation of government pursuant to article 47, paragraph 6 of the National accountability ordinance, which requires government to establish further rules regarding the way in which a tender is organized and executed by national decree, containing general measures.

Terms of Reference poorly prepared/late start of preparations for tendering

The terms of reference had many deficiencies. Many topics were not properly defined or were open to multiple interpretations. As an important document upon which the bidders were to make and prepare extensive and clear bids, the terms of reference itself lacked details. Some items lacked (clear) definitions. Other critical items, for example, the required documentation also lacked clear explanation leaving too much space for subjective interpretation. Despite having been vetted with the ministry, legal, and the Council of Ministers, the Terms of reference contained much area for improvement. This was largely acknowledged within the evaluation committee and the management of the ministry. Time constraints was also mentioned as a contributing factor to the discrepancies.



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Some of the principal shortcomings in the terms of reference were:

The requirement of having a business license based on the scope of work tendered;

Although the intention and objective of the requirement was positive, the way how it was applied and consequently disproportionately affected some contractors, was arbitrary and unreasonable. For starters, the new requirement was not communicated properly.

The requirement of having a bank statement indicating the financial capacity of the company;

The investigation has revealed that what was recognized and accepted as ‘a bank statement indicating the financial capacity of the company’ was not consistent. Although many companies submitted a bank letter describing their relationship with their bank, including the existence and extent of credit facilities, others submitted a bank statement simply listing their current account balances, which is only a snapshot of a company’s finances at a specific point in time.

The composition of the Evaluation Committee;

The integrity of the committee members is paramount. The minister established in the new policy that the committee should not all be from the same department. The fact that cabinet members were part of the evaluation committee was identified as an impediment by a majority of the department during the hearings conducted by the Ombudsman. This should be reconsidered moving forward.

The chosen method for the scoring of Pricing;

The chosen method for the scoring of pricing is inadequate and should be thoroughly reviewed. The investigation has revealed that only 20% of qualified contractors received points for pricing. This is alarming. Considering that the determination of the government price is in itself a challenge, due to the lack of data and alleged expertise, this subject matter must be separately tackled as well.

Serious consideration should be given to limiting the number of parcels per contractor or having a real verification of the capacity of the company to execute the works. It is currently being proven that a contractor handling more than two (2) parcels is quite a challenge. The participation of sole proprietorships in the collection of solid waste tenders, considering the risk that this poses for government, should be reconsidered as well. The present garbage contracts range in value from NAf. 4 million to 10 million for the five (5) year term. Exposing government to such considerable risk cannot be considered good governance.

Terms of Reference not being followed /enforced

Certain provisions of the terms of reference are being ignored by contractors and not being enforced by the department, partly due to understaffing, these include but are not limited to the ten (10) year maximum age of trucks, the requirement of having two (2) trucks per parcel and the prohibition of subcontracting. A perhaps less significant requirement that is being



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flouted, but equally important, is the obligation of the contractor to provide satisfactory uniforms, including a hard hat, safety glasses, safety vests and safety shoes, to the personnel.

Lack of a comprehensive waste management plan

A comprehensive vision for waste management does not exist. The management of waste is primarily the responsibility of government which regulate and manage waste in accordance with their respective legislation, policies, and programs. Much of this responsibility is presently passed on to the contractor with little to no responsibility for the community. Oftentimes (some) members of the public refuse to follow established, common sense requirements much to the chagrin of the contractors. For example, concrete rubble, LPG (cooking gas) cylinders and hazardous chemicals are callously placed amongst household waste for collection. These frequent infractions of the public usually go unpunished; however, inspectors immediately target the haulers with warnings and penalties. This creates an imbalance in duties and hinders realization of an effective waste management plan.

Transparency of the post awarding process

There is limited transparency in the post awarding process, particularly for the unsuccessful contractors. Although all contractors received an official overview of the awarded points per parcel, further clarification on the awarded points was difficult to receive and requests to receive an evaluation report were denied, which is in contravention with fundamental procurement principles.

Based on the findings in the report, the Ombudsman made the following recommendations:

1. A comprehensive tender procurement policy should be created /enactment of national decree containing general measures;
2. The terms of reference should be timely and accurately prepared;
3. The staff of the department of infrastructure must be increased and provided with training;
4. A public tender evaluation report must be introduced;
5. A comprehensive waste management plan must be created.

The [final report](#) is available via download on the Ombudsman's website www.ombudsmansxm.com under the 'reports and articles' tab. To complement the report a short animation [video](#) has been produced. The film can be viewed on the Ombudsman's Facebook page (Bureau Ombudsman Sint Maarten) and via the Bureau's YouTube channel (Ombudsman Bureau Sint Maarten).

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