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Whether or not the re-roofing of the Tonga Fire & Emergency Service Central Office was conducted in accordance with government procurement and building processes?

Legislation	<i>Ombudsman Act; Building Control Act ; Procurement Regulations</i>
Agency	Tonga Fire & Emergency Services
Ombudsman	'Aisea H. Taumoepeau, SC
Case Number(s)	OMB18/71
Date	April 2019

SUMMARY

The complainant is an employee of Tonga Fire & Emergency Services ("TFES"). He has complained about one of his superiors and his decision and work involved in the re-roofing works ("the works") of the Central Station building at Longolongo in 2016. It is alleged the works was not done in accordance with the proper procurement processes that all Government ministries are subject to. Further the materials purchased was not all used for the re-roofing.

Building engineers from the Ministry of Infrastructure ("MOI") inspected the works on or about 31 May 2017 and discovered that a building permit had not been granted for the works to be carried out. As a result of the inspection carried out by MOI it was clear that -

- i) MOI could not determine whether all the materials purchased was used for the re-roofing;
- ii) MOI was not invited to the procurement process, therefore could not vet the design plans; and
- iii) MOI also found irregularities in the procurement documents against the contractor's Bill of Quantities;
- iv) MOI had recommended a review of the procurement process for an explanation as to why the work was awarded to the contractor TFES had engaged.

The Ombudsman upon its investigation concluded that the matter be referred to MOI to deal with TFES, in light of its findings and recommendations of its inspection report carried out in May 2017.

BACKGROUND

1. The complainant is an employee of TFES who decided to inquire about the re-roofing of TFES building after he heard rumours that it was not done in accordance with the proper Government processes.
2. He complained first to Tonga Audit Office ("Audit") in November of 2017 but Audit could not identify any information relevant to his complaint during its normal audit of TFES in 2015-2016.
3. He complained to the Ombudsman in July 2018.
4. In October 2018 the complainant provided new information - a savingram from MOI of its findings after an inspection of the works in May 2017. The entirety of the information collected was referred to TFES, MOI and the Ministry of Finance & National Planning ("MFNP").

INVESTIGATION

5. The Ombudsman commenced an investigation to determine whether or not the works were done according to approved procurement processes.
6. During the investigation the Ombudsman considered the findings made by MOI building engineers compelling - that the works were done without a building permit. TFES was unable to explain some of the inconsistencies identified by MOI in the approved procurement documents and the Bill of Quantities provided by the contractor.
7. The Ombudsman accepted MOI's findings that they could not confirm even after its inspection whether the 78 purlins for the works had in fact been replaced or not. Further, two other contractors had bid lower than the contractor who won the bid to carry out the works. MOI strongly advised a review of the procurement process as to why the winning contractor won the bid. The working documents appeared to be conflicting in terms of proper procurement processes.
8. The Ministry confirmed that the roofing works at TFES completed in 2016 were carried out by the contractor without a building permit. This is in violation of the Building Control Act and should be dealt with accordingly.

Section 10 of **Building Control Act**, states that -

“every person intending to erect a building must first obtain a building permit from the Building Controller).

Section 3 of the **Building Control Act**, states that

“erecting a building includes reconditioning of a building, making of any alteration, adding to, or repairing a building. It excludes non-structural maintenance work.

OUTCOME

9. The Ombudsman has informed the TFES that the matter is now referred to the MOI for necessary actions, in accordance with its findings and recommendations of its inspection of the re-roofing work of May 2017.