

**IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Commercial Division
Claim No. 2023/COM/com/00065**

BETWEEN:

**RONNIE FERGUSON
(d/b/a Sunrise Communications)**

Claimant

AND

THE BAHAMAS POST OFFICE

First Defendant

AND

THE POSTMASTER GENERAL

Second Defendant

AND

**GAYNELL ROLLE
(in her capacity as Acting Permanent Secretary, Ministry of Transport & Energy)**

Third Defendant

AND

THE ATTORNEY GENERAL

Fourth Defendant

Before: The Honourable Mr. Justice Leif Farquharson

Appearances: Ashley Williams for the Claimant
Kenria Smith for the Defendants

Hearing date: 30 September 2025, 3 October 2025

Requested Disclosure

1. The request before me arose from a Notice of Application filed on 30 June 2025. The Claimant was originally seeking an order for leave to issue “*subpoenas*” directed to various officials involved in the procurement processes of the Government and of other public bodies.

2. When the matter came before me on 30 September 2025, it became evident that a major motivating factor on the part of the Claimant in making the application was to obtain access to certain documents which he maintained the Defendants had failed to provide disclosure of (see Affidavit of Ronnie Ferguson filed on 1 July 2025). This view was reinforced by the fact that the Defendants' List of Documents filed on 16 May 2025 only identified two (2) singular documents and provided none of the documents surrounding the Claimant's bid which forms the subject-matter of the current action. Moreover, some of the documents being sought appeared to be records required to be kept by statute – and which, therefore, presumably ought to have existed.
3. The Court accordingly invited counsel to revisit disclosure amongst themselves, in the hope that any outstanding issues could be resolved or at least narrowed down without judicial intervention. Failing this, the Court indicated that it proposed to treat the Claimant's application as an application for specific disclosure. This course, in my view, was permissible under the *Supreme Court Civil Procedure Rules, 2022* ("**CPR**"), Rule 28.5 of which provides that "*An order for specific disclosure may be made on or without an application.*" The overriding objective also aims to promote the just disposition of cases, which necessarily entails seeking to ensure that proper disclosure is given. In this regard, it should also be noted that the duty of disclosure is continuous and endures until the proceedings are concluded (see CPR 28.12(1)). No objection to the proposed course was raised by either side.
4. At the resumed hearing on 3 October 2025, counsel for the Defendants took no objection to the provision of several documents identified in the Notice of Application and/or referred to in Section 86(2) of the *Public Procurement Act, 2021* (repealed) (the "**2021 Act**" or the "**Act**"), which was apparently in force at the time of a number of the material events referred to in the Claimant's Statement of Claim. That section, which is replicated in Section 74 of the *Public Procurement Act, 2023*, is headed "*Procurement and contract management record*" and imposed an obligation upon a "*procuring entity*" to maintain numerous documents comprising the "*procurement record*" and "*procurement contract management record*" for a period of seven (7) years. Counsel for the Claimant also abandoned his request for certain other documents.

5. As a result of the various concessions made by both sides, there remained only two documents or classes of document in respect of which disclosure was disputed, namely:
 - (i) “(j) any evaluation report prepared, including any report prepared in respect of applications for pre-qualification”, and
 - (ii) “(p) any decision to suspend or debar a bidder and the reason for the decision”.
(See Section 86(2) of the Act)
6. Mr. Williams also made it clear that he was seeking these documents solely in relation to his client and the procurement contract that his client had bid on, not with regard to third-party bids or bidders.

Analysis and Disposition

7. Disclosure and inspection are, of course, addressed in CPR Part 28. The general test to be applied in determining whether a party is duty-bound to provide disclosure of a particular document is based upon the concept of “*direct relevance*”. In this regard, CPR 28.4 provides that:

“If a party is required by any direction of the Court to give standard disclosure that party must disclose all documents which are directly relevant to the matters in question in the proceedings.” [Emphasis supplied]

8. CPR 28.1(4), in turn, states:

“For the purposes of this part a document is “directly relevant” if — (a) the party with control of the document intends to rely on it; (b) it tends to adversely affect that party’s case; or (c) it tends to support another party’s case.” [Emphasis supplied]

The expansive test for discoverability derived from the ***Peruvian Guano*** case is also expressly disavowed in sub-rule 28.1. In the result, the test under the CPR regime is generally acknowledged to be narrower and more issue-oriented.

9. The CPR provides no definitions of the expressions “*tends to adversely affect*” or “*tends to support*” appearing in sub-rule 28.1(4). In elaborating on the practical operation of the rule, the authors of ***‘The Caribbean Civil Court Practice’ (3rd ed.) 2024***, p.359, suggest that in determining the issues in a party’s case, the statement of claim/case is an essential reference point. They further state that parties probably do not need to give disclosure of documents relating to non-material allegations in pleadings, i.e. those which even if substantiated would not affect the result.

10. Citing from the judgment of Baptiste J. in the Eastern Caribbean case of ***Harris v. Douglas*** **SKBHCVAP2019/0026**, the learned authors further elaborate:

"For the purpose of disclosure, the relevance of the documents is analysed by reference to the pleadings and the factual issues that would arise for decision at the trial. The critical question is whether the documents are directly relevant to those issues, and if they are, the court is enjoined to consider whether the order is necessary to dispose of the case fairly or to save costs."

11. Importantly, a party's duty is to provide such "directly relevant" documents which are or have been in the "control" of that party. The concept of "control" is defined thus in CPR 28.2(2):

"For this purpose a party has or has had control of a document if — (a) it is or was in the physical possession of the party; (b) the party has or has had a right to inspect or take copies of it; or (c) the party has or has had a right to possession of it."

12. Having addressed the broad parameters of the obligation to provide disclosure, I now turn to considering the request in the current case. In this regard, I propose to begin with the request for disclosure of documents required to be kept pursuant to Section 86(2)(p) of the Act.

Section 86(2)(p)

13. As indicated, the Claimant seeks disclosure of "(p) any decision to suspend or debar a bidder and the reason for the decision", as it relates to him. This sub-section cannot in my view be looked at in isolation. The suspension of a bidder is addressed in Section 73 of the 2021 Act. The debarment of a bidder is addressed in Section 74 of the Act. I would also note that the terms "debarment", "debar" and "suspension" are all defined expressions for the purposes of Part VI of the Act (see Section 72).
14. The claim in the present case is not a model of clarity and in certain respects it appears to be lacking in particularity. Having reviewed it carefully, I see no reference to the Claimant being either "suspended" or "debarred" as a bidder within the meaning of the Act. And there is certainly no reference to Section 73 or 74 of the Act in the Statement of Claim. Equally, the Defence makes no reference to the Claimant being "suspended" or "debarred" as a bidder and makes no reference to Section 73 or 74.

15. In the circumstances, I see no basis for ordering disclosure of any documents required to be kept pursuant to Section 86(2)(p) of the Act.

Section 86(2)(j)

16. To reiterate, the Claimant seeks the disclosure of “(j) any evaluation report prepared, including any report prepared in respect of applications for pre-qualification”. Again, this sub-section cannot in my view be looked at in isolation. The examination and evaluation of bids by a procurement or tender committee is addressed in Section 53 of the Act. According to Section 53(4), “*Bids not excluded from consideration pursuant to subsection (2) shall be evaluated in accordance with the criteria and methodology stated in the bidding documents*”. Pre-qualification is addressed in Sections 41 and 42 of the Act.
17. The Claimant in his Statement of Claim alleges, among other things, that he submitted a bid for a contract to provide services for the digitization of The Bahamas Post Office; that his bid was accepted, with notice of the award of the contract being published in accordance with the provisions of the 2021 Act; that there was no cancellation of the procurement; and that the procuring entity nonetheless failed to proceed in issuing a formal contract to him or to take other necessary action to progress the matter. Moreover, he alleges that he complied with the scope of work submitted in the “*bonfire portal*” and did the work required to supply the procuring entity with the service outlined in the bid.
18. The Defence in some respects appears to be internally inconsistent. Nevertheless, the Defendants admit that a public notice was issued confirming that the Claimant had been awarded a contract as alleged; however, they aver that this was done in error. They deny paragraphs 1, 3 and 6-13 of the Statement of Claim and deny that the Claimant complied with the scope of works submitted in the “*bonfire portal*”. They deny that the Claimant successfully secured the bid in accordance with the protocols outlined in the Act. They deny that he did the necessary work to supply the procuring entity with the service outlined in the bid. They deny that the procuring entity failed to perform the requisite steps outlined in the 2021 Act for a formal contract to be issued to the Claimant. And, they deny any breach of the provisions of the 2021 Act.
19. Based on the pleadings of both sides, any evaluation report prepared with respect to the Claimant's bid would appear to be directly relevant to matters in question in the

proceedings. I say this because, if such an evaluation report exists, it would likely either tend to adversely affect the Defendants' case or tend to support the Claimant's case. Specifically, it would assist in determination of the issue as to whether the Claimant's bid was in fact approved as he alleges or whether, as the Defendants say, the public notification of the material contract being awarded to him was issued in error. Such an evaluation report is also relevant to the issue of the Defendants' compliance with the Act.

20. I am mindful that Section 81 of the Act imposed a general obligation of confidentiality upon a procuring entity, prohibiting disclosure of information relating to (among others) the evaluation of bids. This provision was drawn to the attention of counsel by the Court. This section, which has been replicated in the *Public Procurement Act, 2023*, appears primarily intended to ensure integrity in the public procurement process as opposed to prohibiting disclosure of documents to an opposing party in litigation (who in this case was actually a bidder) in fulfillment of court-mandated discovery obligations so that there can be a fair trial of an action. In this regard, it also bears pointing out that the Act itself seemingly contemplates a bidder being entitled to certain information with respect to the processing and disposition of his bid (see e.g. Section 56). Moreover, the Act contains various references to the promotion of transparency in public procurement as one of its objects or guiding principles. This is carried over in the *Public Procurement Act, 2023*. In any event, there was no assertion of privilege on grounds of public interest or anything of the sort, and the merits of the request were argued exclusively on the basis of relevance considerations.
21. In the circumstances, and having also considered the criteria in CPR 28.6, I am prepared to order disclosure of the evaluation report required to be kept pursuant to Section 86(2)(j) of the Act. Such disclosure is only to relate to the Claimant and his bid. In other words, I am not requiring disclosure of any information in relation to any third-party bids or bidders for the material contract. If the evaluation report prepared in relation to the Claimant's bid identifies any third-party bidders, the information in regard to such third parties may be redacted accordingly. The issue of "*pre-qualification*" does not feature in the parties' pleadings, either directly or indirectly. Accordingly, I make no order for disclosure of any report prepared in respect of applications for pre-qualification referred to in Section 86(2)(j).

22. I will also include a liberty to apply provision in the Order in the event that the Defendants have need to approach the Court for further direction.
23. Insofar as neither side was completely successful in relation to the matters argued before me, I order that each side bears their own costs.

L. Farquharson

Farquharson J.

15 October 2025