

INDEPENDENT REVIEW PANEL

In the matter of:

Bolah Jeetun Co. Ltd

(Applicant)

v/s

**Ministry of Social Security, National Solidarity & Senior Citizen
Welfare & Reform Institutions**

(Respondent)

(Cause No. 23/08/IRP)

Decision

A. Background

1. The Ministry of Social Security, National Solidarity and Senior Citizen Welfare & Reform Institutions invited bids, through open advertised bidding, for the construction of a “Recreational Centre for Senior Citizens at Belle Mare” (contract ID No.: MSST 01/2008-09). The deadline for the submission of bids was 23 September 2008 at 13.30 hrs. Bids were opened in public on the same day at 14.00 hrs.
2. Addendum no. 1 was issued on 18 September 2008 and was provided to the five potential bidders, that had purchased the bidding documents.

3. Three firms submitted their bids by the closing date of 23 September 2008. The Central procurement Board informed the Public Body on 06 November 2008 that the proposed selected bidder was Tayelamay & Sons Enterprise Ltd. The contract sum was for Rs107,582,349.99, inclusive of a contingency sum of Rs3M, a provisional sum of Rs1M for modification works to kitchen and 15% VAT.
4. The Public Body notified the proposed selected bidder accordingly on 07 November 2008 and also informed the two unsuccessful bidders on the same day. Bolah Jeetun Co. Ltd dissatisfied with the decision of the Public Body challenged it on 10 November 2008. The Public Body replied to the challenge on 17 November 2008 and gave the bidder the reasons, provided by the Central Procurement Board, as to why its bid had not been retained. The bidder still not satisfied with the reasons given submitted an application for review to the Independent Review Panel on 18 November 2008.
5. The Public Body was informed on 19 November 2008 that the procurement proceedings were suspended until the appeal was heard and determined by the Panel. On 25 November 2008, the Public Body and the bidder were informed that a hearing was fixed for 01 December 2008 at 13.00 hrs. Two additional hearings were subsequently held on 03 December 2008 and 05 December 2008.

B. Grounds for Review

The grounds for review submitted by Bolah Jeetun Co. Ltd are as follows:

“We disagree with the assessment of the Bid Evaluation Committee and we suspect that the relevant qualifying criteria i.e. section 5.5(a) and 5.5(e) have been wrongly interpreted.”

C. The Evaluation Process

The Central Procurement Board appointed a Bid Evaluation Committee to carry out an evaluation of the three bids received. The Bid Evaluation Committee submitted its report on 23 October 2008. Two of the bidders, Bolah Jeetun Co. Ltd and Keep Clean Ltd, were considered not to be substantially responsive as they did not satisfy the conditions specified in Clause 5.5(a) of the ITB. The Bid Evaluation Committee, in

addition, had some doubts about the testimonial/financial standing submitted by the two bidders. Only bid from Tayelamay & Sons Enterprise Ltd satisfied the mandatory requirements and qualified for technical appraisal. The Bid Evaluation Committee after evaluation considered that the bid submitted by Tayelamay & Sons Enterprise Ltd, was fully responsive to the tender requirements. It was, thus, recommended for an award for a contract sum of Rs106,976,300 (VAT inclusive). The Central Procurement Board approved the recommendations for a corrected figure of Rs107,582,349.99. To assess compliance with Clause 5.5(a) of the ITB, the Bid Evaluation Committee used the value of the turnover provided in the audited accounts submitted by the bidders.

D. Submission and Findings

1. ITB 5.3(f) as amended in the BDS read as follows:

“reports on the financial standing of the bidder, such as profit and loss statements and audited accounts for the past three years for the bidders who have been in the construction business for three years or more and for the number of years of the business of the company for those who have been in existence for less than three years. To be eligible for an award, bidders should have earned profits for at least one year.

2. To qualify for award of the contract ITB 5.5(a) requires bidders to meet the following criteria: “an average annual financial amount of construction work over the period in the BDS of at least the multiple indicated in the BDS”. In the BDS the multiple is defined as “one x 0.35 Bid Amount” and the period is three years.
3. Paragraphs 5.3(f) and 5.5(a) must be read in conjunction otherwise it will not be possible to assess a bidder, that has been in the construction business for less than three years. Thus, the period of three years mentioned at ITB 5.5(a) should in fact be the past three years. At the hearing both the Public Body and the aggrieved bidder agreed that this was a correct interpretation of the ITB Clauses.
4. The Public Body informed the bidder on 17 November 2008 that based on its audited accounts submitted for the financial years 2004-2005, 2005-2006 and 2006-2007 respectively, the average annual financial amount (AAFA) of construction works over the last three years of at least the multiple of “one x 0.35 bid amount” has

not been met. The AAFA for the bidder amounted to Rs32,694,988.33 instead of the required Rs37,312,280.51.

5. Counsel for the Applicant submitted that ITB 5.5(a) refers to AAFA and not to turnover and that the Central Procurement Board was wrong to consider the turnover of the bidder. At paragraph 1.2 of Section 2 of the bidding documents (Qualification Information) the bidder provides the following information: 1.2 Annual amounts of construction works performed during the last five years in Mauritius Rupees:

2002 – 2003	Rs30M
2003 – 2004	Rs27M
2004 – 2005	Rs120M
2005 – 2006	Rs118M
2006 – 2007	Rs92M
2007 – 2008	Rs20M

However, no documentary evidence is submitted to support the figures listed above.

6. In a letter to the Independent review Panel dated 17 November 2008 the bidder provides the following information:

Annual financial amount of construction works for the year 2005:
Rs115,715,633

Annual financial amount of construction works for the year 2006:
Rs114,000,000

Annual financial amount of construction works for the year 2007:
Rs108,000,000

A list of projects completed with the corresponding contract value is also provided. This information was submitted not only belatedly but still with no supporting documentary evidence to support the details provided.

7. The bidder submitted its audited accounts for the years ending 30 June 2004, 2005, 2006 and 2007 respectively. He also submitted a draft balance sheet for the year ending 30 June 2008. From the documents the turnover for the last three years are as follows:

Year ending 30 June 2005	Rs33,202,707
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Year ending 30 June 2006	Rs28,847,630
Year ending 30 June 2005	Rs36,034,628

The Panel understands turnover to mean construction works that have been completed and invoiced. If it is so, for corresponding periods, the figures quoted above should tally with those given by the bidder at paragraph 1.2, Section 2 of the bidding documents. On the contrary, the two sets of figures show very large differences.

8. Counsel for the bidder agreed that the latter has not provided any documentary evidence to support its statements about its annual financial amounts of construction work. This represented a major shortcoming in the bid submitted and in view of the large discrepancies between figures quoted, the Bid Evaluation Committee had no choice but to rely on the figures for turnovers provided in the audited accounts. The Panel concurs with the Central Procurement Board that the bidder has not satisfied the mandatory condition specified at ITB 5.5(a).

9. ITB 5.5(e) specifies that the minimum amount of liquid assets and/or credit facilities net of other contractual commitments of the successful bidder shall be Rs10M. The bidder submitted a testimonial from the Mauritius Commercial Bank Ltd stating that he “has at the present time, the financial means and resources for the proper execution of the said contract up to a maximum amount of MUR 10,000,000”. The Panel considers that this testimonial is acceptable and satisfies the conditions specified at ITB 5.5(e)

The Panel considers that there is no merit in the case as the bidder, Bolah Jeetun Co. Ltd, has not demonstrated that it has satisfied the mandatory condition specified at ITB 5.5(a). The application for review is therefore set aside.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs E. Hanoomanjee)
Member

Dated this 19th of December 2008