

## INDEPENDENT REVIEW PANEL

**In the matter of:**

**O & M St. Martin IBL DGT**

**(Applicant)**

**v/s**

**Wastewater Management Authority**

**(Respondent)**

**(Cause No. 07/08/IRP)**

### **Decision**

#### **A. Background and Evaluation Process**

On 13 November 2007, The Wastewater Management Authority through the local press and our diplomatic missions invited tenders (as it was then referred to) from experienced local and international firms for the operation and maintenance of St. Martin Wastewater Treatment Plant – contract WW 169 S for seven years. The closing date initially scheduled to 31 January 2008 was extended to 14 February 2008. On that day, the Central Procurement Board held a public opening of tenders which revealed that seven tenders were received and their respective technical offers were opened. They are as follows:

- (i) *Berlinwasser International AG*
- (ii) *Beijing Construction Engineering Group Co. Ltd (BCEG)*
- (iii) *EDCC Co. Ltd/Nuchem Weir India Ltd (Joint Venture)*
- (iv) *Severn Trent Services International*
- (v) *O&M St. Martin IBL/Degremont (Joint Venture)*
- (vi) *Passvant Roediger/Sotravic Ltee (Joint Venture)*
- (vii) *China International Water & Electric Corp (CWE)*

A Tender Evaluation Committee which was set up by the Central Procurement Board started evaluation on 26 March 2008. All of the tenders were found to be responsive and consequently qualified for evaluation under the following criteria:

- |  |          |
|--|----------|
| (i) Tenderer's experience on wastewater plant: | 40 marks |
| (ii) Method statement:                         | 20 marks |
| (iii) Staffing:                                | 40 marks |

As a result of that exercise, it was found that the following tenderers have attained the overall threshold level of 80% and therefore are qualified for the opening of financial offers:

- *Berlinwasser International AG*
- *Severn Trent Services International*
- *O&M St. Martin IBL/Degremont (Joint Venture)*
- *Passvant Roediger/Sotravic Ltee (Joint Venture)*

On 26 April 2008, the Tender Evaluation Committee proceeded to the financial evaluation exercise in respect of the four qualified bidders. The evaluation exercise reveals that the lowest responsive bidder is Berlinwasser International AG (Rs463,579,247.06) followed by O&M St. Martin IBL/Degremont (Joint Venture) (Rs591,543,734.46). The Evaluation Committee noted that:

- (i) *The difference between the two lowest bidders is of the order of Rs128 million.*
- (ii) *It is expected that the Wastewater Management Authority would take up matters related to practical arrangements with the lowest bidder prior to making an award. This may have a slight influence on the contract price.*
- (iii) *However, the contract award sum should not exceed Rs463,579,247.06.*
- (iv) *It is to be noted that, in a letter dated 31 July 2007, Wastewater Management Authority had estimated the works at Rs400 m for a five year contract. A pro-rated value of works for a seven year contract can be taken at Rs560 m.*

In the light of the above, it recommended that contract WW 169 S operation and maintenance of St. Martin be awarded to Berlinwasser International AG for a sum not exceeding Rs463,579,247.06 inclusive of 15% VAT. On 05 June 2008, the Applicant made a challenge against the above decision to the Chief Executive Officer of the Wastewater Management Authority. The latter informed the Applicant by a letter

dated 10 June 2008 that a letter of intent was sent to Berlinwasser International AG following the decision of the Central Procurement Board to the effect that the contract should be awarded to Berlinwasser International AG.

Subsequently on 17 June 2008, the Applicant made an application for review to the Independent Review Panel in accordance with Section 45 of the Public Procurement Act.

### **The suspension waived**

Pursuant to Section 45(6) of the Public Procurement Act, upon receipt on 17 June 2008 of the application for review by the Applicant, the procurement proceedings were suspended until the appeal would have been heard and determined. However on 01 July 2008, the General Manager of the Wastewater Management Authority informed the Panel that urgent public interest considerations require the procurement proceedings for contract WW169 S to proceed on the following grounds:

- “(i) The contract of the present operator came to an end on 09 March 2008 and had to be extended on a month to month basis. As at to date, the prescribed limit of Rs25M has been exceeded.*
- “(ii) The monthly rate of the selected bidder, Berlinwasser International, is lower than the rate being paid to the present operator.”*

On 02 July 2008, in accordance with Section 45(4)(5)(6) and (7) of the Public Procurement Act, the Independent Review Panel ordered that the procurement proceedings be no longer suspended.

### **B. Grounds for Review**

The grounds for review are as follows:

#### ***“The technical responsiveness of Berlinwasser International Ag in relation to the price quoted***

*O&M St. Martin IBL DGT is a JV of IBL & Degremont, companies which form part of the consortium that built the St. Martin Wastewater Treatment Plant and operated and maintained the same over the past 4 years. We have developed considerable expertise regarding the sourcing of resources in the local environment for the execution of such a contract. It is our contention*

*that it is practically impossible for Berlinwasser International AG to execute the contract at such a low price while being fully technically responsive and compliant with all the specifications stipulated in the tender.*

*We appeal to the Review Panel to recommend a re-evaluation of the bid of Berlinwasser International AG (as provided under Section 45(10)(c), with respect to our bid, with special reference to the tender requirements as listed below and we request a hearing to elaborate further, Clause 2.20.2 stipulates that “if a tender is not substantially responsive, it will be rejected, and may not subsequently be made responsive by correction or withdrawal of the non-conforming deviation or reservation.*

**A. “Eligibility and Qualification Requirements” as per Clause 2.3 of the tender documents**

*According Clause 2.3.2 (b) a compliant bidder should have in their employment,*

- Qualified, competent and experienced staff including Wastewater Process Specialists, Engineers....., and of being able to react to any problem instantaneously*
- Workers, skilled and semi-skilled, who are already trained or could be easily trained within a short time in the operation and routine maintenance of all electro-mechanical units, ..... cleaning and replacement of spares and their operations.*

*Has Berlinwasser International AG provided evidence of compliance with the above requirements? Do they have trained workers readily available for the execution of Contract WW169S?*

*It has been noted that according to Addendum 3, it is not a requirement for a tenderer to submit at the bid stage, the names and CVs of all the skilled and non-skilled personnel listed in Clause 7.2.2 (except for the key personnel). However, to satisfy Clause 2.3.2 (b), the tenderer should demonstrate that they already have in their employment trained and skilled workers as described. As Berlinwasser International AG is not operating in Mauritius, it is legitimate to query whether they have satisfied the requirements of this clause.*

*According to Clause 2.3.2 (c), the tender is open to firms with good managerial capacity, sound financial situation, stringent Health and Safety practices and a well set-up repair workshop, or alternatively show proof(s) of workshop facilities.*

*Has Berlinwasser International AG provided evidence of compliance with all of the above requirements?*

*According to Clause 2.3.3, “tenderers shall give in their tender a written description of their experience ..... together with certificate(s) of satisfactory performance from past/present clients?*

*We hereby annex copies of extract of articles which appear on the internet and which are self-explanatory.*

*According to Clause 2.3.5, “it is to the advantage of international firms to team up with suitable local firms having adequate experience in similar works for undertaking the services under the contract”.*

*Berlinwasser International AG has not teamed up with any local firm while the O&M St. Martin IBL DGT is a joint venture between an international firm Degremont and an experienced Mauritian company, IBL.*

**B. Envelope No. 1 contents**

*As per Clause 2.13.1(I), info must be supplied regarding details of any services proposed to be subcontracted together with names and experience of the sub-contractors proposed.*

*Has Berlinwasser International AG supplied details about services to be subcontracted and the names and experience of their proposed subcontractors? Do their subcontractors possess a job contractor permit?*

**C. Documents comprising a fully responsive tender as listed in Clause 2.17**

*According to Clause 2.17.1 (iv), the tenderer shall submit details of his experience to show compliance with the requirements of Clause 2.3 and must have operated 2 wastewater treatment plants comparable to St. Martin in the past 10 years.*

*Has Berlinwasser International AG provided evidence with certificates of satisfactory performance from past/present clients?*

*According to Clause 2.17.2 (d), “a valid job contractors permit from the Ministry of Labour and Industrial Relations (Mauritius) for such types of Works and Services” is required.*

*Has Berlinwasser International AG submitted a valid job contractors permit?*

*According to Clause 2.17.2 (e), “details of the contractors workshop facilities, a list of equipment installed therein including details of skilled workers, etc” are required.*

*Has Berlinwasser International AG provided fulfilled such requirements in its tender documents? Are the resources proposed of a satisfactory quality level to execute such a contract?*

*According to Clause 2.17.2 (h), a list of key personnel to be deployed must be supplied. Key staff must fill a statement of availability of exclusivity in the format supplied.*

*Have all the key staffs proposed by Berlinwasser International AG provided the statement of exclusivity and availability as per the Clause 2.13.1 (f) for a period covering the full duration of the contract?*

*According to Clause 2.17.2 (i), a completed and signed covenant of integrity must be provided by each tenderer.*

*Has it been supplied by Berlinwasser International AG?*

**D. Detailed evaluation of tenders, as per Clause 2.23**

*According to Clause 2.23.1 (c), the technical merits are evaluated in accordance with three categories of criteria mentioned below.*

*1. Tenderers experience on wastewater treatment plants.*

*Has Berlinwasser International AG provided evidence of experience in UV treatment, as this is a relatively new technology?*

*2. Method Statement*

*Has the method statement been evaluated by knowledgeable assessors in the field of wastewater treatment?*

3. Staffing

*Are the qualifications and experience of the key staffs proposed in full conformity with requirements specified in Clause 7.2.5, as elaborated below?*

*Ref 7.2.5.1 Contract Manager/Plant Manager*

*Ref 7.2.5.2 General Works Manager/Process Engineer*

*Ref 7.2.5.5 Laboratory Head*

*Do the staffs proposed by Berlinwasser International AG for the above posts meet the specifications per Clauses 7.2.5.1, 7.2.5.2 and 7.2.5.5? We have operated the plant during the past four years, and are aware of the difficulties to identify Mauritian nationals corresponding to such profiles. In case expatriate staffs are proposed, are they available for the full duration of the contract period? No training of unqualified local candidates by expatriate staff is provided for these key positions.*

*Ref 7.2.5.3 Operations Superintendent*

*Ref 7.2.5.4 Maintenance head/M&E Engineer*

*Do the staffs proposed by Berlinwasser International AG for the above two posts meet the specifications per Clauses 7.2.5.3 and 7.2.5.4? In each case, are there provisions to employ an expatriate staff to train a suitable local candidate in case an unqualified Mauritian national has been proposed?*

### **C. Submissions and Findings**

The main contention of the Applicant relates to the experience and qualification of the personnel which a compliant bidder needs to have in its employment. An examination of this contention warrants an examination of the following:

- (a) The requirement and specifications contained in the tender documents
- (b) The proposals by the preferred bidder
- (c) The criteria used by the Evaluation Committee and the results of the Evaluation Committee
- (d) The reaction of the Public Body

**The requirements and specifications set out in the tender documents**

In the instruction to tenderers, (as it was then referred to), in section 2.3, it is stipulated that the tender is open to firms having in their employment,

*“Qualified, competent and experienced staff including Wastewater Process Specialist, Engineers, Technicians, Superintendents and Supervisors capable of maintaining in good operational conditions all components of the electro-mechanical units, and of being able to react to any problem instantaneously*

*Workers, skilled and semi-skilled, who are already trained or could be easily trained within a short time in the operation and routine maintenance of all electro-mechanical units, maintenance of instrumentation equipment and be able to do other related works, including repairs, general site maintenance, cleaning and replacement of spares and their operations.”*

In Section 2.13 in respect of submission of tenders, it is provided that the envelope No. 1 – technical and other details should contain all technical and administrative aspects of the tender including those at 2.13.1(f),

*“a list of key personnel to be employed on the contract, together with their C.V.’s, ID’s and recent passport sized photograph. These staff shall be fully devoted to the contract, except for the part time staff as specified. Key staff s listed at Sub-Clause 5.6.2 of Volume 2 of the Tender Document shall be required to fill a statement of exclusivity and availability in the format enclosed at Volume 1 – Section 3 of the Tender Document”.*

Section 5.6.2 of Volume I and Section 7 of Volume 7 of the Tender Documents refer to the key personnel and their qualifications and work experience which are required to meet the specifications of the contract.

Contract Manager/Plant Manager – preferably a Mauritian National. He should be a Graduate in Engineering with at least 10 years of experience in the managerial category in any industry of which at least 4-5 years should be related to wastewater treatment contract.

The Process Engineer should be a Graduate in Civil/Chemical Engineering with specialisation in wastewater treatment process and



plant functioning. He/She should have at least 10 years of working experience in similar type wastewater treatment plant. He should be preferably a Mauritian National. However, the contractor in case of unavailability of such person, can employ an expatriate staff for one year and can train a suitable local candidate.

The Operations Superintendent should have a Diploma with specialisation in wastewater treatment plant operation. He should have at least five years working experience in full scale biological wastewater treatment plants. He should preferably be a Mauritian National and in case such person is not available, the contractor can employ an expatriate staff for one year who can train a suitable local candidate.

The Maintenance Head Mechanical and Electrical Engineer should preferably be a Mauritian Graduate in Mechanical Engineering with at least 8 years of working experience of which at least 3 years should be in a water or wastewater treatment plant. He should preferably be a registered engineer with the Council of Registered Professional Engineers (Mauritius). In case a Mauritian is not available, the contractor can employ an expatriate staff for one year who can train a suitable local candidate.

The Laboratory Head should be preferably a Mauritian Citizen, Graduate in Chemistry or Biology Science or Environmental Science with 5 years of experience.

The Health Safety Officer should have at least a Diploma in Health and Safety with at least 5 years of working experience in industry. Experience in the wastewater sector will be an advantage.

It is significant to note that in Addendum 3, which refers to Addendum 2 dated 30 January 2008 which explained that at the tender stage, the names of personnel for shift operators and labour are not required, but will be required prior to the start of contract.

### **The proposals of the preferred bidder**

The Contract Manager is Andreas Otto a German National who is in employment with Berlinwasser since 1988. He is holder of a Diploma (MSc) in Engineering and is presently the General Manager of the Wastewater Treat Plant Qing Shan Hu in Nanchang which is a subsidiary company of Berlinwasser International AG, China. He will be available for one year only.

The Process Engineer is Alexander Mantyk, a German National who is holder of a Diploma in Engineering (MSc) in Water and Wastewater Treatment Plant/Process Engineering. He has been in employment with Berlinwasser since May 2000 and presently holds the post of Director in Charge of large scale projects. He works for Wastewater Treatment Plant in Nanchang, China since 2004. He will be available for one year only.

The Proposed Maintenance Head/M&E Engineer is Deepak Seetamonee, holder of a B-Tech (Hons) Mechanical Engineering, University of Mauritius. He is a Registered Professional Engineer at the Council of Registered Engineers of Mauritius. He has been working since 1993 and occupies the post of Corporate Engineer for the Appavou Group. In the statement of exclusivity and availability, there is no mention of the name of the tenderer for which he agreed to work.

The Operations Superintendent is Kevin Moonesamy, a Mauritian National holder of a Licence Professionnelle (En Gestion Des Ressources et Production D'Eau). Since 2005, he works at shift coordinator at St. Martin Wastewater Treatment Plant. Since he was graduated in 2004, and started working at St. Martin Wastewater Treatment Plant, we can safely conclude that he has three years experience instead of the five required in the specifications.

The Proposed Head of Laboratory is Varsah Eyasamy, a Mauritian National. She started working as Laboratory Assistant in 1992 at Central Water Authority and is now promoted to the post of Technical Officer of the Water Quantity Laboratory which she occupies since 2006.

The Health and Safety Officer (available up to end of contract) is a Mauritian National, holder of MSc of Public Health (Food and Drinking Water) University of Hertfordshire, UK. He has worked for several employers and occupies presently the post of Health and Safety Officer at Esko Group since 2005.

The proposed trainer for Electrical Engineering is Mr Eric Findlay, a British Citizen. He holds a BSc in Engineering, Victoria University of Manchester. Since 2007, he is self employed performing as Independent Consulting Engineer, after having served for several firms as Engineer and Principal Engineer during the last 40 years.

### **The Tender Evaluation Committee**

The Technical Evaluation report is dated 14 April 2008. As far as staffing is concerned the Technical Evaluation Committee observed that

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Berlinwasser has proposed German Professionals for the posts of Contract Manager and Process Engineer, respectively. The other four key personnel are Mauritian. The qualification and experience meet the expected level.

A summary of the marking reveals the following:

- (i) Tenderers experience on Wastewater Treatment Plant (40 marks)
- (ii) Method statement (20 marks)
- (iii) Staffing (40 marks)

<i>Criteria</i>		<i>1 – B Wasser</i>	<i>2 – Beijing</i>	<i>3 – Nuchem</i>	<i>4 – STWA</i>	<i>5 – IBL</i>	<i>6 – JV Sotravic</i>	<i>7 – China Intern</i>
<i>1</i>		39.8	24.5	26.5	40	40	38.4	30.5
<i>2</i>		17.8	17	12.6	16.8	17.3	17.6	15.6
<i>3</i>		31.3	27.3	26.5	34.3	26.6	30.2	30.8
<i>Total</i>	<i>100</i>	88.9	68.8	65.6	91.1	83.9	8602	76.9

The Tender Evaluation Committee analysed the financial offers of the four qualified bidders.

<i>Bidder</i>	<i>Original Tender Sum</i>	<i>Corrected Tender Sum</i>
<i>Berlinwasser International Ag</i>	463,579,247.06	463,579,247.06
<i>Severn Trent Services International</i>	843,723,449	843,723,449
<i>O&amp;M St. Martin IBL/Degremont (Joint Venture)</i>	591,543,734.46	591,543,734.46
<i>Passavant Roediger/Sotravic Ltée (Joint Venture)</i>	736,754,624.25	697,942,124.25

In respect of Berlinwasser, the Committee commented that:

*“They have proposed a staffing process whereby two German Professionals (The Contract Manager and Process Engineer) will be initially in Mauritius for around 6 months/1 year to manage the contract, recruit and train local counterparts, who will eventually take over their respective responsibilities. The other key staff are Mauritian and they have been proposed for the duration of the contract.*

*Being given that this bidder has submitted the lowest evaluated offer, it is expected that the Wastewater Management Authority will take up all the issues related to practical arrangements with the bidder before a contract award is made to them.”*

Finally, the Committee recommended that the contract WW 169 S operation and maintenance of St. Martin Wastewater Treatment Plant in a sum not exceed to Rs463,579,247.06

### **The Public Body**

In a letter dated 28 May 2008 the General Manager of the Wastewater Management Authority wrote to the selected bidder to the effect that the “Wastewater Management Authority intends to award you the contract for the Operation and Maintenance of St. Martin Wastewater Treatment Plant – Contract WW 169S, in the sum of **Mauritius Rupees Four hundred and sixty three million, five hundred and seventy nine thousand, two hundred and forty seven and cents six only (MUR 463,579,247.06), including 15% VAT**, in accordance with the terms and conditions of the bid.

*The award shall be subject to the following issues being resolved to the satisfaction of the Wastewater Management Authority and that all requirements and clarifications be submitted not later than Wednesday 03 June 2008:*

#### **(i) Plant Manager/Contract Manager**

*You have mentioned in your Method Statement that this key staff will be available for a period of six months only, from the start of the Contract and will train a local staff for replacing him, whereas in the Statement of Exclusivity & Availability, it is stated that this foreign staff will be in place for one year. Moreover, neither the name nor the CV of the intended local replacement has been submitted.*

*You are required to confirm the availability of this staff and the duration of his services. Furthermore, any local counterpart to be recruited and trained for eventually taking over the responsibility, shall satisfy the requirements spelt out at Clause 7.2 of the bidding documents.*

#### **(ii) General Works Manager/Process Engineer**

*You have also mentioned in your Method Statement that this key staff will be available for a period of one year only, at the start of the Contract and will train a local staff for replacing him. Furthermore, any local counterpart to be recruited and trained for eventually taking over the responsibility, shall satisfy the requirements spelt out at Clause 7.2 of the bidding documents.*

*Your attention is also drawn to the fact that, until such time that the WMA is satisfied with any proposed replacement for the abovementioned two key personnel, both the Contract Manager and the Process Engineer posted at the start of the contract, shall remain in post.*

**(iii) Maintenance Head/M & E Engineer**

*The proposed staff for this position has omitted to state the name of the company for which he is providing the statement of Exclusivity and Availability. You are required to confirm whether their services of this staff will be retained under the Contract.*

**(iv) Operation Superintendent**

*The working experience of the proposed staff for this position is below the minimum requirements. The bidding document stipulates that if such a person is not available, the Contractor can employ an expatriate staff for one year and can train a suitable candidate. However, in the method statement, it is stated that this staff will receive particular operational training by the Plant Manager will be in place for six months. On the basis of your Method Statement, it has been noted that the duration of the various training programmes proposed by you, adds up to a total of nine weeks only during the first year of the contract. The duration of training offered is inadequate. Consequently, you are required to inform this Authority as to the methodology, as well as the availability of the trainer(s) during the first year of services under the contract.*

**(v) Workshop Facilities**

*The offer mentions that the workshop facilities are located overseas. This needs to be clarified.*

**(vi) Technical back up and Training**

*In the Method Statement, no mention of the provisions of any technical back up from your Head office, has been made. This needs to be confirmed. You are also required to confirm that WMA*

*staff will be allowed to attend the training programme, as proposed in your Method Statement.*

**(vii) Transition Period**

*The availability of all key staff for the transition period of two weeks, prior to the start of services, has to be confirmed.*

**(viii) Subcontracted activities**

*You are required to confirm your subcontractors for the following services under the contract:*

- (i) Site security*
- (ii) Laboratory testing facilities*
- (iii) Green area maintenance*
- (iv) Sludge transport*

**(ix) Operational Personnel**

*You are required to submit the names and CVs of Operational Personnel to be deployed under the contract.*

**(x) Management Information System (MIS)**

*You have to confirm whether the proposed MIS will be available at the start of your services.”*

The concern expressed by the Board of the Wastewater Management Authority through its General Manager to the Central Procurement Board in respect of compliance with specifications of staffing appears indeed to be very serious.

It is stated that four out of six key personnel proposed do not fully satisfy the requirements as stipulated in the bidding document. For the proper and efficient operation and maintenance of a treatment plant of such complexity as St. Martin Wastewater Treatment Plant, these four key staffs are crucial and any replacement at any point in time over the duration of the contract should satisfy all the requirements of the bidding documents, especially with respect to the profile and capacity.

Furthermore on 30 May 2008, a letter was addressed to the Chairman of the Central Procurement Board in reply to the request made on 26 May 2008 to the Wastewater Management Authority to take all issues related to practical arrangement pertaining to staffing process. The Board of the Wastewater Management Authority through its General

Manager has considered that such request constitutes a new element that is being introduced at post evaluation stage.

Unfortunately the recommendation of the report of the evaluation Committee does not refer specifically to all these shortcomings which have been identified by the Wastewater Management Authority. There is only a concluding note Para 8(ii) of the report *“it is expected that the Wastewater Management Authority would take up matters related to practical arrangements with the lowest bidder prior to making an award. This may have a slight influence on the contract price.”* The terms practical arrangement which later were explained by the Central Procurement Board on 26 May 2008 to mean practical arrangement pertaining to the staffing process proposed by the preferred bidder. As a result of which, oddly enough, we have a letter of intent to award a contract issued on 28 May 2008, but subject to issues being resolved and the required documents and clarifications submitted not later than 03 June 2008 concerning serious shortcomings in respect to the staffing proposed in the technical offer of the preferred bidder.

In its reply to the letter of intent dated 28 May 2008, the preferred bidder confirmed the availability of the Plant Manager/Contract Manager as well as General Manager/Process Engineer for a period of one year, and that it undertook to provide adequate training of the local counterparts who will satisfy all the requirements laid down in the tender documents in particular Clause 7.2. But the reply of the preferred bidder did not specifically mention the name of the local counterparts and their qualifications so that it is impossible at this stage to effect a proper scrutiny as to the compliance of the proposed replacements to the specifications laid down in the bidding documents.

After a perusal of all the bidding documents, the Panel fully agrees with the views expressed by the Wastewater Management Authority in respect of staffing which constitutes in its view serious shortcomings and deficiencies in the evaluation process.

There is also one aspect in the financial offer which deserves consideration.

The Evaluation Report noted that in paragraph 8(iii) *“However the contract award sum should not exceed Rs463,579,247.06. In para (iv) it is to be noted that, in a letter dated 31 July 2007, Wastewater Management Authority had estimated the works at Rs400 m for a five year contract. A pro-rated value of works for a seven year contract can be taken at Rs560m.”*

Indeed the financial offer of the preferred bidder is Rs463m whereas the Public Body itself estimated the works in July 2007 at Rs560m for the seven year contract. The Panel understands well that it is the policy of the Public Body after approval of the Central Procurement Board to award to the lowest responsive compliant bidder. However, we feel that it is the duty of the Evaluation Committee to scrutinize carefully the offer of a preferred bidder which is less by nearly one hundred million rupees of the estimated price. We have no indication in the report of the Evaluation Committee that the above aspect has been considered.

For all these reasons, the Panel finds as highlighted by the Wastewater Management Authority that there have been serious shortcomings and deficiencies in the bidding procedure, which would have warranted other remedies under Section 45(10) of the Public Procurement Act, had the contract not being already awarded. In these circumstances, the Panel finds in favour of the Applicant and pursuant to Section 45(9) of the Public Procurement Act award the Applicant a compensation of Rs100,000 representing costs of bid preparation and participation in the procurement proceedings.

The Panel would like to make the following observation in respect of the suspension of the procurement proceedings provided in Section 45(5), (6) and (7) of the Public Procurement Act:

This area of the Law, in our view, needs to be considered anew. The objectives of the Public Procurement Act is to promote, inter alia, the efficiency of the public procurement system and to achieve objectives like competition, fairness, transparency and accountability. The Public Body by only issuing a certificate of urgency, the justification or otherwise of which is not subject to any control, can prevent the Panel from granting significant remedies to successful Applicants, which would otherwise be available to them, had the suspension of the procurement proceedings not been waived. The application for leave for judicial review before the Supreme Court as provided in Section 45(7) in the Public Procurement Act 2006 whose determination is not expected within a prescribed delay, is an a posteriori examination of the grounds evoked by the Public Body to award the contract urgently irrespective of the outcome of the application before the Panel. Contrary to a writ of injunction it cannot pray for an order from the Supreme Court prohibiting the granting of the contract to the selected bidder by the Public Body. We feel that these provisions of the law may, in some instances, constitute an obstacle in achieving the objectives highlighted above.



**(H. D. Vellien)**  
**Designated *Chairperson***

**Mrs E. Hanoomanjee**  
***Member***

**Dated this 13<sup>th</sup> of March 2009**