

## INDEPENDENT REVIEW PANEL

In the matter of:

Island Chemicals Ltd.

(Applicant)

v/s

Central Water Authority

(Respondent)

(Cause No. 17/11/IRP)

### A. Background

1. The Central Water Authority (CWA) invited bids on 24 March 2011 through Open Advertised Bidding method for OAB No: CWA/C2011/11 – supply of Liquid Chlorine and Maintenance of Chlorine Cylinder (70/100 Kg.) and Tonners (900 Kg.) in the local press. The deadline for the submission of bids was scheduled for Tuesday 26 April at 13.00 hrs at latest. Four bids were received by the closing time. The bids were opened in public by the Bid Opening Committee (BOC) on the same day at 13.05 hrs.
2. A five-member Bid Evaluation Committee (BEC) was constituted by the Public Body to evaluate the four bids received.
3. Island Chemicals Ltd. under Section 43 of the Public Procurement Act 2006 challenged the decision of the Public Body on 26 July 2011.
4. The Public body replied to the challenge on 04 August 2011 and explained to the bidder the grounds why its bids were not valid. *“Your bid is not valid as you have not entered the total bid sum in the Bid Submission Form as required at Para C of the said form. Thus, it is not in compliance with ITB Clause 32.2 of the bidding document.”*

5. Island Chemicals Ltd dissatisfied with the decision of the Public body with respect to the procurement of Chlorine made an application for review to the Panel on 10 August 2011. The Panel informed all parties concerned accordingly on 10 August 2011 and pursuant to Section 45(4) of the Public Procurement Act 2006 suspended the proceedings for the Supply of Liquid Chlorine and Maintenance of Chlorine Cylinders (70/100 kg.) and Tonners (900 kg.) until the appeal was heard and determined by the Review Panel.

**B. Grounds for Review**

The Grounds for Review are as follows:

1. *The Central Water Authority unlawfully and in breach of the Act failed to award the contract to the Applicant which was a bidder having submitted the lowest evaluated substantially responsive bid.*
2. *The Central Water Authority ought to have considered the bid made by the applicant.*
3. *The Central Water Authority erred in finding that the applicant's bid was not valid inasmuch as-*
  - (a) *The Central Water Authority had asked the applicant to extend the validity of its bid and had therefore considered the applicant's bid to be valid and responsive;*
  - (b) *The minor omission in the Bid Submission Form was not of a nature to invalidate the bid;*
  - (c) *The Central Water Authority failed to take into account the huge difference in the bids submitted by the bidders;*
  - (d) *Even if there were an omission in the filling of the Bid Submission Form this omission was cured by all the other bidding documents, which showed clearly that the applicant had placed a bid in an amount of R. 24,241,680 as compared to the bid of 39,943,464,56 placed by Desbro Trading.*

**C. The Evaluation Process**

1. A five-member Bid Evaluation Committee (BEC) was constituted by the Public Body to evaluate the four bids received by the closing date as given below.

<b>S.No.</b>	<b>BIDDER</b>	<b>TOTAL BID SUM (EXCL VAT)</b>	<b>REMARK</b>
1	<i>Island Chemicals Ltd</i>	24,241,680	<i>Total Bid sum was not indicated in Bid Submission Form</i>
2	<i>Desbro Trading Ltd</i>	39,943,464.56	<i>Also quoted in foreign currencies (a) USD 154,985.07 (b) ZR 7,331,148</i>
3	<i>HPL Chemicals Lt</i>	24,951,600	
4	<i>Chemco Ltd</i>	51,363,000	

2. At the opening of the bids, the BEC had observed that Bidder No. 1-Island Chemicals Ltd had not indicated the Total Bid Sum at paraof the Bid Submission Form of the bidding documents. On 26 April 2011, legal advice was sought from its Attorney at Law – Mr. A. O. Jankee. On this issue “The BEC was advised not to accept the bid from Island Chemicals Ltd as it is an incomplete Bid Submission Form submitted by Island Chemicals Ltd. In the light of the above the bid from Island Chemicals Ltd was rejected and was not considered further.”
3. The Bid Evaluation Committee submitted its evaluation report on 08 June 2011.
4. The Public body approved the recommendations of the Bid Evaluation Committee and by a letter dated 20 July 2011, and notified all bidders of the outcome of the bidding exercise, pursuant to Section 40(3) of the Public Procurement Act 2006.
5. Island Chemicals Ltd. was informed that “*an evaluation of the bids received had been carried out and your bid was not retained for award*”. It was also informed of the name of the successful bidder, *Desbro Trading Ltd together with the Contact Price of Rs. 39, 943, 464.56.*

#### **D. Submissions and Findings**

1. The failure to insert the total bid sum in the Bid Submission From as a ground to reject the applicant’s bid, is in the view of the Panel, not fatal to the applicant’s bid. In fact the sum of Rs 24, 241, 680 can be ascertained easily in the other sections of the form,

rendering the information in respect of the said sum available at the time the bid was submitted.

2. Moreover a scrutiny of the bid of the selected bidder, reveals that several paragraphs of the bidding document given below have not been filled in.

*(e) refers to validity period as specified in ITB Sub Clause 20.1,;*

*(f) obtaining a Performance Security in accordance with ITB Clause 44 and Clause 18; and*

*(g) inclusion of subcontractors or suppliers.*

3. This omission on the part of the successful bidder which is not disputed by the Public Body in respect of the above paragraphs constitute, in the view of the Panel, a significant omission leading to technical non responsiveness of the successful bidder.
4. It is also significant to refer to the failure of the successful bidder to submit evidence of authorisation of the signature on behalf of Desbro Trading Ltd.

For these three reasons, the Panel finds merit in the application and according to Section 45(10(b) and (c) of the Public Procurement Act 2006 recommends the annulment of the award to Desbro Trading Ltd at the Contract Price of Rs. 39, 943, 464.56 and a re-evaluation of the remaining technically responsive bids in the light of our findings.

**(Dr. M. Allybokus)**  
***Chairperson***

**(H. D. Vellien)**  
***Member***

**(Mrs. E. Hanoomanjee)**  
***Member***

**Dated 09 September 2011**