

INDEPENDENT REVIEW PANEL

In the matter of:

Keep Clean Ltd

(Applicant)

v/s

**Ministry of Public Infrastructure, National Development Unit,
Land Transport & Shipping**

(Respondent)

(Cause No. 22/12/IRP)

Decision

A. Background

1. The Ministry of Public Infrastructure, National Development Unit, Land Transport & Shipping using the open advertised bidding method invited bids on 03 October 2011 from eligible bidders for the Maintenance, Repairs and Rehabilitation of Government Buildings (2012). The deadline for the submission of bids was initially scheduled for 10 November 2011 at 13.30 hrs with bid validity up to 07 February 2012. The bid submission date was subsequently postponed to 01 December 2011 at 13.30 hrs with new bid validity up to 28 February 2012. The public opening of bids was scheduled for the same day at 14.00 hrs.
2. Twenty four bids were received by the closing date and were opened in public on 01 December 2011 at 14.00 hrs. The Central Procurement Board then appointed a four-member Bid Evaluation Committee to evaluate the bids received. The Bid Evaluation Committee submitted its evaluation report on 22 February 2012 and on 04 May 2012 the Central Procurement Board informed the

Public Body that it has approved the award of the contracts as follows:

<i>Lot</i>	<i>Region</i>	<i>Bidder</i>	<i>Contract Price (Rs)</i>
<i>Lot A</i>	<i>Port Louis</i>	<i>22. Keep Clean Ltd</i>	<i>52,453,665.00</i>
<i>Lot B</i>	<i>Pamplemousses</i>	<i>5. Canakiah Associates Ltd</i>	<i>49,951,028.00</i>
<i>Lot C</i>	<i>Riv. du Rempart</i>	<i>21 J. Annauth Construction Ltd</i>	<i>54,322,850.00</i>
<i>Lot D</i>	<i>Moka</i>	<i>23. Safety Construction Co. Ltd</i>	<i>38,882,155.00</i>
<i>Lot E</i>	<i>Flacq</i>	<i>9. Power Contractors</i>	<i>52,395,985.00</i>
<i>Lot F</i>	<i>Grand Port</i>	<i>11. Ajmol Enterprise Ltd</i>	<i>60,440,317.00</i>
<i>Lot G</i>	<i>Savanne</i>	<i>6. LORO Associates Company Ltd</i>	<i>40,945,199.00</i>
<i>Lot H</i>	<i>Black River</i>	<i>18. Nova Glass Waterproofing Private Company Ltd</i>	<i>48,978,575.00</i>
<i>Lot I</i>	<i>Upper Plaine Wilhems</i>	<i>17. Greenish Co. Ltd Building and Civil Works</i>	<i>76,297,905.00</i>
<i>Lot J</i>	<i>Lower Plaine Wilhems</i>	<i>10. Monesh Enterprise Ltd</i>	<i>50,956,247.00</i>

The Public Body informed all bidders of the outcome of the bidding exercise on 24 May 2012. Keep Clean Ltd, as an aggrieved bidder challenged the decision of the Public Body on 28 May 2012. The Public Body sought materials for reply from the Central Procurement Board and on 08 June 2012 informed the bidder that its offer had not been retained because its bid prices for each lot were higher compared to those approved.

3. The aggrieved bidder still dissatisfied with the decision of the Public Body submitted an application for review to the Panel on 21 June 2012. The Panel pursuant to Section 45(4) of the Public procurement Act 2006 suspended proceedings on 22 June 2012 until the appeal is heard and determined. Hearings were then held by the Panel, in the presence of the selected bidders, on 19 July 2012 and 24 July 2012.

B. Grounds for Review

The Grounds for Review are as follows:

“The Applicant is not satisfied with the decision of the Ministry and/or the Central Procurement Board (the Board) on the following grounds:

1. *The Ministry and/or the Board has failed to take into account the minimum qualifying criteria listed in Section 6.3(a) of the Instructions to Bidders (ITB) and ITB 6.3(a) of the Bidding Data Sheet (BDS), as mandatory in allotting the award.
 - (i) *Applicant avers that Greenish Co. Ltd Building and Civil Works does not have a minimum average annual financial amount of construction works of Rs10Million (inclusive of VAT) over the last 3 years, as testified by the annual financial statements filed by it at the Registrar of Companies for the years 2009, 2010 and 2011.*
 - (ii) *In the absence of such mandatory qualifying criteria in the bidding documents, the Board or the Ministry ought to have disqualified Greenish Co. Ltd for non-responsiveness of its tender.*
 - (iii) *In these circumstances, the Applicant avers that there is a serious doubt that the tenderers who have been awarded the different lots do not satisfy the qualifying criteria listed in Section 6.3(a) of the ITB.*
 - (iv) *The Applicant also avers that there is a serious doubt that the tenderers who have been awarded the different lots have not submitted their audited financial statements for the last three years.**
2. *The Ministry and/or the Board has been too lenient towards Greenish Co. Ltd in the submission and compliance of its tender and in the evaluation process;*
3. *The Ministry and/or the Board has taken into account irrelevant factors in their assessment;*
4. *The Ministry and/or the Board has failed to take into account relevant criteria in their assessment;*
5. *The Ministry and/or the Board has consequently failed to ensure transparency and equity in the whole evaluation process.”*

C. The Evaluation Process

1. The Central Procurement Board appointed a four-member Bid Evaluation Committee to evaluate the twenty four bids received by the closing date of 01 December 2011. The Bid Evaluation Committee considered that four of the bidders had failed to satisfy the minimum qualifying criteria and as such were not eligible for further evaluation. Clarifications were then sought on 26 January 2012 from fifteen of the twenty bidders which had according to the Bid Evaluation Committee satisfied the minimum qualifying criteria.
2. All fifteen bidders provided the additional information required by the deadline of 31 January 2012. Following an examination of the documentation received the Bid Evaluation Committee determined that only fifteen of the bidders were technically responsive.

The financial proposals of the fifteen bidders were then examined for the ten lots which comprise the project.

3. As per the bidding document, contract award is to be made on a lot wise basis – one contractor per lot. In case there is an insufficient number of substantially responsive and acceptable bids than a bidder may be awarded more than one contract. However, for this particular exercise the Bid Evaluation Committee considered that there were more than ten responsive bids and as such award is to be made on a lot wise basis.

The Public Body then informed all bidders of the outcome of the bidding exercise on 24 May 2012.

D. Submissions and Findings

1. The Bid Evaluation Committee considered that the bid submitted by Keep Clean Ltd was fully responsive and thus qualified for financial evaluation. However, its bid prices for each of the ten lots were substantially higher than the selected bidders. The Panel concurs with the conclusion of the Bid Evaluation Committee with that aspect of the evaluation process.
2. At the hearing Mr N. Hurnaum of Counsel for the aggrieved bidder argued that to qualify for an award as per ITB 6.3(a) of the Bidding

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Data Sheet a bidder must have a minimum average annual financial amount of construction works of MUR 10M (inclusive) of VAT over the last three years. He went on to add that Greenish Co. Ltd Building and Civil Works does not satisfy this mandatory requirement. To substantiate his averments he submitted certified copies of “Balance Sheet and Accounts” for year ending 30 June 2009, 2010 and 2011, as filed with the Registrar of companies by Greenish Co. Ltd Building and Civil Works.

3. The Directors of Greenish Co. Ltd Building and Civil Works are Messrs T. Seenarain and P. Seenarain and the former is also the company secretary. The auditor of the company is Mr P. Ramjug. The “Report of the Directors to the Members” is signed by the company secretary and the “Report of the Auditor” is signed by the auditor for the years 2009, 2010 and 2011.

The document submitted by the bidder as part of its bid to show compliance with ITB 6.3(a) is signed by the two Directors.

4. The turnover presented by the bidder in the two documents are as follows:

<i>Turnover</i>	<i>Year 2009</i>	<i>Year 2010</i>	<i>Year 2011</i>
<i>As per Document from Registrar of Companies</i>	<i>2,169,633</i>	<i>1,859,973</i>	<i>1,900,931</i>
<i>As per Documents enclosed in bid</i>	<i>13,526,321</i>	<i>16,528,984</i>	<i>15,462,291</i>

The Panel considers that the Bid Evaluation Committee had carried out a fair assessment of all the bids submitted and had no reason to question any of the required documents submitted by the bidders. The onus to submit genuine documents as part of a bid lies upon the bidder.

5. Mrs S. Topsy-Sonoo of Counsel for Public Body, when made aware of the discrepancy in turnover values conceded after examination of the two documents that the figures submitted in both documents are not similar and concurred that there was a need to re-evaluate the bids received.

For the above reasons, the Panel finds that there is merit in the application and pursuant to Section 45(10)(6) of the Public Procurement Act, recommends a re-evaluation of the bids received.

Furthermore, the Panel recommends that an enquiry be carried out by the authorities concerned into the genuineness or otherwise of documents produced for bid purposes.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated 14 August 2012