

INDEPENDENT REVIEW PANEL

In the matter of:

Books and Business Co. Ltd

(Applicant)

v/s

Ministry of Education & Human Resources

(Respondent)

(Cause No. 33/11/IRP)

Decision

A. Background

The Ministry of Education & Human Resources invited bids through request for sealed quotation for the Supply of ELP/Longman Resource Atlas for Mauritius and Rodrigues – Revised Edition (ISBN 99903-87-01-X or substitute) and Oxford Illustrated Primary English Dictionary (ISBN-0-19-567049-3 or substitute). The present application concerns only the first item. The deadline for the submission of bids was 30 August 2011 at 10.30 hrs at the Ministry of Education & Human Resources and the public opening was scheduled for the same day at 10.40 hrs.

B. Grounds for Review

The Grounds for Review are as follows:

Ground 1

‘The School Atlas of Mauritius’ proposed to be supplied by Books & Business Co. Ltd was wrongly evaluated by the Ministry of Education and Human Resources as not being a valid substitute for the ELP/Longman Resource Atlas for Mauritius and Rodrigues inasmuch as:

- (a) ‘The School Atlas of Mauritius’ and the ELP/Longman Resource Atlas for Mauritius and Rodrigues have been authored by the same expert person, Mr Cader Kalla (Associate Professor and former Deputy Director of the Mauritius Institute of Education);*
- (b) The contents of the ‘School Atlas of Mauritius’ are fully in line with the new Upper Primary History & Geography textbooks/curriculum developed by the Ministry of Education in 2009;*
- (c) ‘The School Atlas of Mauritius’ proposed to be supplied by Books & Business Co. Ltd was authorized for distribution by the Ministry of Education to Std. 4 pupils in the context of a donation project and copies of the ‘School Atlas of Mauritius’ were actually distributed to pupils of the said Standard as aforesaid.*

Ground 2

The price quoted by Books & Business Co. Ltd for the ‘School Atlas of Mauritius’ was the lowest compared to the other bids(s).”

C. The Evaluation Process

A four-member Bid Evaluation Committee was set up to examine the two bids received in respect of the first item, i.e. Atlas for Mauritius and Rodrigues.

*List of Bidders and Prices – Total Bid Amount
Atlas*

<i>SN</i>	<i>Bidder</i>	<i>Title</i>	<i>Bid Amount</i>
1	<i>Editions Le Printemps Ltee (ELP)</i>	<i>ELP Resource Atlas for Mauritius and Rodrigues New Edition</i>	812,156.60
2	<i>Books and Business Co. Ltd</i>	<i>EOI/Philip's Atlas for Mauritius</i>	740,788.00

On 28 September 2011, the Bid Evaluation Committee recommended that the contract be awarded to Editions Le Printemps for the fixed sum of Rs812,156.60 inclusive of all charges and delivery.

D. Submissions and Findings

1. The Panel has heard partly witness for the Applicant, when Mrs P. Ramjeeawon-Varma, Senior State Counsel appearing for the Public Body, moved to raise a point in Law to the effect that this Panel has no jurisdiction to hear the present application, being given that the case has been lodged in breach of Section 45 of the Public Procurement Act. In support of her contention, she called Mr M. Varaden, Principal Assistant Secretary of Ministry of Education & Human Resources to produce a contract agreement marked 'Doc A', between the Ministry of Education & Human Resources and Editions Le Printemps Ltee, signed on 07 November 2011, for the amount of Rs812,156.00. Mr M. Varaden stated that the bids were opened on 31 August 2011 and it was understood that the Applicant was aware that the award has already been made, upon a reading of its letter dated 29 November 2011.
2. Mrs P. Ramjeeawon-Varma stated the challenge was filed on 29 November 2011 and the application for review on 20 December 2011. In the light of above, the Applicant could not challenge the decision to award the contract under Section 43 of the Public Procurement Act because the contract signed on 07 November 2011 was already in force. Nor could the Applicant proceed by an application for review because under Section 45(1)(c) of the Public Procurement Act of 2006 coupled with 48(6) of the Regulations made under the Act the right for a review is limited to contracts of above Rs1M. She added that the reply of the Public Body to the

challenge should not be construed as a fact which gives legality to improper and invalid procedure adopted by the Applicant.

3. In reply to her contention, Mr R. Uteem, Counsel for the Applicant submitted that once the Public Body has decided to reply to the challenge, such decision could be appealed against by an application for review. Under Section 43, the Public Body is bound to give a decision which in turn could be subject to review by the Panel.
4. We have heard both submissions, we share the view of Counsel for the Public Body that in the present state of our legislation, there is no provisions governing the procurement process, which would provide an opportunity of appeal before the Independent Review Panel for award of below Rs1M, after the entry into force of the contract.

Having reached that finding, the Panel holds that the application should be dismissed for breach of Sections 43 and 45 of the Public Procurement Act 2006.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated 12 October 2012