

INDEPENDENT REVIEW PANEL

In the matter of:

Kisten Enterprise Co. Ltd

(Applicant)

v/s

Ministry of Education & Human Resources

(Respondent)

(Cause No. 38/14/IRP)

Decision

A. History of the case

The project consists in the rehabilitation and upgrading works in two blocks. Works include repairs to structural members, waterproofing, new metal burglar proofing, replacement of naco frames, electrical installation and finishes and associated works.

Tenders were invited on 14 September 2014 through open advertised bidding. On the closing date of 21 October 2014, seven (7) bids were received.

B. Notification of award

The notification to unsuccessful bidders under Section 40(3) of the Public Procurement Act was made on 18 November 2014 through a letter from the Ministry of Education & Human Resources. The Particulars of the successful bidder were as follows:

Independent Review Panel – Decision No. 03/15

<i>Description</i>	<i>Name of Bidder</i>	<i>Address</i>	<i>Contract amount</i>
<i>Rehabilitation and Upgrading works at Ramsoondur Prayag State Secondary School, Riviere du Rempart</i>	<i>Keep Clean Ltd</i>	<i>Supreme Square Sookdeo Bissoondoyal Street, Port Louis</i>	<i>Rs35,604,103.50 inclusive of VAT and a contingency sum of Rs2M</i>

C. Evaluation

The Bid Evaluation Committee set up by the Ministry of Education & Human Resources consisted of Mr M. S. Ayoob Saab, Deputy Permanent Secretary as Chairperson. The list of bidders and prices were as follows:

<i>Bidder No.</i>	<i>Bidder</i>	<i>Bid Amount (Rs)</i>
<i>1</i>	<i>Canakiah Associates Co. Ltd</i>	<i>40,888,200.00</i>
<i>2</i>	<i>Safety Construction Co. Ltd</i>	<i>41,053,487.75</i>
<i>3</i>	<i>SNB Construction Ltd and Naw-rang Co. Ltd</i>	<i>41,857,043.00</i>
<i>4</i>	<i>Kisten Enterprise Co. Ltd</i>	<i>31,625,000.00</i>
<i>5</i>	<i>Keep Clean Ltd</i>	<i>35,604,103.50</i>
<i>6</i>	<i>Bolah Jeetun Co. Ltd</i>	<i>40,965,880.75</i>
<i>7</i>	<i>Ramloll Bhooshan Renovation and Building Contractor Ltd</i>	<i>59,800,000.00</i>

In their report, at paragraph 10 (2)(b) headed, “reference to analysis of mandatory requirements”, the Bid Evaluation Committee stated that the Applicant had not undertaken a minimum of two works of similar nature and complexity over the past five years as prime contractor in compliance with paragraph 6.3(b) of the Bidding Data Sheet.

The Bid Evaluation Committee considered the deviation mentioned above at paragraph 2 as a major one and the bid was therefore not retained for further evaluation.

The Bid Evaluation Committee, at paragraph 13 of its report, carried out the financial appraisal on the remaining five bidders. It recommended that the contract be awarded to the lowest responsive bidder Keep Clean Ltd in the fixed amount of Rupees twenty five million six hundred and five thousand one hundred and eight and fifty cents (Rs35,605,108.50), after having applied the Margin of Preference.

D. The Challenge

On 20 November 2014, the Applicant challenged the award on the following grounds:

- “1. At the opening we were the lowest bidder.*
- 2. We are fully qualified and financially sound status.*
- 3. We have completed in the last five years project as mentioned in the bidding document.”*

E. The Reply to challenge

By letter dated 27 November 2014, the Public Body made the following reply to the challenge:

“The Bid of Kisten Enterprise Co. Ltd, has been found non-compliant with Instructions to Bidders 6.3(b) of the Bidding Documents; the project which the Bidder referred to at para 7 of his Challenge had not been included in his Bid as at the Closing Date of Submission of Bids.”

F. Grounds for Review

On 03 December 2014, the Applicant seized the Independent Review Panel for review on the following:

“The Respondent was wrong to have determined that the Applicant’s bid was not responsive in terms of paragraph 6.3(b) of the Instructions To Bidders, as stated in the Respondent’s letter dated 27 November 2014, and Respondent was wrong not to have selected the Applicant’s bid for award as the Respondent has plainly failed to take into account the various contracts which had been successfully performed by the Applicant over the last five years and which are referred to in the relevant spreadsheet which formed part of the Applicant’s bid.”

G. The Hearing

In the course of the hearing, the Applicant relied on four main projects, namely the completion of the New Fire Station for a value of Rs25M, the extension of SSRN Hospital for a value of Rs75M, Building Works for the Ministry of Public Infrastructure for a value of Rs60M and another work for the Ministry of Public Infrastructure for a value of Rs54M. The Applicant referred to other contracts arguing that the total amount of all those contracts was more than Rs150M over a period of five years, and

submitted that, in the circumstances, his disqualification was not justified under ITB 6.3(b).

He also argued that he was not communicated with any particulars of the disqualification. The Respondent called Mr R. Rumzan, who sat as a member of the Bid Evaluation Committee. He explained the reason why the Applicant's bid was not retained; it was because there was only one project which met the criteria as set out in the bidding document. It is the extension of the SSRN Hospital. The other projects amounting to Rs60M and Rs40M are made up of small projects. As regards the works performed as District Contractor, they are all small contracts up to a level of Rs5M which have been added together to make the bigger figures as shown in the table produced by the Applicant.

To clear up matters, the only reason put forward by Mr R. Rumzan as to why the Applicant was not responsive was due to the fact that they could not find a second project which would satisfy the minimum value required though all the other projects submitted satisfied the criteria of works of similar nature, complexity and size.

The Panel has gone through the proceedings and through the bidding documents and has paid particular attention to ITB 6.3(b) which reads as follows:

“The number of work is two, the period is 5 years”.

There is no mention of a minimum value attached to the work to be performed by any bidder. The Panel is therefore of the view that imposing a minimum value is, in the circumstances, arbitrary.

It is noteworthy that in its report at paragraph 2(a) no mention was made of any minimum value. The Bid Evaluation Committee stated that the Applicant had not undertaken a minimum of two works of a similar nature and complexity over the past five years as prime contractor in compliance with paragraph 6.3(b) of the Bidding Data Sheet without the least reference to any minimum value.

H. Findings

In view of the above, the Panel finds merits in the application and recommends the annulment of the decision of the Public Body and a re-evaluation of the bids.

(Said Toorbuth)
Chairperson

(Siv Potayya)
Member

(Jacques C. Nauvel)
Member

Dated 23 January 2015