

## INDEPENDENT REVIEW PANEL

In the matter of:

**Ramphul Enterprises Ltd**

**(Applicant)**

**v/s**

**Ministry of Education & Human Resources, Tertiary Education  
& Scientific Research**

**(Respondent)**

**(Cause No. 07/15/IRP)**

### Decision

#### **A. History of the case**

1. The Ministry of Education & Human Resources, Tertiary Education & Scientific research invited bids from eligible and qualified bidders through a restricted bidding process.
2. The bidding exercise concerned the: ***“Provision of Taxi Lorries/Vans to Zonal Directorates 1-4 on an “as and when required” basis for an initial period of one year renewable for another period of one year upon satisfactory performance”.***
3. Letters bearing reference: ***“MOEHRTESR/Lorries/Vans/RB025/2015”*** were issued by the Respondent to a list of service providers on 02 March 2015.
4. The closing date was the 10 March 2015.
5. By 10 March 2015, only four (4) service providers responded.

**B. Evaluation**

1. The Bid Evaluation Committee was chaired by Mr. Y. Kistonohum, Assistant Permanent Secretary.
2. The Bid Evaluation Committee submitted its recommendations on 19 March 2015.
3. The Bid Evaluation Committee recommended that the contract be awarded to bidder Sanjeev Bhurosy.

**C. Notification of award**

1. The Ministry of Education & Human Resources, Tertiary Education & Scientific research by way of a letter dated 15 April 2015, informed the Applicant of the particulars of the successful bidder as follows:

*“An evaluation of the bids received has been carried out, and your bid has not been retained for award. The successful bidder is Sanjeev Bhurosy.”*

2. The Applicant was further informed by way of letter that his bid has not been retained for the following reasons:

(1) Only two of the four lorries comply with the required weightage of 5 to 7 tons; and

(2) The Applicant did not submit any copy of registration book in respect of vans.

**D. Grounds for Review**

1. On 14 April 2015, the Applicant seized the Independent Review Panel (the “Panel”) for review under Section 45 of the Public Procurement Act 2006.
2. The Applicant’s grounds for review are reproduced below:

*“(1) The successful bidder namely Mr Sanjeev Bhurosy was the third lowest bidder.*

*(2) I am the lowest bidder*

- (3) *I am the owner of at least four good vehicles not older than 12 years at the time of the closing of the bid, thus in compliance with the eligibility criteria as laid down in Section 1(9)(g) of the Bidding Document.*
  - (4) *I am fully qualified to submit for the bid as I satisfies all the eligibility criteria as laid down in Section 1(9)(g) of the Bidding Document.*
  - (5) *The successful bidder should have been disqualified from the bid as he produced wrong documents during the previous bid which was annulled by the Independent Review Panel (CN 36/ 14/IRP).*
  - (6) *The decision of the Public Body not to award the contract to me is unfair, illegal, irrational and wrong in principle.*
  - (7) *The Ministry should have awarded the contract directly to me after the Independent Review Panel recommended the annulment of the contract awarded to Mr S. Bhurosy and the review of the decision for an award to me.*
  - (8) *The Ministry has not complied with the Decision of the IRP dated 11 February 2015 but instead requested for new bids which allowed Mr S. Bhurosy to bid once again. The decision is irrational as it defeats the purpose of a citizen to appeal before an independent body.*
  - (9) *Any other reasons that may be adduced at the time of hearing as I am still waiting for the debriefing session with the Ministry of Education.”*
3. On 21 April 2015, the Applicant filed an additional ground for review. The additional ground is reproduced below:

*“The reason provided for the non retention of my bid is illegal, unfair and wrong in principle in as much as I complied with all the requirement of the bid application and there is no mention in the bid documents that a bidder should provide registration books for a specific number of lorries nor a specific number of vans.*

*Paragraph 9(g) of the bid documents provides **ONLY** that the bidder should own four good vehicles and according to paragraph 2 of the same documents, the bidder should produce registration books for the four good vehicles. Good vehicles include Lorries and vans depending upon their capacity and this has always been the case in the same bid of previous years.*

*Item 8 of S V provides that the Lorries should be between 5 to 7 tons without specifying the number of Lorries needed.*

*Item 9 of S V provides that Vans should be between 2 to 3 tons without specifying the number of vans needed”*

## **E. Comments from the Respondent**

1. In line with Regulation 55 of the Public Procurement Regulations 2008, the Respondent provided its comments on the application for review before the Panel.
2. The Respondent's comments are reproduced below:
  - “(1) Mr. Sanjeev Bhurosy was the only substantially responsive Bidder to the Requirements of the Bidding Document.*
  - (2) Bidder Ramphul Enterprises Ltd was not substantially responsive to the requirements of the Bidding Document.*
  - (3) According to the four Registration Books submitted by Ramphul Enterprises Ltd, the latter satisfied the eligibility criteria for participation in the bid as per Section I paragraph 9(g) of the Bidding Document. However, the Bidder did not comply with Section V: “Specifications and Performance Standards Compliance Sheet”; Item No 8: Taxi Lorry provided should be 5-7 tons gross weight”.*
  - (4) Ramphul Enterprises Ltd satisfied the eligibility criteria for participation in the bid as per Section I paragraph 9(g) of the Bidding Document.*
  - (5) Sanjeev Bhurosy is not listed among the disqualified Bidders and Suppliers of the Procurement Policy Office.*
  - (6) Bidder Ramphul Enterprises Ltd was not substantially Responsive to the requirements of the Bidding Document.*
  - (7)&*
  - (8) Following the recommendation of the Independent Review Panel (Cause No. 36/14/IRP) in respect of the previous Procurement Exercise, the contract with Mr. Sanjeev Bhurosy was terminated. However, after verification of the Registration Books of Ramphul Enterprises Ltd, the latter was found non-compliant with the requirements of the Bidding Document. Subsequently, a new bidding exercise was launched.*
  - (9) A request for debriefing was made by Ramphul Enterprises Ltd on 10 April 2015. A reply was made to Ramphul Enterprises on 15 April 2015.”*

## **F. Hearing and Submissions**

1. A single hearing was held on 29 July 2015.
2. Both the Applicant and the Respondent were represented by counsel.

3. The successful bidder was also present and was accompanied by his counsel.
4. Mr. Lallman Ramphul, director of the Applicant deponed on behalf of the Applicant.
5. Mrs. Appadoo deponed for the Respondent.
6. The following facts were gathered from the Applicant's representative:
  - (a) The Applicant submitted registration books of four (4) goods vehicles, of which the Applicant was the owner.
  - (b) The Applicant has been providing services to the Ministry of Education since around 2002.
  - (c) Items 8 and 9 of Section V do not require to submit proof of the relevant horse powers at the time of submission of bid.
  - (d) The Applicant's bid was the lowest.
7. During cross examination, the Applicant's representative conceded the following points:
  - (a) the words "*comply*" were inserted in respect of all 9 items of Section V.
  - (b) Although 2 of the registration books provided did not comply with the requirements of item 8 of Section V, the submission of the registration books were in line with item 2(c) of Section I which requires registration books in respect of "*four goods vehicles*".
8. The following facts were gathered from the Respondent's representative:
  - (a) the Bid Evaluation Committee assessed the bid of the Applicant and found it to have fully complied with the eligibility requirements as per the Bidding Document.
  - (b) it was only at the next stage of the evaluation of bids that the Bid Evaluation Committee found Mr. Sanjeev Bhurosy to be the only substantially responsive bidder.

- (c) the Bid Evaluation Committee submitted its report to the Departmental Bid Committee for examination and approval.
  - (d) the Departmental Bid Committee examined the report and requested the National Transport Authority to submit to it information pertaining to the Registration books submitted by bidders.
  - (e) Section IV entitled “*Priced Activity Schedule*” clearly stated in sections C and D that the quotes should relate to lorries and vans and Items 8 and 9 of Section V prescribed the weight of the lorries and vans.
9. During cross examination, the Respondent’s representative conceded the following:
- (a) The National Transport Authority were requested to confirm if the registration books provided by the bidders related to lorries or vans.
  - (b) The Bidding Document did not specify whether registration books to be submitted should consist of a certain number of lorries or vans.
  - (c) Part 2(c) of Section I of the Bidding Document only mentions that “*four goods vehicles owned by the bidder not older than 12 years*” should be submitted, without specifying that they needed to be lorries or vans.
  - (d) A bidder was not required to provide evidence or documents in respect of all items specified in Section V of the Bidding Document at the time of submitting the bid, but same should be available only at the time of the contract.
10. During cross examination of the Respondent’s representative, Item 8 of Section I was highlighted to the Respondent’s representative, which reads as follows:

**“8. Evaluation of Bids**

*The Public Body shall have the right to request for clarifications during evaluation. Offers that are substantially responsive shall be compared on the basis of evaluated cost, to determine the lowest evaluated bid.”*

The Respondent's representative conceded that no clarification was requested to the Applicant and provided reasons as follows:

- The Bidding Document should be read a whole and not in piecemeal, such that it was clear from the Bidding Document that since the bid related to lorries and vans *as per* Items No. 8 and 9 of Section V, registration books in respect of such categories of vehicles with the prescribed weight should be submitted.
  - The Respondent did not request for clarifications following the bid of the Applicant as it was clear from the registration books submitted that only two (2) out of the four (4) registration books provided by the Applicant satisfied the requirements of the Bidding Document.
11. The Panel was also favoured with written submission of counsel for both Applicant and Respondent.

#### **G. Discussions and Findings**

1. The Panel has considered the evidence on record and the submissions of both counsel.
2. The Panel notes the undisputed fact that the Applicant:
  - 2.1 has fully complied with the eligibility requirement as per the Bidding Document; and
  - 2.2 was the lowest bidder.
3. The Panel notes that the main issue which requires its consideration is: Whether the registration books of the “four goods vehicles” submitted by the Applicant in accordance with Item 2(c) of Section I, should have consisted of vans and lorries carrying the gross weight specified in Items 8 and 9 of Section V of the Bidding Document.
4. The Panel has considered Item 2(c) of Section I, which reads as follows:

**“2. Documents to be submitted**

[...]  
 (c) **copy of Registration Books of four goods vehicles owned by bidder not older than 12 years at time of bid submission deadline;”**

5. The Panel has considered Section V which is reproduced as follows:

**• “SECTION V: SPECIFICATIONS AND PERFORMANCE STANDARDS COMPLIANCE SHEET**

[.....Bidders should complete columns C and D with the specification of the services offered. Also state “comply” or “not comply” and give details of any non-compliance/deviation to the specification required. Attach detailed technical literature if required. Authorise the specification offered in the signature block below.]

<b>Item No</b>	<b>Specifications and Performance Required</b>	<b>Compliance of Specifications and Performance Offered</b>	<b>Details of Non-Compliance/Deviation (if applicable)</b>
<b>A*</b>	<b>B*</b>	<b>C</b>	<b>D</b>
<b>1</b>	<b>Vehicles should not be older than 12 years at time of bid submission deadline</b>		
<b>2</b>	<b>At least 3 helpers should be provided for each lorry and at least one helper for each van</b>		
<b>3</b>	<b>Each vehicle should be equipped with an odometer in good running conditions</b>		
<b>4</b>	<b>“Caisson” of each lorry should be equipped with a large tarpaulin to protect all stores/materials</b>		
<b>5</b>	<b>Transport to be provided at a short notice as and when required</b>		
<b>6</b>	<b>The minimum No of taxi lorries/vans that should be offered at any time for all four (4) zones &amp; other institutions is at least 12</b>		
<b>7</b>	<b>Service should comprise both lorry and van</b>		



<b>8</b>	<b>Taxi Lorry provided should be 5-7 tons gross weight</b>		
<b>9</b>	<b>Taxi Van provided should be 2-3 tons gross weight</b>		

\*Columns A and B to be completed by Public Body

[.....]”

6. The Panel has considered Item 8 of Section I (reproduced at paragraph F(10) above).
7. Item 2 (c) of Section I imposes 3 criteria when providing copies of registration books. According to Item 2(c) of Section I, the bidder should provide copy of registration books of:
  - (i) four goods vehicles;
  - (ii) the four goods vehicles must be owned by the bidder; and
  - (iii) **must not be older than 12 years at the time of bid submission deadline.** [*emphasis ours*]
8. The Panel notes that out of the 3 criteria provided by Item 2(c) of Section I, only the 3<sup>rd</sup> criteria (i.e the age of the vehicles) matches compliance with an item of Section V (i.e item 1, which also reads “**Vehicles should not be older than 12 years at time of bid submission deadline**”).
9. The Panel is therefore of the view that if the Bidding Document required a bidder to submit proof of registration cards in respect of lorries and vans, complying strictly with the specifications of Items 8 and 9 of Section V, such requirement would have been expressly mentioned in Item 2 of Section I (“**Documents to be submitted**”), being the basis of the evaluation exercise.
10. The Panel considers that the Bidding Document is not explicitly clear that the registration cards in respect of the four goods vehicles would be used by the Public Body towards the next stage of the evaluation exercise, such that the four goods vehicles should meet the requirements of Items 8 and 9 of Section V.
11. Given the admission of the Respondent at paragraph F (9) (d) to the effect that a bidder was not required to provide evidence or documents in respect of all items specified in Section V of the Bidding Document at the time of submitting the bid, but that same should be available only at the time of the contract [*emplasis ours*], and given the fact that the Applicant has stated “*comply*” in respect

of all items of Section V when submitting its bid, it was incumbent upon the Respondent to request the Applicant for clarifications, including proof of or submission of such relevant registration cards satisfying the criteria of Items 8 and 9 of Section V by virtue of Item 8 of Section I. However the Respondent did not avail itself of such right as per paragraph F (10) above.

12. The Panel therefore concludes that the Applicant, initially assessed as being fully compliant with the eligibility criteria and also being the lowest bidder, has been improperly eliminated.

#### **H. Decision**

In the light of our findings, as hereinabove discussed, we find merit in the application and accordingly recommend, pursuant to Section 45 (10)(b) of the Public Procurement Act 2006, the annulment of the contract awarded to Mr S. Bhurosy and pursuant to Section 45 (10)(c) of the Public Procurement Act 2006, that the Respondent reviews its decision for an award to the Applicant.

**(G. Athaw)**  
***Vice-Chairperson***

**(R. Ragnuth)**  
***Member***

**(V. Mulloo)**  
***Member***

**Dated 06 August 2015**