Decision No. 26/15

INDEPENDENT REVIEW PANEL

In the matter of:

Unmole Heerasagar

(Applicant)

v/s

Ministry of Health & Quality of Life

(Respondent)

(Cause No. 21/15/IRP)

Decision

A. History of the case

The Ministry of Health and Quality of life launched a tender to prospective bidders on the 30 January 2015 for the Procurement of Vegetables and Bananas for all hospitals for a period of one year.

Bids were received on 04 March 2015 and opened the same day. Twelve(12) bids were received for five different regions

Bid No.	Bidders	Bid Price without VAT (Rs.)
1.	BURAHEE Abdool Ahad.	
	Region 1	5,618,550.00
	Region 2	No Quote
	Region 3	No Quote
	Region 4	No Quote
	Region 5	3,495,797.00
2.	Fresh Noor Vegetables Ltd	
	Region 1	No Quote
	Region 2	No Quote
	Region 3	2,387,920.00
	Region 4	3,429,097.00
	Region 5	4,547,320.00

3.	**Sivapragassen Lutchmanen**	
	Region 1	7,209,750.00
	Region 2	4,012,780.00
	Region 3	2,925,800.00
	Region 4	No Quote
	Region 5	5,003,120.00
4.	**S.D Farms & Co Ltd**	
	Region 1	6,411,750.30
	Region 2	No Quote
	Region 3	No Quote
	Region 4	4,162,605.00
	Region 5	3,826,372.48
5.	**Varshinee Acharaz**	
	Region 1	No Quote
	Region 2	No Quote
	Region 3	No Quote
	Region 4	3,329,390.00
	Region 5	No Quote
6.	**Modern Era Services Ltd**	
	Region 1	9,352,085.00
	Region 2	5,046,732.00
	Region 3	No Quote
	Region 4	No Quote
	Region 5	No Quote
7.	**Roomowtee Unmole**	
	Region 1	No Quote
	Region 2	No Quote
	Region 3	2,294,790.00
	Region 4	No Quote
	Region 5	No Quote
8.	**Satyadev Soogrim**	
	Region 1	No Quote
	Region 2	5,056,592.00
	Region 3	3,381,368.50
	Region 4	No Quote
	Region 5	No Quote
9.	**Kemraz Ramphul**	
	Region 1	No Quote
	Region 2	No Quote
	Region 3	2,220,800.00
	Region 4	No Quote
	Region 5	No Quote
10.	**DCN Auction Ltd**	
	Region 1	No Quote
	Region 2	No Quote
	Region 3	No Quote
	Region 4	No Quote
	Region 5	3,899,130.70
11.	**Unmole Heerasagar**	
	Region 1	No Quote
	Region 2	3,435,980.00
	Region 3	No Quote
	Region 4	No Quote
	Region 5	No Quote

12.	Varun Harvest Co Ltd	
	Region 1	5,992,290.00
	Region 2	No Quote
	Region 3	No Quote
	Region 4	No Quote
	Region 5	3,416,404.00

After the notification of award issued by the Public Body, the Applicant submitted a request for the review to the Independent review panel on 04 August 2015. The request for suspension was communicated to the public Body by the Independent Review Panel on the same day.

B. Evaluation

The bids have been evaluated by the tender evaluation committee composed of the following members:-

- H Dhaliah, R.H.S.A Chairman
- R Bholah Senior C/Officer Member
- D Bhantoo Ag C/Officer Member
- D Ramasawmy Dep Director Member

The Bid Evaluation committee submitted its report on 17 June 2015 and concluded the following:

" *In the light of the above, it is recommended to award the contract for the procurement of Bananas and Vegetables for all hospitals for a period of one year as from award of contract, to the lowest substantially responsive bidders as follows:-*

(a) Region 1 – Bid No 1 - Burahee Abdool Ahad for MUR 5608, 620.00

(b) Region 2 – Bid No 3 - Sivapragassen Lutchmanen for MUR 4,012,780.00

(c) Region 3 – Bid No 2 - Fresh Noor Vegetables Ltd for MUR 2,387,920.00

(d) Region 4 – Bid No 4 - Fresh Noor Vegetables Ltd for MUR 3,429,097.00

(e) Region 5 – Bid No 5 - Vanu Harvest co Ltd for MUR 3,416,404.00

C. Notification of award

The Ministry of Health & Quality of Life through a letter dated 31 July 2015, informed the Applicant of the particulars of the successful bidders as follows:

Region No.	***Health Institutions***	***Name of Successful Bidder***	***Address***	***Total Price (Exc VAT) (Rs)***
1	*A. G. Jeetoo, B. Sequard MHCC and S. Bharati Eye Hospitals*	*Mr Burahee Abdool Ahad*	*Des Vergues, Glen Park, Vacoas*	*5,608,620.00*
2	*SSRN and Poudre D'Or Hospitals*	*Mr Lutchmanen Sivapragassen*	*Forbach Branch Road, Poudre D'Or Hamlet*	*4,012,780.00*
3	*Flacq Hospital*	*Fresh Noor Vegetables Ltd*	*Cadwell Street, Henrietta, Vacoas*	*2,387,920.00*
4	*J. Nehru, New Souillac and Mahebourg Hospitals*	*Fresh Noor Vegetables Ltd*	*Cadwell Street, Henrietta, Vacoas*	*3,429,097.00*
5	*Victoria and ENT Hospitals*	*Varun Harvest Co. Ltd*	*La Grotte Lane, Riviere du Poste*	*3,416,404.00*

D. Grounds for Review

On 04 August 2015, the Applicant seized the Independent Review Panel for review on the following grounds:

"(i) I was the lowest bidder for Region 2

(ii) The successful bidder quoted price much higher than mine

(iii) Has in past satisfy Region 2."

E. The Hearing

Hearings were held on 26 August, 07 September and 16 September 2015. Written submissions were made on 14 September and 11 September and 16 September 2015, by Applicant and Respondent respectively.

The Applicant was represented by Mr Z. Nazurally, Counsel whereas the Respondent was represented by Mrs M. Lambert-Henry together with Mr A. Rohamally, State Counsel.

F. Findings

From submissions, and at hearings, it became evident that the only reason that the Public Body did not award Region 2 to the Applicant was because of a perceived conflict of interest because the Applicant's wife had bid for the same exercise but for another region.

The Respondent has put in much effort and energy to prove the marital relationship between the 2 bidders, and to show that they shared the same roof and telephone number. The Applicant did not deny any of this.

The Respondent has failed to show by what mechanism a conflict will arise if the 2 have bid for 2 different regions. All the Respondent's efforts and documentary submissions attempt to show that:

I. Two related bidders bidding for the same tender can collude to rig prices

II. By splitting into several related parties to submit more than one tender, a bidder could obtain more than 1 contract where a tender is divided in several parts.

However, under persistent questioning, the Respondent has repeatedly stated that there were no restrictions as to the number of regions that a single bidder could bid for, and that the same bidder could be eligible to obtain contracts for more than one region, (as indeed is the case for Regions 3 and 4), but was unable to explain how the situation would differ if instead of the same bidder, a husband and wife should bid for 2 different regions.

The Respondent has also claimed that the equipment listed by Mrs Unmole in her bid belonged in fact to Mr Unmole. If such were the case, then that would affect Mrs Unmole's bid, and the latter disqualified. The Respondent has not shown that Mr Unmole was at any time aware of the contents of the bid of Mrs Unmole, and of the fact that the latter intended to make use of the same equipment. Even if that were the case, that would not prevent the two, or any one of them from bidding for more

than one region, but would become relevant if they were considered for award for more than one region.

Lastly, the Panel agrees with the Respondent that, in the event that it finds for the Applicant, the Panel cannot order an award to him.

The key argument canvassed by the Public Body is the Breach of Item (5.2) under the section I of Part I of the Bidding Document, which provides as follows:

"*A bidder shall not have conflict of interest. All bidders found to have conflict of interest shall be disqualified. A bidder may be considered to be in a conflict of interest with one or more parties in this bidding process if, including, but not limited to:*

…..

(d) have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence the bid of another bidder".

In the present case, the Applicant made a bid for the procurement of Bananas and Vegetables in Region 2 of which only 4 bidders quoted out of 12 bidders. Applicant's wife, Mrs Unmole Roomowtee also made a bid but in Region 3. Obviously, it is understood that bidder are *in a position to have access to information about or influence the bid of another bidder* only if they have quoted for the same Region. However, it is noted from the bidding documents that Mr Unmole and Mrs Unmole have made their bids in two different Regions i.e. Region 2 and Region 3 respectively.

Mr Unmole's bid has satisfied the bid evaluation committee in regard to specifications but was not qualified for the financial evaluation. The wrong application of ITB 5.2 was the only obstacle for further consideration of the Applicant's bid.

For the above reasons, the Panel finds that the Respondent should not have disqualified the Applicant, and that there was no conflict of interest arising out of the second bid put in by the Applicant's wife for another region. There was no competition between the related parties even if they bid for different regions of the same tender, because for all intents and purposes, tenders for different regions could be considered as different tenders.

G. Decision

For the above reasons, the Panel orders a re-evaluation of the tenders by the Respondent.

(R. Laulloo)
Chairperson

(R. Rajanah)
Member

(R. Ragnuth)
Member

Dated 23 September 2015