



Independent Review Panel

In the matter of:

**JV Aqua Science and Technology Ltd and
Aqualia DPI Ltd**

(Applicant)

v/s

**Commission for Public Infrastructure and Others
(Rodrigues Regional Assembly)**

(Respondent)

(Cause No. 16/16/IRP)

Decision

A. History of the case

The objective of the project is to design, supply, install and commission two Reverse Osmosis Desalination Plants having a production of not less than one thousand (1000) cubic meters per day at Bay Malgache and Pointe Coton respectively. The plant shall have two trains or modules.

The works shall be executed at the Bay Malgache and Pointe Coton sites in the Island of Rodrigues and shall comprise of the following: -

- Design of Reverse Osmosis Desalination Plant having a production of not less than one thousand (1000) cubic meters per day. The plant shall have two trains or modules. The characteristics of raw water to be treated are given indicatively in the bidding document for bidding purposes. However, the characterization of the raw water for the final design of the RO plant shall be carried out by the Contractor after award of contract.
- Supply, install test and commission the Reverse Osmosis Desalination Plant and all required auxiliary systems and accessories including feed pumps, booster pumps working in duty/standby mode from the raw water tank to the plant complete with all electrical and control cabling and all necessary piping works.
- Monitor and maintain the RO plants and Equipment for a period of six months following their successful testing and commissioning.
- Training of Local Personnel.

The final closing date for the submission of bids was fixed for 27th April 2016 up to 13.30 hours at latest at the Central Procurement Board (CPB).

Ten (10) bids were received at the prescribed date and time. Public Opening of the bids received was carried out on the same day at 14.00 hours in the Conference Room at the CPB.

Bidder's No.	Bidder's Name	Bid Amount inclusive of VAT (MUR)
1	Befula Investments (Pty) Ltd t/a Rossi Engineering	Price not inserted in Form of Bid
2	Proctecno Srl	134,481,699.00
3	Aqua Science and Technology Ltd and Aqualia DPI Ltd	91,929,299.00
4	Veolia Water Solutions & Technologies South Africa (Pty)	143,154,879.60 + 2 alternative offers
5	Odis Filtering Ltd	103,010,470.00 (incl. of 5% Discount)
6	Metito Overseas Limited	138,000,727.00
7	JV – Aquaflo Ltd & Aquamarine	135,824,324.20
8	MAK WATER -EDCC JV	136,439,570.75
9	PVS GmbH	124,440,762.68 (in figure) 124,444,762.68 (in word)
10	Blychem Ltd	113,433,956.00

B. Evaluation

The Bid Evaluation Committee (BEC) was set up by the CPB in accordance with Section 11(1) d of the Public Procurement Act 2006 and was comprised of:

Mr. CHUNNOO Suresh – Director (Mechanical Engineering) – Ministry of Public Infrastructure & Land Transport (Team Leader & registered evaluator)

Mr. DEERPAUL Utamsingh – Electrical Engineer/Senior Electrical Engineer- Ministry of Public Infrastructure & Land Transport (Energy Services Division) (Member & registered evaluator)

Mr. BEEDASEE Pravesh Kumar – Engineer/Senior Engineer (Mechanical) – Waste Water Management Authority - (Member & registered evaluator)

Mrs. CLAIR-JEAN Marie Antoinette - Confidential Secretary (Secretary)

In respect of the Applicant, the BEC noted that:

Bidder No. 3 – Aqua Science and Technology Ltd and Aqualia DPI Ltd (Mauritius)

*(i)*3/1 The bidder is a joint venture between Aqua Science and Technology Ltd represented by Mr. Mrinal KHADDOO and Aqualia DPI Ltd represented by Mr. Jean Francois RAULT. According to the joint venture*



agreement dated 21 April 2016 Aqua Science and Technology Ltd will act as Manager (Team Leader) for the works and of the operation of the joint venture.

However, the bid has been signed by Mr. F. RAULT of Aqualia DPI Ltd instead of Mr. Mrinal KHADOO. Refer to Annex G.

*(ii)*3/2 The Contract Manager proposed has a B.Tech (Hons) in Mechanical Engineering with 16 years of experience mainly in sugar milling industry followed by only 4 years experience in the construction and water industry as opposed to a minimum 5 years experience in water industry.*

*(iii)*3/3 The Process Engineer proposed meets qualification. However, no C.V has been submitted to assess his experience in design of RO plants. The Technician is qualified however full detailed CV has not been submitted to assess experience in installation, operation and maintenance of RO desalination plants.*

*(iv)*3/4 The list of Plant and Equipment to be deployed on the project has not been submitted.*

*(v)*3/5 The bidder has submitted its experience which relates mainly in installation and commissioning of desalination plant rather than its experience as prime contractor in the construction of RO desalination plants.*

*(vi)*3/6 Bidder has experience solely in the supply, installation and commissioning but not in design of RO desalination plant over the last 10 years.*

Decision of BEC

BEC considers all the above items as major deviations and thus not retained for further evaluation.

C. Notification of Award

The Commission for Public Infrastructure & Ors (Rodrigues Regional Assembly) through a letter dated 21 June 2016, informed the Applicant of the particulars of the successful bidders as follows:

Name of Bidder	Address	Contract Price Inclusive of VAT
Odis Filtering Ltd (Israel)	8, Martin Gehl St, P.O.B. 3137 Kiryat-Arye, Petach-Tikva 49130 Israel	MUR 103,010,469.00

D. The Challenge

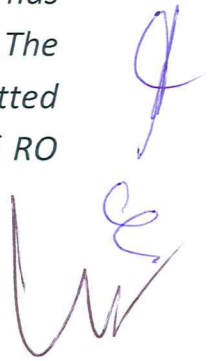
On 24 June 2016, the Applicant challenged the award on the following grounds:

“Our Bid was responsive and was the lowest of the tender exercise.”

E. The Reply to Challenge

On 29 June 2016, the Public Body made the following reply to the challenge:

- “(a) You are a joint venture between Aqua Science and Technology Ltd represented by Mr Mrinal Khadoo and Aqualia DPI Ltd represented by Mr Jean Francois Rault. According to the joint venture agreement dated 21 April 2016 Aqua Science and Technology Ltd will act as Manager (Team Leader) for the works and of the operation of the joint venture. However, the bid has been signed by Mr F. Rault of Aqualia DPI Ltd instead of Mr Mrinal Khadoo;*
- (b) The Contract Manager proposed has a B. Tech (Hons) in Mechanical Engineering with 16 years of experience mainly in sugar milling industry followed by only 4 years experience in the construction and water industry as opposed to a minimum 5 years experience in water industry;*
- (c) The Process Engineer proposed meets qualification. However, no CV has been submitted to assess his experience in design of RO plants. The Technician is qualified. However full detailed CV has not been submitted to assess experience in installation, operating and maintenance of RO desalination plants;*



- (d) *The list of Plant and Equipment to be deployed on the project has not been submitted;*
- (e) *You have submitted experience which relates mainly in installation and commissioning of desalination plant rather than experience as prime contractor in the construction of RO desalination plants; and*
- (f) *You have experience solely in the supply, installation and commissioning but not in design of RO desalination plant over the last 10 years.”*

F. Grounds for Review

On 05 July 2016, the Applicant seized the Independent Review Panel for review on the following grounds:

- “1. *The Applicant avers that the Tender exercise was substantially flawed and led to an erroneous intention to award to a foreign bidder since it is expressly provided that in Open Advertised Biddings which includes International Biddings (vide s.18 of the PPA), a margin of preference shall apply in favour of bidders incorporated in Mauritius (vide Circular No. 13 of 2012 of the PPO) – an application of the margin of preference would obviously have favoured the applicant and other Mauritian bidders – see result of the opening of bids of 27 April 2016;*
2. *The decision of the Public Body to consider Odis Filtering Ltd as the successful bidder and to declare its intention to award the tender to the latter is wrong and untenable in as much as:*
 - (a) *The bid price of the Applicant was MUR 91,929,299.00 as compared to that of the successful bidder which amounted to MUR 103,010,470.00, which is around MUR 11 Million more than that of the Applicant; and*
 - (b) *The bid of the Applicant was in the circumstances the lowest substantially responsive bid.*
3. *The Public Body and/or the Bid Evaluation Committee have failed to properly assess and/or evaluate the bid of the Applicant, which is in compliance with all the requirements of the bidding documents.*

4. *The decision of the Public Body not to retain the bid of the Applicant, the lowest substantially responsive bid, is wrong and the alleged six reasons put forward by the public Body and/or the Bid Evaluation Committee are untenable and unfounded in view of the following:*

(a) *Authorized representative*

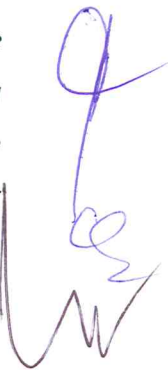
It is to be noted that according to the JV agreement, there is an Executive Committee of which Mr Jean Francois Rault is a member (Clause 10 (ii) of the JV Agreement refers). All the decisions of the Executive Committee shall be binding on the Consortium (vide Clause 10 (iv) of the JV Agreement). Mr Jean Francois Rault is duly authorized by the Executive Committee of the Joint Venture to sign the bid for and on behalf of the Joint Venture to sign the bid for and on behalf of the Joint Venture. In any case the bid of the applicant bore the seal of BOTH companies to the JV. Furthermore, the challenge dated 24 June 2016 was signed by the same Mr Jean Francois Rault alone and the respondent duly entertained the challenge and responded to same. The respondent cannot be heard today to complain that the bid document was erroneously signed.

(b) *Experience of the Contract Manager*

The Contract Manager reckons 16 years working experience at the Medine Sugar Milling Co. Ltd, Mauritius wherein he was in charge of the whole factory including the water treatment process namely the Reverse Osmosis plant on the boiler feed water of the power plant. The Contract Manager has thus more than 5 years of experience as required by the tender documents.

(c) *Submission of CVs*

The Applicant has provided the qualification and the years of experience of the process Engineer and Technician as requested by the bidding documents and the Public Body confirmed in its letter of reply to the challenge that these two persons meet qualification. The Applicant cannot be penalized for not having submitted the CV's of the Process Engineer and the Technician in as much as the required information has



been provided by the Applicant in its bid. In any case this cannot be deemed to be a material deviation rendering the bid unresponsive.

(d) List of Plant and Equipment

The Applicant has submitted the main plant and other equipment, which will be deployed on the project (vide Resources – Sub-contractors – Mechanical and Electrical Works – Section 1 – Instructions to Bidders). According to section 7 of the bidding documents – Schedules, these schedules are intended to provide the Employer with essential supplementary information in an organized format and they do not generally give a full description of the plant and equipment to be supplied and the services to be performed under each item. The Applicant has submitted complete set of the technical specifications of all plant and equipment that would be supplied and the Applicant cannot be penalized for not having filled Schedule II of Section 7 – Schedule of Major Items of Construction Plant and Schedule of Recommended Spare Parts – M. Schedule of Major Items of Equipment. Furthermore, the major items of equipment, which will be deployed on the project will be purchased by the JV as brand new ones. Again this cannot be deemed to be a material deviation and render the bid unresponsive.

(e) Experience as prime contractor

(f) Experience in design of RO Desalination plant

This is a design build and turnkey contract. The Applicant has bid for the contract on that basis and has provided the respondent with all the details of its project which in effect does not entail the construction of the plant but the setting up of the plant and equipment supplied by Temak SA from Greece, a leading supplier of such plant and equipment as provided in the company profile submitted win the bid.

5. *The decision of the Public Body and/or the Bid Evaluation Committee not to retain the bid of the Applicant for award on the account of the above alleged reasons is wrong in as much as the Applicant ought not to be penalized, more particularly in view of the substantial difference between the bid price quoted by the Applicant and that of the successful bidder*

amounting to some MUR 11 Million (about 10% more of the contract price).

6. *The Public Body should have awarded the contract to the Applicant, the lowest substantially responsive bidder.”*

G. The Hearing

Hearings were held on 14, 21 and 26 July and 16, 25 August and 07 September 2016. Written submissions were made to the Independent Review Panel on 19 July 2016 by the Applicant, and on 07 September 2016 by the Respondent.

The Applicant was represented by Mr G. Glover, SC together with Ms S. Chuong, Counsel whereas the Respondent was represented by Mr I. Cooshna, Counsel. At the Hearing of the 07 September 2016, the selected bidder, Mr T. Jahangeer was represented by Mr F. Jahangeer, Counsel.

H. Objection

H.1

At the first Hearing of 14th July 2016, Counsel for the Respondent raised an objection that the Application for Review had not been properly made, and could not be entertained. Essentially, the objection was that the Application for Review was not signed by a duly authorised representative of the Joint Venture. Proceedings were postponed to the 21st July for arguments on the preliminary objection.

H.2

At the Hearing of the 21st July, Counsel for the Applicant tabled a document purporting to be an authorisation from the JV authorising Mr Rault to act on its behalf (see below). However, Counsel for the Applicant conceded that this document had not been included in the Applicant's bid, nor had it been previously submitted to the Public Body.

The Applicant also relied on the fact that the original bid had been signed by Mr Rault, and had been accepted as a bid. Subsequent correspondence from the Public Body referred to the submission signed by Mr Rault as a bid. The Applicant therefore argued that if Mr Rault is authorised by virtue of the Joint

Venture Agreement to sign a bid on behalf of the Applicant, then he would be equally authorised to sign the Challenge and Application for Review.

It was also noted that the Challenge was signed by the same Mr Rault, and was accepted by the Public Body.

H.3

The Panel ruled that:

“As at now, the Panel is not in possession of a valid instrument to show that that the signatory of the Application for Review has been duly authorised to do so.

The Document submitted to the Panel dated the 21st April 2016 by Counsel for Applicant is not in accordance with the provisions of the Deposit of Powers of Attorney Act.

Should such a document be made available to the Panel, then the latter would be in a better position to carry on with the proceedings.”

The issue of signature of the Application for Review is therefore still live, and shall be dealt with in this Decision.

I. Issues

I.1

It is appropriate that the Panel should first deal with the issue of representation and authorisation to sign, both the bid and the Application for Review.

On 25 August 2016, the Applicant tabled a notarised Power of Attorney, registered in Mauritius on the same day, and signed by Directors of Aqua Science and Technology and Aqualia who constitute the *Executive Committee of the Joint Venture* set up under the Joint Venture Agreement submitted along with the Applicant’s bid. The Power of Attorney appoints Mr Rault as attorney for the JV for all matters relating to this tender:

“AQUA SCIENCE AND TECHNOLOGY LTD and AQUALIA DPI LTD, a Joint Venture formed on the 21st April 2016, HEREINAFTER REFERRED TO AS "THE PRINCIPAL";

WHO, THE SAID PRINCIPAL declares and states that AQUA SCIENCE AND TECHNOLOGY LTD AND AQUALIA DPI LTD have formed a Joint Venture by virtue of a Joint Venture Agreement dated 21st April 2016 and it is the Joint Venture which does, acknowledge having nominated, constituted and appointed as their attorney since the 21st April 2016 and for the full period of the Bidding Process (and any subsequent appeal to be eventually made to the Independent Review Panel, or any other competent jurisdiction) relating to the Tender above, inter alia to represent them and act on their behalf in connection with and for the purposes of the following matters, until the termination of the Bidding Process or the express revocation and termination hereof and also to perform as he deems appropriate for the purposes stated herein any or all of the acts, deeds and things hereinafter set out, and/or until completion of any appeal process:

Mr Jean Francois RAULT, born on the seventh March one thousand nine hundred and seventy-four (07/03/1974) (Birth Certificate bearing reference 196/1974 Plaines Wilhems, Curepipe), holder of a national identity card bearing reference R 070374290196G, electing domicile for the purpose of this power of attorney at the registered office of the companies above named, Managing Director.

To whom The Principal has given full power and authority for the specific purpose of representing them as the bidder in all matters pertaining to the Tender and any subsequent appeal concerning "DESIGN-BUILD AND TURNKEY CONTRACT FOR REVERSE OSMOSIS DESALINATION PLANTS AND EQUIPMENT AT BAY MALGACHE AND POINTE COTON, RODRIGUES - Procurement No: CPB/31/2015" (or any other name that may be given to it in the future) for the Tender and in that respect, authorised The Proxy who accepted same to perform all tasks including but not limited to sign and submit the Proposal for The Tender; to participate in all stages of the Bidding Process of The Tender; to conduct correspondence for and on behalf of The Principal and thereby bind The Principal; to sign the relevant document; to execute any documents required to give effect to the outcome of the Bidding Process of The Tender;



attend meetings, conferences held by the Commission of Public Infrastructure of Rodrigues Regional Assembly and any other competent authorities (the "Authorities"); provide information, clarifications, etc. to the Authorities or its advisors/consultants; to communicate with the Authorities or its advisors/consultants (if required); To appeal to any competent authorities against the outcome of the Bidding Process, including but not limited to the Independent Review Panel."

Counsel for the Respondent did not object to the part relating to powers to make an Application for Review with the Independent Review Panel but did object to any authorisation being granted *à posteriori* to Mr Rault to sign the bid on behalf of the Applicant.

The Public Procurement Act specifies that the unsatisfied **Bidder** can make the Application for Review. By extension, therefore, the person authorised to sign the Bid on behalf of the Bidder is also authorised to sign the Application for Review. However, this should not be taken to mean that **only** the person authorised to sign the bid may also sign the Application for Review. The bidder is free to appoint any other person to represent him at Review proceedings, albeit in the absence in the Public Procurement Act of any specific requirement as to the manner in which such a representative may be appointed. It is only necessary for the Panel to be satisfied that the signatory of the Application for Review represents and is authorised by the bidder, who in this case is the Joint Venture.

In the Panel's opinion, the Power of Attorney, although drawn up and registered well after the Application for Review, does indicate the intent of the JV to appoint Mr Rault as its representative at the time of the Application for Review, when viewed along with the following facts:

1. Mr Rault is the General Manager of Aqua Science and Technology , the Managing Partner of the JV
2. Mr Rault is also the General Manager of Aqualia, the other Partner of the JV, as evidenced by his CV, submitted with the tender
3. Mr Rault signed the challenge and the Public Body duly entertained and replied to the challenge.

4. Mr Mrinal Khadoo was present at proceedings and did not object to Mr Rault representing the JV, nor has there been any objection from any other official of the JV or of the members of the JV.

Moreover, the Panel has always been reticent to reject Applications for Review on issues relating to form rather than content.

The Panel therefore declares that the Application for Review signed by Mr Rault on behalf of the Applicant is acceptable, the moreso, in view of the Power of Attorney produced by the Applicant following the Panel's Ruling dated 12 August 2016.

However, whether Mr Rault was equally authorised to sign the bid is quite another matter.

In the spirit of competitive tendering, it is not possible to give an opportunity to any tenderer to legitimately withdraw his bid after opening of tenders, as this may give rise to collusion among tenderers. Therefore, an authorisation to sign the bid, submitted along with the tender is normally a *sine qua non* condition to the acceptance of the bid. Instructions to Bidders, therefore, normally specify the manner in which this authorisation should be given for submission with the tender.

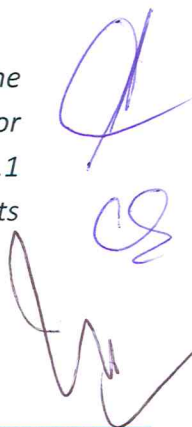
In the case under consideration, Clause 30.1 of the Instructions to Bidders (ITB) states:

30.1 Prior to the detailed evaluation of bids, the Employer will determine whether each bid (i) meets the eligibility criteria of the Public Body; (ii) has been properly signed; (iii) is accompanied by the required securities; (iv) is substantially responsive to the requirements of the bidding documents; and (v) provides any clarification and/or substantiation that the Employer may require pursuant to Clause 29.

Clause 22.2 of the same ITB further states:

22.2 The original and all copies of the bid shall be typed or written in indelible ink (in the case of copies, photocopies are also acceptable) and shall be signed by a person or persons duly authorized to sign on behalf of the bidder, pursuant to Sub- Clauses 6.1 (a) or 6.2 (b), as the case may be. All pages of the bid where entries or amendments have been made shall be initialled by the person or persons signing the bid.

Clauses 6.1 (a) and 6.2 (b) referred to above are reproduced below:



6. Qualification of the Bidder:

6.1a To be qualified for award of Contract, bidder (a) must submit written confirmation of authorization to sign on behalf of the Bidder which could be in the form of power of attorney or in any other form demonstrating that the representative has been duly authorized to sign.

6.2 Bids submitted by a joint venture of two or more firms as partners shall comply with the following requirements:

.....

(b) one of the partners shall be authorized to be in charge; and this authorization shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the partners;

In the spirit of the ITB, therefore, a bid from a Joint Venture can only be signed by one of the partners, so empowered by legally authorised signatories of all the partners. The ITB do not provide for a situation where none of the partners is a physical person. Clause 22.2 above provides for either a bid from a single entity, in which case it has to be signed by a duly authorised representative according to Clause 6.1 (a) or for a bid from a Joint Venture, in which case it has to be signed by one of the partners authorised to be in charge, as per Clause 6.2 (b). There is no provision for the appointment of a duly authorised signatory for a Joint Venture, other than Clause 6.2(b) above which does not apply when the “Partner in Charge” is not a physical person.

In the case under review, the JV Agreement does appoint one of the partners to be in charge of managing the affairs of the JV, and an executive committee with designated functions, but does not specifically appoint Mr Rault as signatory of the bid.

The Bid Evaluation Committee avers that the overall effect of the above ITB is that the representative of the Managing Partner in the JV Agreement (Mr M Khadoo) should be considered as authorised signatory, but does not give any valid reasons why this should be so. According to the JV Agreement, Mr Khadoo, an official of Aqua Science and Technology was appointed specifically to represent that company for the purposes of forming the Joint Venture and signing the JV Agreement. The latter, however, does not at any time appoint him or anybody else to represent the JV in tender proceedings. The General

Manager of the Managing Partner, Messrs Aqua Science and Technology, and Mr Khadoo's supervising officer is in fact Mr Rault, the signatory of the bid (as evidenced by Mr Rault's CV and the organisation chart, both submitted with the tender). There is no reason to believe that Mr Khadoo is anymore authorised to sign the bid than Mr Rault. It is true that the Applicant should have clarified the issue before submitting his bid, but it is possible that he was under the same misapprehension as the Bid Evaluation Committee as to the eligibility of Mr Rault to sign the bid in his capacity of General Manager of the Managing Partner of the JV. Also, the Applicant failed to fill in the form provided in the Bid documents for the appointment of an authorised signatory for a Joint Venture. The Bid Evaluation Committee did not mention this, nor was the matter brought up during these review proceedings, presumably because the ITB do not provide for such appointment.

Since the confusion as to the authorised signatory of a Joint venture has arisen because of shortcomings in the Bid Documents prepared by the Respondent, the benefit should clearly go to the Applicant.

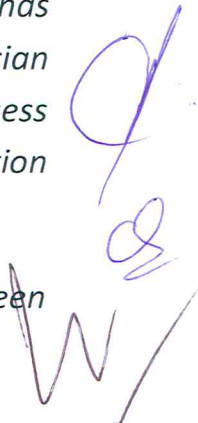
I.2

The BEC did not reject the bid from the Applicant for reasons of unauthorised signature of the bid, but on a number of perceived shortcomings, of which the lack of authorisation to sign the bid was only one. The other reasons for rejection are as follows:

(b) The Contract Manager proposed has a B. Tech (Hons) in Mechanical Engineering with 16 years of experience mainly in sugar milling industry followed by only 4 years' experience in the construction and water industry as opposed to a minimum 5 years' experience in water industry;

(c) The Process Engineer proposed meets qualification. However, no CV has been submitted to assess his experience in design of RO plants. The Technician is qualified. However full detailed CV has not been submitted to assess experience in installation, operation and maintenance of RO desalination plants;

(d) The list of Plant and Equipment to be deployed on the project has not been submitted;



(e) [The bidder has] submitted experience which relates mainly in installation and commissioning of desalination plant rather than experience as prime contractor in the construction of RO desalination plants; and

(f) [The bidder has] experience solely in the supply, installation and commissioning but not in design of RO desalination plant over the last 10 years.

During Hearings, Counsel for the Respondent relied more on the first ground relating to the issue of authorised signature. However, now that the Panel has declared its unwillingness to reject the Application for Review solely on this issue, it is incumbent upon it to review those grounds, and determine whether the Applicant's arguments in these respects have any merit.

Some of the shortcomings of the Applicant's tender could have been cured through clarifications, but it would not be relevant to elaborate on this, because no amount of clarification would have cured all the shortcomings mentioned above. Furthermore, the nature of the bid documents is such that failure in only one of the criteria can entail elimination from the bidding exercise.

In fact, even though the Applicant avers that the proposed Contract Manager did acquire extensive experience in Reverse Osmosis treatment plants during his sixteen years in a senior position on a sugar mill, this would not count as experience "*in the water industry*" which is what the bidding documents require of the Contract Manager, for reasons that are not very clear to the Panel.

Also, although the Panel is sympathetic to the argument of the Applicant that experience in "*design of RO desalination plant over the last 10 years*" should not be required for the supply of a package plant, yet the Panel insists that it is not possible to alter qualification criteria after the opening of bids.

In fact, the bid documents require that tenderers have experience in design, manufacture, installation and operation of Reverse Osmosis Desalination Plants. It would be quite difficult to find all those qualities in only one entity. It is not surprising, therefore, that not one of the ten tenderers passed all the evaluation and qualification criteria.

Only 2 of the 10 bidders passed the initial test of substantial responsiveness, and qualified for technical evaluation. Both of these bidders did not submit certain documents and information listed as “Mandatory” in the evaluation criteria. In respect of the selected bidder, the BEC noted the following in respect of the shortcomings of its tender:

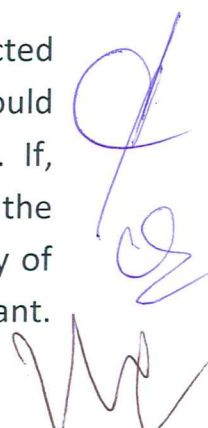
**1 The Bidder has not submitted preliminary design calculation for dosing, antiscalant, RO trains and membranes but has submitted full information and technical specifications of these items. The BEC has carried out a technical assessment based on the information provided and is of the view that the bidder must have undertaken all the preliminary design so as to be able to make the technical proposal in its bid. Moreover, the bidder will submit its detailed design for assessment and approval by clients Engineer as indicated in its programme of works and as specified in the bid document.*

**2 Description and details of emissions and environmental control measures for ambient noise levels have not been submitted. During the execution of the Contract, the bidder shall ensure that it respects the noise emission standard and will have to provide the necessary measures to satisfy the noise level in the event that it exceeds the limit.*

**3 The bidder has not submitted the operation and maintenance manual. However, it has mentioned that same will be submitted upon delivery of RO plant.”*

The submission of the O&M Manual should never have appeared in the evaluation criteria of bids, as it is customary for this to be supplied after supply and installation. Yet, it did, and the BEC cannot waive conformity to stated criteria at will, presumably in an effort to salvage the exercise.

If the Respondent is aiming to procure a custom designed and constructed Reverse Osmosis Desalination Plant, as is apparent in the documents, he would be better served to go for separate design and construction contracts. If, however, he can accept a package plant (there is no reason to believe that the successful bidder was not also planning to supply such a plant), then many of the substantial and technical responsiveness criteria would be irrelevant.

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Moreover, the use of numerous pass/fail criteria is bound to eliminate almost all, if not all bidders.

In fine, the bid documents have been wrongly drafted, and have not yielded any positive result. The Panel is conscious of the sloppiness displayed by the Applicant in the preparation of his tender, but its decision is motivated by the Respondent's clumsiness in the establishment of bid documents, and his no less clumsy attempts to overlook the shortcomings of the selected bid. The effects of the bid documents, moreover, extend beyond the Applicant's tender and has affected other tenders, and may have discouraged potential tenderers.

J. Decision

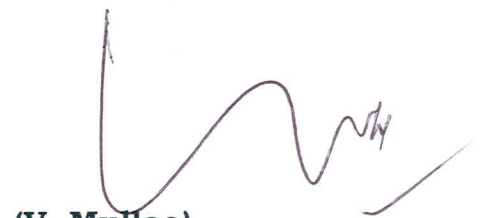
The Panel therefore finds that there is merit in the Application, and hereby orders the annulment of the decision to award to the successful bidder. The Panel also orders the annulment of the procurement exercise.



(Mrs C. Sohun)
Member



(R. Laulloo)
Chairperson



(V. Mulloo)
Member

Dated: 20 September 2016