



## Independent Review Panel

Decision No. 30/16

**In the matter of:**

**RBL Waterproofing Specialists Ltd**

**(Applicant)**

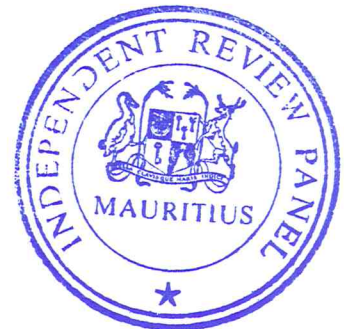
**v/s**

**Mauritius Institute of Training and Development (MITD)**

**(Respondent)**

**(Cause No. 25/16/IRP)**

**Decision**



## A. Background

### A.1

**Title of Project:** The project is “for Waterproofing works to be carried out at the following MITD Training Centres:

- Lot 1 - Prof B S Upadhyaya Training Centre in Piton
- Lot 2 - Knowledge Based Training Centre in Port Louis
- Lot 3 - Sir Kher Jagatsingh Training Centre in Beau Bassin
- Lot 4 – Ecole Hotelière Sir Gaetan Duval in Ebene
- Lot 5 - School of Information Technology, Electronics and Communication in Ebene
- Lot 6 – Sir Rampersad Neerunjun Training Centre in Ebene
- Lot 7 - Lycée Polytechnique Sir Guy Forget in Flacq
- Lot 8 – Resource Centre in Ebene
- Lot 9 – Gymnasium in Ebene

### A.2

**Project Description:** The Project consists of the following:

- (a) To carefully remove and cart away to approved dumping site(s) all existing defective waterproofing membrane to the roof slabs, copings and all sides and top of upstands;
- (b) To carefully remove and cart away to approved dumping site(s) and as directed by the Engineer, defective screed over the roof surface and defective rendering on copings and sides and top upstands;
- (c) To carefully remove all existing fibreglass water tanks, electrical conduits/pipes, cables/wirings, supply and distribution pipes and other services and re-fix same afterwards;
- (d) Provision of reinforced concrete plinth for fibreglass water tanks and pre-cast concrete blocks of appropriate size and quantity for the fixing of all pipes, conduits, etc.;

- (e) Provision of trafficable waterproofing membrane underneath fiberglass water tanks and where necessary;
- (f) Repairs to expansion/construction joints and supply and fixing of metal flashing;
- (g) Repairs to visible cracks in ceiling through the use of appropriate non-shrinkable grout/crack filler;
- (h) Hack surfaces where roof screeding have been removed and apply bonding agent and new screed of minimum thickness 20mm laid to 1% slope on the roof surfaces (selected bidder(s) to ensure that the slopes shall be sufficient to discard all water from these surfaces towards the rainwater pipes);
- (i) Hack surfaces of coping and upstands where rendering have been removed and apply bonding agent and new rendering thereon;
- (j) Supply and fixing of metals/PVC gratings at inlets of existing and new rainwater pipes;
- (k) Repairs of spalled concrete through the application of an approved repair mortar and anti-corrosion coating to reinforcement bars;
- (l) Supply and lay double layer new waterproofing membrane of a total minimum thickness of 4.2mm with granular finish on roof slab, slab edges, upstands and concrete platforms and as per manufacturer's details and specifications, including all necessary primer, tack-coat, overlapping (measured-net) and tucking into groove;
- (m) Roof screeding/dressing around all rainwater pipes including the use of any bonding agent/sealant;
- (n) Demolition of part of existing concrete slabs where applicable and supply and lay new reinforced concrete slab; and
- (o) Any associated works.

### A.3

**Advertisement and Submission of Bids:** Bids were invited on 24 June, 2016 by open advertisement in the local press. The closing date for submission was





Friday 29 July, 2016 at 13.30 hours. The Public Opening of bids was held on the same day at 1400 hours in the Conference Room of the MITD at MITD House, Phoenix.

#### A.4

**Pre-Bid Meetings:** Pre-bid visits / meetings were held at the different sites. No notes of the pre-bid meetings were taken as stated by the Respondent.

#### A.5

**Method of Procurement:** The method of procurement was by Open Advertised Bidding through the local press and on the portal of the Procurement Policy Office.

#### A.6

**List of Bidders and Prices as Read Out in the Public Opening:** By Friday 29 July, 2016, 9 (nine) Bids were recorded as per Table below with the prices as read out in the Public Opening.

Bidders	Lot No.1	Lot No.2	Lot No.3	Lot No.4	Lot No.5	Lot No.6	Lot No.7	Lot No.8	Lot No.9
Coolkote Enterprises Ltd.	909,178.50	2,511,887.50	1,101,573.50	1,993,266.25	2,062,300.75	454,480.00	3,819,437.50	<b>799,078.75</b>	978,650.00
XIORA Development Ltd.	1,172,200.00	3,060,050.00	889,800.00	1,239,550.00	1,780,850.00	413,250.00	2,932,900.00	405,250.00	955,750.00
Eurolux Contracting Ltd.	1,642,862.40	4,204,894.50	1,964,257.50	2,120,957.65	2,425,220.05	1,022,632.90	4,732,217.23	533,904.75	1,273,377.75
Tusk Contracting Ltd.	1,268,835.25	3,102,251.50	1,734,407.00	1,805,270.00	2,600,541.00	683,732.50	3,917,912.00	876,702.50	1,073,927.50
Riteseal (Mtius) Ltd.	2,121,824.75	5,488,133.50	1,756,814.75	2,286,136.75	3,345,666.25	707,054.50	5,751,644.50	862,615.00	1,548,906.25
Anil Puttoo Building and Civil Contractor Co. Ltd.	1,851,902.50	4,467,290.00	2,062,870.00	2,151,247.50	2,908,982.50	854,105.00	4,991,172.50	1,011,137.50	1,320,660.00
Clima Waterproofing Co. Ltd.	Not Quoted	2,559,670.00	Not Quoted	Not Quoted	Not Quoted	Not Quoted	2,931,476.50	Not Quoted	Not Quoted
Jurassic Waterproofing Enterprise Ltd.	1,133,946.00	2,523,784.25	1,408,060.00	2,078,165.00	1,750,363.25	674,296.75	3,802,883.25	685,198.75	847,895.00
RBL Waterproofing Specialists Ltd.	913,427.75	2,490,440.00	1,172,750.45	2,751,432.50	1,578,357.75	1,142,582.50	3,085,294.75	1,104,287.50	1,782,442.50

## B. Evaluation

### B.1

The following committee was appointed to evaluate the bids received:

<b>Chairperson</b>	
Mr T.Parbhunath	Deputy Director (Civil Engineering), MPI & L.T (P.I Div.)
<b>Members</b>	
Mr. V. Munbodh	Ag. Divisional Manager, MITD
Mr. H. Bheenick	Trainer, LPSGF, MITD
Mrs. S. Daworaz	Accounting Technician, MITD
<b>Secretary</b>	
Mr. R. Baichoo	Executive Clerk, MITD

### B.2

In respect of the Applicant, the Selected Bidder, and others, the Bid Evaluation Committee found that:

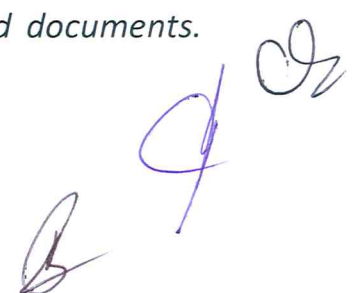
#### Bidder No. 8 – Jurassic Waterproofing Enterprise Ltd. :

*The bidder has complied fully with the submission requirements of the bid documents.*

#### Bidder No. 9 – RBL Waterproofing Specialists Ltd. :

*The bidder has complied fully with the submission requirements of the bid documents except for the evidence of Adequacy of Working Capital which does not indicate any monetary value.*

*The BEC considers most of the above shortcomings in the submissions to be non-material non-conformity to the requirements of the bid Documents except for the non-submission of the evidence of working capital from a Bank as is the case for bidders 1,2,3,4,5,and 6 and the submission of the Form of Bid not in accordance with the format of the bid documents as is the case for bidder No. 2, to be material non-conformity to the requirements of the bid documents.  
[....]*





*The bids from bidders as hereunder are therefore considered to be non-responsive to the submission requirements of the bid documents and are therefore not retained for further evaluation.*

- *Bidder No. 1 – Coolkote Enterprises Ltd.*
- *Bidder No. 2 – XIORA Development Ltd.*
- *Bidder No. 3 – Eurolux Contracting Ltd.*
- *Bidder No. 4 – Tusk Contracting Ltd.*
- *Bidder No. 5 – Riteseal (Mtius) Ltd.*
- *Bidder No. 6 – Anil Puttoo Building and Civil Contractor Co. Ltd.*

It is worthy of note that the Bid Evaluation Committee did not eliminate the Applicant at this stage, but retained him for further evaluation.

### **B.3**

The Bid Evaluation Committee proceeded further with the evaluation of the three remaining bids, and reported as follows:

#### *Responsiveness to Minimum Qualification Requirements:*

*The three retained bids were then checked for compliance with the minimum qualification requirements laid down in the Bid Documents at ITB 6.2 and 6.4:*

*The salient features are as follows:*

- *Bidder No.7 - Clima Waterproofing Co. Ltd. has been found to be generally compliant to the minimum qualification requirements except for the Financial Soundness of the bidder as per the financial statements submitted for years 2013, 2014 and 2015 which indicate loss for all three years. The Company's net worth for year 2015 is also negative. The bidder has therefore not passed this qualification criteria [sic].*
- *Bidder No.8 - Jurassic Waterproofing Enterprise Ltd. has been found to be compliant to the minimum qualification requirements of the Bid Documents.*

- Bidder No.9 - RBL Waterproofing Specialists Ltd. has been found to be generally compliant to the minimum qualification requirements except for the requirement of adequacy of Working Capital at BDS 6.4 (e) which requires the bidder to demonstrate availability of liquid assets and / or credit facilities net of other contractual commitments to be a minimum of 15% of the tender price. The BEC has noted that the evidence submitted by the bidder's banker does not indicate any amount and does not contain the wordings "net of other contractual commitments"

The BEC has consulted Directive No. 24 as issued by the PPO on 01 July 2015 regarding the responsiveness of Bank Certificates required as an evidence of adequacy of financial resources, [.....]

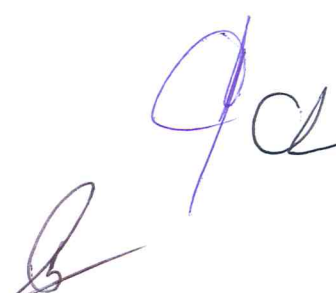
The BEC has taken note that a format of the Bank Certificate has not been incorporated in the Bidding Documents.

Considering however that the qualification requirements at BDS 6.4(e) specify a minimum of 15% of the tender price, and that the procurement exercise concerns 9 lots whereby the award of a number of lots will be based also on this requirement amongst others, the BEC views that in the absence of an amount stated in the Evidence submitted by the bidder, it will be difficult for the BEC to decide on the number of lots that can be awarded to this bidder with the proviso that he is the best evaluated bidder.

The BEC has therefore considered the Bank Certificate submitted by Bidder No. 9 to be non-responsive.

The Bids from Bidders No. 7 and No. 9 have therefore not been retained for further assessment.

At this stage, therefore, out of 9 bidders, only the Selected Bidder had survived the evaluation process.





### C. Notification of Award

The Mauritius Institute of Training and Development (MITD) through a letter dated 11 October 2016 informed the Applicant of the particulars of the successful bidders as follows:

Contract No.	Name of Bidder	Address	Contract Price (Rs) Incl. VAT & Contingency Sum
OAB/72/06/2016	Jurassic Waterproofing Enterprise Ltd	2 <sup>nd</sup> Floor Arc Building, SSR Street, Port-Louis	14,230,295.50

LOT	LOCATION	AMOUNTS (Rs) Inc. of VAT & Contingency sum
1	Prof B S Upadhyaya Training Centre	1,133,946.00 (contingency sum Rs 50,000.)
2	Knowledge Based Training Centre	2,523,784.25 (contingency sum Rs 200,000.)
3	Sir Kher Jagatsingh Training Centre	1,408,060.00 (contingency sum Rs 100,000.)
4	Ecole Hoteliere Sir Gaetan Duval	2,078,165.00 (contingency sum Rs 100,000.)
5	School of Information Technology, Electronics and Communication	1,750,363.25 (contingency sum Rs 100,000.)
7	Lycée Polytechnique Sir Guy Forget	3,802,883.25 (contingency sum Rs 200,000.)
8	Resource Centre	685,198.75 (contingency sum Rs 50,000.)
9	Gymnasium	847,895.00 (contingency sum Rs 50,000.)
TOTAL AMOUNT (Rs) Inc. of VAT & Contingency Sum		14,230,295.50

### D. The Challenge

On 17 October 2016, the Applicant challenged the award on the following grounds:

*“Being lowest in two locations for the above Procurement, why we have not been awarded the contract for the above two locations.”*

### E. The Reply to Challenge

On 21 October 2016, the Public Body made the following reply to the challenge:



*“This is to inform you that your bid was not retained for consideration as you have not demonstrated **“availability of liquid assets and/or credit facilities net of other contractual commitments to a minimum of 15% of the tender price”** as required in the Bid Data Sheet at Clause 6.4(e).”*

*“It has been noted that the Financial Standing submitted from your Banker, Barclays Bank of Mauritius Ltd, did not indicate any amount.”*

## **F. Grounds for Review**

On 27 October 2016, the Applicant seized the Independent Review Panel for review on the following grounds:

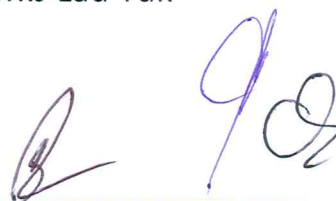
1. *“The Public Body was wrong to have disqualified and ought not to have disqualified RBL Waterproofing Specialists Ltd on the ground that it had not allegedly not complied with Clause 6.4(e) of Instruction to Bidders (ITB)”*
2. *“The Pubic Body has failed and neglected to award the contract to RBL Waterproofing Specialists Ltd which has submitted the lowest evaluated substantially bid in two locations for the above procurement.”*
3. *“The Bid Evaluation Committee of the Public Body having been satisfied after verification of all bid documents including the Bank Testimonials submitted by the Applicant, the Public Body could not or ought not to have disqualified RBL Waterproofing Specialists Ltd.”*

## **G. The Hearing**

Following Applicant’s Statement of Case, written submissions were made by the Respondent and Applicant on 11 November and 18 November 2016 respectively.

Hearings were held on 08 November 2016 and 22 November 2016.

The Applicant was represented by Mr N. K Malleck and Mr Bilaal Oozeerally both of Counsel, whereas the Respondent was represented by Mrs M.J Lau Yuk Poon (Assistant Solicitor General)



## H. Issues and Findings

### H.1

The sole bone of contention is the acceptability as proof of adequacy of financial resources of the “certificate” provided by the Applicant’s bank, which, as stated by the Public body does not “certify”, does not mention any amount, and does not contain the wording sought by the Public Body.

The Applicant has averred that the Public Body has not specified any format for the required bank certificate, nor provided a model, and therefore cannot reject a bank certificate that does not conform to a model that existed only in the Public Body’s collective mind.

### H.2

It is appropriate that the Panel should make here the following observations:

In September 2016, the Procurement Policy Office (PPO), issued Directive No 31 stating:

#### *Bid Evaluation Committee (BEC) review of financial information*

*(i) The financial information provided by the bidder should be reviewed in its entirety by the Bid Evaluation Committee (BEC) to allow for an informed assessment in reaching a pass-fail decision on the financial soundness and capability of the bidder.*

*(ii) The manner in which the financial information is to be analysed for financial soundness is more fully explained in the Evaluation Guide (Works and Goods available on PPO Website at page 15 ) rather than relying solely on Bank Certificate.*

*(iii) For analysis of complex Audited Accounts /Financial Statements, BECs may seek a report assessing the financial soundness of the bidders by a Professional Accountant registered with Mauritius Institute of Professional Accountants (MIPA).*

*This Directive supersedes Directives 18 and 24 and applies to relevant bidding documents issued as from 15 September 2016.*

There is therefore a recognition of the fact that Banks have each their own format of certificate, and that insisting on a particular format (as per Directive



24) would unduly penalise bidders who cannot secure a certificate with the exact wording required by the Public Body. However, this Directive 31 is only applicable to tenders launched as from 15th September 2016, which is not the case here. In fact the Directive specifies a transition period during which: *“For Invitation for Bids (IFBs) which have already been issued and procurement proceedings are in progress, the submission of Bank Certificate as required will continue to be used for compliance and assessment.”*

Directive 24, referred to by Directive 31, specifies that Bidding Documents should include a format for the bank certificate. Issued on 1<sup>st</sup> July 2015, the Directive 24 states that: *In order to ensure consistency and avoid submission of non-responsive Bank Certificates required as an evidence of adequacy of financial resources, a format of the Bank Certificate as at Annex should be incorporated for compliance in relevant bidding documents.*

*2. Public bodies should reject Bank Certificates submitted by bidders that are not substantially similar to the format provided. Bank Certificates that contain terms such as “Testimonial” instead of “Certificate” and/or omission of the words “net of other contractual commitments” should be rejected.*

*3. Non-responsive Bank Certificate leads to the rejection of a bid.*

*4. This Directive applies to relevant bidding documents issued as from 15 July 2015.”*

This Directive 24 is therefore the one applicable to this tender, which was issued in June 2016.

### H.3

The Bid Evaluation Committee has noted the absence of a format of a Bank Certificate in the Bidding Documents but nevertheless penalised bidders who did not submit a certificate comprising specific wording.

It is true that one would expect a bank certificate to comprise the words “certify” or “certificate” rather than “opinion”, which has been used occasionally in the past to disguise the fact that the bank is in fact unwilling to commit itself as to the adequacy of financial resources of the bidder. However, this may not be true of all banks, and no such conclusion may be drawn in respect of the Applicant. Also, the Panel agrees with the Bid Evaluation Committee that the absence of mention of an amount in the “bank certificate”



reduces its value, but does not agree with its assertion that: *“Considering however that the qualification requirements at BDS 6.4(e) specify a minimum of 15% of the tender price, and that the procurement exercise concerns 9 lots whereby the award of a number of lots will be based also on this requirement amongst others, the BEC views that in the absence of an amount stated in the Evidence submitted by the bidder, it will be difficult for the BEC to decide on the number of lots that can be awarded to this bidder with the proviso that he is the best evaluated bidder.”* Had a model or format been included in the Bidding Documents, in all cases the amount specified in the bank certificate should be 15% of the tender price, failing which the tender would be invalid.

#### H.4

The Panel also fails to understand why the Applicant’s bid was retained for further evaluation after the initial responsiveness screening, when bidders 1, 3, 4, 5, 6 were eliminated for the sole reason of *“non-submission of the evidence of working capital from a Bank”*, but the Applicant’s bid was rejected at the next stage for this exact same reason.

#### H.5

In regard to the only other bidder, apart from the Selected Bidder, who submitted an acceptable bank certificate, the Bid Evaluation Committee found that *“Bidder No.7 - Clima Waterproofing Co. Ltd. has been found to be generally compliant to the minimum qualification requirements except for the Financial Soundness of the bidder as per the financial statements submitted for years 2013, 2014 and 2015 which indicate loss for all three years. The Company’s net worth for year 2015 is also negative. The bidder has therefore not passed this qualification criteria.”* This bidder was also eliminated during evaluation of qualification criteria for lack of financial soundness, even though he had demonstrated that he would have access to liquid assets and/or credit facilities to the extent required in the Bidding Documents. One may be justified to speculate on the real value of this bank certificate which may be overruled by other financial data, the more so that Section III of the Bidding Documents, (Bidding Form for Qualification Criteria) contains the following instructions *“1.7 Financial reports for the last [insert number; usually 3] years: Financial Statements, Audited Accounts, etc. [List below and attach copies.]”* with a footnote: *“This clause is not applicable for bidders having a Provisional Registration or bidders currently operating in Mauritius who are duly registered*



*with the CIDB under the grade that covers adequately the size and type of works related to the project.”* The Bid Evaluation Committee reports that this particular bidder did provide evidence of registration with CIDB. It may be noted that the Public Body did not bother to customise this form and other parts of the Bidding Documents, leaving in brackets with field descriptions and instructions.

It also appears that the intended award to the Selected Bidder does not include lot No 6, which seems to have disappeared along the way, without any explanation from the Bid Evaluation Committee.

### **H.6**

The Panel has considered that the Application for Review concerns only 2 lots out of 9, and has looked for ways of salvaging this Bidding Exercise. But even if a re-evaluation was possible, it would also alter the situation of bidders 1, 3, 4, 5, and 6 who were also eliminated for failure to provide a valid bank certificate, with the potential of affecting the award of other lots. What the Panel has found, and reported above, does not disclose only mistakes in evaluation, but also flaws in the Bidding Documents. Moreover, Directive 18 of 2014, which had not yet been superseded at the time of tender, states at paragraphs 4 and 5:

*“4. The banker's certificate establishing the bidder's cash flow adequacy is a major document for the purposes of Directive No 3.*

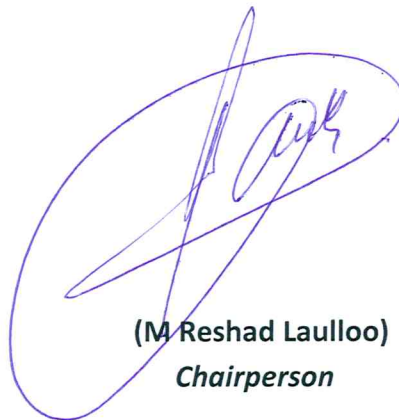
*5. No shortcoming in that major document from his banker with regards to the bidder's adequacy of financial capability may be cured at the time of bid evaluation for works/services as this is not a document of a factual nature or of public knowledge. This inadequacy is considered as a material deviation to that measure which limits in a substantial way the bidder's obligation under the proposed contract.”*

The failure of the Public Body to include in the Bidding Documents a model for the bank certificate (as per Directive 24, applicable at the time of tender), has resulted in the elimination of 6 out of 9 tenderers for non-compliance with an undisclosed model. This cannot be cured by a re-evaluation using other financial data.

The Panel therefore has no alternative than to order the annulment of the Bidding Exercise.

**I. Decision**

For the above reasons, the Panel finds merit in this Application for Review, and hereby orders the annulment of the whole Bidding Exercise.



**(M Reshad Laulloo)**  
*Chairperson*



**(Robin Rajanah)**  
*Member*



**(Mrs Christelle Sohun)**  
*Member*

Dated 28 November 2016

