

## INDEPENDENT REVIEW PANEL

**In the matter of:**

**Canakiah Associates Co. Ltd**

**(Applicant)**

**v/s**

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

**(Respondent)**

**(Cause No. 29/15/IRP)**

### **Decision**

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

On 26 September 2014, the Ministry of Education and Human Resources, Tertiary Education and Scientific Research invited bids for Renovation Works at Dr. Regis Chaperon State Secondary School at Rose Belle through an open advertised bidding process.

The closing date for submission of bids was fixed on 28 October 2014. Six bids were received from the following firms:

- (a) Monesh Enterprises Ltd
- (b) Canakiah Associates Co. Ltd
- (c) Kisten Enterprise Co. Ltd
- (d) Goldox enterprise Co. Ltd
- (e) Safety Construction Co. Ltd
- (f) S.N.B Construction Ltd

## **B. Evaluation**

In November 2014, the Bid Evaluation Committee evaluated the bids and recommended Safety Construction Co. Ltd for award of contract.

On 25 February 2015, the bid was cancelled and that the Public Body proceeded with a re-evaluation exercise in the course of which the bids of the aggrieved parties were reconsidered. The suspension of the award was maintained and all bidders were notified of the successful bidder in accordance with the provision of the Act.

The Bid Evaluation Committee re-evaluated the five bids and the latter recommended the award of the contract to Monesh Enterprise Ltd, the lowest substantially responsive bidder.

On 03 November 2015, the successful bidder and the unsuccessful bidders were notified the selection of the bid of Monesh Enterprise Ltd.

On 06 November 2015, the Ministry of Education & Human resources, Tertiary Education & Scientific Research received a challenge from Canakiah Associates Co. Ltd who was an unsuccessful bidder.

## **C. Notification of award**

The Ministry of Education & Human Resources, Tertiary Education & Scientific Research through a letter dated 03 November 2015, informed the Applicant of the particulars of the successful bidders as follows:

<i>Description</i>	<i>Name of Bidder</i>	<i>Address</i>	<i>Contract Amount</i>
<i>Renovation Works to Dr Regis Chaperon State Secondary School at Belle Rose</i>	<i>Monesh Enterprise Ltd</i>	<i>Monesh Lane Deux Freres, GRSE</i>	<i>Rs39,100,000 inclusive of a contingency sum of Rs2M and 15% VAT</i>

## **D. The Challenge**

On 06 November 2015, the Applicant challenged the award on the following grounds:

“(a) *ITB 6.2(c) stipulate as follows: “experience in works of a similar nature and size for each of the last five years or as otherwise stated in the BDS and clients who may be contacted for further information on those contracts”.*

*ITB 6.3(b) experience as prime contractor in the construction of a minimum number of works of a nature and complexity equivalent to the works over a period as specified in the BDS (To comply with this requirement, works cited should be at least 70 percent complete);*

*It will be substantiated and submitted that the successful bidder has not performed any work of a similar nature and size for each of the last five years. The BDS does not make provision for alternative experience.*

(b) *Under section IV headed ‘Evaluation Criteria’ at page 33 of the bidding document, it is not permissible to group works in multiple contracts (reference is made to section 1(b) headed multiple contracts), and this is exactly what the successful bidder has done.*

(c) *Under ITB 1.1(7) of Section II of the BDS at page 18 of the bidding document, provision is made for electrical installation works and it will be submitted that the successful bidder has not shown any evidence that it has in the past performed and provided any electrical installation works for a similar nature and size.”*

## **E. The Reply to Challenge**

On 12 November 2015, the Public Body made the following reply to the challenge:

“(a)(i) *ITB 6.2(c) stipulates that contractor should have experience in works of a similar nature and size for each of the last five years or as otherwise stated in the Bidding Data Sheet (BDS).*

*ITB 6.2(c) in the BDS specifies that “Contractors should have at least five years of experience in building construction works”.*

(ii) *ITB 6.3(b) stipulates that contractor should have experience as prime contractor in the construction of a minimum number of works of a nature and complexity equivalent to the Works over a period as specified in the BDS.*

*ITB 6.3(b) in the BDS specifies “The number of works is 2; and the period is 5 years*

- (iii) Monesh Enterprises Ltd meets the requirements at ITB 6.2(c) and 6.3(b) in the BDS.*
- (b) The evaluation criteria at page 33 of the Bidding Document, regarding “Multiple Contracts” being “Not Applicable”, has accordingly not been considered in the evaluation exercise.*
- (c) Monesh Enterprises Ltd has proposed an Electrical Contractor from the list at Appendix A of the Bidding Document.”*

#### **F. Grounds for Review**

On 06 November 2015, the Applicant seized the Independent Review Panel for review on the following grounds:

- “(a) ITB 6.2(c) stipulate as follows: “experience in works of a similar nature and size for each of the last five years or as otherwise stated in the BDS and clients who may be contacted for further information on those contracts”.*

*ITB 6.3(b) experience as prime contractor in the construction of a minimum number of works of a nature and complexity equivalent to the works over a period as specified in the BDS (To comply with this requirement, works cited should be at least 70 percent complete);*

*It will be substantiated and submitted that the successful bidder has not performed any work of a similar nature and size for each of the last five years. The BDS does not make provision for alternative experience.*

- (b) Under section IV headed ‘Evaluation Criteria’ at page 33 of the bidding document, it is not permissible to group works in multiple contracts (reference is made to section 1(b) headed multiple contracts), and this is exactly what the successful bidder has done.*
- (c) Under ITB 1.1(7) of Section II of the BDS at page 18 of the bidding document, provision is made for electrical installation works and it will be submitted that the successful bidder has not shown any evidence that it has in the past performed and provided any electrical installation works for a similar nature and size.”*

## **G. The Hearing**

Hearings were held on 25 November and 21 December 2015.

The Applicant was represented by Mr S. Potayya together with Mr M. Gobin, Counsel whereas the Respondent was represented by Mr Y. Jean Louis, Principal State Counsel together with Mr N. Meettook and Ms P. Punchu, both State Counsel.

## **H. Findings**

The Panel has given due consideration of the grounds of objection of the Applicant and as well as the witness statement of Mr N. Ramsurn on behalf of the Respondent. The Applicant submitted to the fact that under ITB 6.2(c) and ITB 6.3(b), the successful bidder has not performed work of similar nature and size and complexity and the work also required plumbing and gas installation as required under ITB 1.1 of the BDS. It was further submitted by the Applicant that the successful bidder has not performed any work of a similar nature and size and complexity for each of the last five years.

The Applicant has in his plea, according to ITB 1.7 of Section II of the Bidding Data Sheet, at page 18 of the Bidding Document, stated that the successful bidder failed to include in his bid, the electrical installation works. However, the Panel is of the view that according to criteria set out in the bidding document, the successful bidder has in its bidding exercise showed and complied to all the details of ITB 1.7 of Section II of the Bidding Data sheet.

The Panel is of the view that according to criteria set out in ITB 6.3(b), the successful bidder had experience as prime contractor in the construction of two works of a nature and complexity equivalent to the works over a period of five years.

The Panel has given due consideration of the lists of construction sites where the successful bidder was appointed as prime contractor. It is a fact that the Applicant satisfies the criteria of the bidding document in relation to the Renovation Works at Dr Regis Chaperon State secondary School but there is one important issue that the Panel has given due consideration is that the Applicant remains the highest bidder whereas the successful bidder quoted the lowest price.

As far as the Applicant's grounds of appeal that the successful bidder failed to provide sufficient proof of works experience in works of a similar

nature and size for each of the last five years or as otherwise stated in the Bidding Data Sheet, the allegation made is unfounded in as much as the bidding documents of the successful bidder in fact substantiate the experience, in similar nature and size for each of the last five years. Therefore, the Panel has observed from the bidding document of the successful bidder that his bid was responsive, and also concluded that there was provision in the bidding document of a sub contracting partner (i.e.) System Building Ltd.

Thus it is the Panel's humble view that the successful bidder is the substantially responsive bidder and that the application is set aside.

**(A. Kallee)**  
***Vice-Chairperson***

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

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

**Dated 12 February 2016**