

INDEPENDENT REVIEW PANEL

In the matter of:

Super Builders Company Limited

(Applicant)

v/s

National Development Unit (Prime Minister's Office)

(Respondent)

(Cause No. 36/15/IRP)

Decision

A. History of the case

The National Development Unit (NDU), invited qualified local and foreign Contractors to apply for participation in a Framework Agreement for the construction and upgrading of drains across Mauritius.

The NDU is responsible for the selection process, to establish and manage the Framework Agreement on terms and conditions indicated in the model provided in Section V - Framework Agreement. The NDU shall procure works through “Call-Off” under contract with any of the selected Contractors and shall be liable individually for the respective contract issued under each “Call-Off” as morefully defined in the Framework Agreement Documents. The NDU and other contracting public bodies are also referred to as Employer when in contract with any Contractor for a particular work.

The Works shall consist of the construction and upgrading of drains, culverts, bridges, absorption drains and associated works such as upgrading of watercourses, cleaning of drains and watercourses, etc...

The Works shall be carried out in four zones, Zone 1 to 4 which are made up of a group of locations identified through their constituency number, i.e Constituency No. 1 to 20, as detailed in the Bidding Documents. The zoning system is as follows: Zone 1 – Constituencies 1, 2, 3, 4, 19 and 20, Zone 2 – Constituencies 5, 6, 7 and 9, Zone 3 – Constituencies 8, 10, 15, 16 and 17 and Zone 4 – Constituencies 11, 12, 13, 14 and 18.

To enable works to be carried out simultaneously in different regions, the Framework Agreement shall allow for the selection of, as far as reasonably possible, five Contractors per zone

based on their technical, financial capabilities and quoted rates to undertake works for one or more zones.

The total value of projects to be implemented under the Framework Agreement is about Rs 750 M.

Works will be allocated as and when required for values not exceeding Rs 10 M, as per the lowest evaluated price of the specific Bill of Quantities based on the quoted rates of the Contractors selected for a specific zone under the terms and conditions of the Framework Agreement. For works between Rs 10 M to Rs 20 M, the NDU will allocate works following a mini-competition among the Contractors selected in the Framework Agreement for all zones. The terms and conditions for mini-competition is defined in Section V - Framework Agreement.

The invitation for Framework Agreement was issued on the 13 August 2015 through an Open International Bidding exercise.

A press communiqué and Tender Notice were issued during the period 14 August to 16 August 2015 in five local newspapers and the closing date for submission of bids was Wednesday 30 September 2015 at 13.30 hrs, at latest, at the Central Procurement Board, Social Security House, Rose-Hill.

Twenty (20) bids were received and Public Opening was carried out on the same day at 14.00 hours in the Conference Room of the CPB.

Name of Project: **Framework Agreement For Construction and Upgrading of Drains and Associated Works for the Year 2015-2017**

CPB Ref. Number: **CPB/23/2015**

B. Evaluation

The Bid Evaluation Committee was composed of:

Mr. T. Parbhunath	Deputy Director (Civil Engineering) - Ministry of Public Infrastructure and Land Transport (Chairman & Registered Evaluator)
Mr. R. Bhoojhowon	Project Manager – National Development Unit, Prime Minister’s Office (Member & Registered Evaluator)
Mr. V. Seetohul	Project Officer – Ministry of Environment (Member & Registered Evaluator)
Mr. K. Hosanee	Project Assistant – National Development Unit, Prime Minister’s Office - (Acting as Secretary)

In the matter of submission of financial statements, the Bid Evaluation Committee had this to say:

Bidder No. 1 – Kisten Enterprise Co Ltd.

The bidder has submitted certified copies of the audited accounts/financial statements as requested for year 2014.

Bidder No. 2 – Prakash Foolchund Contractor Ltd.

The bidder has submitted certified copies of the audited accounts/financial statements as requested for years 2012, 2013 and 2014.

Bidder No. 3 – Super Builders Co. Ltd.

The bidder has submitted the certified true copies of audited/financial statements as requested for years 2012, 2013 and 2014.

The BEC has noted that the bidder has additionally submitted the financial documents for 2015 with his auditor's report dated 12 October 2015 which is well after the closing date for the submission of bids, i.e 30 September 2015.

The BEC considers that the documents submitted for the year 2015 is not receivable and therefore not considered in the evaluation.

Bidder No. 5–Rehm-Grinaker Construction Co. Ltd.

The bidder has submitted certified copies of the audited/financial statements for the years 2012, 2013 and 2014 as requested.

Bidder No. 6 – Gamma Construction Ltd.

The bidder has submitted certified copies of the audited/financial statements for the years 2012, 2013 and 2014 as requested.

Bidder No. 9 – J. Dookhun & Sons Ltd.

The bidder has submitted the certified copies of his financial statements for the years 2013, 2014 and 2015 as requested.

Bidder No. 15 – Phil Alain Didier Company Ltd.

The bidder has stated that the audited accounts for the year 2014 will be submitted as soon as same are received.

Bidder No. 19 – T.K. Construction Ltd.

The bidder has not submitted the certified copies of audited financial statements as requested

Bidder No. 20 – Nawrang and Company Ltd.

The bidder has submitted the financial statement signed by a MIPA registered Accountant vouching that the annual turnover of the company does not exceed Rs 50.0 M.

The BEC has also noted the following:

*Whereas the Qualification Criteria at Sub-factor 2.3.1 require the bidders' net worth, calculated as the difference between total assets and total liabilities should be positive for the bidder's latest financial year, **Bidder No.3 – Super Builders Co. Ltd.** and Bidder No.18 – Super Construction Ltd. have a negative net worth from their Financial statements submitted for year 2014.*

In the light of the above non-compliance to the minimum Qualification Criteria, the BEC has considered the following bidders to be substantially non-responsive to the Qualification requirements of the bid documents and are therefore not retained for further evaluation:

Bidder No. 3 – Super Builders Co. Ltd. for displaying a financial situation as per the Audited / Financial statement submitted for the latest financial year (2014) with a negative net worth as against the requirement at sub-factor 2.3.1.

C. Notification of award

The National Development Unit through a letter dated 25 November 2015, informed the Applicant of the particulars of the successful bidders as follows:

<i>Selected Contractor</i>	<i>Number and Description of Zones</i>
Onix Co. Ltd	<i>Four Zones (Zones 1, 2, 3 and 4)</i>
Rehm Grinaker Construction Co. Ltd	<i>One Zone (Zone 2)</i>
Gamma Construction Ltd	<i>Two Zones (Zone 1 & 2)</i>
Trivan & Co. Ltd	<i>Two Zones (Zone 3 & 4)</i>
J. Dookhun & Sons Ltd	<i>One Zone (Zone 1)</i>
H. Padiachy Contractor Ltd	<i>Four Zones (Zones 1, 2, 3 and 4)</i>
Safety Construction Co. Ltd	<i>One Zone (Zone 3)</i>
Square Deal Multipurpose Cooperative Society Ltd	<i>Four Zones (Zones 1, 2, 3 and 4)</i>
Naw-Rang & Company Ltd	<i>One Zone (Zone 4)</i>

D. The Challenge

On 30 November 2015, the Applicant challenged the award on the following grounds:

“1. Super Builders Fully Responsive

Having submitted a complete bid, in strict accordance with the bidding documents, Super Builders Co. Ltd cannot be found unresponsive in the terms of reference. SB Ltd has

satisfied all requirements namely financial statement and capacity for execution of the works.

2. *Super Builders Co. Ltd being lowest Bidders in All Zones*

The most important basis which supersedes all other considerations; above board, is the cost element – Super Builders Co. Ltd being the lowest bidders in all zones and satisfying all criteria; morefully so, as a current operating contractor with outstanding track records with the NDU should automatically have been selected for award.

By selecting the highest bidders, it will be massive public funds unnecessarily spent.

We request that Super Builders Co. Ltd be reinstated in its capacity as a successful bidder.”

E. The Reply to Challenge

On 04 December 2015, the Public Body made the following reply to the challenge:

“(a) The qualification criteria with respect to Financial situation at Clause 2.3 sub-factor 2.3.1 of the bidding document stipulates that “Mauritian Companies should submit certified copies of audited accounts for the last three years as filed at the Registrar of Companies to demonstrate the current soundness of the contractors financial position”. The clause furthermore stipulates that “to qualify for award, the bidder’s net worth calculated as the difference between total assets and total liabilities should be positive for the bidder’s latest financial year.” Your company has submitted copies of audited accounts for the years 2012,

2013 and 2014 with your proposal. However, these audited accounts as submitted were not certified copies.

Consequently, your firm was requested to submit certified copies of financial statements for years 2012, 2013 and 2014 as filed at the Registrar of Companies, to which you complied.

However, in your reply, you also forwarded a certified copy of financial statements for year 2015.

The financial statement submitted for year 2015 has not been considered by the Bid Evaluation Committee, as the financial document for 2015 with the auditor's report is dated 12 October 2015, which is well after the closing date for the submission of bids, i.e. 30 September 2015.

- (b) Your firm has displayed a financial situation as per the Audited/Financial Statement submitted for the latest Financial Year (2014) with a negative net worth which is a major deviation from the requirement for financial situation at factor 2.3 sub-factor 2.3.1 thus, rendering your bid to be non-responsive.*
- (c) Any attempt to consider the financial statement for 2015 filed after the closing date for submission of bids would tantamount to making a non-complying bid becoming complying.”*

F. Grounds for Review

On 10 December 2015, the Applicant seized the Independent Review Panel for review on the following grounds:

- “1. The Public Body was wrong to have come to the conclusion that the bid of the Applicant was non-responsive on the basis of the Financial Situation (Sub Factor 2.3.1 (2nd*

paragraph) – Historical Financial Performance) inasmuch as

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- (a) *The Public Body based its decision of the Audited Financial Statements of the Applicant for the year ended 30 June 2014 whereas the closing date for submission of bids was the 30 September 2015 such that the Public Body ought to have considered the Financial Statements for “the bidder’s latest financial year” i.e. the figures for the year ended 30 June 2015; (. i.e. before the closing date) which show that the Applicant’s bid is fully responsive. The latest financial statements of the Applicant show a positive net worth of Rs1,213,841.*
 - (b) *The Public Body ought to have considered the Financial Statements as at year ended 2015 and not merely rely on the figures for 2014 inasmuch as –*
 - (i) *In accordance with Section 210 of the Companies Act, the Applicant had a statutory delay of 6 months to file its financial statements which it did;*
 - (ii) *The Applicant is authorized by law to file financial statements for year ended 30 June 2015 with the Mauritius Revenue Authority by 28 December 2015 at latest and with the Register of Companies by 28 January 2016 at latest.*
 - (c) *The latest financial statements refer to the financial statements for year ended 30 June 2015. Although there is a statutory delay of 6 months to file these statements with the relevant authorities, the crude fact remains that these statements refer to the*

financial situation of the Applicant as at 30 June 2015 – i.e. the financial position of the Applicant before the closing date.

2. *The Bid Evaluation Committee (BEC) erred when they arrived at the conclusion that the financial statements of the Applicant for the latest financial year ought not be considered. The BEC erred when they considered that the said financial statements were dated 12 October 2015 and ought to be discarded for purposes of the evaluation. The BEC failed to consider that although the said financial statements were dated 12 October 2015, the statements in fact relate to the financial situation of the Applicant as at 30 June 2015 – i.e. before the closing date of the bid.*
3. *The Applicant is the lowest bidder and there is no economic justification for not retaining the bid of the Applicant.”*

G. The Hearing

It is apposite to mention that the Panel heard and decided on 17 December 2015 an application for review (CN 27/15/IRP), involving the same litigants and the same type of contracts, but for roads instead of drains. In the present matter, hearings were held on 17 December 2015, 14 January and 02 February 2016. Written submissions were made on 27 January and 29 January 2016, by Applicant and Respondent respectively.

The Applicant was represented by Ms T. Choomka and Ms Y. Choomka, Counsel whereas the Respondent was represented by Mr D. Bissessur, State Counsel.

At the Hearing of 17 December 2015, the Applicant informed the Panel that he intended to apply for a Judicial Review against the Panel’s decision 38/15, involving the same parties

and issues. Given that the application for Judicial Review would deal with almost the same issues as the ones before us, the Applicant and the Respondent both agreed that this case should be kept temporarily in abeyance whilst awaiting developments in the Judicial Review Application. Thereafter, and as a consequence of this common decision, the case was subsequently adjourned, until the hearing of 02 February 2016, when, on being queried by the Panel as to the status of the application for Judicial Review, the Applicant finally informed the Panel that the application had been lodged the day before. By then the deadline of one month for the Panel's decision had lapsed.

The Panel was made aware from correspondence between the Applicant and the Respondent that the latter had proceeded with the award. This has led to vehement protests from the Applicant, repeated at the last Hearing. The Panel reiterates its statement made at that Hearing that it is powerless to intervene in the Public Body's decision to award as has been made abundantly clear by correspondence from the Respondent.

H. Findings

All arguments (with one exception) regarding the acceptability of the Applicant's late submission of financial statement for the FY 2014-2015 have already been addressed in Decision 38/15 in regard to CN 27/15/IRP involving the same litigants and the same type of contracts, but for roads instead of drains. The Panel has already dealt with grounds of review involving the acceptability of financial statements, and it therefore refers the parties first of all to the abovementioned Decision available at:

<http://ppo.govmu.org/English/IndependantReviewPanel/Documents/irp38-15.pdf>

The Applicant claims that the following argument submitted with his written submission of 24th January 2016, also in regard to Financial Statements, is new and had not been canvassed before:

1.5 The Applicant reiterates all the submissions and evidence adduced before the Tribunal in the review bearing cause number IRP 27/15 and at the request of the Tribunal, submissions are hereby been provided for the one issue which was not considered before the Tribunal in the review bearing cause number IRP 27/15 - that is, that the Central Procurement Board (the "CPB") issued a letter to the Applicant after the closing date requesting it inter alia to submit the financial statements for the year 2014.

2. Financial Statements 2014/2015

2.1 From the letter of the CPB dated 21st October 2015, the Applicant was clearly requested to provide the financial statements for the year 2014, that is, for the full financial year 2014.

2.2 It is submitted that Financial Statements 2013/2014 include the period of six (6) months in 2014 so that Financial Statements 2014 comprise of the period of six (6) months in 2014 and the period of six (6) months in 2015. It is more convenient to refer to it as the Financial Statements 2014/2015.

2.3 It is submitted that it is the Financial Statements 2014/2015 which are considered to be the latest financial statements of the Applicant and which must have been taken on board by the BEC. In such circumstances, the obvious conclusion of the Respondent would have been that the Applicant has been a fully responsive bidder and thus the lowest bidder.

2.4 *By failing to give due consideration to the latest financial statements, that is, the financial statements 2014/2015 having financial year end on the 30th June 2015, the BEC has not ensured that its decision making process is a fair and reasonable one. Its decision making process is clearly flawed and has caused great prejudice to the Applicant.*

2.5 *Since the closing date was the 30th September 2015, it is rational for the Respondent to consider the financial statements of the bidders for the most recent financial year end which in the case of the Applicant would be the 30th June 2015. True, it is that the financial statements 2014/2015 of the Applicant bore the date 12th October 2015 but it is undisputed that they relate to the financial year 2014/2015 ending on the 30th June 2015. The Respondent should have ignored the date of submission, the more so, as it was on its request itself after the closing date that the Applicant submitted its most recent financial statements.*

2.6 *It is to be noted that for the qualification of the award, the Bidder should submit the financial statement of the latest financial year, so accordingly given that Super Builders Co Ltd's financial year is 30 June and the bid for the Construction and Upgrading of Roads and Associated Works (2015-2017) was launched in August 2015 closing on the 22 September 2015, it is anticipated that the latest financial statement should have been 30 June 2015. It is not appropriate to use financial figures of more than 15 months old which is already considered outdated to make an assessment of the net worth or financial standing of the Bidder at the time of the closing of the Bid on 22 September 2015. It would be unfair not to consider the audited financial statement of Super Builders Co Ltd as at 30 June 2015 given that the other bidders General Construction Co Ltd (31 March year - end), Gamma Civic Ltd (31 December year - end), Colas (Maurice) Ltee (31 December year - end) and Safety Construction Co Ltd (31 December year - end) have updated and most recent*

financial statements which gives an understanding of the net worth of these entities and which have been included in their bidding documents. In all fairness this would have put all the bidders at on same level playing field in the bidding proposals.

2.7 It is further submitted that the only matter that the BEC has based itself on in declaring that the Applicant was a non-responsive bidder is the criterion pertaining to the financial statements. It is hereby submitted that by virtue of Circular No.4 of 20/09 (the "Circular"), a guidance issued by the Procurement Policy Office (the "PPO") with respect to responsiveness of bids, the very non-submission of financial statements is considered only as a minor omission. Here, the Applicant has duly submitted its financial statements but the Respondent via the BEC has considered it apt to declare the Applicant a non-responsive bidder on the mere reliance of financial statements. It is submitted that since the non-submission of financial statements is considered only a minor statement by the guidelines of the PPO, the BEC should not have based its decision on a criterion relating to a minor omission. This undoubtedly causes tremendous prejudice to an applicant who has satisfied all relevant material criteria enough to be declared as the lowest bidder for the tender subject matter of this application.

2.8 After evaluation of the lowest evaluated substantially responsive bid (stage 4) stipulated that the Bidder should have the financial and technical capability or qualifications to execute the contract satisfactorily. The financial capability refers mainly to the cash flow capability in the form of internally generated cash flows or banking facilities to support the execution of the contract. It is to be noted that net worth is based on assumptions and estimates made by accountant in line with International Accounting Standard (IAS) "Presentation of Financial Statements" however this does not justify that a company

having a positive net worth implies having a financial capability to execute the contract. This gives a strong indication of the financial capability of Super Builders Co Ltd to execute all the awarded contracts till date.

2.9 Reference is made to the reply of the Respondent to the challenge of the Applicant, where the qualification criteria with respect to the financial situation at Clause 2.3 sub-factor 2.3.1 of the bidding document was referred to. It stipulated as follows:

"Mauritian Companies should submit certified copies of audited accounts for the last three years as filed at the Registrar of Companies to demonstrate the current soundness of the contractors' financial position. "

2.10 It is submitted that the Respondent's very aim was to assess the current soundness of the financial position of the bidders. Therefore, when the Applicant provided the audited accounts for the year end June 2015, though it was dated 12th October 2015 but were undoubtedly related to the year end June 2015, the Respondent should have in all fairness and rationality, consider these financial statements as reflecting the most current financial position of the Applicant.

2.11 It is further argued that had the criterion relating to the financial submissions been so mandatory and fatal as the Respondent is purporting to show, then it would not even have had to ask the Applicant after the closing date to submit the certified copies of the financial statements for the years 2012, 2013 and 2014. As per the arguments of the Respondent, it should then have just discarded the bid of the Applicant. However, in its wisdom and perhaps in consideration of the requirements of the Circular, the Respondent felt it was right to ask for the missing information (if any).

2.12 It is submitted however that the Respondent has failed to give effect to substance over form. The aim of assessing the current financial position of the bidders has totally been overlooked. The Respondent was therefore completely mistaken to have concluded that any attempt to consider the financial statement 'for 2015 ' filed after the closing date would tantamount to making a non-complying bid becoming complying.

2.13 It is further submitted that the fact that the law itself permits companies to file their audited financial statements filed with the ROC within a delay of six (6) months (which can be extended on request) from the balance sheet date of the company, shows that making any criterion around financial statements for a bid should not be a determining factor. In any case, the criterion should be subject to the requirements of the Companies Act. In the same vein, that must be the reason why the non-submission of the financial statements in a bid is considered as minor omission in the Circular. For bidding purposes, it does not affect the price or rate quoted by the other bidders.

2.14 Therefore, it is submitted that the BEC has through its wrong interpretation of the terminologies in the bid document, as apprehended by the PPO in its Circular, has wrongly caused the competitive bid of the Applicant to be rejected due to nonmaterial deviation.

2.15 It is also to be highlighted the Circular's interpretation of the requirement pertaining to financial statements is sound in as much as different companies have different balance sheet dates so that each of the financial statements that they submit for the bid could relate to a different year with a differing year end. In these circumstances, by trying to treat the bidders on similar terms when in fact their position differ mean that the Respondent has acted unreasonably.

2.16 *Since there should be no room for subjective interpretation in bidding documents, the PPO has ensured to specify in its Circular that requirements pertaining to financial statements should be considered minor omission. This in tum upholds the basic rule of procurement that all bidders should bid on the basis of the same information. In the present matter, being given that the financial statements 2014/2015 submitted by the Applicant related to the financial year ended June 2015, there was no means by which unfairness would have occurred as no new information available before the closing date would have been submitted. The financial statements 2014/2015 related to the state of financial affairs as at 30th June 2015. By requiring the bidders to prepare and file their financial statements pertaining to the financial year end June 2015 before the closing date would have in a certain manner deprived the bidder companies of their statutory right under Section 210 of the Companies Act 2001.*

2.17 *It is also submitted that in line with Stage 2: Preliminary Examination Section 2.5 (b) Substantial Responsiveness to Commercial Terms and Conditions, financial statement or audited accounts as applicable has been considered as minor omissions, thus the Committee upon review of the outdated audited financial statements of Super Builders Co Ltd for the year ended 30 June 2014 and after consideration of the lowest bid from the said company, should have requested for updated financial statements of the Company as at 30 June 2015 in line with the Prequalification Evaluation Flow Chart of the Evaluation Guide to confirm the actual net worth of the Company at the time of the bidding rather than of evaluation the Company on a net worth on past figures of 15 months ago which will give a bias view of Super Builders Co Ltd.*

The submission of the Applicant is reproduced *in extenso* above in recognition of the valiant efforts of his Counsel to find new

elements to bring forward. In some arguments, the Applicant seeks to reply to some of the points raised in Decision 38/15, and in some, the Applicant does introduce new elements. By and large, however, the above arguments, in relation to the previous case, largely represent more of the same, in different packaging and in much larger servings.

The Panel will not engage into a semantic discussion of what constitutes a financial year, or the proper nomenclature thereof, nor will it repeat the argumentation that led to the Decision in CN 27/15. It will suffice to outline the principles that guided the Panel in the above Decision.

First of all, the Panel wishes to refer to the wording of Sub-factor **2.3.1 Historical Financial Performance**: *Submission of audited account or if not required by the law of the Contractor's country, other financial statements acceptable to the Employer, for the last three (3) years to demonstrate the current soundness of the Contractors financial position.*

To qualify for award, the bidders' net worth calculated as the difference between total assets and total liabilities should be positive for the bidder's latest financial year.

N.B: Mauritian Companies with less than annual turnover of Rs 50 M not requiring to file audited accounts shall submit certified copies of the financial statements for the last three years as filed at the Registrar of Companies prior to the deadline for submission of bids.

For Annual turnover above Rs 50 M, Mauritian companies should submit certified copies of Audited accounts for the last three years as filed at the Registrar of Companies prior to the deadline for submission of bids.

The correct interpretation of the wording is that to be acceptable, financial statements or audited accounts had to be filed with the Registrar of Companies **prior to the deadline for submission of bids** to be accepted for consideration in tender analysis. It would be perfectly acceptable for the Respondent or the Bid Evaluation Committee on behalf of the Respondent to request bidders to furnish these documents during clarification, if none had been submitted with the tender, or if there is no evidence that accounts submitted with the bids are those that were submitted to the Registrar of Companies.

Once financial accounts have been filed with the Registrar of Companies, they cannot be changed, at least if one rules out fraudulent practice. Therefore, non-submission of financial statements or audited accounts may be considered minor omissions if they have already been filed at the Registrar of Companies.

It follows therefore, that financial statements and/or audited accounts prepared and filed **after** the deadline for submission of tenders are not acceptable.

It would seem from documents submitted by other bidders that there was no confusion about the meaning of “*the last three years*”, since financial statements or audited accounts for the FY 2014/2015 filed at the Registrar of Companies, could not be expected to be available in September 2015. More importantly, the Applicant also correctly understood “*the last three years*” to exclude FY 2014/2015, since he did submit financial statements with his tender for the three FY preceding that.

If at the time of tender, the Applicant believed that financial data for FY 2014/2015 was relevant, he should have had his accounts audited or certified as the case may be, and filed with the Registrar of Companies before depositing his tender.

If he did not, for whatever reason, then the Respondent and the Bid Evaluation Committee can only consider the accounts submitted with his tender as the relevant ones, and reject any belated attempt to introduce other financial data more to the advantage of the Applicant.

There is however, another matter which may be of relevance. The Bid Evaluation Committee, during clarification, had requested a number of bidders to submit their financial data as filed with the Registrar of Companies. The Panel can only hope that these were scrutinised when they were made available to confirm that they conform to the requirements of the tender. More importantly, the Bid Evaluation Committee mentioned in respect of bidder PAD & Co that *The bidder has stated (during clarification) that the audited accounts for the year 2014 will be submitted as soon as same are received.* There is no further reference to this, and the Panel is left in the dark whether these accounts were eventually submitted.

Unfortunately, the Panel is limited in the orders it can make after application by the Public Body of Regulation 57A made under the Public Procurement Act. At any rate, failure of another bidder to submit mandatory documents within the time specified, if true, does not affect the qualification of the Applicant, on the principle that “two wrongs do not make one right.

I. Decision

For the above reasons, the Panel finds that there is no merit in this Application.

(R. Laulloo)
Chairperson

(Mrs C. Sohun)
Member

(V. Mulloo)
Member

Dated February 2016