



## Independent Review Panel

**Decision No. 13/17**

**In the matter of:**

**Aquaflo Ltd**

**(Applicant)**

**v/s**

**Central Water Authority**

**(Respondent)**

**(Cause No. 13/17/IRP)**

**Decision**

## A. Background

### A.1

**Name of Project:** Supply, Installation & Commissioning of 6 Nos of Containerised Pressure Filtration Plants

**Procurement:** ONB/CWA/C 2016/109

**Reference No.** Under e-Procurement System —CWA/IFB/2016/23

### A.2

With a view to supplying adequate potable water to the consumers, the CWA envisages to procure 6 Nos of containerised pressure filtration plants which will treat raw water of a high turbidity of up to 300 NTU as follows:

S/N	Description	Site	Capacity (m <sup>3</sup> /day)	Quantity
1	Containerised Filtration Plant	- Cote D'Or Reservoir	2500	1
		- Belle Rose Clemencia		2
2	Containerised Filtration Plant	- La Flora	2000	1
		- Mon Loisir Rouillard Reservoir		1
		- Plaines des Papayes Reservoir		1
	Total			6

### A.3

The procurement was done through e-Procurement System on 26 October 2016. The closing date for submission of bids was 07 December 2016 at 13:00 hours (local time).

#### **A.4**

Bids were opened at the CWA on 09 December 2016 at 13:05 hours (local time). The names of bidders who submitted their bids and their respective bid amounts as read out at the public opening are detailed hereunder:

Bidder No	Bidders	Read Out Total Bid Sum (Rs) excl VAT as per BSF
1	Aquaflo Ltd	26,204,000.00
2	Improchem Mauritius Ltd	56,228,000.00
3	EDCC Co. Ltd	38,620,331.17
4	Pipeline Utility Solutions Ltd	91,150,000.00
5	Technic Water Services Ltd	46,130,000.00
6	Sotravic Ltee ( Base Offer)	99,943,028.00
	Sotravic Ltee (Offer 1)	86,837,040.00
7	Blychem Ltd	51,428,000.00
8	Audax Ltd (Base Offer)	27,963,432.00
	Audax Ltd (Offer 1)	43,330,305.00
	Audax Ltd (Offer 2)	36,849,690.00
	Audax Ltd (Offer 3)	49,486,686.00
9	Aqualia DPI	51,867,200.00

#### **B. Evaluation**

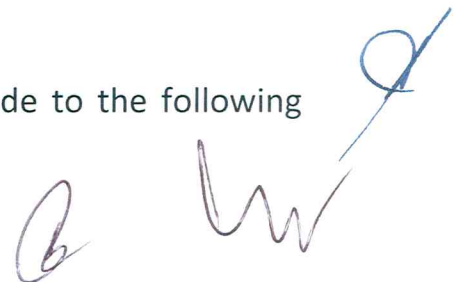
##### **B.1**

The Bid Evaluation Committee was constituted as follows:

- |                   |   |            |
|-------------------|---|------------|
| (i) S. Dinassing  | Executive Engineer/Senior Engineer (Mech) | - Chairman |
| (ii) O. Capery    | Executive Engineer/Senior Engineer (WTP)  | - Member   |
| (iii) S. Ramtohul | Senior Accounts Officer                   | - Member   |

##### **B.2**

After arithmetical checks, the following changes were made to the following bid prices:





Bidder No.	Bidders	Total Bid Price as Read Out as per BIF (Rs) (Excl VAT)	Total Corrected Bid Amount (Excl VAT)
7	Blychem Ltd	51,428,000.00	51,368,000.00
8	Audax Ltd (Base Offer)	27,963,432.00	28,463,432.00

### B.3

The bid from Technic Water Services was rejected for non-compliance with the requested delivery period.

### B.4

Preliminary examination in respect of eligibility: the Bid Evaluation Committee noted that:

*Bidder No. 1 —Aquaфло Ltd did not submit or partially submitted the following:*

- *Evidence from the bidder confirming of handling one (1) similar contract in the last ten (10) years*
- *Documentary evidence that they have a well-equipped workshop for attending to any repairs/after sales services*
- *Manufacturer's recommendation for Inspection and Maintenance*
- *Certified copies of audited Financial Statements or Financial Summaries for the last three years filed with the Registrar of Companies and bearing the stamp of the Registrar of Companies.*
- *The containerized pressure filtration plants meet the requirement for treating river water for potable use as per the Drinking Water Standard of Mauritius of EPA 1991(G.N No. 55 of 1996)*

*The BEC opined that the above non-submissions were not material grounds for rejection of this offer. As such it was decided to request the bidder to submit clarifications. Accordingly, a letter of clarification was issued on 10 January 2017 (Annex-3). In a reply, dated 16 January 2017, this bidder submitted the required above info except copies of Financial Statements. Although this bidder failed to submit the Financial Statements, the BEC decided not to reject this bid*

at this stage but to request the required info in case this bidder is selected for an award.

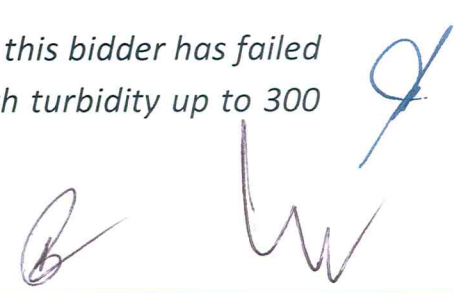
*Bidder No. 7 — Blychem Ltd did not submit the Financial Accounts for period ended 30 June 2016 and 30 June 2015. The bidder was requested to submit same through a letter of clarification dated 20 January 2017 (Annex-3) and in its reply dated 24 January 2017, this bidder submitted the required info and as such the bid was retained for further evaluation.*

## **B.5**

**TECHNICAL ANALYSIS:** The Bid Evaluation Committee made the following remarks after technical analysis:

### ***Bidder No. 1 —Aquaflo Ltd***

- *This bidder has submitted an offer from Wenzhou Hengtong Water Treatment Co. Ltd from China. The proposed filtration process is particle filtration using multimedia filter. The model comprises of 1 No. Of filter housing with a filtration rate of 84 m/hr (2,016 m<sup>3</sup>/d) for the treatment plant with filtration capacity of 2000 m<sup>3</sup>/d whereas for the 2500m<sup>3</sup>/d, the same principle of filtration process is used.*
- *However, the backwashing period is 24hrs with a duration of 10 minutes. It is to be noted that with a high turbidity of 300NTU, the frequency of backwashing will be more frequent, thus producing less treated water. On the other hand, the treated water in the storage tank will be used for backwashing process. Thus, the proposed filtration plant will be unable to work to its optimum capacity with raw water of high turbidity of 300NTU.*
- *The proposed containerised filtration plants of 2000m<sup>3</sup>/d and 2500m<sup>3</sup>/d respectively are not suitable to treat water with high turbidity of 300NTU and as a result of same, the filters will clog and the filtration plants will have to be shut down.*
- *Although requested through a letter of clarification, this bidder has failed to describe the treatment process of raw water with turbidity up to 300 NTU and chemical used.*





- *Based on the observations made above, this offer is considered to be technically non-compliant and is therefore rejected.*

### **Bidder No. 7 — Blychem Ltd**

- *This bidder has quoted for a containerised filtration plant of make Water Icon from South Africa.*
- *The proposed treatment plant works as a direct-floc-filtration without pre- settlers.*
- *The proposed system consists of 24 dual media filters (DMF) — 2 banks of 12 each. For the purpose of backwashing, filtered water from preceding filters is used to backwash the subsequent filters. In this way, the need for dedicated backwash pumps is eliminated. Backwash is initiated by a pressure sensor in the feed to the DMF or time base whichever occurs first. Backwash can also be initiated manually. During backwash, one bank of 12 DMF remains in service while the other bank is backwashed.*
- *This bidder has complied with all the technical requirements of the bidding document and as such this bid is being retained for further evaluation.*

### **B.6**

The Bid Evaluation Committee concluded as follows:

*Following the opening of the bids received on 09 December 2016, the BEC carried out the evaluation of the bids as follows:*

- a) Determination of eligibility/responsiveness of bids and,*
- b) Technical Analysis.*
- c) Financial Analysis.*

*[---] the lowest evaluated substantially responsive offer is from **Blychem Ltd** in the total sum of **Rs 51,368,000 excl VAT**.*

**B.7**

In February 2017, the Bid Evaluation Committee submitted a Supplementary Bid Evaluation Report at the request of the Departmental Bid Committee, in which it stated, *inter alia*:

➤ **Clarifications from Aquaflor Ltd**

*In a letter dated 10 January 2017, Aquaflor Ltd was requested to submit Final Audited Accounts for the Financial Year ending 31 December 2015 filed with the Registrar of Companies. In his reply dated 16 January 2017, Aquaflor Ltd explained that same would be submitted by 31 January 2017 as his Auditor was absent from the country. Being given that this bidder had complied with all the other preliminary requirements, the BEC had decided to retain this bid for technical evaluation and to request the required info if the bid is selected for an award.*

*On 31 January 2017, Aquaflor Ltd submitted the Final Audited Accounts for the Financial Year ending 31 December 2015. However, upon perusal of the Accounts, it was observed that this bidder has failed to comply with the following:*

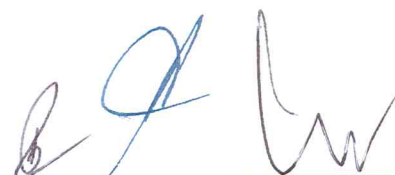
- *An average annual turnover over the last three years representing at least 70% of the estimated cost of goods to be procured.*
- *A positive working capital in one of the last three years.*

*In view of the above, the BEC consider this bid as being non-responsive in line with ITB 39.3 of the bid document.*

➤ **Blychem Ltd**

*As per Post-qualification Requirements (ITB 39.2), to determine the financial capability of the selected Bidder, the responsive Bidder shall furnish documentary evidence that it meets the following financial requirement(s):*

- (i) the bidder must have an average annual turnover over the last three years representing at least 70% of the estimated cost of the goods to be procured;*





*(ii) the bidder must have earned profit in at least one of the last three years;*

*(iii) the bidder must have a positive working capital in one of the last three years;*

*The BEC observed that Bidder Blychem complied with criteria (i) and (ii) but does not have a positive working capital (Current Assets less Current Liabilities) in any of the last three years as per Financial statements submitted for Years 2014, 2015 and 2016.*

*This bidder has also computed a transportation cost of Rs 60,000 in the contingency sum of Rs 500,000 and same was corrected as detailed at para 14.0 of the Evaluation Report.*

*In light of the comments made above especially with regard to para (iv), the Bid Evaluation Committee recommends that the Contract C2016/109 — Supply, Installation and Commissioning of 6 Nos Containerised Filtration Plants be subject to negotiation, in line with Circular No.7 of 2010 — Special Circumstances for Negotiation, with the lowest substantially evaluated bidder, Blychem Ltd in line with the following:*

- For a satisfactory reduction in the bid amount of Rs 51,368,000.00 (Rupees Fifty One Million Three Hundred and Sixty Eight Thousand Only) excl VAT which is 31.71% above the estimated cost of Rs 39,000,000.00.*
- Blychem Ltd will have to accept correction of the quoted price from Rs 51,428,000 to Rs 51,368,000 excl VAT.*
- Bidder Blychem Ltd will have to provide a Financial Standing from its bank to confirm that it has sufficient funds to undertake the project.*

### **C. Notification of Award**

The Central Water Authority through a letter dated 13 April 2017, informed the Applicant of the particulars of the successful bidder as follows:

<b>Contract No.</b>	<b>Name of Bidder</b>	<b>Address</b>	<b>Contract Price (Rs) excl. VAT</b>
C2016/109	Blychem Ltd	IBL Business Park, Riche Terre	50,800,000.00



#### **D. The Challenge**

On 19 April 2017, the Applicant challenged the award on the following grounds:

*“Aquaflo Ltd is the lowest bidder and complies with all technical specification.”*

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

On 21 April 2017, the Public Body made the following reply to the challenge:

*“We wish to inform you that your bid for the above-mentioned contract was rejected for the following reason:*

*Under the working principle of filtration plant, it is specified that during the backwashing process, the production of treated water shall be at least 75% of the Maximum filtration capacity of the filtration plant.*

*The proposed pressure filters comprises of only 1 No. of filter housing; thus during the backwashing process, the production of the treated water would be interrupted and this is not in line with working principle of the filtration plant.”*

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

On 02 May 2017, the Applicant seized the Independent Review Panel for review on the following grounds:

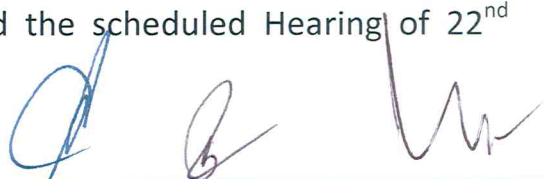
*“Aquaflo Ltd is the lowest bidder and fully complies with the technical specifications as per bidding documents procurement ref: ONB/C2016/109.”*

#### **G. The Hearing**

A Preliminary Hearing was held on 08 May 2017 and a Hearing was scheduled for 22 May 2017.

Reply from Respondent was made on 15 May 2017. Skeleton Arguments on behalf of Applicant was received on 24 May 2017.

The Applicant was represented by Mr L. Servansingh, Counsel instructed by Mr P. Nathoo, Attorney whereas the Respondent was not assisted by Counsel at the Preliminary Hearing, and did not attend the scheduled Hearing of 22<sup>nd</sup> May.



## H. Findings

### H.1

Were it not for the incredible sloppiness of the Public Body in handling the Challenge and Application for Review, the real issues regarding the rejection of the Applicant's bid could have been discussed, possibly leading to a different conclusion.

In reply to the Challenge made by the Applicant, the Public Body invoked a non-existent requirement of the Bidding Documents that a production of 75% of specified output should be maintained during the backwash process. Since this has never been a condition of the Bidding Documents, the Applicant was obviously dissatisfied with the reply to the Challenge, and, as a result, made an Application for Review.

After the Application for Review, the CWA sent a letter to the Panel dated 5<sup>th</sup> May 2017, stating *inter alia*, that:

*" [----] it is specified that during the backwash process, the production of the treated water should read 50% of the maximum filtration capacity of the filtration plant instead of 75% of the maximum filtration capacity"*

However, the last paragraph of the letter also read: *"According to the working principle of the proposed filtration plant by Aquaflo Ltd, the Plant would no longer produce treated water during the backwashing process."* This is contrary to the assertions of the Applicant in his bid, and is nowhere to be found in the Bid Evaluation Report. It is noted that this letter was not copied to the Applicant, and, at best, it represents yet another instance of the lack of seriousness of purpose of the Respondent in dealing with this Application for Review.

For the uninitiated, backwashing represents a process of cleaning the filter media by (stated simply) reversing the flow in the filter with clean water. Thus, no single unit can produce clean water while being backwashed. A reduced (e.g. 50%) production during backwash may be achieved by the use of 2 or more units in one plant, thus ensuring that at least one unit will be working while another is being backwashed. The backwash process may be programmed to start automatically when the media is clogged to a certain degree, as measured by the pressure differential required to "push" the water through the media.



It may also be mentioned that very fine particles may not be removed by all types of media, and chemicals may sometimes have to be added to flocculate or coagulate such particles.

Lastly, the requirement for continued production (50%) of clean water during the 10 minutes or so that a backwash process would last is poorly understood, since the clean water is not fed directly into the network to consumers, but to a storage reservoir. The Panel is not making an issue out of this, since the point was not raised either before or after the submission of tenders, and is therefore not relevant to the determination of this case. However, for future reference, the CWA should bear in mind that insisting on things that may not be essential (in this case that each plant should be made up of at least 2 units) unnecessarily reduces competition and increases costs.

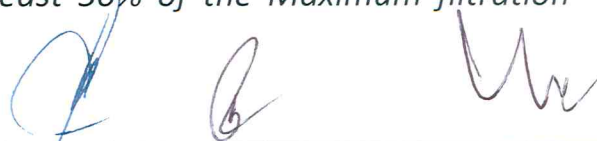
## H.2

The absence of the Respondent at the scheduled Hearing prompted the Panel to decide to determine this case on the basis of documentary submissions only, without a Hearing. Nothing in the Public Procurement Act, or its attendant Regulations makes it mandatory for the Panel to conduct a Hearing. Moreover, in the particular circumstances of this case, insisting on a Hearing would have made it impossible for the Panel to deliver its Decision within one month of application, thus depriving the Applicant of his rights under the Public Procurement Act, in case of merit.

## H.3

The real reasons for rejection of the Applicant's bid are not stated in the reply to Challenge, and partly addressed in the reply to the Statement of Case from the Public Body. The Statement of Case from the Applicant, therefore, is irrelevant as it addresses only a non-existent issue raised by the Public Body in its reply to the Challenge. However, the reply to the Statement of Case from the Public Body contains sufficient information to elicit relevant and pertinent information from the Applicant.

In a further submission, the Applicant has stated that "[---] in the Bidder's offer [---] it is clearly mentioned that: "During the backwashing process, the production of treated water shall be at least 50% of the Maximum filtration

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*capacity of the filtration plant"; this is completely in line with the technical specifications of the Bidding Documents [---].*

*[---]*

*The bidder's offer also clearly states that there are 2 Nos. of filter housing under subheading no. 15 offer [---]. This implies that during backwashing of filter no. 1, production of treated water would be 50%, achievable via filter no.2 and vice-versa.*

*However, [---], the CWA specifies that the reason for rejection of the Bidder's offer is due to the proposed pressure filters comprising only 1 No. filter housing. In the light of the above, this is clearly not true."*

#### **H.4**

The Panel, fortunately, never relies exclusively on written submissions from the parties, but always refers to source documents such as the Bidding Documents, the Bid Evaluation Report, and the Applicant's bid.

The Panel would also like to mention in reply to the Applicant's objection to the effect that *"The Bidder takes objection to the CWA's statement of case, more specifically to paragraphs 3 (i) and (ii), which contain new reasons for rejecting the bid of the Bidder and which were never made a live issue at the challenge stage"*, that under Regulation 53(3), made under the Public Procurement Act, *"(3) The Review Panel may request or allow the submission of additional statements by the parties and by other parties not participating in the application for review as may be necessary for the fair resolution of the application for review."*

#### **H.5**

An analysis of the various reasons put forward by the Public Body at different times to justify rejection of Applicant's bid shows the same lack of rigour, thoroughness and meticulousness that would later characterise post-challenge correspondence and, generally, CWA's attitude during this Application for Review.

- **First Bid Evaluation Report**

*However, the backwashing period is 24hrs with a duration of 10 minutes. It is to be noted that with a high turbidity of 300NTU, the frequency of backwashing*

*will be more frequent, thus producing less treated water. On the other hand, the treated water in the storage tank will be used for backwashing process. Thus, the proposed filtration plant will be unable to work to its optimum capacity with raw water of high turbidity of 300NTU.*

In the covering letter to his bid, the Applicant has mentioned that:

*“H. Backwash Water Storage Tank*

*For each containerised treatment plant, 2 x 9000 L polyethylene tanks will be supplied to store water for at least 2 backwashes per day.”*

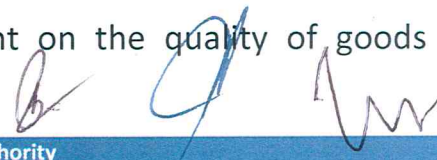
Also, it is not clear whether the remark *“the frequency of backwashing will be more frequent, thus producing less treated water”* applies only to the Applicant’s bid because of the specificity of his filter media, or to all bids because of the high turbidity of raw water. In the absence of any argumentation about the filter media to support this assertion, the Panel is forced to believe that it is the nature of the raw water which would necessitate more frequent backwashing, in which case, the remark applies equally to all bids. Also, in the same covering letter, under *“15. Proposed Filtration Process,* the Applicant seems to be proposing 2 No Filter Units per Plant, which is what the Public Body is apparently looking for:

A. Filter Housing	Treatment Plant 2000 m <sup>3</sup> /day	Treatment Plant 2500 m <sup>3</sup> /day
Model:	WTMMF-2500	WTMMF-3000
Quantity:	2 No.	2 No.
Flow Rate:	100 m <sup>3</sup> /h	125 m <sup>3</sup> /h
Filter Housing Dimension:	Φ2200mm x 2500mm	Φ2200mm x 3000mm

The Panel believes that there are sufficient unresolved issues in this regard to warrant further investigation.

*The proposed containerised filtration plants of 2000m<sup>3</sup>/d and 2500m<sup>3</sup>/d respectively are not suitable to treat water with high turbidity of 300NTU and as a result of same, the filters will clog and the filtration plants will have to be shut down.*

Although the Panel recognises that the expertise of the Bid Evaluation Committee entitles it to make a value judgement on the quality of goods





proposed, the above statement would need to be elaborated to support what would otherwise look like a gratuitous statement.

*Although requested through a letter of clarification, this bidder has failed to describe the treatment process of raw water with turbidity up to 300 NTU and chemical used.*

It is regrettable that this matter was not raised in the reply to the Challenge, nor in subsequent submissions.

In Section V, Schedule of Requirements, of the Bidding Documents, the Public Body has described at Section 7, the “Working Principle of Filtration Plant”, and has requested *inter alia*:

*“The containerized Pressure filtration plants shall be equipped only with mixed media filter capable to treat raw water with turbidity up to 300 NTU and the chemical used, **if any** in the treatment process should be mentioned.” (emphasis added)*

The Bidding Documents, therefore do not make the use of chemicals mandatory. This leads to the belief that the quality of raw water, alone, does not necessarily warrant the use of chemicals. However, the Bid Evaluation Committee may have judged the filter media proposed by the Applicant inadequate for use with high turbidity raw water without any chemical. If so, the remark should be further elaborated, and the Applicant be given a chance to reply.

▪ *Supplementary Paper to the Bid Evaluation Report*

*“On 31 January 2017, Aquaflo Ltd submitted the Final Audited Accounts for the Financial Year ending 31 December 2015. However, upon perusal of the Accounts, it was observed that this bidder has failed to comply with the following:*

- *An average annual turnover over the last three years representing at least 70% of the estimated cost of goods to be procured.*
- *A positive working capital in one of the last three years.*

*In view of the above, the BEC consider this bid as being non-responsive in line with ITB 39.3 of the bid document.”*



If, after clarification, a bidder fails to comply with mandatory requirements, the Panel agrees that this would constitute sufficient grounds for rejection of a tender. However, in the same Report, the Bid Evaluation Committee noted, in respect of the Selected Bidder: *“The BEC observed that Bidder Blychem complied with criteria (i) and (ii) but does not have a positive working capital (Current Assets less Current Liabilities) in any of the last three years as per Financial statements submitted for Years 2014, 2015 and 2016.”*

In the light of the above, the Bid Evaluation Committee recommended negotiations with the Selected Bidder

- *For a satisfactory reduction in the bid amount of Rs 51,368,000.00 (Rupees Fifty One Million Three Hundred and Sixty Eight Thousand Only) excl VAT which is 31.71% above the estimated cost of Rs 39,000,000.00.*
- *Blychem Ltd will have to accept correction of the quoted price from Rs 51,428,000 to Rs 51,368,000 excl VAT.*
- *Bidder Blychem Ltd will have to provide a Financial Standing from its bank to confirm that it has sufficient funds to undertake the project.*

The Panel does not believe that negotiations may be used to alter the conditions of tender so as to make a non-responsive tender responsive, when about half of the bids received, some of which may have been fully responsive, **have not been analysed**. However, it will stress that the same treatment should be given to all tenderers.

The Panel has also noted that the Bid Evaluation Report lists a number of items for which the bid submissions from the Applicant were found unsatisfactory, and clarifications sought from Aquaflo. Thereafter, the Bid Evaluation Report, and the supplementary report are silent on these issues, which lead the Panel to believe that they have been satisfactorily clarified. However, this needs to be confirmed.



## I. Decision

For all the above reasons, the Panel finds merit in the application, and hereby orders a fresh evaluation.

The Panel also wishes to stress that the above Decision is based solely on documents submitted during this Application for Review process.



**(Reshad Lulloo)**  
**Chairperson**



**(Virjanan Mulloo)**  
**Member**



**(Ramsamy Rajanah)**  
**Member**

**Dated 30 May 2017**

