



## Independent Review Panel

Decision No. 16/17

In the matter of:

**Canakiah Associates Co. Ltd**

(Applicant)

v/s

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

(Respondent)

(Cause No. 15/17/IRP)

**Decision**

## A. History of the case

### A.1

On 28 December 2016, the Ministry of Education and Human Resources, Tertiary Education and Scientific Research invited tenders through Open Advertised bidding for the Construction of additional facilities at Rabindranath Tagore SSS, Ilot, Pamplemousses.

The bids were to be submitted to the Chairperson, Departmental Bid Committee, M/Education & HR, TE & SR, Phoenix. The deadline for the submission of the bid was 31 January 2017 at 10.30 hrs. Eight bids were received and were opened on the same day by the Departmental Bid Committee.

### A.2

The deadline for submission of bids i.e. the closing date was initially set for 17 January 2017, but was later extended to 31 January 2017.

### A.3

<b>Name of Project:</b>	Construction of Additional Facilities at Rabindranath Tagore SSS, Ilot, Pamplemousses
<b>Public Body:</b>	Ministry of Education & HR, Tertiary Education and Scientific Research
<b>Ministry Ref. Number:</b>	MOEHRTESR/Works/OAB 069/2016-2017
<b>Contract Description:</b>	Contract duration of 240 days from the date of start of works
<b>Method of Procurement:</b>	Open Advertised Bidding

**A.4**

At bid opening, eight bidders had submitted bids with the following prices:

Bidder No.	Bidder Name	Amount Quoted inclusive of VAT after discount (Rs)	Discount (Rs)
1	Como Construction Ltd	35,972,000.00	1,364,450.00
2	Bolah Jeetun Co. Ltd	31,550,595.00	Nil
3	Monesh Enterprise Ltd	29,000,000.00	3,432,108.70
4	Kisten Enterprise Co. Ltd	31,998,750.00	Nil
5	Safety Construction Co. Ltd	34,086,287.50	Nil
6	Keep Clean Ltd	31,863,929.92	Nil
7	Canakiah Associates Ltd	27,978,530.00	Nil
8	Tayelamay & Sons Co. Ltd	39,760,100.00	Nil

**B. Evaluation****B.1**

Composition of the Bid Evaluation Committee (BEC) and Official Status of each member including profession:

NAME	DESIGNATION	STATUS
<b>Mr Y. Kistomohun</b>	Assistant Permanent Secretary	Chairperson
<b>Mr Y. Sairally</b>	Engineer/Senior Engineer	Member
<b>Mr H. Jankee</b>	Assistant Manager Financial Operations	Member
<b>Mrs N. Mutty</b>	Office Management Assistant	Secretary

**B.2**

In regard to General Responsiveness, the Bid Evaluation Committee observed as follows:

***“Bidder No. 6 - Keep Clean Ltd.***



*The bidder has not submitted financial statements for the year 2016.*

*The BEC considered the above as a minor deviation.”*

***Bidder No 7 – Canakiah Associate Ltd.***

*The bidder has not:*

- (i) submitted financial statements for the year 2016.*
- (ii) signed the authority to seek references from the bidder’s bankers*
- (iii) submitted information with respect to item 6.2 (h) – information regarding any current litigation*

*The BEC considered the above as minor deviations and all the Bidders have been retained for further evaluation.”*

**B.3**

In regard to Technical Requirements, the Bid Evaluation Committee, after analysis, concluded as follows:

***“Bidder No. 6 - Keep Clean Ltd.***

*The bidder has not fully complied with the requirements for the proposed experienced Electrician regarding Modules 1, 2, 3 in electrical installation works as per the qualification requirements of the bidding document.*

*The BEC considered the above as acceptable.*

***Bidder No 7 – Canakiah Associates Ltd.***

*The bidder has not complied with the following:*

- (a) no proposal has been submitted for the Full Time Site Agent, Electrical Technician and Plumbing Technician.*
- (b) the proposed experienced Electrician holds a National Diploma Level 6 in Applied Mechanical and Electrical Engineering by MITD instead of NTC in electrical installation works (Modules 1,2,3) issued by MES and IVTB as per the qualification requirements of the bidding document.*

*The BEC considered item (a) above as a non-submission and therefore a major deviation.”*

#### **B.4**

The Bid Evaluation Committee concluded its report with the following recommendation:

*“The BEC recommends that the contract for the construction of additional facilities at Rabindranath Tagore SSS be awarded to Bidder No.6, Keep Clean Ltd in the amount of Rs 31,863,929.92 inclusive of VAT and Contingency for a contract duration of 240 days subject to the Bidder submitting financial statement for the year 2016 and the make and country of origin for Item 9 of Schedule of Materials (Electrical) - Luminaires Types A, B and C.”*

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

The Ministry of Education and Human Resources, Tertiary Education and Scientific Research through a letter dated 25 May 2017, informed the Applicant of the particulars of the successful bidder as follows:

<i>Description</i>	<i>Name of Bidder</i>	<i>Address</i>	<i>Contract Price</i>
<i>Construction of Additional Facilities at Rabindranath Tagore SSS, Ilot. Pamplémousses</i>	<i>Keep Clean Ltd</i>	<i>Supreme Square, Sookdeo Bissoondyal Street, Port Louis</i>	<i>Rs31,863,929.92 inclusive of a contingency amount of Rs1.5m and VAT</i>

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

On 26 May 2017, the Applicant challenged the award on the following grounds:

*“Because the Public Body was wrong to award the bid to Keep Clean Co. Ltd although the applicant Canakiah Associates Co. Ltd was the lowest.”*

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

On 01 June 2017, the Public Body made the following reply to the challenge:



- (i) *The lowest evaluated substantially responsive Bidder, Keep Clean Ltd has been selected for award of contract;*
- (ii) *The bid of Canakiah Associates Co. Ltd is not responsive. It is not compliant with ITB 6.3(d) as no proposal has been submitted in respect of the following:*
  - (a) *Full Time Site Agent;*
  - (b) *Electrical Technician; and*
  - (c) *Plumbing Technician.”*

## **F. Grounds for Review**

On 07 June 2017, the Applicant seized the Independent Review Panel for review on the following grounds:

*“The Applicant will show that it indeed provided the name of the Full Time Site Agent (as per annexure A) and also provided an Electrical Engineer instead of an Electrical Technician and concedes that it omitted to provide a Plumbing Technician. In these circumstances, the Public Body ought to have called upon the Applicant for clarifications. The Applicant, which is substantially responsive, was the lowest bidder and Keep Clean Ltd is around Rs3,000,000.00 above.*

*As in the past and owing to similar minor omissions, the Applicant was called upon by Public Bodies in writing to furnish clarifications.*

*Such omissions do not affect in any substantial way the scope, quality, or performance of the works consisted in the contract as per Directive No. 3 issued by the Procurement Policy Office under the heading Determination of Responsiveness of Bids. The Public Body also failed to comply with ITB 30 under the heading E – Evaluation and Comparison of Bids of the Bid Document.”*

## **G. The Hearing**

Hearings were held on 14 and 28 June 2017. Statement of Defence was made on 19 June 2017 by Respondent.

The Applicant was represented by Mr S. Potayya, Counsel whereas the Respondent was represented by Mr K. Boodhun, State Counsel.

## H. Issues

### H.1

The Applicant claims that he has submitted in his bid sufficient information in regard to the provision of a full-time site agent to comply with ITB 6.3 (d). The Respondent claims that he has not.

### H.2

The Respondent claims that the Applicant did not propose to provide an electrical technician as required under ITB 6.3 (d). The Applicant claims that he did provide in his bid the name and CV of an Electrical Engineer, and that the latter can perform the work of an Electrical Technician, and that therefore, the provision of the latter in his bid was not necessary.

### H.3

In regard to the failure of the Applicant to provide in his bid a Plumbing Technician, the Respondent agrees that this may be considered a minor deviation, and could eventually be addressed through clarification, had not the Applicant's bid been rejected for other reasons.

## I. Findings

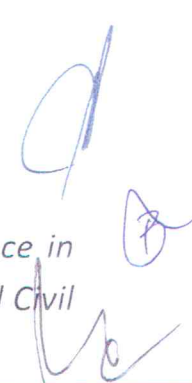
### I.1

Since the rejection of the Applicant's bid is based on non-compliance with the provisions of ITB 6.3 (d), it is apposite that the latter should be reproduced here:

*ITB 6.3 (d)*

**Key Personnel:**

*One Contract Manager with a minimum of 10 years' experience in Contract Management holding at least a degree in Building and Civil*





*Engineering or any similar qualifications from a recognised institution and registered with his/her respective council. The duties of the Contract Manager shall be amongst others to attend site meetings, coordination meetings and site visits.*

*One Site Agent on site on a full-time basis with a minimum of 10 years relevant experience and holding at least a diploma in Building and Civil Engineering or any similar qualification from a recognised institution.*

*One General Foreman with minimum 10 years relevant experience.*

*One registered Electrical Engineer with a minimum of 5 years post registration experience.*

*One Quantity Surveying Technician with minimum 5 years relevant experience holding at least a diploma in Quantity Surveying or a similar qualification.*

*One Electrical Technician with minimum 5 years' experience holding the part II Electrical Engineering Technician's certificate 280 or 803 of the City of Guilds of London or any similar qualifications.*

*At least one experienced electrician holding the National Trade Certificate (NTC) in electrical installation works (Modules 1,2,3) issued by the Mauritius Examinations Syndicate and the IVTB*

*One Plumbing Technician with minimum 5 years' experience holding the National Trade Certificate (NTC) in plumbing installation works (Module 1,2,3) issued by the Mauritius Examinations Syndicate and the IVTB or equivalent qualification.*

*One Health and Safety Officer*

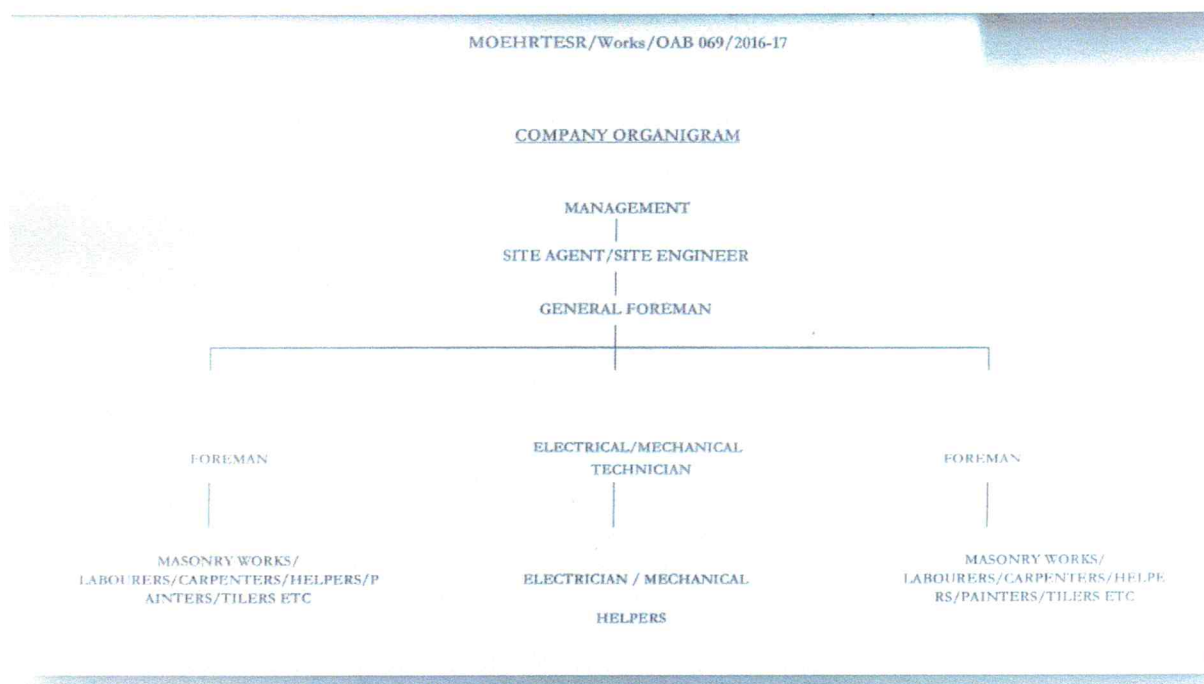
***The bidder shall submit: (i) recent signed CV's of the proposed personnel, detailing experience and qualifications, (ii) signed agreements and undertakings from the proposed personnel to be deployed on this contract.***



## 1.2

The Applicant has insisted that he has provided a full-time site agent in conformity with the above ITB 6.3 (d), and that the relevant information can be found in an organisation chart provided with his bid. This implies that the Public Body was in extreme bad faith to reject his bid on the grounds that he had not provided for a full-time site agent.

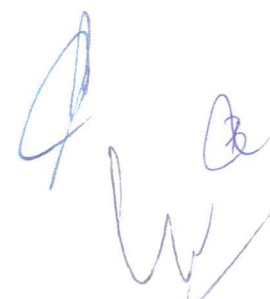
The Panel has therefore scrutinised the bid of the Applicant, and has found only this organisation chart:



The Panel has also found a “*List of Personel*” which includes a “*site agent*”, but does not conform to the above chart in other respects:

### **“LIST OF PERSONEL**

- *Engineer - 1*
- *Site Agent -1*
- *Quantity Surveyor - 1*
- *Quality Control - 1*
- *General Foreman - 3*
- *Site Foreman- 3*



- *Time Keeper-2*
- *Store Keeper -2*
- *Drivers - 4*
- *JCB Operator - 2*
- *Bobcat Operator -2*
- *Roller Operator - 2*
- *Chain Man-2*
- *Masons - 15*
- *Carpenters - 10*
- *Steel Fixer - 8*
- *Plumber-4*
- *Electrician - 5*
- *Welder-2*
- *Painter - 6*
- *Skilled Labourers - 20*
- *Tilers – 5”*

This list seems to be the total full-time work force of the Company, not necessarily personnel to be deployed on the Contract under discussion.

Likewise, the organisation chart is in no way responsive to the requirements of ITB 6.3 (d), as no names are mentioned, and certainly, no CV's are given, and neither any undertaking of availability of the relevant key personnel. It is to be noted that, in respect of the Contracts Manager and the Electrical Engineer, the Applicant has submitted in his bid both the CVs and undertakings of qualified persons external to the Applicant Company. That the Applicant did not submit equivalent documents in respect of the Site Agent can only mean that he does not have in his employment, nor that he could secure the services of any free-lance qualified Site Agent.

Furthermore, the Applicant has stated that he has in his possession a copy of his bid, and he could therefore, at all times verify, and cause to be verified, that the “*organigram*” he insists is included in his bid can, in no way, be considered as evidence of compliance with ITB 6.3 (d). The Panel can only conclude that the arguments submitted by the Applicant in respect of the missing Site Agent represent an attempt to mislead it.



### I.3

ITB 6.3 (d) is clear that all bidders have to propose the names and CVs of, along with undertakings from one qualified electrical engineer **and** one electrical technician.

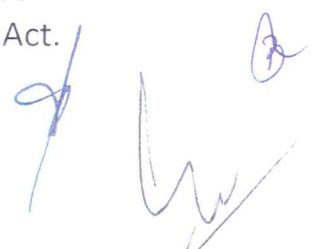
The Applicant has attempted to prove that an electrical engineer can perform the duties of an electrical technician. This has not been disputed. However, the Applicant has failed to show how one electrical engineer can perform the duties of both the required electrical engineer and electrical technician. In spite of the high esteem in which the Panel holds members of this noble profession, it is painfully aware that neither their degree, nor their registration with the CRPE can confer upon engineers the power of ubiquity.

The Applicant has attempted to justify the absence of an electrical technician from his bid by asserting that, based on his experience on other similar contracts, he does not believe that there was any need for such a technician on the Contract under discussion. However, he did not, at any time prior to submission of tenders, attempt to clarify this issue with the Public Body, but rather sought to exploit what he perceived as a loophole in the Bidding Documents. Thus, he submitted a bid according to his own beliefs and interpretation, in the full knowledge that other bidders, lacking his business acumen, would increase their bid prices to conform strictly with the provisions of ITB 6.3 (d).

The Public Body was, moreover, right in considering that the above omissions were material deviations, and could therefore not be cured through clarifications.


## **J. Decision**

It is clear from the above that the Panel cannot find merit in this application. It is also clear that the Applicant knew from the start that his bid was non-responsive. The Panel therefore hereby determines that this Application for Review was frivolous, as per S.45(3)(b) of the Public Procurement Act.






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



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



**(Rajsingh Ragnuth)**  
**Member**

**Dated 05 July 2017**

