



Independent Review Panel

Decision No. 21/17

In the matter of:

Clima Waterproofing Co. Ltd

(Applicant)

v/s

Agricultural Marketing Board

(Respondent)

(Cause No. 18/17/IRP)

Decision

A. History of the case

A.1 Project Description

The project is "Waterproofing Works at AMB, Moka"

The scope of the works is as follows:

- Make survey of existing waterproofing and remove and cart away existing roof waterproofing treatment, clean and make survey to existing screed and allow for removal of unlevelled screed as required and provide new screed with bonding and allow for double layer waterproofing works to all existing building roofs within the AMB compound.
- Make survey to areas of water ponding/accumulation, make survey to uneven waterproofing and allow for remedial works.
- Make survey and allow for replacing damage rainwater downpipes including all finings including cleaning/adjustment of roof outlets and the like and making good to concrete upstands.
- Make survey to existing concrete gargoyle and allow for remedial works to spalled concrete including cutting of spalled concrete, clean surfaces, expose reinforcement, including brushing and treatment with epidermix or equivalent and repair mortar and finished to match existing surfaces and painted finish.
- Make survey to existing dome light and extractor and allow for provision of new solar reflective dome lights and making good to upstand around dome light and extractor.

A.2 Bidding Data

Bids were invited on 06th March 2017 by open advertisement in the local press. The closing date for submission was 06th April 2017 at 14.00 hours. The Public Opening of bids was held on the same day at 14 .15 hours in the Board Room of the AMB at Moka.

A pre-bid meeting was held on Thursday 16th March 2017. A site visit was effected after the meeting.

An Addendum Labelled No. 1 was issued on 09th March 2017 regarding missing pages in the bid documents and confirming terms and conditions in the documents.

A.3 List of Bidders and Prices as Read Out in the Public Opening

	Bidders	Price Quoted (VAT Incl) (Rs)
1.	RBL Waterproofing Specialists Ltd	21,500,000.00
2.	Clima Waterproofing Co Ltd	11,481,542.50
3.	Schimen Ltd	12,547,667.25
4.	Jayaum Construction Limited	21,502,748.30

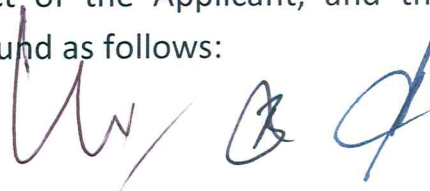
B. Evaluation

B.1 Composition of the Bid Evaluation Committee (BEC)

Chairperson	
Mr. T.Parbhunath	Deputy Director (Civil Engineering), MPI & L.T (P.I Div.)
Members	
Mr. V. Ramjattun	Engineer / Senior Engineer, MPI & L.T
Mr. L.K. Seboruth	Asst. Quantity Surveyor, MPI & L.T
Secretary	
Mr. R. Sookun	Seeds Officer, AMB

B.2 Completeness of Submissions

The bids received were checked for completeness of submission as per the requirements of the Bid Documents. In respect of the Applicant, and the Selected Bidder, the Bid Evaluation Committee found as follows:



Bidder No. 1 -RBL Waterproofing Specialist Ltd

The bidder has complied fully with the submission requirements of the bid documents. The bidder has applied for a margin of preference in respect of both SME and Local Labour specified at 100%.

Bidder No. 2 - Clima Waterproofing Co. Ltd

The bidder has complied fully with the submission requirements of the bid documents. The bidder has applied for a margin of preference in respect of both SME and Local Labour specified at 100%, and has submitted the auditor's statement vouching the bidder's annual turnover to be less than Rs 50M.

The bidder has submitted evidence that it is registered with the CIDB under B08 Water Proofing specifications as required at ITB 6.3 and is as such exempted from the submission requirements of ITB 6.2 (b) and 6.2 (f) regarding experience as water proofing contractor and submission of audited financial statement respectively.

Comments of the Bid Evaluation Committee:

The BEC considers the bids from Bidders No. 1 and 2 to be fully compliant to the submission requirements of the bid documents.

The BEC considers the Bid from Bidder No. 3: Messrs. Schimen Ltd to be non-responsive to the submission requirements of the bid documents, as the bidder has not submitted any of the documents required.

Likewise, the BEC considers the bid from Bidder No. 4: Messrs. Jayaum Construction Ltd to be nonresponsive as in addition to failing to submit documents requested, the bidder has also failed to sign his bid submission form.

The bids from Bidders No. 1 and 2 only have been retained for further consideration.

B.3 Responsiveness to Minimum Qualification Requirements:

The bids were then checked by the Bid Evaluation Committee for compliance with the minimum eligibility criteria as laid down in the bid documents.

Bidder No. 1: Messrs. RBL Waterproofing Specialist Ltd

The BEC has noted that the bidder is registered as a Grade E Waterproofing Contractor with the CIDB.

The Bidder has complied with the qualifications requirements of the bid documents.

Bidder No. 2: Messrs. Clima Waterproofing Co. Ltd

The BEC has taken note that the bidder is registered as a Grade G waterproofing contractor with the CIDB.

The bidder has not demonstrated that it has undertaken two (2) waterproofing projects worth at least Rs 8.0 M each as required at ITB 6.2 (b)(i).

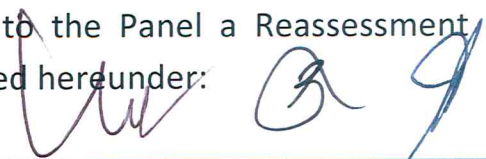
The BEC therefore considers the bid from Messrs. Clima Waterproofing to be non-compliant to the Eligibility Requirements of the bid documents as:

- I. The bidder being a Grade G contractor cannot execute works above a ceiling of Rs 10 M as per the Fourth Schedule of the CIDB Act 2008.*
- II. The bidder has failed to demonstrate that it has undertaken at least two (2) waterproofing projects of value Rs 8.0 M each against the requirement of B.D.S 6.2 (b) although it has done numerous waterproofing projects of value less than Rs 2.0 M over the last past five years.*

The BEC has therefore retained only the bid from Messrs. RBL Waterproofing Specialists Ltd for detailed Technical Evaluation.

B.4 Reassessment Report

On 31 July, 2017, the Respondent submitted to the Panel a Reassessment Report of which the relevant parts are reproduced hereunder:



Reassessment Report

The BEC met on Monday 24 July 2017 following a request from the Department Bid Committee reassess the BEC Report submitted on 05 May 2017 in the light of the application for review submitted by Bidder No.2: Messrs. Clima Waterproofing Co Ltd to the Independent Review Panel (IRP) on 17 July 2017.

The BEC examined the arguments put forward by the bidder and maintained its recommendations regarding ineligibility of the bidder for the above project on the following grounds:

- 1. The Project was estimated on 21 June 2016 by the consultant appointed by the AMB for the project namely Messrs. Servansingh Jadav & Partners at Rs 16.5 M excluding contingency and VAT. The BEC took note that the bidder was absent in the pre-bid meeting that was held on Thursday 16 March 2017 and considered the price quoted by the bidder to be substantially lower than the estimated cost.*
- 2. The BEC considered that the amendments brought to the CIDB Act 2016 on 01 March 2017, while upgrading the ceiling for Grade G contractors to Rs 10 M, however, no longer enlisted waterproofing works as an area of specialisation. Therefore, BEC considered the exclusion notes in ITB 6.2(b)&(e) to be invalid as per the new grading effective as from 1st March 2017 following the amendment brought to the CIDB Act 2016 as waterproofing contractor under classification B08 no longer exists. Therefore, the BEC has considered it appropriate for the bidder to demonstrate experience as required at ITB 6.2 (b) in the bid document in line with amendment brought to the CIDB Act 2016.*
- 3. ITB 6.2 (b) stipulates that 'the minimum qualifications criteria to be met are:*
 - i. Contractor must have carried out two waterproofing works, each, for a value of MUR 8M over the last five years. Bidder shall submit brief description of the completed project, indicating the contract price, the final account and enclosing a copy of completion certificate*

duly signed by the relevant consultant and a copy of the letter of award'.

The bidder submitted a list of projects undertaken during the past five years none of which met the above qualification criteria.

For recall, it should be noted that:

I. the bid documents were prepared before 01 March 2017 i.e. prior to the amendment of the CIDB Act 2016;

II. tenders were floated on 06 March 2017; and

III. the bid evaluation report was done in good faith and in compliance with the provisions of the CIDB Act 2016 as amended.

The Reassessment Report was signed by the chairman and members of the Bid Evaluation Committee.

C. Notification of Award

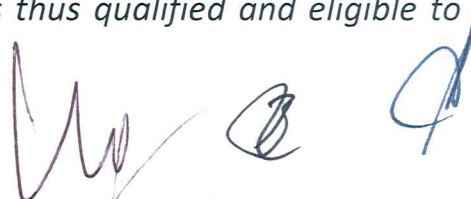
The Agricultural Marketing Board through a letter dated 05 July 2017, informed the Applicant of the particulars of the successful bidder as follows:

<i>Name of Bidder</i>	<i>Address</i>	<i>Contract Price</i>
<i>RBL Waterproofing Specialists Ltd</i>	<i>Luchman Street, Nouvelle France</i>	<i>Rs21.5M inclusive of Contingency and VAT</i>

D. The Challenge

On 06 July 2017, the Applicant challenged the procurement on the following grounds:

- “1. The Public Body is in breach of Section 40 of the Public Procurement Act.*
- 2. Clima Waterproofing Co. Ltd is the lowest responsive bidder by Rs10,018,457.50 (Rupees Ten Million Eighteen Thousand Four Hundred and Fifty Seven and Cents Fifty Only).*
- 3. Clima Waterproofing Co. Ltd has satisfied all the minimum qualifying criteria. The moreso, the Public Body has failed to take into account that in terms of experience, key personnel, financial standing and bank testimonial, Clima Waterproofing Co. Ltd is thus qualified and eligible to be awarded the contract in lite.”*



E. The Reply to Challenge

On 10 July 2017, the Public Body made the following reply to the challenge:

“The Bid Evaluation Committee, set up by the AMB to evaluate aforesaid tender, in its report pointed that:

- 1. Clima Waterproofing Company Ltd is a Grade G contractor and cannot execute works above the ceiling of Rs10M as per the Fourth Schedule of the CIDB Act 2008.*
- 2. Clima Waterproofing Company Ltd has failed to demonstrate that it has undertaken at least two waterproofing projects of value Rs8.0M each against the requirement of bidding document 6.2(b) although it has done numerous waterproofing projects of value less than Rs2.0M over the last past five (5) years.*

Taking the above observations into consideration, the Bid Evaluation Committee considered that the bid from Clima Waterproofing Co. Ltd to be non-compliant to the eligibility requirements of the bid document.”

F. Grounds for Review

On 17 July 2017, the Applicant seized the Independent Review Panel for review on the following grounds:

- “1. The Public Body has failed to take into account that Part C of the Second Schedule of the Construction Industry Development Board (amendment) Act 2016 allows a Grade G Contractor to undertake any contract, under its class of works, up to a limit of Rs10 million excluding VAT.*
- 2. The Public Body is wrong to have concluded that the Applicant has failed to demonstrate that its bid is compliant with ITB 6.2(b) of the bidding document inasmuch as ITB 6.2(b) does not apply to bidders complying with the requirements specified in ITB 6.3 of the bidding document.*
- 3. The Applicant’s bid is fully compliant with the requirements as specified in the Respondent’s bidding document.”*

G. The Hearing

Hearings were held on 20 July and 01 and 17 August 2017. Statement of Defence from Respondent was made on 07 August 2017 and Statement of reply of the Applicant was received on 11 August 2017.

The Applicant was represented by Mr N. Hyderkhan, Counsel whereas the Respondent was represented by Mr H. Gunesh, Attorney.

H. Findings

H.1

Basically, the evaluation, including the reassessment report, was flawed, because the Respondent and the Bid Evaluation Committee have attempted to assess the bid of the Applicant according to criteria that did not appear in the Bidding Documents.

H.2

The Respondent has failed to show that the estimates of his Consultant have been established correctly, and that these estimates should constitute an absolute minimum below which all bids should be rejected.

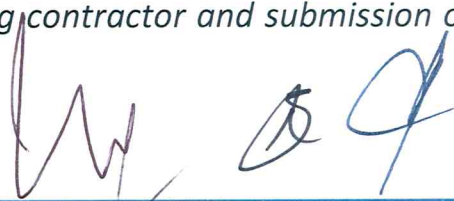
H.3

Registration as a Grade G contractor, under the new classification of the CIDB (Amendment) Act 2016, that is under applicable Law, entitles the Applicant to perform works of the value of his bid.

H.4

The same Bid Evaluation Report, at different places, make contradictory statements:

*The bidder has submitted evidence that it is registered with the CIDB under B08 Water Proofing specifications as required at ITB 6.3 and is as such **exempted from the submission requirements of ITB 6.2 (b) and 6.2 (f)** regarding experience as water proofing contractor and submission of audited financial statement respectively.*



And,

*The bidder has failed to demonstrate that it has undertaken at least two (2) waterproofing projects of value Rs 8.0 M each against the **requirement of B.D.S 6.2 (b)** although it has done numerous waterproofing projects of value less than Rs 2.0 M over the last past five years.*

This was an obvious mistake that the Respondent has tried to correct through the reassessment report which is unfortunately, also flawed.

H.5

In the reassessment report, the Bid Evaluation Committee introduces new criteria for evaluation, that did not appear in the bid documents.

The CIDB (Amendment) Act 2016, provided for the continued existence of the obsolete classification in the defunct Schedules of the CIDB Act (2008):

“Section 21 of principal Act repealed and replaced

Section 21 of the principal Act is repealed and replaced by the following section –

21. Duration and renewal of registration

(1) A registration under section 19, shall, unless previously suspended or cancelled, continue to be in force until 30 June next following the date when it was issued or last renewed, but shall, subject to section 22, be renewable for yearly periods ending 30 June.

It was therefore not unlawful for the Respondent to specify a requirement for specialisation B08 under the obsolete Third Schedule of the CIDB Act (2008). The Bid Evaluation Committee did not have any alternative than to conform strictly with the provisions of the Bidding Documents.

H.6

Irrespective of the date of preparation of the Bidding Documents, at the date of tender, the CIDB (Amendment) Act 2008 was already in force. The Respondent

had ample opportunity to issue addenda or otherwise to correct any discrepancy in the Bidding Documents arising out of the coming into force of the amendments. That the Respondent did not do so is an indication that the Bidding Documents should be interpreted in the light of the CIDB (Amendment) Act 2016, which provided for the continued existence of the classification B08 in the defunct Schedules of the CIDB Act (2008). The Panel did not find the documents to be incompatible with the CIDB (Amendment) Act 2016, and cannot therefore find the process vitiated. however, if any such incompatibility exists, this will become evident in the re-evaluation.

I. Decision

The Panel therefore, finds merit in this Application for Review, and hereby orders a re-evaluation of bids.



(Virjanan Mulloo)
Member



(Reshad Laulloo)
Chairperson



(Rajsingh Ragnuth)
Member



Dated 23 August 2017

