



## Independent Review Panel

Decision No. 22/17

In the matter of:

**B. Hurreeram & Son Co. Ltd**

(Applicant)

v/s

**Ministry of Public Infrastructure & Land Transport**

(Respondent)

(Cause No. 20/17/IRP)

**Decision**

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

### **A.1**

**Name of Project:** Framework Agreement for the Maintenance, Repairs and Rehabilitation of Government Buildings (2017-2018)

**Public Body Ref:** MPI/OIB 30 of 2016/2017

**CPB Ref. Number:** CPB/70/2016

**Procuring Entity:** Ministry of Public Infrastructure and Land Transport.

**Contract number:** MPI/OIB 30 of 2016/2017

**Method of Procurement:** Open International Bidding

**Margin of Preference:** Applicable

### **A.2**

The Ministry of Public Infrastructure and Land Transport (Public Infrastructure Division) invited qualified local and overseas contractors to apply for participation in a framework agreement for maintenance, repairs, rehabilitation and minor construction works in connection with Government Buildings and associated infrastructures for Ministries and Departments.

The works consist of routine, periodic maintenance works and minor constructions of buildings and associated infrastructures for the Ministries and Departments including but not limited to block works, carpentry, flooring, aluminium and pvc openings, partitioning works, pavements, plastering and wall tiling, painting, plumbing, metal works, fill materials, heavy duty vinyl, water proofing etc. for the period of the contract.

The island has been divided into ten lots and a maximum of three contractors will have to be selected per Lot. Works will be allocated through Call Offs, as and when required, based on the lowest evaluated price of specific BOQ's calculated using the quoted rates of the contractors selected for a particular lot under the terms and conditions of the framework agreement.

A press communiqué and Tender Notice were issued in February 2017 and the closing date for submission of bids initially set at 18 April 2017 was extended to

Wednesday 10 May 2017 at 13.30 hrs, at latest, at the Central Procurement Board, Social Security House, Rose-Hill.

Twenty-one (21) bids were received and Public Opening was carried out on the same day at 14.00 hours in the Conference Room at the CPB.

### A.3

Bids were received from the following 21 Bidders

<b>Bidder Number</b>	<b>Name of Bidder</b>
1	<i>Modern Jurassic Building &amp; Construction Ltd.</i>
2	<i>Prakash Foolchund Contractor Ltd.</i>
3	<i>Bolah Jeetun Co. Ltd.</i>
4	<i>Canakiah Associates Co. Ltd.</i>
5	<i>Kisten Enterprise Co. Ltd.</i>
6	<i>Deeya Construction Ltd.</i>
7	<i>Trivan and Company Limited</i>
9	<i>Tayelamay &amp; Sons Enterprise Ltd.</i>
10	<i>Monesh Enterprises Ltd.</i>
11	<i>SNB Construction Ltd.</i>
12	<i>Super Construction Co. Ltd.</i>
13	<i>PAD &amp; Co. Ltd.</i>
14	<i>New Horizon Builders Ltd.</i>
15	<i>Power Contractors Ltd.</i>
16	<i>Keep Clean Ltd.</i>
17	<i>J. Dookhun &amp; Sons Ltd.</i>
18	<i>J. Annauth Construction Ltd.</i>
19	<i>Cimix Construction Co. Ltd.</i>
20	<i>NovaGlass Waterproofing Private Co Ltd.</i>
21	<i>Safety Construction Company Ltd.</i>

## **B. Evaluation**

### B.1

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

Mr. T. Parbhunath                      Acting Director (Civil Engineering) - Ministry of Public Infrastructure and Land Transport (Chairperson & Registered Evaluator)



Mr. P. Balloo	Head, Public Infrastructure Department – District Council of Riviere du Rempart (Member & Registered Evaluator)
Mr. N.K. Padaruth	Quantity Surveyor/Senior Quantity Surveyor - Ministry of Public Infrastructure and Land Transport (Member & Registered Evaluator)
Mr. V. Ramtohul	Assistant Permanent Secretary - Ministry of Public Infrastructure and Land Transport - (Acting as Secretary)

## **B.2**

The Bid Evaluation Committee examined all the twenty-one (21) bids received for completeness of bids and substantial responsiveness. The summary of results in respect of the Applicant was as

follows:

### ***Bidder 8 – B.Hurreeram & Son Co. Ltd.***

<b>Description</b>	<b>Remarks</b>
<b>Completeness of submission</b>	<i>The bidder has not submitted evidence of his registration with the CIDB but has submitted a copy of an acknowledgment from the CIDB dated March, 2017 of his application for registration. This is considered to be a material non-conformity to the requirements of the bid documents as required at EQC 2.4.1</i>
<b>Eligibility Criteria</b>	<b>Non-Responsive</b>

*Bidder was non-responsive and was therefore not retained for further consideration.*

## **B.3**

The BEC recommended the award of the Contract as follows at the rates quoted, with three bidders selected for each of the ten regions.

Bid	Bidder	Zones
1	Modern Jurassic Building & Construction Ltd.	F (G.Port) & I (Upper Pl. Wilhems)
2	Prakash Foolchund Contractor Ltd.	B ( Pampl.) & E (Flacq)
3	Bolah Jeetun Co. Ltd.	A (P.Louis)
4	Canakiah Associates Co. Ltd.	B ( Pampl.); H (B.River) & I (Upper Pl. Wilhems)
5	Kisten Enterprise Co. Ltd.	B ( Pampl.) & G (Savanne)
9	Tayelamay & Sons Enterprise Ltd.	D ( Moka); I (Upper Pl. Wilhems) & J (Lower Pl. Wilhems)
10	Monesh Enterprises Ltd.	C ( Riv. du Rempart ); E (Flacq) & F (G.Port)
11	SNB Construction Ltd.	H (B.River)
14	New Horizon Builders Ltd.	J (Lower Pl. Wilhems)
15	Power Contractors Ltd.	E (Flacq) & F (G.Port)
16	Keep Clean Ltd.	C ( Riv. du Rempart ); D (Moka) & H (B.River)
17	J. Dookhun & Sons Ltd.	A (P.Louis) & J (Lower Pl. Wilhems)
18	J. Annauth Construction Ltd.	G (Savanne)
19	Cimix Construction Co. Ltd.	D ( Moka) & G (Savanne)
20	NovaGlass Waterproofing Private Co Ltd.	C ( Riv. du Rempart )

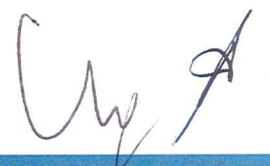
### C. Notification of Award

The Ministry of Public Infrastructure and Land Transport through a letter dated 24 July 2017, informed the Applicant that his bid has not been retained for award.

### D. The Challenge

On 28 July 2017, the Applicant challenged the procurement on the following grounds:

“1. The Appellant (B. Hurreeram and Sons Ltd) shall submit that the Bidding Committee erred in failing to consider that the company ought to be awarded at least 2 zones since he was the second lowest bidder.






2. *The Bidding Committee failed to take into account that the appellant is in fact still under contract with the respondent (Minister of Public Infrastructure) for the current contractual year 2015/2016 so that the Appellant had satisfied all specifications and requirements and have been allotted 2 zones in the previous years as the lowest bidder for the previous framework agreement 2015/2016 so that these were on record when the Appellant submitted their tender initially on the 10<sup>th</sup> of May 2017.*

3. *The Appellant also submits in the light of the above that it stands to reason that the tender submitted by the other companies and which were selected were grossly exaggerated and well above the bid given by the Appellant and same is unfair, illegal, unjustified and is against the rules of natural justice and against interest of the Ministry.*

4. *The Appellant also submits that the Bid Committee breached S. 4(5) of the Public Procurement (Regulations 2008) in as much as the Appellant's bid was one amongst the lowest one and same was a legal duty for the Bid Committee to discharge and same has not been the case in relation to the objective approach of evaluation, examination and comparison of bid.*

5. *The Appellant will also submit that for the purpose of this present bidding exercise not only had the company complied with all the requirements but latter has also extended its previous Insurance for this present bid as the Appellant Company had a legitimate expectation in all fairness to be selected for the present exercise as the second lowest bidder."*

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

There was no reply to the Challenge from the Public Body.

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

On 09 August 2017, the Applicant seized the Independent Review Panel for review on the following grounds:

*"1. It is the contention of the Applicant that the Respondent and its Bid Evaluation Committee failed to appreciate the technicalities of the Applicant's tender specifications.*

2. *The Applicant maintains that its bid was technically responsive and compliant with the bid specifications. Moreover, the prices quoted for the Applicant's bid was lower than that of the successful bidder, and therefore the Applicant's bid should have been accepted. The Appellant shall submit that the Bidding Committee erred in failing to consider that the company ought to be awarded at least 2 zones since he was the second lowest bidder.*

3. *The Bidding Committee failed to take into account that the appellant is in fact still under contract with the respondent (Minister of Public Infrastructure) for the current contractual year 2015/2016 so that the Appellant had satisfied all specifications and requirements and have been allotted 2 zones in the previous years as the lowest bidder for the previous framework agreement 2015/2016 so that these were on record when the Appellant submitted their tender initially on the 10<sup>th</sup> of May 2017.*

4. *The Appellant also submits in the light of the above that it stands to reason that the tender submitted by the other companies and which were selected were grossly exaggerated and well above the bid given by the Appellant and same is unfair, illegal, unjustified and is against the rules of natural justice and against interest of the Ministry.*

5. *The Appellant also submits that the Bid Committee breached S. 4(5) of the Public Procurement (Regulations 2008) in as much as the Appellant's bid was one amongst the lowest one and same was totally disregarded. The Appellant further submits that there was a legal duty for the Bid Committee to discharge and same has not been the case in relation to the objective approach of evaluation, examination and comparison of bid.*

6. *The Appellant will also submit that for the purpose of this present bidding exercise not only had the company complied with all the requirements but latter has also extended its previous Insurance for this present bid as the Appellant Company had a legitimate expectation in all fairness to be selected for the present exercise as the second lowest bidder.*

7. *The Appellant shall further submit that in its application for the Bidding exercise, it was fully compliant to submit its bids in as much as although the Appellant Company was in the process of registration with the Construction Industry Development Board Registration (CIDB) and same has been notified to*





*the Respondent together with the Bid on the 10<sup>th</sup> May 2017. The Appellant further contends that in the meantime the Respondent has amended criteria in extending the Registration of Contractors to H (H being the lowest grade for any contractor).*

8. *In this respect the Appellant shall humbly submit to all intents and purposes that there was no legal impediment or otherwise for the Appellant not to be considered as a responsive bidder.”*

### **G. The Hearing**

Hearings were held on 17 and 31 August 2017. Statement of Defence from Respondent was made on 22 August 2017.

The Applicant was represented by Mr A. Luximon, Counsel together with Ms B. Gansam, Counsel whereas the Respondent was represented by Mr D. Bissessur, State Counsel.

### **H. Issues**

#### **H.1**

The Applicant’s bid was rejected by the Bid Evaluation Committee for failure to be registered with the Construction Industry Development Board (CIDB). The Panel shall therefore ignore all arguments of the Applicant in regard to pricing of his, and other bidders’ tenders, as this did not constitute the reasons for rejection of his bid.

#### **H.2**

The Applicant’s claim that his bid should have been considered technically responsive because he was *“still under contract with the respondent (Minister [sic] of Public Infrastructure) for the current contractual year 2015/2016 so that the Appellant had satisfied all specifications and requirements and have been allotted 2 zones in the previous years as the lowest bidder for the previous framework agreement 2015/2016 so that these were on record when the Appellant submitted their tender initially on the 10<sup>th</sup> of May 2017”* is spurious, as the Public Body has, for this new exercise, amended its requirements to include registration with the CIDB, in order to conform to the requirements of the CIDB Act.



## I. Findings

### I.1

The date for submission of tenders was finally set for Wednesday 10 May 2017. For all intents and purposes, this is the relevant date on which offers of services were made.

S 19(1) of the CIDB Act 2008 states:

#### ***“19. Registration of consultant and contractor***

***(1) No person shall offer his services as a consultant or as a contractor, unless he is registered under this Act.”***

To conform to this requirement, the Public Body cannot accept an offer from a contractor, unless the latter is registered. That the Applicant was eligible, or had applied for registration at the date of tender is irrelevant.

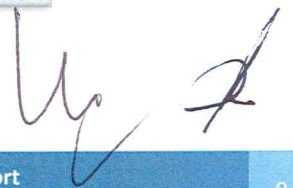
It is to be noted, also, that the CIDB (Amendment) Act 2016 did not alter the above Section 19(1).

### I.2

*In fine*, all contractors registered with CIDB, under the classification of the CIDB Act 2008, were considered eligible. However, the 2008 Act and the 2016 (Amendment) Act, in force at the time of tender, provided for differing thresholds of eligibility for the different grades of contractors:

#### **The CIDB Act 2008**

<b>C. GRADES OF CONTRACTORS</b>	
Grading Designation	Value of Contract that a Contractor is allowed to undertake (exclusive of VAT)
A	Up to any amount above Rs 200m
B	Up to Rs 200m
C	Up to Rs 100m
D	Up to Rs 50m
E	Up to Rs 20m
F	Up to Rs 10m
G	Up to Rs 4m
H	Up to Rs 1.5m




## The CIDB (Amendment) Act 2016

PART C – GRADES OF CONTRACTORS	
Grading designation	Value of contract that a contractor is allowed to undertake (exclusive of VAT) (Rs)
A	Up to any amount above 250 million
B	Up to 250 million
C	Up to 150 million
D	Up to 75 million
E	Up to 50 million
F	Up to 25 million
G	Up to 10 million
H	Up to 5 million

Section 9 of the CIDB (Amendment) Act 2016 provided for the continued existence of the old 2008 classification:

***“9. 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.”*

Even though, therefore, on March 1, 2017, the 2008 Act classification had been repealed, and replaced by the new 2016 Amendment Act classification (S 14 of the CIDB (Amendment) Act 2016), those who were registered under a specific grade at that date, were considered to be still registered with the same grade at the date of tender. Those who were not previously registered, and applying for registration after March 1, 2017, would have to meet the new criteria set out in the new schedules to be registered under a specific grade. The Applicant showed that he was eligible for, and was eventually granted registration in grade E of the new schedule, but he was not so registered at the date of tender.



That the CIDB took an inordinate amount of time to process the application for registration of the Applicant cannot be held against the Respondent, and does not, *per se*, vitiate the tender process.

### 1.3

However, any Bidding Document for a bidding exercise closing after 1<sup>st</sup> March 2017, is deemed to have been established under the Legislation applicable at that date. The Bidding Documents stated under Section II, Evaluation and Qualification Criteria:

#### **“2. Qualifications**

*Pursuant to ITC 5.1, Bids will be considered from Contractors who are duly registered with the CIDB under the grade and specialization that cover adequately the size and type of works related to the project.”*

This was followed by the following table:

Factor	2.4 Experience	Criteria				Documentation Required
		Requirement	Contractor			
			Single Entity	Joint Venture		
Sub-Factor			All partners combined	Each partner	At least one partner	
2.4.1 General Experience	Contractors have to be registered with the CIDB under the grade and specialization indicated hereunder.  Grade: A to E  Specialisation: B04	Must meet requirement	-	Must meet requirement	-	
2.4.2 Specific Experience	Participation as Main Contractor, in at least two building works each of minimum contract value of Rs. 2.0 Million over the past 5 years.	Must meet requirement	Must meet requirements	-	-	Form EXP - 2.4.2

Specialisation B04, under the new classification of the Amendment Act 2016 refers to:

B 04	Asbestos handling	All building works including demolition and construction where asbestos is used for insulation and coating
------	-------------------	--




According to the defunct classification of the repealed schedules of the CIDB Act 2008, B04 refers to:

B 04	General building maintenance and refurbishment	All types of building, fixing partition, roofing and general maintenance of building.
------	--	---

It is clear therefore that the Public Body was referring to the latter classification when it mentioned specialisation B04 in the Bidding Documents. No such specialisation exists in the new schedules established with the Amendment Act of 2016.

Contractors registered with CIDB under applicable Law at the date of Tender have therefore been excluded from participating in this tender, unless they were specialised in the handling of asbestos. The requirement for specialisation under B04, therefore, introduced two classes of bidders, to be treated differently during evaluation.

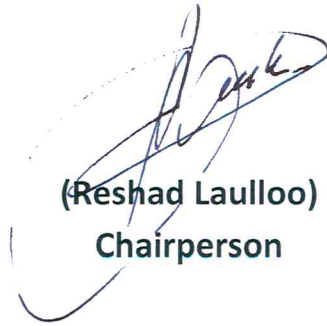
That the Bid Evaluation Committee, presumably in an attempt to correct this anomaly, ignored this requirement for specialisation under B04, is immaterial. The test here is what a reasonable bidder would have understood from the contents of the Bidding Documents at the date of tender. Any attempt to alter the requirements of the tender, after the date of tender, would not alter this understanding.

This leads to the inevitable conclusion that the process was vitiated, by the requirement of a specialisation that, under applicable Law, meant something entirely different than under the repealed schedules of the CIDB Act 2008.

## J. Decision

The Panel, therefore, rules that the Bidding Documents have been wrongly established, thereby vitiating the bidding process. The Panel therefore, finds merit in this Application for Review, and hereby orders the annulment of the Bidding exercise.





**(Reshad Lalloo)**  
**Chairperson**



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



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

Dated 07 September 2017



