



Independent Review Panel

Decision No. 27/17

In the matter of:

Monesh Enterprises Ltd

(Applicant)

v/s

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

(Respondent)

(Cause No. 25/17/IRP)

Decision

A. History of the case

On the 19 January 2017, the Ministry of Education and Human Resource Tertiary Education and Scientific Research hereinafter referred as the Respondent launched an invitation for bids through an open advertising bid for the procurement of Extension and Upgrading works to R. Gujadhur State Secondary School (girls) at Flacq bearing contract number MOEHRTESR/works/OAB 077/2016-2017.

On the 19 September 2017, Monesh Enterprise Ltd hereinafter referred as the Applicant was notified of the Respondent's decision in relation to the bidding exercise.

The Applicant challenged the Respondent's decision on the 20 September 2017. The Respondent replied to the challenge on the 25 September 2017 and feeling aggrieved of the Respondent's decision the Applicant applied for review at the Independent Review Panel on the 02 October 2017.

B. Notification of Award

The Ministry of Education and Human Resources, Tertiary Education and Scientific Research through a letter dated 19 September 2017, informed the Applicant of the particulars of the successful bidder as follows:

Description	Name of Selected Bidder	Address	Contract Price
<i>Extension and Upgrading Works to R. Gujadhur State Secondary School (Girls) at Flacq</i>	<i>Canakiah Associates Ltd</i>	<i>SSR Avenue, Quatre Bornes</i>	<i>Rs53,900,000 inclusive of a contingency sum of Rs2M and VAT</i>

C. The Challenge

On 20 September 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. *Monesh Enterprises Ltd is by far the lowest responsive bidder by more than Rupees 7 Million (Seven Million rupees).*
3. *Monesh Enterprises Ltd has satisfied the minimum qualifying criteria. The moreso, the Public Body has failed to take into account that in terms of experience, financial standing and bank testimonial provided. Monesh Enterprises Ltd is thus qualified and eligible to be awarded the contract in lite."*

D. The Reply to Challenge

On 25 September 2017, the Public Body made the following reply to the challenge:

- "(i) The lowest evaluated substantially responsive Bidder has been selected for award of contract; and*
- (ii) The bid of Monesh Enterprises Ltd is not responsive. It is not compliant with ITB 6.3(d) of Section II – Bidding Data Sheet of the Bidding Document – the proposed Electrical Engineer holds a degree in Mechatronics instead of Electrical Engineering."*

E. Grounds for Review

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

- "5. 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 namely the CV of the Engineer thus not paying heed to the Professional, Qualifications and Experience (PQE) of the latter and the Respondent failed to ask for the required clarifications as is the norm in any normal bidding exercise and as per the provisions of Paragraph 30.1 of Section I of the bidding documents.*
- 6. 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 the more so that at page 133 of the Applicant's bid in relation to the Electrical Works, the quotation provided was only Rs4,400,360 and this was minimal compared to other contractual works and therefore the Applicant's bid should have been accepted.*
- 7. The Respondent has informed the Applicant that its bid is not responsive, that is, it has failed to comply with the ITB 6.3 (d) of Section II – Bidding*

Data Sheet of the Bidding Document in that the Applicant's proposed Electrical Engineer holds a degree in Mechatronics instead of Electrical Engineering. It is the contention of the Applicant that regarding this project, the Electrical Engineer holding a Mechatronics Degree was qualified enough to carry out the said duties. According to the definition of Mechatronics in Wikipedia, Mechatronics is a multidisciplinary field of science that includes a combination of mechanical engineering, electronics, computer engineering, telecommunications engineering, systems engineering and control engineering. As technology advances, the subfields of engineering multiply and adapt. Mechatronics' aim is a design process that unifies these subfields. Originally, mechatronics just included the combination of mechanics and electronics, therefore the word is a combination of mechanics and electronics; however, as technical systems have become more and more complex the definition has been broadened to include more technical areas.

8. *The Applicant contends that the Respondent has failed to give proper and valid consideration to the comprehensive Curriculum Vitae of the Electrical Engineer in which all the PQEs of the requirement of the Electrical Engineer was highlighted. It is apposite to note that in the ITB 6.3 (d) of Section II – Bidding Data Sheet of the Bidding Document, it was only stated that “One registered Electrical Engineer with a minimum of 5 years post registration experience” was required. On this score only, the Applicant submits that it could only understand that the post experience was sufficient to meet the requirements of 5 years. On the other hand, had the Respondent exercise its consideration properly, a thorough perusal of the CV of the Electrical Engineer would have concluded that the latter had all the necessary experience for this work which clearly the Respondent for reasons best known to them did not perform.*
9. *Even the Applicant contends that if it was still disputed by the Respondent that the electrical engineer having a mechatronics degree was not applicable and acceptable in the selection and if it could be termed as an omission, same is not a material deviation. It was rightly decided in the decision delivered by the Independent Review Panel of Gibb (Mauritius) Ltd v Chief Commissioner's Office (Rodrigues Regional Assembly) [Cause No: 10/15/IRP], the Panel considered that “omission cannot be considered as material deviations and should have been clarified with the bidder”.*
10. *It is apposite to note that as per section 40(2) of the PPA, the Applicant respectfully submits that this is a “special circumstance” and the fact that the Applicant had satisfied all the relevant criteria, the Respondent ought to have held negotiations with the latter regarding the issue of Electrical Engineer. The Respondent has infringed the relevant section of the law and it did not deem even fit to even hold any negotiation to clarify such issue with the Applicant.*

11. *Furthermore, the Respondent has utterly failed to take into account the fact that the Applicant had all other necessary qualifications and had satisfied all the items regarding the key personnel showing the blanket approach and role the Respondent used in the bidding exercise. It is important to note that this is not the first time the Applicant has been awarded contracts with the Respondent as opposed to someone new to the business.”*

F. The Hearing

Hearings were held on 05 October and 14 November 2017. Written submissions were made on 13 October 2017 by the Respondent.

The Applicant was represented by Mr. A. Luximon and Ms. B. Gansam, Counsel whereas the Respondent was represented by Mr. K. Boodhun, State Counsel.

G. Findings

The Panel would address the issue of whether the Respondent should have sought for further clarification in relation to ITB 6.3 sub section D. According to the Applicant, all conditions were met. However, there might be a minor deviation and in this case, the Respondent should have sought for further clarification.

Section 37(1) of the Public Procurement Act is reproduced below:

37. Examination and evaluation of bids

- (1) *The Board, in the case of major contract, or a public body may seek clarification during the examination of bids from any bidder to facilitate evaluation but it shall neither ask nor permit any bidder to change the price or substance of his bid.*

True it is that the board has the power to decide whether or not to seek clarification depending on conditions laid down in Directives

However, the Panel notes that among the key personnel in ITB 6.3(d) there must be “*One registered Electrical Engineer with a minimum of 5 years post registration experience*”. Furthermore the section also stipulates that “**the bidder shall submit: (i) recent C.Vs of the proposed personnel detailing experience and qualifications (ii) signed agreements from the proposed personnel to be deployed on this contract.**”

It is the contention of the Respondent that the personnel is not a Registered Electrical Engineer. This fact has been conceded by the Applicant. However the latter has relied on the letter dated 25 September 2017, where it was mentioned that the proposed Electrical Engineer holds a degree in Mechatronics instead of Electrical Engineering.

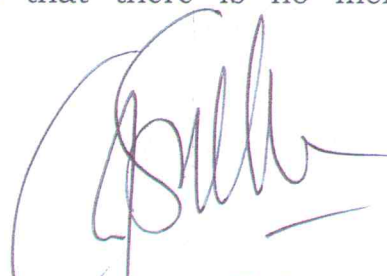
The Panel is of the view that it was clear from the ITB6.3 (d) that the Applicant should have proposed a Registered Electrical Engineer instead they have proposed someone who holds a degree in Mechatronics and is not a Registered Electrical Engineer.

H. Decision

The Panel therefore finds that there is no merit in this application.



(Virjanan Mulloo)
Member



(Arassen Kallee)
Vice-Chairperson




(Rajsingh Ragnuth)
Member

Dated 15 December 2017