



# Independent Review Panel

**Decision No. 05/18**

**In the matter of:**

**EDCC Co. Ltd**

**(Applicant)**

**v/s**

**Central Water Authority**

**(Respondent)**

**(Cause No. 28/17/IRP)**

**Decision**

### A. History of the case

This is a case where the EDCC Ltd hereinafter referred to as “the Applicant” is challenging the decision of Central Water Authority hereinafter referred to as “the Respondent” to award a contract to Chemco Ltd “Selected Bidder” for the Supply, Installation and Commissioning of 10 Nos. Containerised Pressure Filtration Plant (Contract Reference : C2017/124).

The Applicant was notified of the award by the Respondent on 13 November 2017 and subsequently challenged the latter’s decision on 15 November 2017. Feeling aggrieved of the Respondent’s reply to its challenge, the Applicant applied for review of the Respondent’s decision before the Independent Review Panel pursuant to Section 45 of the Public Procurement Act on 23 November 2017.

### B. Notification of Award

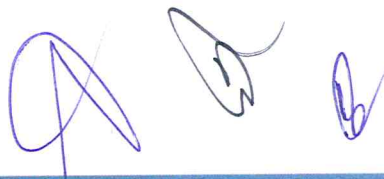
The Central Water Authority through a letter dated 13 November 2017, informed the Applicant of the particulars of the successful bidder as follows:

Name of Bidder	Address	Contract Price
Chemco Ltd	Chaussee Tromelin, Fort George, Port Louis	Rs56,719,000.00 including contingencies and excluding VAT

### C. The Challenge

On 15 November 2017, the Applicant challenged the procurement on the following grounds:

*“EDCC Co. Ltd would like to know the reasons for its disqualification and subsequent award to Chemco Ltd whose price was higher than EDCC Co. Ltd.”*



## D. The Reply to Challenge

On 17 November 2017, the Public Body made the following reply to the challenge:

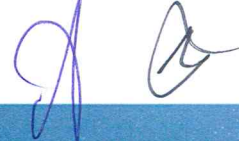
*“Reference is made to your request for explanation as per the Second Schedule (Regulation 48) of the Public Procurement Regulations 2008.*

*In line with Clause 7(b) and 7(d) – Working Principle of Filtration Plant of Section V – Schedule of Requirements, the containerised filtration plant shall also be equipped with an appropriate fiber glass or polyethylene tank for automatic backwashing of the filter/sand and the filtered water shall then be fed to the tank to cater for at least two washing per day.”*

## E. Grounds for Review

On 23 November 2017, the Applicant seized the Independent Review Panel for review on the following grounds:

- “1. The Backwashing of one filter is performed using the filtered water from the two other filters as clearly defined in EDCC’s offer and therefore there is no need for a backwash tank for automatic backwashing.*
- 2. The CWA has therefore erred in failing to appreciate that there is an additional polyethylene tank from which automatic backwashing takes place and the principles of backwash requested are complied to.*
- 3. CWA has specified for water tank and backwash pump in order for the backwashing of the filters to be performed with filtered water rather than raw water. The modern design and technology of TEMAK-TWIN filters allows for the backwashing of the filters with filtered water without having a dedicated backwash tank and pump. This is possible with the TWIN configuration since raw water first gets filtered before backwashing the vessels.*
- 4. The CWA erred to appreciate that the proposal made by EDCC performs the same basic function which is backwashing the filters with filtered water.*
- 5. The filtration plant fully complies with the technical specifications of the bid document and more importantly performs the basic function for which it is intended i.e. it produces filtered water of the required volume of 2000/2500 m<sup>3</sup>/day, which is in compliance with the drinking water standards of Mauritius of EPA 1991 (GN No. 55 of 1996).*
- 6. EDCC has gone through clause (vi) substantial responsiveness to the technical requirements of the bidding document of the circular No. 4 of*



- 2010 and notes that the reason provided for rejecting its bid cannot be classified among one of the non-conformances listed between (a) and (d).*
- 7. The proposal made by EDCC is substantially responsive to the requirements of the CWA.*
  - 8. There is no clear indication in the bidding document especially under the technical specifications that the requirement of a backwash tank is mandatory and non-compliance to same entail to rejection of the bid.*
  - 9. It is also worth mentioning that two fibre glass tanks have been proposed with EDCC's design in addition to the filtration plant shall be located on site in compliance with addendum of this contract to make this proposal complete."*

## **F. The Hearing**

Hearings were held on 28 November and 04 December 2017.

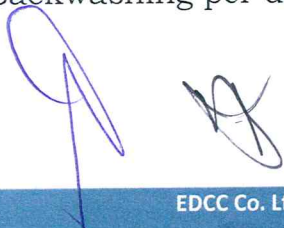
The Applicant was represented by Mr Z. Rajani, Counsel whereas the Respondent was represented by Miss N. Torabally and Mr B. Nursimulu, both of Counsel. The Successful Bidder was also present and was represented by Mr T. Saminaden.

## **G. Findings**

The Central Water Authority launched a bid through an open advertised bidding exercise for the Supply, Installation and Commissioning of 10 Nos. Containerised Pressure Filtration Plant.

In the Technical Specifications of the bidding document, provisions were made for bidders to comply with item 7(b) and 7(d) as per Section V, the specific requirement of the Respondent was set out as follows:

“The containerised filtration plant shall also be equipped with an appropriate fiberglass or polyethylene tank for automatic backwashing of the filter/sand and the filtered water shall then be fed to the tank to cater for at least two backwashing per day.”



The requirement includes a fiberglass/polyethylene for automatic backwashing of the filtered water which shall be fed to (i) an appropriate size pure water tank to cater for at least two backwashing per day.

The representative of the Applicant had been quite illustrative in his demonstration to explain how and why a separate fiber glass on tank would not be an appropriate method for an automatic backwashing of the filter/sand.

A backwashing process is done through an automated technique from the filtered water from water Filtration Plant. There is a logical approach from the observation made. The Central Water Authority is pumping out the raw water from rivers and containerised pressure filtration plant is used in the treatment of raw water into drinking/pure water. Raw water consists of extracts of mud, thrown out objects in rivers, bottles and so on. A proper filtration plant should be pumped out raw water to water tanks, which in turn starts up the process of filtration. It is understood that when the water are pumped to the containerized filtration plant, it will contain all the extracts from the rivers. The filter tank would act as an initial filtration treatment of the raw water. Thereon, the treated water should be backwashed at least twice a day in an automatic separate backwasher. The end product shall be what the Central Water Authority distributes to the households, that is treated water. The Applicant did not convince the Panel at all, its mechanism in the water treatment and backwashing. If the TEMAK – TWIN filtration plant is used, it is not found to produce hygienic and pure water. Certainly, this could arouse the risk of the filters without a separate automated backwash, to get clogged which would undesirably result in the plant to stop its daily filtration of water.

A bidding document is an instrument/legal framework for the bidders to comply with requirements, Instruction to Bidders and other technical formalities.

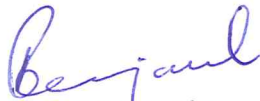


The Applicant's contention is that the requirement of Clause 7(b) and 7(d) at Section V of the technical specification was not found in the bidding document. It has always been a legal practice in tender/bid exercise that if ever a bidder has not understood part of the bid document or seeks for further clarifications, the bidder is not prohibited, to write and ask the tenderer for further information. The Applicant failed in the non-compliance of his right to seek for further information, which apparently was unclear or rather not mentioned in the bidding document.

For the reason set out above, the Panel finds no merit in this application.



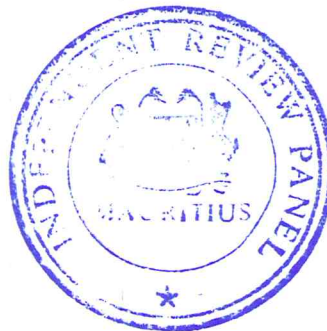
**(Arassen Kallee)**  
**Vice-Chairperson**



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



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



**Dated 23 March 2018**