



Independent Review Panel

Decision No. 05/21

In the matter of:

B. Hurreeram & Son Co. Ltd

(Applicant)

v/s

**Commission for Child Development, Family Welfare and Ors
Rodrigues Regional Assembly**

(Respondent)

(Cause No. 05/21/IRP)

Decision



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A. History of the case

On 26 October 2020, the Respondent invited bids for the Construction of Boundary Wall and Lighting Works at Rodrigues Prison at Pointe La Gueule. The Procurement bore reference number **OAB/RRA/CCD/05 of 2020/2021**.

B. Evaluation

A Bid Evaluation Committee was set up to evaluate the bids received and identify the lowest evaluated substantially responsive bid that meets the qualification criteria.

C. Notification of Award

On 04 February 2021, the Respondent in response to the Invitation for Bids, informed the Applicant, that an evaluation of the bids received has been carried out and the particulars of the successful bidder are as mentioned below:

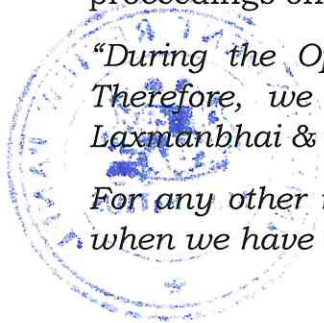
| Name of Bidder | Address | Contract Price |
|---|---|--------------------------|
| <i>Laxmanbhai & Co. (Mauritius) Ltd</i> | <i>1st Floor, Kurjibhai Ramji Building, Le Hochet, Terre Rouge Mauritius</i> | <i>Rs. 16,349,376.97</i> |

D. The Challenge

On 11 February 2021, the Applicant challenged the procurement proceedings on the following grounds:

“During the Opening of Bid, we are the lowest responsive bidder. Therefore, we are not satisfied with the Notification of Award to Laxmanbhai & Co Ltd under this procurement exercise.

For any other reasons and grounds to be given in due course of time when we have taken cognizance of the debriefing documents.”






E. The Reply to Challenge

On 15 February 2021, the Public Body replied to the challenge and stated the following:

The Departmental Bid Committee that met on 15 February 2021 has decided that the following information as regard to your challenge in connection with the above project be conveyed to you:

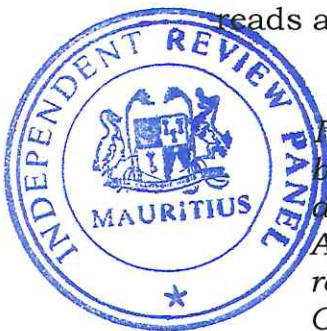
- *Addendum No. 1 with respect to the procurement for Construction of Boundary Wall and Lighting works at Rodrigues Prison, Pointe La Gueule was uploaded on the Public Procurement Office Website on 18th November 2021.*
- *The offer submitted by B. HURREERAM & Son Co Ltd has not taken into consideration the changes brought to the Bidding Document through Addendum No. 1.*
- *This is considered as a major deviation and the offer has therefore been considered as non-responsive.*

In light of the above, the bid of B. HURREERAM & Son Co. Ltd has not been retained for award.

You will note that the bid of Laxmanbhai and Co. (Mauritius) Ltd has been evaluated and is the lowest evaluated substantially responsive bid and has thus been recommended for award of contract by the Bid Evaluation Committee.”

F. Grounds for Review

On 19 February 2021, the Applicant applied to the Independent Review Panel for review to which was attached a Statement of case and the grounds for review are found in the Statement of case which reads as follows:



It is the contention of the Applicant that the action throughout the bidding process and the decision of Respondent is unjust, unfair and unreasonable inasmuch as it has failed to inform the Applicant, as an interested bidder of the change in the bidding requirements mentioned in the addendum no. 1 of the Bidding Contract dated 18 January 2021 (Annex F) (hereinafter referred to as the “Addendum”).

Reference is made to **Section 26A of the PPA and Regulation 12 of the Public Procurement (Electronic Bidding System) Regulations 2015 GN 210/2015** which read as follows:

Section 26A of the PPA

Electronic bidding process

- (1) There shall be an electronic bidding system to receive and process bidding documents for evaluation and for the award of any procurement **contract**, in accordance with such regulations as may be made.

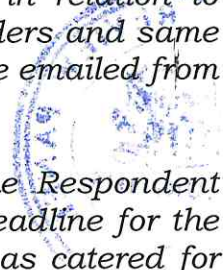
Regulation 12 Public Procurement (Electronic Bidding System) Regulations 2015

Release of bidding documents

- (1) Every public body shall post on the e-procurement system –
- (a) the procurements undertaken using the open advertised bidding method;
 - (b) the expression of interest; and
 - (c) the prequalification proceedings.
- (2) Every bidding document shall be made available on the e-procurement system for suppliers to view and consider participation in the bidding exercise.

The Applicant submits that indeed there is the e-procurement system which is the electronic bidding system for the secure transmission of bidding documents, bid data and related documents in connection with the procurement of works, consultancy services and that all bidding document shall be made available on same. However, it has been the practice of public bodies to communicate such addendum (if any) in relation to bidding documents through email to interested bidders and same can be evidenced from **Annexes G and H** which are emailed from the relevant public body.

Moreover it is important to highlight that had the Respondent acted in good faith, it would have extended the deadline for the submission of bids further to the said Addendum as catered for under clause 10 of the Bidding Contract. The Addendum has been published on the "public procurement system" on 18 January 2021 and the deadline for the submission of bids remained for the 25 January 2021 which is considered to be a



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very short delay taking into consideration the content of the Addendum.

Regulation 26 of Public Procurement Regulations 2008 GN 7/2008

26. Submission of Bids

- (1) Bids shall be submitted to only one place, in accordance with the instructions in the bidding document.
- (2) Deadlines for submission of bids shall not be less than 30 days from the date of issuance of the invitation to bid through open advertised bidding method, except for bids-
 - (a) **made by electronic means**; or
 - (b) in relation to simple projects not exceeding 100 million rupees. [Emphasis added]

The Applicant humbly submits that by amending the bidding document and by not extending the deadline for submission of bids, the Respondent has breached clause 8 of the Bidding Contract by clearly not allowing the Applicant to have the opportunity to request for clarification regarding the Addendum. Clause 8 of the Bidding Contract is reproduced below:

8. Clarification of Bidding Document

8.1 A prospective Bidder requiring any clarification of the Bidding Document shall contact the Employer in writing at the Employer's address indicated in the BDS.

The Employer will respond in writing to any request for clarification, provided that **such request is received 14 days prior to the deadline for submission of bids.**

The Employer shall respond to such request at latest 7 days prior to the deadline set for submission of bids.

Should the Employer deem it necessary to amend the Bidding Document as a result of a request for clarification, it shall do so following the procedure under ITB 10.

[Emphasis added]

It is important to highlight that **Regulation 9 of Public Procurement Regulations 2008 GN 7/2008** provides that unsuccessful bidders are allowed to obtain a debrief and that the



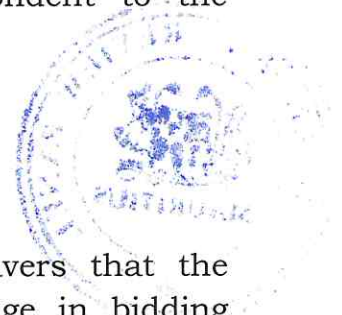
debriefing of an unsuccessful bidder shall be limited to information relating to –

- (a) *the reasons for which his bid was unsuccessful;*
- (b) *reasons for which the bid of the successful bidder was retained.*

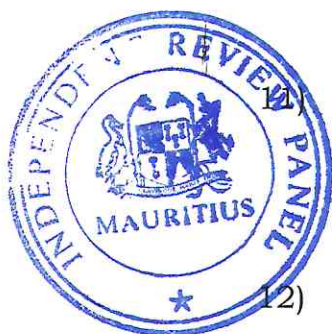
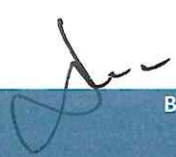
The Applicant wish to highlight that so far, the Respondent has failed to the request for a debrief since 5 February 2021.”

G. RESPONDENT’S STATEMENT OF REPLY dated 04/03/2021 reads as follows:

- 1) The Respondent has taken cognizance of the Applicant’s Statement of Case dated 19th February 2021 (hereinafter referred to as “A1”).
- 2) Respondent takes note of paragraphs **1 of A1**.
- 3) Respondent admits paragraphs **2, 3, 4 and 5 of A1**.
- 4) Save and except that Applicant sent its challenge to the Respondent on 11th February 2021, Respondent denies paragraph **6 of A1** and avers that the delay prescribed under section 43 of the Public Procurement Act 2006 (hereinafter referred to as “the Act”) for a challenge to be made to a Public Body, has not been respected inasmuch as the Notification to Unsuccessful Bidders was sent by the Respondent to the Applicant on 4th February 2021.
- 5) Respondent takes note of paragraph **7 of A1**.
- 6) Respondent denies paragraph **8 of A1** and avers that the Respondent notified the Applicant of the change in bidding documents required by the Addendum dated 18th November 2020 (hereinafter referred to as “the Addendum”) inasmuch as:



- a) the Respondent sent an email to all prospective bidders, including the Applicant, on 20th November 2020 informing it of same and,
- b) the Addendum was uploaded by the Respondent on the Public Procurement Portal on 18th November 2020.
- 7) Respondent takes note of paragraph **9 of A1**.
- 8) Respondent denies paragraph **10 of A1** and repeats herein its averments at paragraph 6) above.
- 9) Respondent denies paragraph **11 of A1** and takes note of the Applicant's admission that the Addendum was in fact uploaded on the Public Procurement Portal prior to the deadline to submission of bids in, albeit wrongly averred by Applicant as January 2021 instead of, November 2020. Respondent further avers that the delay between the said Addendum and the closing of submission of bids was not a very short delay taking into account the content of the Addendum.
- 10) Respondent denies paragraph **12 of A1** and avers that it never prevented the Applicant from making any request for clarification regarding the Addendum. Respondent further avers that the Applicant did not in fact ever attempt or make any such request to the Respondent.
- 11) Respondent takes note of paragraph **13 of A1** and avers that such debriefing will be made in accordance with the provision of the Act and the Regulations.
- 12) Respondent strongly denies the contents of paragraph **14 of A1** and repeats herein its averments at paragraph 6) above.
- 13) For all the reasons set out in this Reply, the Respondent prays that this application for Review be set aside by the Panel.



H. The Hearing

The Hearing was held on 09 March 2021. There was on record a Statement of Case and a Statement of Reply, by Applicant and Respondent respectively.

The Applicant was represented by Miss B. Gansam whereas the Respondent was represented by J. Mosaheb.

Mr Lalji Kurji Patel, Director representing the Successful Bidder was present.

On the day of hearing, Counsel Mr A. Luximon appearing for the applicant was laid up and was replaced by Ms B. Gansam, the latter moved for a postponement and informed the Panel that she has no instructions to conduct the hearing.

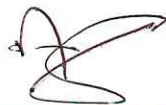
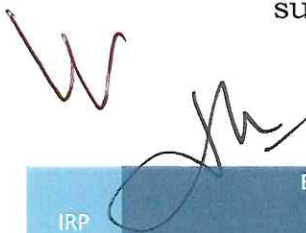
Mr J. Mosaheb appearing for the Respondent informed the Panel that the representative of the Respondent has not been able to attend.

The Ag. Chairman informed both Counsel that a postponement would delay matters for the Panel to determine the application within the legal time frame. The last date to determine the application is 20/03/2021.

After an exchange of views with Counsel appearing for both parties and taking into account the function of the Panel, it is agreed that both parties should file written submission. Review application can be dealt with, without any physical appearances and therefore it was agreed that a written submission be filed and based on the Statement of Case, Statement of Defence, written submissions and the documents already in possession of the Panel, like the Bidding Documents, Instructions to Bidders and Bid Evaluation Report, the Panel can make a determination.

The Applicant through its legal adviser Mr A. Luximon submitted a written submission dated 14/03/2021.

Counsel for Respondent Mr J N Mosaheb submitted written submissions dated 14/03/2021.



I. Findings

The Panel has only one issue to determine whether Addendum No.1 with respect to the procurement for Construction of Boundary Wall and Lighting works at Rodrigues Prison, Pointe La Gueule was brought to the knowledge of all the bidders or not.

The Respondent on 18/11/2020 issued an Addendum No.1 and according to the Respondent this was communicated to all bidders through Email and on the day of hearing the Respondent filed a document showing the list of email address to whom the addendum was sent as attachments.

Applicant has denied having received such an Email.


The Panel has noted from the Annex A filed by the Respondent which is an Invitation For Bids (IFB) document and under item 10 of the document it is mentioned as follows:

'Bidders are advised to consult regularly the Public Procurement Portal:- <http://publicprocurement.govmu.org> to take notice of any addendum issued.

This Panel is of opinion that the Respondent was duty bound to consult the Public Procurement Portal regularly as advised in the Invitation for Bid.

From the documents available at the Independent Review Panel in connection with this application, the Panel notes that other bidders submitted their bids on the Addendum although they did not acknowledge receipt of the email notice.

The Panel therefore concludes that the Bid Evaluation Committee was right to have considered the bid of the applicant as non-responsive.

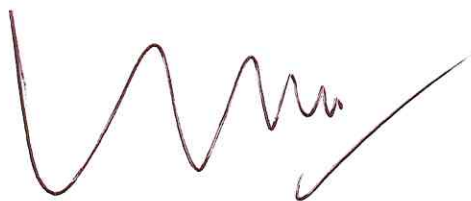


J. Conclusion

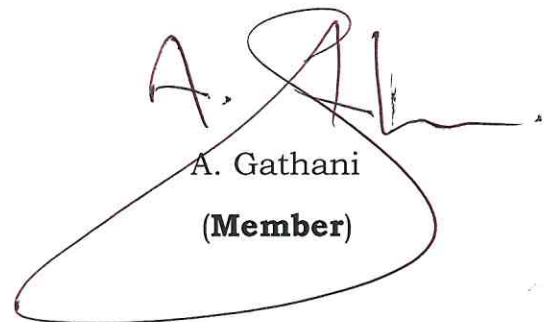
It is therefore concluded that the application for review is devoid of merits and is set aside.



H. Gunesh
(Ag. Chairperson)



V. Mulloo
(Member)



A. Gathani
(Member)

Dated: 19 March 2021

