



Independent Review Panel

Decision No. 11/25

In the matter of:

JVA Onix/Oxita

(Applicant)

v/s

National Housing Development Company Ltd.

(Respondent)

(Cause No. 16/25/IRP)

Decision



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A. History of the case

On 06 August 2025, the Respondent (National Housing Development Company Limited, “NHDC”) invited bids through Open National Bidding exercise on the e-procurement system – Proc Ref. No. NHDC/ONB/02-2025/021 – NHDC/IFB/2025/91

The closing date was set for 03 September, 2025. On the opening date of 05 September 2025, three bids were received and the Applicant (JVA Onix/Oxita) was one of the bidders.

B. Evaluation

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

C. Notification of Award

On 9th October 2025, the Respondent informed all the bidders that an evaluation of the bids received had been carried out and the particulars of the successful bidder are as given hereunder:

Name of Bidder	Address	Contract Price
RBL Waterproofing Specialists Ltd.	Shivala Lane, Nouvelle France	MUR 62,309,950.00 (Mauritian Rupees Sixty-Two million three Hundred and Nine Thousand Nine Hundred and Fifty only) including a Provisional Sum of MUR 13,500,000.00 and excluding VAT

D. Challenge

On 14 October 2025, the Applicant challenged the procurement proceedings on the following grounds:

Bidder's grounds for challenge:

1. The Public Body has failed to carry out a proper analysis of the bids in accordance with the applicable procurement laws in as much as; i) our bid is the lowest substantially responsive bid in this bidding exercise and ii) we have adequately fulfilled the eligibility requirements of the said bidding document such that the rejection of our bid in the circumstances is incomprehensible, unreasonable, unfair and arbitrary in breach of natural justice. We firmly maintain that we have the required qualification and experience and that our bid is the lowest substantially responsive bid in this bidding exercise.

2. The Public Body erred in considering RBL Waterproofing Specialists Ltd as the successful bidder as we firmly believe that the latter is under our laws unable to perform the majority of the works as described in the BOQ (E.g. alteration to services, repainting of external facades; remedial works which also encompass concrete repairs, addressing soil erosion, improvements to the drainage system, and construction of new structures such as drains, ramps, block walls, etc....) given that the scope of the works under this bid document is not restricted to solely waterproofing works but a substantial proportion of the scope entails new constructions, refurbishments and upgrading. The award to RBL Waterproofing Specialists Ltd is, therefore, misconceived, incomprehensible when viewed against the actual scope of this bid document and exposes the project to a significant risk of non-performance.

E. Reply to Challenge:

On 17th October, 2025, the Respondent, in reply to the challenge of the Applicant, stated that:-

We wish to inform that the evaluation of bids was conducted in strict compliance with the Public Procurement Act 2006 and related regulations, adhering to the conditions set out in the bidding document.

Your grounds of challenge that your Joint Venture is the lowest substantially responsive bidder and that your eligibility and qualifications were adequately demonstrated for this exercise, were duly noted. However, the Bid Evaluation Committee found that your submission does not meet the qualification criteria, namely;

- a. Sub-factor 2.4.1 (b) "*General Experience*" of being registered with the CIA in Specific Works (Waterproofing) and
- b. Sub-factor 2.4.2 (b) "*Specific Experience*" of having a minimum experience in Roof waterproofing works covering an area of at least 3,200m² within the last 5 years.

None of the Joint Venture partners satisfies these qualification criteria. These shortcomings were considered as material deviations and therefore your bid is considered as non-responsive.

The bid from RBL Waterproofing Specialists Ltd is considered responsive, having satisfied all the Evaluation and Qualification Criteria set out under Section III of the Bidding Document. The bidder has demonstrated adequate technical experience in works of a similar nature, and thus meets requirements stipulated in the bidding document.

We wish to express our disagreement with your statement at paragraph 8.2 under the grounds for challenge.

We maintain that the bid evaluation was undertaken impartially and fairly, and the outcome reflects strict compliance with the Public Regulatory Framework.

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F. Grounds for Review:

On 23rd October 2025, the Applicant seized the Independent Review Panel for review on the following grounds:-

1. In view of the Reply to Challenge dated 17th October 2025, the Public Body has failed to carry out a proper, fair and reasoned evaluation and assessment of the bid of the Applicant because in particular:
 - (a) the Applicant's bid is fully responsive to all the requirements of the bidding documents;
 - (b) the insistence of the Public Body that the Applicant failed to meet the qualification criteria is wrong, unreasonable and unfair given that the Applicant demonstrably satisfies the qualification criteria under sub-factors 2.4.1 & 2.4.2; and
 - (c) the Public Body erred in adopting a narrow and mechanical "check-the-box" approach to evaluation, instead of applying a reasoned assessment of capability. A bidder with broader and proven experience, which inherently includes the specific works required under this bid, ought reasonably to be regarded as meeting the limited qualification criteria for specific works.
2. The Public Body erred in considering RBL Waterproofing Specialists Ltd as the successful bidder when the Applicant firmly believes that RBL Waterproofing Specialists Ltd will be unable to perform the majority of the works as described in the BOQ (E.g alteration to services, and repainting of external facades; remedial works which also encompass concrete repairs, addressing soil erosion, improvements to the drainage system, and construction of new structures such as drains, ramps, blockwalls, etc) given that the scope of works under this bid document is not restricted to solely waterproofing works but a substantial proportion of the scope entails new constructions, refurbishments and upgrading. The award to RBL Waterproofing Specialists Ltd is, therefore, misconceived, incomprehensible when viewed against the actual scope of this bid document and exposes the project to significant risk of non-performance.

G. The Hearing

The Hearing was held on Wednesday 05 November 2025. The Applicant was represented by Ms Z. Tawheen Choomka, Counsel, whilst Mr Rishi Bhoyroo, Counsel, represented the Respondent.

H. Findings

At the outset, we must commend the parties in this case for their thorough statements and submissions and Counsel on both sides for the conduct of their respective cases. We have indeed been provided with more than enough material to aid us in determining the present Application for Review. We do confess to some regret that this Decision of ours need not go into the depths of detail with which the parties have presented their case.

Indeed, the present Application for Review rests on only two issues which can expediently be dealt with namely, the registration certificate submitted by the Applicant, and the assessment of the documents establishing the Applicant's experience as assessed by the Bid Evaluation Committee (hereinafter, the "BEC").

Registration Certificate

Entrepreneurs and firms, commonly called 'contractors', in the construction industry require, for the various works they carry out, relevant and applicable registration certificates issued under the Construction Industry Authority Act 2023 by the Construction Industry Authority ("CIA" which has succeeded the Construction Industry Development Board, or CIDB).

Under that law, there exists four grades of registration certificates that contractors may apply for. They are to be found in the Second Schedule to the Construction Industry Authority Act 2023, an extract of which is reproduced below:

"SECOND SCHEDULE - Continued

PART II – CLASSES OF WORKS OF CONTRACTORS

Building construction works

Civil engineering construction works

Mechanical, electrical and plumbing works

Specific works (works related to any class of works of contractors as the Authority may determine)" (underlining is ours)

The Applicant, as at the date of closing of bids, possessed a 'Building construction works' while the Bidding Documents, as couched, required a certificate issued under the 'umbrella' category of 'Specific works' above for specifically 'waterproofing'.

On that basis, amongst others, the BEC has rejected the bid of the Applicant which has led to hotly contested testimony and submissions before the Panel.

Based on the bulk of evidence and submissions on record before us on this particular issue, we can authoritatively state that the BEC's reasoning was flawed when it decided to reject the bid on that specific basis, and we are of the view that the BEC has adopted too mechanical an approach in its assessment. The Bidding Documents prepared by and on behalf of the NHDC defer to the CIA, as the licensing and enforcing authority in the industry, to, as it were, vouch for the qualifications of a contractor. Bidders, as contractors, were to seek the appropriate registration from the CIA.

We strongly emphasise that the CIA itself has deponed on behalf and in support of the Applicant's case and had, on 16th September 2025, replied to a clarification sought from it by the Applicant to the effect that the certificate it holds would cover waterproofing works. The BEC was alive to that letter and yet chose to confine itself to requiring a dedicated 'Specific Works (waterproofing)' certificate from bidders and rejected the Applicant's bid.

True it is, based on the testimony on behalf of the NHDC and on the line of questioning adopted by it, that the Corporation was seeking specialists in the field and considered that having a dedicated certificate would achieve that purpose. Of course, if an entrepreneur or firm only does waterproofing works, it would only be able to have that exact registration certificate. However, the flip side of such an approach would be to exclude other entrepreneurs and firms, usually bigger or more diversified ones, that may simply have a department or division that does waterproofing works. The Applicant is such a company and its 'greater' certification includes the 'lesser' one (waterproofing) as confirmed by the CIA in its letter referred to above and in testimony before us.



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We have that the Ground for Review 1 is successful in so far as the CIA certification aspect is concerned.

Major deviation

The other basis on which the Applicant's bid was rejected, we note, is because the information about experience (previous contracts undertaken) as requested by the NHDC in addendum to the Bidding Documents was deemed to be inadequate, and thus a major deviation.

Bound as it is, by the state of the law expressed in the Supreme Court's judgment of **SECURICLEAN (MAURITIUS) LTD V THE MINISTRY OF LOCAL GOVERNMENT & OUTER ISLANDS & ORS 2015 SCJ 327**, this Panel must refrain from interfering with the finding of fact by, and the conclusion of, the BEC that a major deviation exists.

The successful bidder's bid

Pursuant to Ground for Review 2 above, the Applicant has rightly, in effect, moved the Panel to scrutinise the bid of the successful bidder. Admittedly, notwithstanding the significant dispute between the parties before us about the extent (expressed as a percentage) of waterproofing works over the totality of works to be carried in this bidding exercise, one thing is very clear: simply having a registration certificate from the CIA for 'Specific works (waterproofing)' would not be enough. The successful contractor would require at least one or two other certifications from the CIA in order to undertake all aspects of the works for the NHDC without breaching the law (Construction Industry Authority Act 2023). Were it the case that the successful bidder was not eligible to carry out the works for which it was selected, our intervention might have become necessary under other provisions of section 45 of the Public Procurement Act 2006.

To that end, we have queried from the witnesses on behalf of the NHDC during their testimonies and have proceeded to confirm what was stated before us by verifying the successful bidder's bid.

We have found that the successful bidder did provide a multiple certification which have been assessed by the BEC, and we have not found any finding of fact by the said BEC of a degree that would render its decision *Wednesbury* unreasonable in law.

Our intervention, pursuant to Ground for Review 2, is therefore not necessary.

I. Conclusion

The Application for Review is, therefore, devoid of merit and is, accordingly, set aside.



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R, K



J. Ramano
(Chairperson)



A. K. Namdarkhan
(Member)



R. Mungra
(Member)

Dated: 21st November 2025



