

INDEPENDENT REVIEW PANEL

In the matter of:

Keep Clean Ltd

(Applicant)

v/s

Ministry of Local Government

(Respondent)

(Cause No. 04/08/IRP)

Decision

A. Background

On 22 April 2008 the Permanent Secretary of the Ministry of Local Government notified the General Manager of Keep Clean Ltd that in respect of contract number SWM/242/17/5v5 – Cleaning and Maintenance of Toilet Blocks on Beaches, the successful bidder is Compagnie Regionale de Services et de L'Environnement Ltée (referred as CRSE).

On 28 April 2008, Keep Clean Ltd dissatisfied with the decision of the Ministry of Local Government challenged the procurement proceedings on the prescribed form. In reply to the application for challenge, on 09 May 2008, the Permanent Secretary of the Ministry of Local Government informed the General Manager of Keep Clean Ltd that the notification of award was issued following the decision of the Central Procurement Board that “the contracts for lots 2 and 4 be awarded to CRSE as its bid, including the financial standing is the lowest responsive bid.”

On 22 May 2008, Keep Clean Ltd still not satisfied with the reasons given by the Permanent Secretary of the Ministry of Local Government made an application to the Independent Review Panel to review the decision of the Ministry of Local Government.

B. Grounds for Review

“The Applicant is not satisfied with the decision of the ministry of local Government (The Ministry) and/or the Central Procurement Board (the Board) on the following grounds:

1. *The ministry and/or the Board should have disqualified “Compagnie Regionale de Services de L’Environnement Ltee” for non-responsiveness of its tender in respect of lack of experience and know-how, equipment and tools, personnel and financial standing of the Tenderer for the following amongst other reasons.*
 - (a) *It is a known fact that Compagnie Regionale de Services de L’Environnement Ltee does not have at least 2 years successful experience in the provision of cleaning and maintenance of toilet blocks as required under Clause 5.1 of the Instructions to Tenderers;*
 - (b) *Compagnie Regionale de Services de L’Environnement Ltee has not established that it has the required equipment and tools to be deployed for Lots nos. 2 and 4 as required under Clause 5.3 of the Instructions to Tenderers;*
 - (c) *Compagnie Regionale de Services de L’Environnement Ltee has not established that it has the ability to deploy the required key personnel for the performance of the works for Lots Nos. 2 and 4. The Ministry and/or the Board, has thus, failed in this respect, to request Compagnie Regionale de Services de L’Environnement Ltee to furnish evidence that key personnel, with qualifications and experience, together with their previous experience in handling similar contracts in compliance with Clause 5.4 of the Instructions to Tenderers;*
 - (d) *Compagnie Regionale de Services de L’Environnement Ltee does not have the financial capacity to undertake the works for Lots nos. 2 and 4. In this respect,*

Compagnie Regionale de Services de L'Environnement Ltee has failed to meet the criteria of submission of a Bank Testimonial and/or otherwise to demonstrate that it has available liquid assets, line of credit or other financial means in compliance with Clause 5.6 of the Tender Document for Cleaning and Maintenance of Toilet Blocks on beaches.

2. *The ministry and/or the Board has been too lenient towards Compagnie Regionale de Services de L'Environnement Ltee in the submission and compliance of its tender and in the evaluation process;*
3. *The Ministry and/or the Board has taken into account irrelevant factors in their assessment;*
4. *The ministry and/or the Board has failed to take into account the relevant criteria in their assessment;*
5. *The Applicant's bid price is a good estimate of the market price that the Ministry is presently paying to other scavenging contractors on the market, for similar services under contracts awarded this year;*
6. *The bid of Compagnie Regionale de Services de L'Environnement Ltee is not responsive to the works under Lots nos. 2 and 4."*

C. The Evaluation Process

An Evaluation Committee was set up by the Central Procurement Board to examine the bids and to make recommendations to the Board. The Committee submitted its final report on 18 March 2008. Paragraph 26 of the Instruction to Tenderers relates to the "Detailed Evaluation Bids". Section 26.1(b) states that the Evaluation will result in a "pass/failed" classification of each bid in accordance with the Evaluation Grid. The detailed evaluation criteria stipulates that for bidders to qualify technically they must obtain a total of eight passes out of ten with a compulsory pass in item 1.0, i.e. a pass in item 1.0 and at least passes in 7 items are mandatory.

Item 1 specifies that the bidder must submit a financial standing with as a minimum requirement "cost for bonds and two monthly fees for each lot".

CRSE submitted a financial standing, but without details of “costs for bonds and two monthly fees for each lot”. This was considered to be a major deviation by the Evaluation Committee set up by the Central Procurement Board. The bid from CRSE was consequently not retained for any further evaluation. For the same reason the bids from two other bidders were also rejected. It is worth noting that the Evaluation Committee was chaired by a Registered Professional Civil Engineer of the Ministry of Public Infrastructure Land Transport & Shipping and one of its members is a Civil Engineer employed as technical Manager by the Ministry of Local Government.

The Chairman of the Central Procurement Board informed the Permanent Secretary of the Ministry of Local Government by letter dated 18 April 2008 that it had examined the report submitted by the Bid Evaluation Committee and has decided that:

- (i) Contracts for Lots 2 and 4 be awarded to CRSE as per details:
 - (a) Lot 2 for the total sum of Rs6,444,852 for three years subject to tender conditions
 - (b) Lot 4 for the total sum of Rs14,130,687 for three years subject to tender conditions
- (ii) As regards lots 1 and 3, fresh tenders be invited twice the lowest responsive bids are substantially higher compared to estimated costs.

D. Submissions and Findings

During the hearing the Applicant through Counsel informed that he will insist only ground 1(d) of his written submission in respect of the financial capacity of the successful bidder. The Panel was also informed that the Bank Testimonial submitted by CRSE covers two projects for which tenders were closed on the same day:

- (i) Cleaning, refuse collection and transportation of wastes on public beaches; and
- (ii) Cleaning and maintenance of toilet blocks on beaches.

The Panel will therefore restrict its examination on documentary evidence and submission of Counsel in respect of the financial requirements only. On that score it is significant to examine the bank testimonial submitted by CRSE.

1. Bank Testimonial

- (i) Section 5.6 of the “Instruction to Tenderers” deals with financial standing. In virtue of that Section the bidder has to state the amount that he can make available to meet the initial running costs should he be awarded the contract/s. To support his financial capacity, he shall submit a Bank Testimonial and/or demonstrate otherwise that it has liquid assets, line of credit or other financial means.
- (ii) The minimum amount that the bidder must show that he has or can make available is defined in the evaluation grid as “cost for bonds and two monthly fees for each lot”. Based on the submission of CRSE this minimum amount should be close to Rs1.7 M.
- (iii) In lieu CRSE has submitted a testimonial from the MCB Ltd which states that “the undersigned certify that the firm CRSE submitting a tender for the above-mentioned projects has, at the present time, the financial means and resources for the proper execution of the said contract”. No amount is mentioned.
- (iv) It has been established that the same testimonial has been used by CRSE for another project where the required financial standing was similar. The minimum amount required cannot be ascertained as it is outside the scope of this review.
- (v) From the balance sheet of CRSE for 2005 and 2006 it is noted that the Company already has borrowings (bank overdraft) of over Rs2M per year.
- (vi) It is doubtful that the Central Procurement Board was aware of the use of the same testimonial for another project when it ruled that the bid of CRSE was financially responsive.
- (vii) The Bid Evaluation Committee set up by the Central Procurement Board to examine the bids and including a Technical Manager from the public body clearly understood what had to be stated in the Bank Testimonial submitted by a bidder. The Committee in our view rightly concluded that because of the missing details of cost for bonds and 2 monthly fees for each lot, which amounts to a deviation from

Independent Review Panel – Decision No. 05/08

a compulsory requirement, the bid of CRSE could not be retained for further evaluation.

- (viii) The Panel appreciates that there is some 20% difference between the bids of CRSE and Keep Clean Ltd for lots 2 and 4 and that the bids of CRSE are only some 6% higher than the updated client's cost estimate. Thus, Financially the bid of CRSE is attractive but we strongly feel that such major deviation on its part in respect of financial requirement warrants our intervention.
- (ix) For the Panel, the Bank Testimonial submitted by CRSE represents an absolute non-compliance of the requirements set in Clause 5.6 of the Instructions to Tenderers and in the evaluation grid provided in the bidding document.

For all these reasons, we find that there is merit in the application and recommend a review of the decision of the Ministry of Local Government intending to award the contracts for lot 2 and lot 4 "Cleaning and Maintenance of Toilet Blocks on Beaches" to CRSE.

Independent Review Panel – Decision No. 05/08

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs E. Hanoomanjee)
Member

Dated this 5th of August 2008