

## INDEPENDENT REVIEW PANEL

In the matter of:

**Trio Development Ltd**

**(Applicant)**

**v/s**

**Pamplemousses/Riv. Du Rempart District Council**

**(Respondent)**

**(Cause No. 12/08/IRP)**

### **Decision**

#### **A. Facts of the case**

The facts of the case can be summarised thus:

1. *“Trio Development Ltd is a grade A contractor.*
2. *On 13 May 2008, Trio Development Ltd submitted its bid for a tender relating to supply and placing of asphaltic concrete on non classified roads within the Pamplemousses/Riv. Du Rempart District Council Area.*
3. *On 02 July 2008, Trio Development Ltd was requested by the Central procurement Board, amongst a number of other requirements, to confirm its agreement to make available a site agent holding a diploma in civil engineering or equivalent with a minimum of 3 years experience (annexure 1)*

*Annexure 1 reads as follows:*

*You are requested to:*

- (a) submit a preliminary description of the proposed work method and schedule required under ITB sub clause 5.1;*
  - (b) submit a copy of your Job Contractor's permit valid as at today;*
  - (c) confirm that a 10 T capacity steel drum vibrating roller would be available for the project, in case your offer is retained. Please indicate whether the equipment is owned or submit evidence of lease, as appropriate;*
  - (d) confirm your agreement to the effect that the following personnel will be available for the project:*
    - (i) a site agent holding a diploma in civil engineering or equivalent with a minimum of three years of experience*
    - (ii) a foreman having at least seven years of experience*
  - (e) submit evidence of adequacy of working capital for this contract in accordance with ITB sub clause 5.3(g) in the form of a bank testimonial;*
  - (f) provide information regarding any litigation, current or during the last five years.*
- 4. By letter dated 10 July 2008, Trio Development Ltd provided the required information to the Central Procurement Board and stated, inter alia, the following:*  
*A site agent with at least a diploma in civil engineering will be available for the project (annexure 2)*

*Annexure 2 reads as follows:*

- 1. We confirm that a 10 tons capacity steel drum vibrating roller will be available for the project;*
- 2. A site agent with at least a diploma in civil engineering will be available for the project;*
- 3. A foreman having more than seven years of experience will be available for the project*

*In a letter dated 25 July 2008 under the hand of Mr R. Beeharry, Asst. Chief Executive of Pamplemousses/Riv. Du Rempart District Council, informed Trio Development Ltd that A.J. Maurel Construction had been selected for the award of the contract.*

- 5. By letter dated 31 July 2008 addressed to the Chief Executive of Pamplemousses/Riv. Du Rempart District Council, Trio*

*Development Ltd, under Section 43 of the Public Procurement Act, challenged the procurement proceedings in respect of the above tender on the ground that the rates quoted by A. J. Maurel Construction Ltd were much higher than the bid prices of Trio Development Ltd and requested for communication of the reasons for the rejection of its bid.*

6. *By letter dated 05 August 2008 from the Pamplemousses/Riv. du Rempart District Council, Trio Development Ltd was informed that its aforesaid challenge of the decision of the Central Procurement Board had been set aside on the ground that Trio Development Ltd had failed to indicate and/or confirm the availability of a site agent holding a Diploma in Civil Engineering or equivalent with a minimum of three years of experience, the minimum of three years being an essential requirement.”*

## **B. Grounds for Review**

*On 12 August 2008, Trio Development Ltd filed its application for review as prescribed by regulation. A copy of the said application is reproduced hereunder.*

*Name of Applicant: Trio Development Ltd*

*Name of Representative: Jaisen Ramdenee*

*Address of Applicant: Coastal Road, Pointe aux Piment*

*Tel. No./E-mail: 261 6629/ trio@intnet.mu*

*Public Body: Pamplemousses/Riv. du Rempart District Council*

*Solicitation/Contract reference No.: CPB/B/DCPRR/AC/1/08 – supply and placing of asphaltic concrete year 2008-09*

*Date of decision of Public Body: 25 July 2008*

*Date of filing of challenge: 31 July 2008*

*Applicant’s grounds for review: Our rates are lower than that of the lowest selected bidder (A&J Maurel Construction Ltd)*

*Statement of Applicant on economic interest: We have been undertaking contracts for supply and placing of asphaltic concrete for the District Council for several years in the past. We have invested in the*

*plant/equipment and have restricted staff. Workers who will now will not have works and will not be used to the optimum. This will cause loss to us.*

*Special measures sought to: Review of the Decision of the award*

*Relief requested: To suspend award of the contract to the selected bidder until review panel has taken decision*

*Reasons of request for specific documents to support the application: copies of the supporting documents enclosed*

*Reasons of request for hearing: To give our arguments in support of our request for review*

*A copy of this application to be sent to the Chief Executive Officer of : Pamplemousses/Riv. du Rempart District Council.*

### **C. Submissions and Findings**

It is the contention of Counsel for the Applicant that if on one hand the reply made by the Applicant does not contain specifically the requirement of three years experience, on the other hand, it does not suggest that the Applicant was against or that it was not agreeable to that request. According to him in case of doubt, the Public Body has a duty pursuant to Section 37 of the Act to seek clarifications from the bidder.

Mr P. Kistnen of Counsel for the Public Body stated that being given the difference of prices between the Applicant and the successful bidder, which amounts to Rs4 to Rs5 millions, the District Council has no alternative than to concede that it is proper to review the decision of the Central Procurement Board.

We have considered the submissions of both Counsel.

In Section 5.3 at Page 33 of the Instruction to Bidders, it is clearly stipulated that the technical personnel must include a site agent holding a diploma in Civil Engineering or equivalent with a minimum of three years experience. Therefore, as indicated in the letter of the Central Procurement Board, this requirement in respect of duration of experience is an essential requirement.

The Central Procurement Board has given an opportunity to the applicant to confirm the availability of a site agent of such calibre. But unfortunately the applicant has failed to do so. Furthermore, we are not prepared to infer by the word “confirm” that the Applicant though it did expressly mentioned it, would include a site agent holding a diploma in Civil Engineering with three years experience.

We say so because an examination of the reply in respect of both requests by the Central Procurement Board for a site agent and a foreman reveals the following:

- (i) The Applicant used the word “at least a diploma in civil engineering”, when it was requested to make available a site agent holding a diploma in Civil Engineering.
- (ii) The Applicant is silent on the request of three years of experience for the site agent.
- (iii) Upon a request for a foreman having at least seven years of experience, the Applicant’s answer was that a foreman having more than seven years of experience will be made available.

The above mentioned facts indicate that the Applicant was alive to the issue of past experience and duly considered it in both cases. In the foreman’s case, the Applicant provides more than what was requested. If it has remained silent for the site agent, it was made deliberately because he could not make available at the material time a site agent with three years of experience.

For all these reasons, we find that the Central Procurement Board was right to award the contract to the other bidder. We therefore dismiss the application.

**(Dr. M. Allybokus)**  
***Chairperson***

**(H. D. Vellien)**  
***Member***

**(Mrs E. Hanoomanjee)**  
***Member***

**Dated this 19th of September 2008**

