

INDEPENDENT REVIEW PANEL

In the matter of:

Metex Trading Co. Ltd

(Applicant)

v/s

Central Water Authority

(Respondent)

(Cause No. 17/08/IRP)

Decision

A. Background

The Central Procurement Board, on behalf of the Central Water Authority launched an invitation to tender through open advertisement in February 2008 for the supply of 80,000 nos. 15 mm diameter cold water meters. The closing date for the submission of bids was initially fixed for Wednesday 02 April 2008 at 13.30 hrs at the Central Procurement Board. The closing date was extended to Friday 23 May 2008 at 13.30 hrs through an addendum dated 31 March 2007. It is obvious that it should have read 31 March 2008.

A two envelope system was adopted. Tenders were required to submit their offers in two parts, namely:

- (a) The Technical offer
- (b) The Financial offer

At paragraph 12 (pg 10) of the bidding document, the Evaluation Criteria are specified. Then it is stated that “only tenders from tenderers scoring at least 75% of the marks for their Technical Proposal in total will

be considered further and their Financial Proposal will be evaluated. The lowest bid among those who achieve the pass mark will be awarded the contract.”

The Central Procurement Board set up a Bid Evaluation Committee to examine and evaluate the bids received. Nineteen bidders submitted a total of 30 offers. One bidder did not submit the mandatory three samples with his tender and was thus considered to be non-responsive. Another tenderer did not submit the samples for one of his offers. This offer was rejected. Thus, there remained 18 bidders and 28 offers.

Three bidders did not submit the mandatory tender bond of Rs100,000 and were disqualified.

Based on the above details obtained from the technical evaluation report, it is implied that that 15 bidders and 24 offers were considered to be responsive and could be evaluated further.

The items on which the bidders were to be evaluated for a total 100 marks were specified in the bidding document as follows:

<u>Item</u>	<u>Description</u>	<u>Marks</u>
1.	<i>Compliance with Technical Specifications</i>	45
2.	<i>Warranty Undertaking</i>	15
3.	<i>Delivery Period</i>	10
4.	<i>Previous Proven Experience (Minimum 5 years)</i>	15
5.	<i>Literate/Technical Documentation</i>	15

	<i>TOTAL</i>	<i>100</i>

The Bid Evaluation Committee submitted two reports to the Central Procurement Board. A technical evaluation report dated 10 July 2008 recommended that the financial proposals of 11 bidders be opened for their 15 offers to be evaluated further. These offers had scored at least 75 mandatory marks.

A financial appraisal report was submitted on 05 August 2008. The Bid Evaluation Committee recommended the bidder Timber Connection Ltd for an award in the sum of Rs33,580,00 (VAT inclusive) provided that all clarifications requested are in accordance to the tender documents. The clarifications were about the supply of a removable integral strainer at no extra cost, the submission of an ISO-4064 certificate and the payment of the contract sum in Mauritian Rupees. The Central Procurement Board wrote to the Manager of Timber

Connection Ltd on 07 August 2008. The Managing Director of the Company wrote to the Central Procurement board on 12 and 13 August 2008.

The General Manager of the Central Water Authority notified the Managing Director of Metex Trading Co. Ltd on 22 August 2008 that his tender had not been retained for an award and that the selected bidder for an award was Timber Connection Ltd. The contract C 2007/59 for the supply of 80,000 Nos. 15 mm diameter cold water meters was to be awarded in the sum of Rs33,580,000 inclusive of VAT. On 26 August 2008, the Managing Director of Metex Trading Co. Ltd dissatisfied with the decision of the Central Water Authority challenged the procurement proceedings. On 15 September 2008, the General Manager of the Central Water Authority replied to the Managing Director of Metex Trading Co. Ltd and informed him that all bids had been evaluated according to the criteria spelled out in the bidding documents and that the lowest evaluated bid had been approved. As for information requested with respect to the selected bidder he was informed that they were of a confidential nature.

On 26 September 2008, the Managing Director of Metex Trading Co. Ltd still not satisfied with the reasons given by the General Managing of the Central Water Authority made an application to the Independent Review Panel to review the decision of the Central Water Authority. The Independent Review Panel notified the General Manager of the Central Water Authority on 30 September 2008 of the application of Metex Trading Co. Ltd for review and that pursuant to Section 45(4) of the Public Procurement Act 2006, the procurement proceedings Ref. No. C 2007/59 shall be suspended until the appeal is heard and determined.

B. Grounds for Review

“That Timber Connection Ltd being a domestic company incorporated in April 2007 dealing in importation of wood and registered as such is not and is deemed not to be in the line of business of supply of cold water meters and therefore Metex Trading Co. Ltd contends that the Board has taken into account irrelevant considerations and has disregarded relevant matters whilst reading its decision to award the contract to the said timber Connections Ltd.”

C. The Evaluation Process

The Bid Evaluation Committee appointed by the Central Procurement Board to carry out the evaluation process submitted its technical evaluation report on 10 July 2008. This was followed by the financial appraisal report on 05 August 2008. Timber Connection Ltd was recommended for an award for the supply of 80,000 nos. 15 mm diameter domestic cold water meters for the sum of Rs33,580,000 inclusive of VAT.

D. Submissions and Findings

An examination of the bidding documents has revealed the following shortcomings:

1. The technical evaluation report indicates that 19 bidders submitted a total of 30 offers in response to the invitation to bid. The list of bidders and the number of offers received per bidder is at page 2 of the Technical Evaluation Report. The Central Procurement Board confirms in its letter dated 03 October 2008 to the Independent Review Panel that 19 technical bids were received. However, when the bids were examined the following were noted:
 - (i) Bidder no. 2 was Severn Trent Metering Services and not knickel Co. Ltd
 - (ii) Bidder no. 4 was Blychem and not Ireland Blyth Ltd
 - (iii) The technical bid from bidder no. 8 Communication & Advertising Works Co. Ltd was not provided.
2. The bid from bidder no. 1, Unit Export Ltd and offer no. 3 from bidder no.6, L'An-Nur Co. Ltee were rejected as the mandatory three samples per offer were not submitted. Thus only 18 bidders and 28 offers remained for further considerations.
3. Bidder no. 8, Communication & Advertising Works Co. Ltd, bidder no. 11, Kabelek Engineering Ltd and bidder no. 13, Knight Trading Agency Co. Ltd did not submit an original tender bond in the sum of Rs100,000 with their bids and were thus considered as being non responsive. At this stage there remained 15 technical bids and 24 offers for further examinations.
4. Table 1 (pg 10) of the Technical Evaluation Report gives the marks allocated for the bids examined. From the table it is noted that marks are given for only 13 bidders and 20 offers. When the list

of bidders on page 2 of the Technical Evaluation Report is compared with the list given in table 2. the following can be observed:

- (i) Bidder no. 2, Knickel Co. Ltd which had submitted one offer appears not to have been evaluated
- (ii) Bidder no. 5, Aqualia DPI Ltd which had submitted one offer appears not to have been evaluated
- (iii) Offer no. 1 from bidder no. 6, L'An-Nur Co. Ltee and offer no. 2 from bidder no. 7, Pro-Civil Works Co. Ltd appear not to have been evaluated.

If these bids and offers had been considered the total would have been 15 bidders and 24 offers.

5. Annex 2 of the Technical Evaluation Report gives a statement of offers received. The bids from bidders no. 1, 8, 11 and 13 are indicated as being rejected. This is in agreement with paragraph 4 above. But, the statement also indicates that bidders no. 3, 5, 7, 9, 14 and 19 have not submitted the 3 meters required. It is not clear as to why these bids were considered further. Bidders no. 3, 5 and 14 submitted only one bid each, while bidders no. 7, 9 and 19 submitted two bids each.
6. Annex 3 gives the marking details for the technical specifications and it is noted that 14 bidders and 22 offers were evaluated. The annex confirms that bidder no. 2, Knickel Co. Ltd and one offer from bidder no. 6, L'An-Nur Co. Ltee, were not considered. Had they been considered the total would have been 15 bidders and 24 offers.

But the table in the annex still contradicts table 1 of pg 10 of the Technical Evaluation Report. Bidder no. 5, Aqualia DPI Ltd, was evaluated for its one bid as well as the offer no. 2 from bidder no. 7, Pro-Civil Works Co. Ltd. If bidder no. 5 and the two offers are added to table 1, this could give 14 bidders and 22 offers. This will correlate table 1 with annex 3.

But the fact remains that one apparently qualified bidder no. 2 Knickel Co. Ltd, has not been evaluated and apparently non responsive bids have been evaluated. The independent Review Panel stresses that this conclusion is based on the contents of the evaluation report and views this with very serious concern. The Bid Evaluation Committee must provide the Central Procurement Board with appropriate clarifications on these discrepancies..

7. In the evaluation criteria given at paragraph 12 (pg 10) of the conditions of tender, it is indicated that a previous proven minimum experience of 5 years would score 15 marks. At paragraph 2 (pg 6) of the same document, it is clearly specified that among other items the technical envelope should contain details regarding the tenderer and its previous experience in supply of similar items. Thus, there is no ambiguity and the marks can only be scored by a bidder if it has proven previous experience.
8. Annex 2 of the Technical Evaluation Report indicates that bidder no. 16, Timber Connection Ltd had experience in the supply of meters and scores 15 marks as per annex 4. In its technical offer, the bidder indicates that the company was incorporated in April 2007 and there is no evidence that it has supplied water meters over the past year. Thus, the bidder cannot score under this item. The independent Review Panel views the poor interpretation by the Bid Evaluation Committee of the well defined conditions of tender with serious concern.
9. It is also stipulated at paragraph 2 (pg 6) of the conditions of tender that the technical offer should include a warranty undertaking and such document would score 15 marks for the bidder (pg 10). The recommended bidder has submitted an undated document referred to as “warranty from Ningbo Water Meter Co. Ltd” and a reference to “contract C 2007/59”. This document appears to be a standard document used by the company and does not refer specifically to the goods being supplied under this procurement.
10. The letter from the Central Procurement Board to the Manager of Timber Connections ltd (07 August 2008) indicates at paragraph 2(b):

“to submit a valid and accredited certificate from an approved international certification body to ascertain conformity with SANS 1529-1 or ISO-4064 class C cold water meter.”

However, it is mentioned in annex 2 that the bidder had submitted the documents required and is given 2 marks out of 4 marks under this item. The technical specification paragraph 3 (pg 14) requires conformity with SANS 1529-1 or ISO-4064 Class C cold water meters.

11. Under the heading, compliance with Technical Specifications, bidder no. 16 Timber Connection Ltd scores 40 marks as per annex 3. In annex 4 the marks are reduced to 38.

Queerly enough, according to annex 4, bidder no. 3, Aqualia DPI Ltd has now has 3 offers, contrary to pg 2 of the Evaluation Report and annex 4 which refers to one single bid from Aqualia DPI Ltd.

In our view, these shortcomings have impaired significantly the bidding process.

For all these reasons, the Panel finds that there is merit in the application and recommends a review of the decision of the Central Water Authority intending to award contract C 2007/59 for the supply of 80,000 nos. 15 mm diameter cold water meters to Timber Connection Ltd. The independent Review Panel would also like to draw the attention of the competent authorities to the very serious errors and omissions in the Technical Evaluation Report.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs E. Hanoomanjee)
Member

Dated this 23rd of October 2008