

INDEPENDENT REVIEW PANEL

In the matter of:

A. & J. Maurel Construction Ltée

(Applicant)

v/s

Ministry of Environment & National Development Unit

(Respondent)

(Cause No. 20/08/IRP)

Decision

A. Background

1. On 30 June 2008, the National Development Unit of the Ministry of Environment & National Development Unit invited bids through open advertised bidding for the construction of drains for the year 2008/2009 – Tender No. CPB/99/2008. The closing date for submission of bids was 01 August 2008. The bids received were opened on the same day.
2. The scope of work comprises the construction of new drains and rehabilitation of existing drains over the whole Mauritius, split into eight specific zones with each zone being made up of several constituencies. The description of the works to be carried out is given in the BOQ. The bidding documents stipulate that no contractor will be awarded a contract in more than two zones. One addendum, No. 1 was issued on 17 July 2008 and modified the following clauses of the Instruction to Bidders:

- (i) Item 5.3(f)
 - (ii) Item 5.5(a)
 - (iii) Item 5.5(b)
4. One set of clarifications, set 1 was also issued on 17 July 2008. The important points in the clarifications given and relevant to this appeal are:
- (i) The approximate total budgetary allocation for drain works to be undertaken under the annual contract in all zones is Rs100M.
 - (ii) The actual value of works to be implemented in each zone will only be known as and when the Employer identifies projects during the contract period.
5. On 09 September 2008, the Permanent Secretary of the Ministry of Environment & National Development Unit notified A. & J. Maurel Construction Ltée that it had been selected for the award of contract in Zone 1 and 6 as per an enclosed schedule of rates. In the same letter it was informed of the successful bidders for the other zones.
6. On 10 September 2008, A. & J. Maurel Construction Ltée wrote to the Permanent Secretary of the Ministry of Environment & National Development Unit to express concern about the manner in which the allocation of zones has been made. It requested a modification in the allocation of the Zones prior to the award of the contract.
7. On 15 September 2008, A. & J. Maurel Construction Ltée challenged the procurement proceedings. It sent a reminder to the Permanent Secretary of the Ministry of Environment & National Development Unit on 06 October 2008 and drew his attention to the fact that he had not acknowledged receipt of the challenge made.
8. The Permanent Secretary of the Ministry of Environment & National Development Unit informed A. & J. Maurel Construction Ltée on 10 October 2008 that bids submitted were evaluated on the basis of criteria laid down in the bid documents and that it had obtained the highest scores for zones 1 and 6. Thus, it was the selected bidder for the award of tender for the two Zones.
9. A. & J. Maurel Construction Ltée dissatisfied with the reasons given by the Permanent Secretary of the Ministry of Environment & National Development Unit made an application to the Independent Review Panel on 17 October 2008 to review the

decision. On 20 October 2008, the Public Body was informed that the procurement proceedings for tender no. CPB/99/08 for construction of drains for the year 2008/2009 had been suspended until the appeal is heard and determined by the Review Panel.

B. Grounds for Review

The grounds for review submitted by A. & J. Maurel Construction Ltée are as follows:

“A. & J. Maurel Construction Ltée having topped the markings in all zones should have been awarded the zones where there are more works to be carried out or/and should have been allowed to choose their two zones.”

C. The Evaluation Process

The Central Procurement Board appointed a Bid Evaluation Committee to evaluate the nine bids received by the closing date. The Bid Evaluation Committee submitted its report on 29 August 2008. From the report it is noted that only four bidders were considered to be substantially responsive and were evaluated in accordance with the marking scheme described in Clause 30.5 of the Instruction to Bidders. A summary of the scores of each bidder and for each zone is given in Table 4 (pg 10) of the Evaluation Report. The Bid Evaluation Committee then recommended an award to A. & J. Maurel Construction Ltée for two zones in which it had the highest score (zone 1 and 6) and Transinvest (Mtius) Ltd two zones in which it had the highest score (zone 2 and 5). Then, the scores of Gamma Civic Ltd and Trio Development Ltd were compared for the remaining four zones. Gamma Civic Ltd was recommended for an award for zones 4 and 8 as it had the highest score in these zones. For the remaining two zones 3 and 7 Trio Development Ltd was recommended for an award.

D. Submission and Findings

1. In the section of Bidding Data Sheet of the Bidding Documents for construction of drains for the year 2008/2009, two tables are relevant to this present appeal. Table BDS 14.1 (pg34) describes the items of work to be carried out and the units in which they are to be measured. In the table there is also a section for schedule of Dayworks and the units in which the items are to be measured.

Table BDS 30.5 defines a marking scheme to be used when assessing the bids. Marks are allocated to each of the items of work and schedule of dayworks described in table BDS 14.1.

From the Marking Scheme provided it is observed that a weightage system is proposed and that the items do not always carry the same marks. The total maximum marks adds up to 968 as per the Marking Scheme.

2. ITB 30.5 on pg 31 of the bidding documents defines the mechanism to be used to determine the mark scored by each bidder for a particular item as follows:

“A Marking system will be used to assess both the Schedule of Rates and the Schedule of Dayworks. For each item, the Tenderer having submitted the lowest rate will be awarded the maximum mark as per Table BDS 30.5 for each of the item constituting the Schedule of Rates. The other bidders will be allocated marks on a pro-rata basis.

Calculation Example:

	Lowest Tenderer	Tenderer N
Tender rate for item I	R_{li}	R_{ni}
Marketing	M_n	$M_n \times (R_{li}/R_{ni})$

$M_n =$ Maximum marks for item I from Table 1 on pages (vi) to (viii).”

From this marking system it can be deduced that the most competitive bid for a zone will be the one scoring the highest marks.

3. Table 4 (pg10) of the Evaluation Report gives a summary of the marks scored by each responsive bidder on a zone basis. From results it is observed that A. & J. Maurel Construction Ltée scored the highest marks in six zones (1, 3, 4, 6, 7,8) and Transinvest (Mtius) Ltd scored the highest in the other two zones (2, 5). Thus, A. & J. Maurel Construction Ltée had the most competitive bid for six zones and Transinvest (Mtius) Ltd for the remaining two zones.
4. If the actual value of works to be implemented in each zone were equal then allocating two zones to a particular bidder on the basis of its competitiveness would have been acceptable. But, as correctly pointed out by the Central Procurement Board the bidding documents do not provide for bidders to have an option to choose the zone where the award of a contract is to be made to

them. However, as indicated in the clarifications issued on 17 July 2008, the actual value of works to be implemented in each zone will only be known as and when the employer identifies projects during the contract period. Furthermore, for some urban areas the Municipal Councils also invite bids for construction of drains. This factor will inevitably reduce the value of works in certain zones. Hence, the Public Body will be deprived of competitive bids if the marks scored by a bidder are not used in conjunction with the value of works to be implemented in a zone.

5. Mr G. Glover, Counsel for A. & J. Maurel Construction Ltée has provided the Independent Review Panel with copies of Invitation to Bid issued by the Municipal Council of Vacoas-Phoenix for construction of drains at three different sites. These sites are in zone 6 where A. & J. Maurel Construction Ltée has been notified that it was the selected bidder. Thus, the risk that a bidder who was most competitive in six zones ends up with less work than a more expensive bidder are very high under the given set of circumstances. We agree with that submission and are of the view that the mode of selection of the zones is most unfair.
6. Most probably, the Ministry also felt likewise and informed the Panel of its intention to cancel the present tender exercise and launch a new one with an increase in the scope of work. However, the applicant insisted that the Panel proceeds with a determination.

The Panel considers that there is merit in the application and recommends a review of the decision of the Public Body to award the zones to the bidders without taking into consideration the value of works to be implemented. Else it will prevent the Public Body from taking advantage to very competitive bids.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs E. Hanoomanjee)
Member

Dated this 10th of December 2008