

INDEPENDENT REVIEW PANEL

In the matter of:

Jan De Nul NV

(Applicant)

v/s

Wastewater Management Authority

(Respondent)

(Cause No. 22/08/IRP)

Decision

A. Background

The Wastewater Management Authority (WMA) acting for and on behalf of the Ministry of Public Utilities is implementing the “Plaines Wilhems Sewerage Project (PWSP)- Stage 1 – Contract WW80F – Construction of Reticulation Network and House Connections for Lot 1A”. The WMA invited tenders for the works which comprise civil works for the construction of approximately 98.5 km of street sewers, as well as the construction of approximately 13,000 sewer house connections, a pump station for sewage water and a rising main of approximately 4,100 m.

Tenders were invited from seven tenderers who had been pre-qualified by the WMA and the closing date for submission of tenders was originally set for 13 hours on 22 January 2008. Four Tender Addenda were issued during the tender period of which Addendum 1 and Addendum 2 postponed the submission dates to 24 January 2008 and 12 February 2008 respectively. Addenda No. 3 and No. 4 were issued

mostly in response to queries from the tenderers but also contained clarifications and amendments to certain Bill items.

Tenders were opened on 12 February 2008 at 14 hours at the Central Procurement Board's office in the presence of tenderers' representatives. Five tenders were received and the Bid amounts ranged from Rs. 2.194 billion to Rs 3. 521 billion.

The instruction to Tenderers (Clause 28.1 and 28.2) required the tenderers to submit specific information/details in order to be substantially responsive. Five tenders were examined and were found to be substantially responsive. The Evaluation committee then carried out arithmetical checks on the five tenders which resulted in some corrections which were not substantial. Two tenderers had offered discounts which had to be taken in to account before the corrected tender amount could be arrived at.

Following compliance with tendering requirements, arithmetical check and taking into account any discounts, the three tenderers with the lowest offers were:

- (i) China Jiangsu/PAD & Co. Ltd (Joint Venture)
- (ii) China International Water and Electric
- (iii) Thymian Holding Gibb/Sotravic Ltd (Joint Venture)

On 09 May 2008, the Bid Evaluation Committee recommended that clarifications be sought from the Employer in respect of several issues from the lowest bid JV China Jiangsu/PAD & Co. Ltd. Subject to obtaining full satisfaction on all issues the Employer may award the contract to the tenderer. The award tender price will be determined based on clarification obtained for the rate under Bill item 3.15 of the BOQ.

On 14 October 2008, the Applicant which ranked fourth in the tender exercise filed a challenge. It received the decision of the Public Body on 23 October 2008 and lodged an Application for Review on 4 November 2008.

B. Grounds for Review

“To ensure that the WMA award the contract to a fully compliant bid that has been priced to deliver the works to a standard that will ensure the long term performance required by the tender specifications.”

1.1 *Tender specifications*

“The applicant’s view is that the requirements of Tender Specification section E1.16 can only be met by HOBAS pipes from Germany. HOBAS pipes from china will not comply with the strain corrosion tests set out in Tender specification pages E25 to E31.

1.2 *Certificates confirming compliance of HOBAS pipes are included in Jan de Nul’s tender submission.*

1.3 *Non HOBAS German Supplied Pipe*

Although HOBAS China has a license from HOBAS Germany and should therefore be in accordance with all standards it should be noted that this license is only given with regards to the production process (technique and equipment) and not does guarantee compliance to the above standards for raw material, control, quality, testing and long term behaviour.”

C. Submissions and Findings

The main contention of the Applicant is that the contract price of the lowest bidder which is too low might have been reached by offering products which are below standard. On that score, Mr K. Dabeesing for the Applicant referred to Clause 33 of the Standard Bidding Documents for procurement of large or complex works. He also invited the Panel to consider detailed technical specification of the bidders in respect of GRP, UPVC pipes, manholes and chambers. The provision of materials of sufficient standard should be ascertained to ensure that the Wastewater Management Authority award the contract to a fully complaint bid.

A. Clause 33

Clause 33 provides as follows: when bills of quantity form part of the bidding documents, the Bid Evaluation Committee shall verify that prices are not so low that the bidder is awarded the contract, would incur substantial loss and therefore fail to complete the works satisfactorily, or that any unrealistically low prices reflect a misunderstanding of the specifications. In reply to his contention on

Clause 33, Mr R. Peeroo of Counsel for the Respondent rightly pointed out that the said provision was not in force at the material time. We agree with that submission. Having said so, we shall examine the specification issue on GRP pipes and others.

B. GRP pipes and others

According to Mr K. Dabeesing, the selected bidder has proposed GRP and UPVC pipes from Hobas China in order to offer a low price. He referred to Section E – para E1.16 in relation to CC – GRP pipes where it is provided that “pipes shall be manufactured in accordance with the following standards: DIN 16869 DIN 19565 EN 1796, EN 14364, ISO 10467. All CC.GRP pipes and fittings shall comply with quality specifications MUCKSP – A2000 for CC-GRP pipe system.

As far as the manholes are concerned it is the contention of the Applicant that there are strong suspicions that the selected bidder have quoted prices respect of prefabricated manholes in polyethylene which are not authorised by the specifications. We have carefully scrutinized the report of the Evaluation Committee comprising of three professional engineers, and its recommendations. The Committee has not detected low prices which would reflect misunderstanding of the specifications nor offers which are not compliant because of the poor quality of products. According to the report, the selected bid does not contain major deviation as far as specifications are concerned.

Further an examination of the various bids reveals the following:

For the selected bidder, the supplier of UPVC pipes will be PPP Piping System Ltd from Mauritius. The UPVC fittings from Redi of Italy the CCGRP will be from Hobas China whereas the manholes from clark-drain China. For the Applicant, the UPVC either from Wavin (Netherlands), Rehau Construction (Germany) or STR Marketing Ltee (Mauritius) the GRP pipes from Hobas (Germany) whereas the manholes will be from China. The chambers from Wavin (Netherlands), Rehau Construction (Germany) or STR Ltee (Mauritius).

It is significant to note that the supplier for some of these products is STR Marketing Ltee, a mauritian concern, the very one, which for some products acts also on behalf of the Applicant. As for the GRP pipes, technical specification of these pipes revealed that they are manufactured by centrifugal casting process complying to German Standards Din. 16896 and Din 19565 in 15.3 length.

If it is true that as averred by the Applicant GRP pipes and UPVC pipes of the selected bidder are manufactured in China, there is no evidence adduced to the effect that China can no longer manufacture under Hobass trade name.

On the contrary, a certificate issued by Hobas Engineering GmbH, 9020 Klagenfurt Austria, is to the effect that Zheziang Eastern Hobas Pipe Co. Ltd is a Hobas license Partner with the right to manufacture Hobas CC GRP Pipe Systems in the People Republic of China. There is also considerable documentary evidence to indicate that the manholes which will be supplied by Clarkdrain Ltd are compliant with the approved standard.

Mr K. Dabeesing laid much emphasis on the required specifications but did not submit evidence to show that Hobas China pipes failed to satisfy the tender specifications. In reply to his submission we refer to in Volume 2, specifications Section B Clause B 5.2, it is clearly stipulated that the schedule in no way prejudices the approval of any other equivalent or superior national or international standards. Further, where the requirements of the specifications and approved standard differ, the approved standard will prevail.

The MUC-KSPA 2000 is a criterion under E16 for specifications but when we look at the table approved standard of the same item GRP pipes, it does not appear, but instead we have ASTM – 5480 which is found in the test report of Zhejiang Eastern Co. It is also the contention of the Applicant that the GRP pipes from China cannot sustain strain corrosion, this is not true being given that in the said certificate it is clearly specified strain corrosion resistance ASTM 3681.

Furthermore, we wish to point out that there is no specification in the tender, though the financing is jointly made by the Government of Mauritius and European Investment Bank, that a specific country is excluded from being a supplier or a bidder in the present contract.

After examination of all the bidding documents and the Bid Evaluation Committee Report of and in the light of the clear provisions in the schedule of approved standard documents, we are satisfied that the specifications have been complied with in relation to the above mentioned products. For these reasons, we set aside the application. However, we wish to make the following observations:

It is clearly mentioned in para 6.2 of the Evaluation Committee Report that the Award Tender Price is 2,293,697,481.98 excluding the amount for item 3.1.5 of the bid. The rate quoted for bill item 3.1.5 “Removal of Asbestos cement pipe and disposal of appropriate dumping

site including all necessary precaution to be adopted in handling the Ac pipe and fittings to be disposed of is Rs200,000 per ton/km amounting to a total of Rs400,000,000 for this single item. The rate quoted by other tenderers for this item varies between Rs50 to Rs200 per ton/km. The rate of Rs200,000 per ton/km quoted by J. V. Chiang Jiangu/PAD & Co. Ltd is deemed to be totally unreasonable and completely unrealistic. The recommendation of the Bid Evaluation Committee was approved by the Central Procurement Board on 23 May 2008.

Thereafter, the Public Body under the instructions of the Central Procurement Board sought the usual clearances from the Ministries and other Institutions concerned. Still under instructions of the Public Body on 08 October 2008, in accordance with Section 40(3) of the Public Procurement Act notified the selected bidder of its intention to award for the sum of MUR 2,291,288,265.24. It would seem that the request of the Bid Evaluation Committee for the tenderer to clarify the issue in respect of bill item 3.1.5 and to produce detailed price analysis to demonstrate the internal consistency of the price for this item has not been considered

The notification of award dated 08 October 2008, confirms that the above exercise has not been carried yet. We are of the view that such exercise ought to have been effected before finalising a price for the award.

(H. D. Vellien)
Designated Chairman

(Mrs E. Hanoomanjee)
Member

Dated this 16th of December 2008