

INDEPENDENT REVIEW PANEL

In the matter of:

Trio Development Ltd

(Applicant)

v/s

Ministry of Environment and National Development Unit

(CN 10/09/IRP)

(Respondent)

Decision

A. Background

1. The Ministry of Environment & National Development Unit invited tenders for the appointment of “Annual Drains and Road Contractors” through the restricted bidding process from eight short listed firms on January 2009. The deadline for the submission of bids was 27 January 2009 at 13.30 hrs. The bid opening took place on the same day at 14.00 hrs at the Central Procurement Board.
2. The eight contractors submitted their bids by the closing date of 27 January 2009 and the Evaluation Committee considered five of them to be technically substantially responsive and went on to appraise their financial proposals. The Bid Evaluation Committee submitted its report on 12 February 2009 and on 27 February 2009 the Public Body notified all bidders that “the tenderers listed hereunder have been selected for award of zone contracts as per attached schedule of Rates”.

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Gamma Civic Ltd	Zones 1 and 3
General Construction Co. Ltd	Zones 2 and 4

3. Trio Development Ltd a dissatisfied bidder challenged the decision of the Public Body on 05 March 2009. The Bidder still not satisfied with the reasons given by the Public Body made an application for review to the Independent Review Panel on 26 March 2009. The public Body was informed on 31 March 2009 that the procurement proceedings were suspended until the appeal was heard and determined by the Independent Review Panel.
4. The Public Body submitted its comments on the application for review on 02 April 2009 and also certified, giving reasons, that urgent public interest considerations require the procurement proceedings to proceed. The Panel informed the aggrieved bidder on 03 April 2009, that pursuant to Section 45(4), (5), (6) and (7) of the Public Procurement Act 2006 the procurement proceedings were no longer suspended.
5. A first hearing was held at the Independent review Panel on 09 April 2009 and a second one on 23 April 2009.

B. Grounds for Review

The Applicant's grounds of review are as follows:

“The Applicant is not satisfied with the decision of the Public Body inasmuch as:

- (a) *Because the Evaluation Criteria/Methodology set down for the said Project (including Zone 2 thereof) has not been complied with and adhered to as regards Zonal allocation;*
- (b) *The Public Body and/or the Central Procurement Board has erred in selecting General Construction Ltd for the award of Zone 2 on the basis of irrelevant justifications (namely “unbalanced offer”) in contravention with the Evaluation Criteria/Methodology set down for the said Project (including Zone 2 thereof); the said Evaluation Criteria/Methodology providing for bidders having received the overall highest marks with respect to a specific Zone to be allocated the same.*
- (c) *The Zonal allocation to bidders being carried out on the basis of the said Evaluation Criteria/Methodology and more particularly on the basis of the highest marks scored for the relevant zone, the public body and/or the Central Procurement*

Board has erred in failing to select Trio Development Ltd for the award of Zone 2; Trio Development Ltd having scored marks higher than General Construction Ltd with respect to the said Zone 2.”

C. The Evaluation Process

The Central Procurement Board appointed a Bid Evaluation Committee to evaluate the eight bids received by the closing date of 27 February 2009. Section II of the bidding documents contain the bidding data sheet and ITB 9 (pg30) reads “to replace wording relating to “Section VIII” by “Schedule of Rates, List of Prices and Schedule of Dayworks”. The wording replaced is “Bill of Quantities”. The Bid Evaluation Committee in its reports observes at Section 14.2 (pg9) “The marking for item of works in the Schedule of Rates ranges from 1 mark to 50 marks and the Bid Evaluation Committee considers that due consideration must have been given to the importance of each item while allotting the marks”. The marking of items are given in Table BDS 30.5 (Pg40-44) and ITB 30.5 (pg32) gives the methodology to be used for computing the total score of a bidder. Based on these, the Bid Evaluation Committee calculated the total score for each bidder by zone and the information is provided in Table 8 (pg11) of the Evaluation Report, as follows:

Ranking of bidders in order of Highest Score/Marks

Rank	Zone 1		Zone 2		Zone 3		Zone 4	
	Total	Bidder	Total	Bidder	Total	Bidder	Total	Bidder
1	1203.43	Gamma	1191.23	Trio	1204.76	Gamma	1193.78	GCC
2	1193.16	GCC	1126.76	Gamma	1190.85	GCC	1190.62	Gamma
3	1068.09	Trans	1118.57	GCC	1083.13	AJMC	1071.64	Trans
4	1032.93	Trio	1047.40	AJMC	1026.14	Trio	1024.9	AJMC
5	-	-	-	-	-	-	949.97	Trio

The Bid Evaluation Committee further notes on page 11 of its report that:

*From the table above, it is observed that Trio Development Ltd is ranked first for zone 2. Taking into consideration the observations made in Tables 5 and 6 at Section 14.2 (as reproduced below), the BEC considers that **the rate for item No. 96 quoted by Trio Development Ltd has to be brought down to the rate quoted by other bidders in the range of Rs320 to Rs410 per m² for the same item, which is considered to be reasonable. This shall be applicable to zone 2 only.***

Rates Quoted by Trio Development Ltd

Zone	Rate per m² (Rs)
Zone 1	11,000
Zone 2	8,800
Zone 3	11,000
Zone 4	15,000

The Bid Evaluation Committee recommends on page 13 of its report that: “the contract for Zone 2 be awarded to bidder no 6, Trio Development Ltd having achieved the highest score of 1191.23 subject to:

The rate of item 96 is brought down to the range of Rs.320 to Rs.410 per m²”.

Notwithstanding the recommendation of the Evaluation Committee, the Central Procurement Board informed the Public Body in a letter dated 09 March 2009 “that the bid of Trio Development Ltd has not been retained as the latter has submitted an unbalanced offer, specifically for item 96 in respect of all zones. The price quoted by Trio Development Ltd for bill item no. 96 supply and lay of asphaltic concrete meaning course 0/10 with 5.5% total mix binder content for a layer of 40 mm thick are as follows:

<u>Zone</u>	<u>Rate (Rs) per square metre (m²)</u>
Zone 1	11,000
Zone 2	8,800
Zone 3	11,000
Zone 4	15,000

The rates quoted by the other bidders for this item range from Rs320/m² to Rs410m².

As the works under item 96 is a major component, if not the most important component, of the works, the bid of Trio Development does not represent value for money.”

D. Submissions and Findings

The point raised by the Applicant is that not awarding Zone 2 to Trio, is ‘in contravention with the Evaluation Criteria/Methodology set down for the Project’. This could have been the case but the difference in the prices quoted for Item 96 by Trio and other bidders is considerable that is Rs 8,800 per square metre as compared to Rs 320 to Rs 410 quoted by other bidders.

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As highlighted in a memorandum a bid analysis and unbalanced bids dated 16 May 1988 from U.S. Department of Transportation, “another reason is to maximize profits. The bidder does this by overpricing bid items he believes will be used in greater quantities than estimated in the proposal and under pricing items he thinks will be used in significantly lesser quantities”.

“One method which can be considered to avoid the problems of unbalanced bids is to insert into its contract specifications a specific clause prohibiting unbalanced bidding”.

Though it is highly desirable to have similar clauses in the bidding documents, the Panel does not consider the absence of such clauses in the bidding document of the present matter, fatal to the case for the Public Body. We say so, because one of the functions of the Central Procurement Board as provided by section 11(2) (e) of the Public Procurement Act is to strive to achieve the highest standards of transparency and equity taking into account *the need to obtain the best value for money in terms of price, quality and delivery, having regard to set specifications.*

In the present matter being given the significant difference of the offer of the applicant in respect item 96 compared to the other bidders, we have no difficulty to find that the Central Procurement Board was right to conclude that the bid of Trio Development does not represent value for money.

For these reasons, the Panel finds no merit in the application, which is accordingly dismissed.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated this 8th of June 2009

