

INDEPENDENT REVIEW PANEL

In the matter of:

Transinvest Mauritius Limited

(Applicant)

v/s

Municipal Council of Quatre Bornes

(Respondent)

(Cause No. 12/09/IRP)

Decision

A. Background

1. The Municipal Council of Quatre Bornes on 13 February 2009, using the open advertising bidding method, invited sealed bids from eligible and qualified bidders for the construction of drains and gutters – Tender No. CPB/17/2009. The closing date for the submission of bids was 20 March 2009 and bids received were opened on the same day.
2. ITB 1.1 of section II of the Bidding Data Sheet (Pg 57) specifies that the works was ‘for an expected value of approximately Rs 25m (indicative only)’. Addendum No I. was issued on 26 February 2009 specified that “The Works will be for a revised expected value of approximately Rs 40m (indicative only).
3. ITB 1.2 indicated that the intended completion date for the whole contract is 365 days as from start of work. Further, the

GCC 2.2 (pg 72) indicates that sectional completions are 84 days from starting date of each work order or any other date to be agreed by the employer and the contractor.

4. The aggrieved bidder wrote to both the Public Body and Procurement Policy Office on 06 March 2009 to indicate what it considered to be inconsistencies between the bidding documents and provisions of the Public Procurement Act, 2006.
5. Subsequently the Procurement Policy Office informed the bidder, on 18 March 2009, that the issues raised would be considered upon completion of the customised standard bidding document for fixed rate contract.
6. The Municipal Council of Quatre Bornes for its part informed the bidder on 19 March 2009 that “the bidding documents for above are in conformity with the provisions of the existing legislations”.
7. Transinvest (Mts) Ltd. submitted its bid on the closing date i.e 20 March 2009. It then wrote to the Municipal Council of Quatre Bornes on 30 March 2009 to inform that it maintained its standpoint that the bidding documents were inconsistent with the provisions of the Public Procurement Act 2006.
8. On 11 May 2009 the Municipal Council of Quatre Bornes notified the bidder that the Central Procurement Board had recommended the award of the Tender No. CPB/17/2009 to Onix C. Ltd.
9. Transinvest (Mts) Ltd. challenged the decision of the Public Body on 15 May 2009. On the basis of the views obtained from Central Procurement Board on 22 May 2009, the Public Body replied to the challenge on 27 May 2009.
10. The aggrieved bidder dissatisfied with the decision of the Public Body to set aside its challenge submitted an application for review to the Independent Review Panel on 05 June 2009.
11. The Panel, pursuant to section 45 (4) of the Public Procurement Act 2006 suspended the procurement proceedings until the appeal was heard and determined. The Panel held hearings on 30 June 2009, 10 July 2009 and 12 August 2009.

B. Grounds for Review

The grounds for review submitted by Transinvest (Mts) Ltd. are as follows:-

- (i) Breach of duty imposed on Public Body under Section 43 (1) in respect of 'Content of Contract', Section 46 (1) (d). Tender Documents issued without 'Contract Price'.*
- (ii) The invitation for Bids for Contract CPB/17/2009 made at 13th February 2009 prior to cancellation dated 27th February 2009 for Notice of Award Contract SQW-47/0809 issued in favour of Transinvest resulted in ample time for unsuccessful bidders for Contract SQW-47/0809 to make use of Transinvest prices communicated through Notice of Award dated 04th February 2009 for SQW-47/0809. Notwithstanding the providing of 'List of Prices' by the public body constitute an infringement to Section 40 (3) of the PPAAct.*
- (iii) Transinvest letter of 06th March 2009 issued to the Council detailing the non-conformity of the Tender Documents to the Procurement Act resulted in ample time to the Council for taking corrective measures as submission of tender was scheduled at 20th March 2009.*
- (iv) Back up letter issued from the Procurement Policy officer was communicated to the Council on 30th March 2009, mentioning that Standard Bidding Documents for Fixed Price Contract under preparation by the said office. The same highlighting that the present Tender Documents and method of Notification of Award not being in conformity with the Public Procurement Act. Nevertheless, the Council issued Notice of Award at 11th May 2009 for Contract CPB/17/2009.*

C. The Evaluation Process

The Central Procurement Board appointed a Bid Evaluation Committee to evaluate the four bids received by the closing date of 20 March 2009. The Bid Evaluation Committee submitted its report on 23 April 2009. Three of the bidders were considered to be substantially responsive and were evaluated according to the marking scheme described as per clause 38 of the ITB (Pg 29). The ranking of bidders in order of highest score/marks is given in Table F(pg 8) of the evaluation report and is as follows:-

<i>Rank</i>	<i>Bidder</i>	<i>Total Marks</i>
1	<i>Onix Co. Ltd</i>	<i>532.01</i>
2	<i>Safety Construction Co. Ltd.</i>	<i>397.20</i>
3	<i>Transinvest (Mauritius) Ltd.</i>	<i>375.22</i>

The Bid Evaluation Committee recommended the award of the contract to the first ranked complying bidder, Onix C. Ltd.

D. Submissions and Findings

1. In November 2008 the Municipal Council of Quatre Bornes, using the request for sealed quotation method, invited bids from selected bidders for construction of drains and gutters within the township Quatre Bornes. The closing date for the submission of bids was the 22 December 2008. The method of evaluation, according to a defined marking scheme, was similar to the one used for the present bid No CPB/17/2009. However, the works to be carried out was up to a maximum value of Rs 3m.

2. On 04 February 2009 the acting Chief Executive of the Municipal Council of Quatre Bornes notified Transinvest (Mauritius) Ltd. that ‘the Departmental Tender Committee has recommended the award of the above quotation to your company, as per the rates herewith annexed’. This information was communicated to all the other bidders.

3. The acting Chief Executive of the Municipal Council of Quatre Bornes caused to be advertised an invitation for bids in the local press on 13 February 2009 for the ‘Construction of Drains and Gutters, CPB/17/2009’. At that point in time Transinvest (Mauritius) Ltd. was still in possession of its notification of award dated 04 February 2009 with respect to procurement No. SQW: 47/08-09. However, on 27 February 2009 it was informed ‘that the exercise has been cancelled to be in line with the Public Procurement (Amendment) Regulations 2009’.

4. Transinvest (Mts) LTd. submitted its bid for the said tender on 20 March 2009, after having challenged the conformity of tender CPB/17/2009 with respect to the provisions of the Public Procurement Act 2006. The bidding document from the Public Body is dated January 2009 which leads the Panel to conclude that while the proceedings for the award of Tender No. SQW

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47/08-09 was ongoing the Public Body was concurrently preparing a new document for the tender No. CPB/17/2009.

5. The Panel has compared the schedule of markings for both tenders referred to above and notes that besides the marks allocated for the main rates both documents are similar.

	CP/17/2009	SQW 47/08 – 09
Main Rates	15 items for 200 marks	Similar but for 100 marks
Day work – Plant	25 items for 100 marks	Similar Sheet
Day work – Material	13 items for 100 marks	Similar Sheet
Day work – Labour	6 items for 100 Marks	Similar Sheet
Day work – All-in-Rates	6 items for 100 items	Similar Sheet
Total Marks	600	500

Furthermore, the rates quoted by Transinvest (Mts) Ltd. in both exercises are similar. The fact that the prices of Transinvest (Mts) Ltd. have been disclosed on 04 February 2009 has certainly caused a serious prejudice to them when the three bids are compared.

6. The Panel is of the view that the Bid Evaluation Committee should have examined critically the detailed working sheets it had prepared at annex C, D, E, F and G of its report. There is evidence that some items have been overpriced while others have been underpriced. At annex E of the evaluation report it is observed that the quoted price for items 10 and 11 for the three bidders are as follows:

Item	Description	Unit	Onix	TIV	Safety
10	Mild Steel bars	t	28750	63000	6200
11	High Yield Steel bar	t	34500	63000	6200

This is also another clear example of unbalanced offer:

At annex C one item (allocated 20 marks) more or less determined which bidder was to score the highest marks for the main rates.

Item	Description	Unit	Onix	TIV	Safety
8	Metal gratings	m ²	7500	29900	28000

Similar observations can be made for the other working sheets. If, as confirmed by the Public Body during the hearing, most of the works will be associated with the construction of drains and gutters then indeed the bid of Onix is less competitive as can be seen at annex C.

For all the reasons given above the Panel finds that the bidding process had been vitiated and that there is serious and reliable evidence of unbalanced offers having been submitted with the obvious aim of being successful but which might also be in breach the provisions of the sections 52 and 53 of the Public Procurement Act relating to price fixing and under pricing.

In these circumstances the Panel, pursuant to section 45 (10 (b) of the Public Procurement Act 2006 recommends the annulment of the decision to award the Tender CPB/17/2009 to Onix Co. Ltd.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated this 21 August of 2009