

INDEPENDENT REVIEW PANEL

In the matter of:

Rehm Grinaker Construction Co. Ltd

(Applicant)

v/s

Road Development Authority

(Respondent)

(Cause No. 17(a)/09/IRP)

Decision

A. Background

1. The Road Development Authority, using the open advertised bidding method of procurement, invited bids through a press notice in two dailies during the period 18 March 2009 to 20 March 2009 for the Construction of Phoenix Beau Songes Link Road. The notice appeared on two consecutive days. The closing date and time for bid submission was 14 April 2009 at 13.30 hrs. The Public Body issued addendum no. 1 on 25 March 2009 to inform potential bidders that the deadline for bid submission had been extended to 05 May 2009 at 13.30 hrs. The bids and bid security were to remain valid up to 01 October 2009 and 31 October 2009 respectively.
2. The five bids received by the time of 13.30 hrs on the closing date of 05 May 2009 were opened in public on the same day at 14.00 hrs. The name of the bidder as well as its bid price were read out in public and as such the bid price of each bidder has since been in the public domain.

3. The Central Procurement Board appointed a Bid Evaluation Committee to evaluate the five bids received and it submitted its report on 15 June 2009. At paragraph 17 (pg 23) of its report the Bid Evaluation Committee recommends that:

“Based on the above analysis the BEC recommends that the contract for the Phoenix Beau Songes Link Road is awarded to A & J Maurel Construction Ltee for the total sum of Rupees Two hundred and seventy nine million eight hundred and eighty eight thousand two hundred and seven and cents fifty only (Rs279,888,207.50) including VAT subject to the following clarifications being obtained.”

4. The Public Body was informed by the Central Procurement Board on 11 June 2009 that it had approved the award of the contract for the Construction of Phoenix Beau Songes Link Road (CPB/30/2009) to A & J Maurel Construction Ltee for the sum of Rs279,888,207.50 (inc. VAT). The selected bidder and four unsuccessful bidders were notified of the decision of the Central Procurement Board by the Public Body on 12 June 2009.
5. Rehm Grinaker Construction Co. Ltd dissatisfied with the decision of the Public Body issued a challenge on 18 June 2009. The Public Body received on 26 June 2009 the information from the Central Procurement Board as to why the bid of Rehm Grinaker Construction Co. Ltd had not been retained for an award, informed the bidder accordingly on 29 June 2009.
6. The aggrieved bidder still dissatisfied with the decision of the Public Body wrote to it again on 02 July 2009. The Public Body replied to Rehm Grinaker Construction Co. Ltd on 06 July 2009 to inform that the decision was final and that it was in accordance with Sections 14(4) and (5) of the Public Procurement Act 2006.
7. Rehm Grinaker Construction Co. Ltd as an aggrieved bidder and still dissatisfied with the decision of the Public Body made an application for review to the Independent Review Panel on 13 July 2009.
8. The procurement proceedings pursuant to Section 45(4) of the Public Procurement Act 2006, were suspended on 13 July 2009.
9. Hearings were held by the Panel on 24 July 2009, 17 August 2009 and 19 August 2009.

B. Grounds for Review

The Grounds for Review are as follows:

“Rehm Grinaker Construction Co. Ltd (RG) considers that the reason provided by the Public Body, the Road Development Authority (RDA) for not awarding it this contract is not acceptable. RG has explained clearly vide letter dated 2 July 2009 (attached) from its Attorney addressed to the RDA the reasons why. This is further explained below.

RG considers that its bid which was the lowest bid for this project, was substantially responsive to the Bidding Documents and hence the project should be awarded to it.

RG who is registered as a Grade A Roadworks Contractor with the RDA considers that the details submitted in its bid which includes its audited accounts for the past 5 years and also the list of projects undertaken by it in the past demonstrate that it has the financial capacity to undertake this project.

RG considers that although the financial standing provided was for a tender that closed a week before this Contract, i.e. the Triolet Bypass Project, it is still proof that it has the financial resources and should hence still be considered, despite the fact that other elements of its bid could also be considered in this respect. RG also encloses herewith all financial standings provided for 3 other RDA projects that were tendered around the same time namely for the Goodlands Bypass Project, the Widening of Motorway M1 project and the Pamplermousses to Forbach Project. The last financial standing for the Pamplermousses to Forbach Project was actually in an amount of Rs120 million compared to Rs60 million called for on the Phoenix-Beau Songes Project.

RG has since provided the relevant financial standing for this particular project.

Most importantly, RG considers that the financial statement provided in the tender does in any way still fully comply with item 2.3.3 of Section III (evaluation and Qualification Criteria) in that it is “fresh and updated documentary evidence from recognized financial institution” as called for in the tender document. Please refer to extract enclosed.

RG therefore considers that it should have at least been given the opportunity to clarify this matter if CPB/RDA had still felt it necessary.

RG considers that it should have been given the opportunity to clarify this matter which would not have affected its price in any way, and draws attention to the fact that CPB and the RDA have on many occasions in the past given RG the opportunity to clarify such matters.

No hearing was given at the challenge stage even though a specific request in writing has been made to that effect.”

C. The Evaluation Process

Following the public opening and the reading out of the list of bidders and their bid price, the Central Procurement Board appointed a Bid Evaluation Committee to evaluate the bids received. The Bids were evaluated in strict accordance with the provision of the bidding documents. The Bid Evaluation Committee considers at Section 12.3 (pg 19) of its report that the bid from Rehm Grinaker Construction Co. Ltd was evaluated to be non-responsive since:

- “i. it has many qualifications, as described at Section 12.2(b), which render it non-compliant with the provisions of the bidding documents*
- ii. it does not contain the fresh and updated documentary evidence from recognized financial institutions certifying the amount of Rs60M available in liquid assets or credit facilities for carrying out this contract and its concurrent commitments. The documentary evidence is for “Triolet By-pass” project in lieu of “Phoenix Beau Songes Link Road” project.”*

The Bid Evaluation Committee concluded that only two bids were substantially responsive and A & J Maurel Construction Ltee was recommended for an award for Rs279,888,207.50 (inc. VAT) as it was the lowest substantially responsive bid.

D. Submissions and Findings

1. The Bid Evaluation Committee at Section 2.3 in Table 5 (pg 10) of its report examines the Financial Standing of the bidders. It is

noted from the table that in addition to audited balance sheet for last three years, profit for at least one year and a minimum average annual turnover of Rs150M within last five years, bidders had to demonstrate financial resources in terms of cash flow requirements for Rs60M. The bank testimonial submitted by Rehm Grinaker Construction Co. Ltd was from Barclays Bank Ltd but referred to the “Triolet By-Pass” project and was dated 27 April 2009.

2. The aggrieved bidder does not dispute that fact and explained at the hearing that there had been an error on its part. It went on to add that the error had been corrected by the submission of the relevant financial standing for this particular project.
3. The relevant financial standing of Rehm Grinaker Construction Co. Ltd for the Phoenix Beau Songes Link Road is from Barclays Bank Ltd and is dated 11 May 2009. This clearly demonstrates that Rehm Grinaker Construction Co. Ltd was not in possession of the document at the time it submitted its bid on 05 May 2009.
4. The bidding documents under 2.3.3 Financial Resources of Section III – Evaluation and Qualification Criteria indicate the following:

“The Bidder must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet:

- (i) *the following cash-flow requirements:*
MUR 60.0 M (Sixty Million Mauritian Rupees)
and
- (ii) *the overall cash flow requirements for this contract and its concurrent commitments.*

Bidders are requested to submit documentary evidence from recognized financial institution. The amount available in liquid assets or credit facilities should be mentioned in these documents.”

5. The Panel agrees with the Bid Evaluation Committee that the bank testimonial submitted by Rehm Grinaker Construction Co. Ltd dated 27 April 2009 and referring to the “Triolet By-Pass” project cannot be considered relevant for this project. The Panel considers that submitting the financial standing for a tender that was closed a week before the closing date of this present tender, however “fresh and updated it is” cannot be accepted in the light of the

precise instructions of Section 2.3.3 Section III of the bidding documents.

6. The Panel is of the view that the above must have been the understanding of the aggrieved bidder also as, without being prompted by any party, it secured the appropriate bank testimonial from its bank on 11 May 2005 and submitted same to Road Development Authority on 02 July 2009. However, this document has been submitted after the prices of the bids have been disclosed in public.

For all the reasons given above, the Panel holds that there is no merit in this application and which is accordingly set aside.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated this 23rd of September 2009