

INDEPENDENT REVIEW PANEL

In the matter of:

Rehm Grinaker Construction Co. Ltd/Trio Development Ltd

(Applicant)

v/s

Road Development Authority

(Respondent)

(Cause No. 18/09/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 01 April 2009 to 03 April 2009 for the Widening of Motorway M1 between Pailles and Caudan. The notice appeared on two consecutive days. The closing date and time for bid submission was 12 May 2009 at 13.30 hrs.
2. The three bids received by the time of 13.30 hrs on the closing date of 12 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 since then, have become in the public domain.
3. The Central Procurement Board appointed a Bid Evaluation Committee to evaluate the three bids received and it submitted its

report on 02 June 2009. At paragraph 17 (pg 20) of its report the Bid Evaluation Committee recommends that:

“The BEC recommends that the contract be awarded to the lowest evaluated and complying bid submitted by, Messrs A & J Maurel Construction Limitée for the sum of Rupees two hundred and five million eight hundred and eighteen thousand and thirty only, Rs205,818,030.00 (VAT inclusive).”

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 Widening of Motorway M1 between Pailles and Caudan (CPB/43/2009) to A & J Maurel Construction Ltee for the sum of Rs205,818,030.00 (inc. VAT). The selected bidder and two 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/Trio Development Ltd dissatisfied with the decision of the Public Body issued a challenge on 18 June 2009. The Public Body, after seeking on 18 June 2009 and receiving on 26 June 2009 the information from the Central Procurement Board as to why the bid of Rehm Grinaker Construction Co. Ltd/Trio Development Ltd had not been retained for an award, informed the bidder accordingly on 29 June 2009.
6. Rehm Grinaker Construction Co. Ltd/Trio Development Ltd as an aggrieved bidder and 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/Trio Development 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/Trio Development 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. On 21 July 2009, the officer in charge of the Road Development Authority pursuant to Section 45(5) of the Public Procurement Act certified, giving reasons, that urgent public interest considerations require the procurement proceedings to proceed forward.

10. The Panel pursuant to Section 45(4), (5), (6) and (7) of the Public Procurement Act 2006 informed all parties concerned that the procurement proceedings were no longer suspended.
11. 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/Trio Development Ltd (RG-TDL) consider that the reasons provided by the Public Body, the Road Development Authority (RDA) for not awarding them this contract are not acceptable. RG-TDL have explained clearly vide letter dated 02 July 2009 (attached) from their Attorney Me. Andre Robert addressed to the RDA the reasons why. This is further explained below.

RG-TDL consider that their bid which was the lowest bid for this project, was substantially responsive to the Bidding Documents and hence the project should be awarded to them.

RG-TDL consider that whilst their submission contained a few discrepancies and clarifications, these were not substantial enough such as to render their bid substantially non-responsive.

RG-TDL consider that they should have been given the opportunity to clarify these matters which would not have affected their price in any way, and draw attention to the fact the CPB and the RDA have on many occasions in the past given Rehm-Grinaker Construction Co. Ltd 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

1. Following the public opening and the reading out of the list of bidders and their bid prices 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 at Section 13 (pg 16) of its report comments on arithmetical corrections and observes the following with respect to Rehm Grinaker Construction Co. Ltd/Trio Development Ltd:

- “(i) For Item 108, The Bidder has quoted a rate of Rs450,000.00 in the List of Prices for Item 108. However the rate quoted in the BOQ for the same item is Rs15,000.00. According to the SCC sub clause 5.2, the List of Prices has priority over the Priced BOQ and therefore the rate and amount is corrected accordingly. Item 108 is therefore revised from Rs450,000.00 to Rs13,500,000.00. It needs to be emphasized that the corrected rate of Rs450,000.00 for this item by JV RG/TRIO is abnormally high and the attention of the Public Body should be drawn to that effect, if JV RG/TRIO is selected for award.
- (iv) The Bidder has used corrector fluid as follows:
In List of Prices : 501,601F
In priced BOQ: 504
This is acceptable”

2. At Section 13.1 (pg 17) the Bid Evaluation Committee provides a table giving the ranking of bidders after the arithmetical check as follows:

<i>Bidder</i>	<i>Amount Quoted Rs (inc. VAT)</i>	<i>Corrected Amount Rs (inc. VAT)</i>	<i>Ranking</i>
<i>AJMC</i>	<i>205,818,030.00</i>	<i>205,818,030.00</i>	<i>1st</i>
<i>JV RG/TRIO</i>	<i>205,742,492.25</i>	<i>220,661,442.25</i>	<i>2nd</i>
<i>GCC</i>	<i>242,711,982.21</i>	<i>244,362,807.21</i>	<i>3rd</i>

The Bid Evaluation Committee then went on to observe, at Section 13.2, that after arithmetical check the ranking of A & J Maurel Construction Ltee has changed from second to first and that of Rehm Grinaker Construction Co. Ltd/Trio Development Ltd becomes second. The ranking of GCC remained unchanged.

3. The Bid Evaluation Committee concluded that the lowest evaluated, compliant and substantially responsive bid was from A & J Maurel Construction Ltee and recommended it for an award for the sum of Rs205,818,030.00 (VAT incl.) subject to some clarifications on personnel and equipment.

D. Submissions and Findings

1. The Panel has for the purpose of this determination examined in details the bid of the aggrieved bidder with emphasis on the list of prices and the corresponding rates quoted in the Bill of Quantities. For Item 108, trial pits, the bidder has quoted a unit price of Rs15,000 in the Bill of Quantities and a price of Rs450,000 in the list of prices. There is no reference in the list of prices as to the number of trial pits. This implies that it was per trial pit as required.
2. The priority of contract documents are listed in sub-clause 5.2 of the special conditions of contract as follows:
 1. *The Agreement;*
 2. *The letter of Acceptance of the Tender;*
 3. *Correspondence with the Contractor prior to Acceptance;*
 4. *The addenda to Tender;*
 5. *The Instruction to Tenderers;*
 6. *The said Tender and Appendices;*
 7. *The Conditions of Particular Application (Part II);*
 8. *The General Conditions of Contract (Part I),*
 9. *The Technical specifications;*
 10. *The Drawings;*
 11. *The list of Prices;*
 12. *The Priced Bill of Quantities;*
 13. *The performance Security;*
 14. *The Insurance Policy.*

Thus, it is clear that the list of prices has priority over the priced Bill of Quantities. As such the unit price of Rs450,000 per trial pit in the list of prices should prevail over the Rs15,000 quoted in the Bill of Quantities and item 108 of the Bill of Quantities should read Rs13,500,000 for 30 trial pits. As a result of this correction the bid price of the Rehm Grinaker Construction Co. Ltd/Trio Development Ltd is Rs220,726,992.25 and is higher than the bid of A & J Maurel Construction Ltee at Rs205,818,030.00.

3. The Bid Evaluation Committee has been very consistent in its approach with respect to the priority of list of prices over priced Bill of Quantities. The bid price of another bidder was adjusted upwards as a result of applying a correction to the same item 108. The unit price in the list of prices was higher than the unit price quoted in the Bill of Quantities.

4. The bidding documents do not allow the seeking of clarifications on the issue of discrepancy in prices quoted in the list of prices and the Bill of Quantities. Section 28 clearly stipulates that “no change in the prices or substance of the bid shall be sought, offered or permitted except to confirm the correction of arithmetic errors discovered by the purchaser in the evaluation of the bids”. The bidding process would have been vitiated if clarifications had been sought and the bidder allowed to modify its list of prices.
5. The Panel considers that the Bid Evaluation Committee was fair in correcting the bid price of the aggrieved bidder. As a result of this adjustment the bid of the Rehm Grinaker Construction Co. Ltd/Trio Development Ltd is no longer the lowest. And rightly so, the Central Procurement Board caused the Public Body to award the contract to the lowest bidder, A & J Maurel Construction Ltee.

Based on the above, the Panel finds that there is no merit in this application and sets it aside.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated this 23rd of September 2009