

INDEPENDENT REVIEW PANEL

In the matter of:

Veolia Eau, Compagnie Generale des Eaux
(Applicant)

v/s

Ministry of Renewable Energy and Public Utilities
(Respondent)
(Cause No. 27/09/IRP)

Decision

A. Background

1. The Government of the Republic of Mauritius, represented by the Ministry of Renewable Energy & Public Utilities, invited pre-qualification applications, on 28 May 2009 for Management Service Contracts for the improvement of the operation and management and maintenance of the water distribution systems of the Central Water Authority and sanitation infrastructure systems of the Wastewater Management Authority. The open advertised bidding method was used with the closing date for submission of bids scheduled for 03 July 2009 up to 13.30 hrs (local time) at latest. The Public Body issued addendum no. 1 on 13 July 2009 and potential bidders were informed that the new deadline for submission of applications was Tuesday 28 July 2009 up to 13.30 hrs (local time).
2. The seven bids received by the time of 13.30 hrs on the closing date of 28 July 2009 were opened in public on the same day at 14.00 hrs. The bidders were:

- (i) *Cascal N. V – Netherlands*
- (ii) *Severn Trent Services International Ltd – U.K*
- (iii) *Veolia Eau – Compagnie Generale des Eaux – France*
- (iv) *Suez Environnement – France*
- (v) *Consortium Ranhill Utilities (Malaysia)/ JUSCO (India)*
- (vi) *Berlinwasser International A.G. – Germany*
- (vii) *JV WSSA/Manser Saxon/WRP*

3. The Central Procurement Board appointed a Bid Evaluation Committee to evaluate the seven bids received and it submitted its report on 27 August 2009. The Chairman of the Central Procurement Board informed the Permanent Secretary of the Public Body on 31 July 2009 that it had selected Professor O. S. Olsen, Consultant, to act as Technical Expert of the Bid Evaluation Committee. The Consultant was informed accordingly.

4. At paragraph 12 (pg 10) of its report the Bid Evaluation Committee concluded that:

(i) *Applying strictly the evaluation criteria for Category 1 (Capacity), Category 2 (Track Record) and Category 3 (Financial Strength, as evaluated by the Financial Expert), based upon the evaluation criteria set out in the prequalification bid document, the following firms qualify:*

- a. *Severn Trent Services International Ltd – U.K*
- b. *Suez Environnement – France*
- c. *Berlinwasser International A.G. – Germany*
- d. *JV WSSA/Manser Saxon/WRP*
- e. *Consortium Ranhill Utilities (Malaysia)/ JUSCO (India)*

And the following firms DO NOT qualify, failing to score the minimum marks (50%) in Category 3 (Financial Strength)

- a. *Cascal N. V – Netherlands*
- b. *Veolia Eau – Compagnie Generale des Eaux – France*

(ii) *In arriving at the above conclusion, the Financial Analyst co-opted by the BEC drew attention to inconsistencies in the methodology used in the assessment of Category 3 (Financial Strength). In particular, the two alternative methodologies as set out in the bid document are based on different financial rationale, and therefore not comparable to each other. For example, the two firms Severn Trent Services International Ltd*

– UK and Suez Environnement France which passed on the Credit Ratings method, fail when assessed by the Financial Ratios method.

Furthermore, as highlighted in the report of the Financial Analyst, appropriate marking schemes should be provided to assess credit ratings other than the markings for the three rating agencies mentioned in the bid document, as the same document allows consideration for credit ratings from any internationally recognized institutions apart from the three (Moody, Standard & Poors, DBRS) mentioned in the prequalification documents.

(iii) In view of the above (ii) the CPB may wish to reconsider the methodology used in computing the financial strength of the applicants to address the issue of the inconsistencies raised above.

5. The Central Procurement Board, on 02 September 2009 informed the Public Body of the list of applicants that had been prequalified:

- (i) Severn Trent Services International Ltd – UK*
- (ii) Suez Environnement – France*
- (iii) Berlinwasser International A.G. – Germany*
- (iv) JV WSSA/Manser Saxon/WRP*
- (v) Consortium Ranhill Utilities (Malaysia)/JUSCO (India)*

The five prequalified bidders and the two unsuccessful bidders were accordingly notified by the Public Body on 07 September 2009.

6. Veolia Eau, an unsuccessful applicant for prequalification, informed the Public Body on 30 September 2009 that the notification letter had been received at its office in Paris on 25 September 2009. The bidder requested a re-examination of its offer and provided some additional information.

7. During the period 02 October 2009 and 30 October 2009, there were several exchanges of correspondences between the public Body, the Central Procurement Board, the Procurement Policy Office and the unsuccessful applicant. The Public Body, following advice received informed the aggrieved bidder on 30 October 2009 that it could appeal to the Independent Review Panel. On 13 November 2009, Veolia Eau made an application for review to the Independent Review Panel.

8. On 12 November 2009, the Central Procurement Board informed the Public Body of the reasons for which the application for prequalification of Veolia Eau was unsuccessful. The information was communicated to the unsuccessful applicant on 16 November 2009 by the Public Body.
9. The Independent Review Panel pursuant to Section 45(4) of the Public procurement Act 2006, suspended the procurement proceedings until the appeal was heard and determined.
10. A hearing was held by the Panel on 09 December 2009 at the request of the applicant so as to allow Mr F. Laforet, Commercial Director for Africa-Middle East-Indian Subcontinent, to come from abroad to give evidence.

B. Grounds for Review

The Grounds for Review are as follows:

“Veolia Eau (Veolia) believes that both the Ministry of Renewable Energy and Public Utilities and the Central Procurement Board have failed in their duties imposed on them inasmuch as:

- (i) they have during their evaluation and the scoring process failed to give due care and attention to Veolia’s proposal in general. Veolia is a world leader in water and sanitation sector since 1863 with a turnover of over US\$17 billion, having over 93,000 employees and currently operating over 4,400 contracts in 64 countries;*
- (ii) they have during the evaluation and the scoring process, in particular failed to direct their minds to, and/or have failed to give sufficient weight to, Veolia’s capacity, track record and financial strength and/or have misinterpreted some information contained in Veolia’s proposal and have consequently attributed scores to Veolia which do not reflect its true capacity, track record and financial strength contrary to what was set out in Veolia’s proposal; and*
- (iii) as a result of the foregoing, Veolia has not been prequalified and therefore been deprived of the opportunity to participate in the bidding process and hence of the possibility of winning the contract, this representing potential loss of income for Veolia.”*

C. The Evaluation Process

Following the public opening and the reading out of the list of applicants on 28 July 2009, the Central Procurement Board appointed a Bid Evaluation Committee to evaluate the applications received. The Central Procurement Board selected Professor O. S. Olsen to act as Technical Expert to the Bid Evaluation Committee. On 06 August 2009, the Chairman of the Bid Evaluation Committee wrote to the Central Procurement Board to request the assistance of a Financial Expert, with a strong financial analysis background, to help with the evaluation of the financial component when the financial reports provided by applicants are used to compute the required Financial Ratios. Mr D. Seegolam, an Assistant Director at the Mauritius Revenue Authority, was selected by the Central Procurement Board.

The Financial Expert submitted his report for consideration by the Bid Evaluation Committee on 21 August 2009 and the latter submitted its evaluation report to the Central Procurement Board on 28 August 2009. The Central Procurement Board approved the report and informed the Public Body on 02 September 2009. The Public Body informed all applicants of the outcome of the prequalification exercise on 07 September 2009.

D. Submissions and Findings

1. Annex 1, pg 42 of the bidding documents provides details of the prequalification scoring system. It explains that the applicant's performance will be scored under three "categories":

- (i) Capacity
- (ii) Track Record
- (iii) Financial Strength

Weights are then applied to the Applicant's score in each category before summing to give its total score out of 100 points. The weights applied to each category are:

	Weights
(i) Capacity	35%
(ii) Track Record	35%
(iii) Financial Strength	30%

2. At pg 44, step 4, it is specified that any firm failing to score at least 50% in any one category mentioned above will not be prequalified even though the firm could have scored the minimum of 70% required for prequalification.
3. At pg 45, it is specified for category 3, Financial Strength, that the Applicant's score will be determined by one of two possible methods depending on whether or not it has a credit rating.
 - (a) If a party has a credit rating, its score under category 3 will be based wholly on its rating. Points will be awarded for the party's most recent credit rating according to a credit matrix provided.
 - (b) Only if a party has no credit rating, its score under category 3 will instead be based on its performance under the aggregate of three factors derived from its financial statements and scored in accordance with a given score sheet.
4. At paragraph 6 of his report the Financial Expert draws attention to the major inconsistencies between the two methods proposed for assessing the Financial Strength of an applicant. He notes that the approach and basis for assessment are different and lead to different values. The score achieved by two firms – Seven Trent Services International Ltd – UK and Suez Environnement – France are used to highlight this major inconsistency. Both firms achieved the mandatory minimum of 50 marks under the Credit Rating Method. Thus, the firms qualify under one assessment method but fail to qualify under the alternative method. The Financial Expert concludes his report with *“The Bid Evaluation Committee may wish to take into account this inconsistency in the final evaluation.”*
5. The Bid Evaluation Committee indicates in its report that its conclusion is based on a strict application of the evaluation criteria set out in the prequalification bid document. However, the Bid Evaluation Committee draws the attention of the Central Procurement Board to comments made by the Financial Expert and concludes its report at paragraph 12 (iii) with *“In view of the above (ii) the Central procurement Board may wish to reconsider the methodology used in computing the financial strength of the applicants to address the issue of the inconsistencies raised above”*.
6. During the hearing the Applicant did not dispute the fact that there was an omission in its bid submission. He explained that as

a company listed on the stock exchange it was mandatory for Veolia Eau to have a credit rating and that this information was in the public domain. He further explained that on the first opportunity available, 30 September 2009, Veolia Eau clarified the situation and provided the missing information. A letter from Veolia Environment was submitted to the Panel where it confirmed that the company was listed on the New York Stock Exchange and on Euronext Paris and that it had a Moody's rating of A3 since 28 June 2005. Veolia Eau, a 100% subsidiary of Veolia Environment, has accordingly the same rating of Moody A3 according to the applicant.

Based on the above and the Rating Score Table (Table A1) provided in the bidding document Veolia Eau would score 52 marks and would prequalify with ease as it had scored 92 marks and 100 marks in category 1 and 2 respectively.

7. Paragraph 6.1 (pg 34) of the bidding documents clearly spells out the responsibility of the applicant and states that the prequalification will be based solely on the information presented in the applications.

However, paragraph 8.3 (pg 37) allows the Central Procurement Board, at its discretion, to ask any applicant for a clarification of its application to assist in the evaluation process.

8. The Panel considers that the omission of Veolia Eau to include its Moody's Rating in its application is not fatal to the application. If the two proposed methods of assessing financial strength had given the same results in absolute terms i.e. pass or fail then either of them could have been used for this prequalification exercise. The marks scored by firms were not being used to rank them in order of merit. The bidding documents clearly indicate at Section 11 (pg 39) that *"shortly after the notification of the results of the prequalification, the Procurement Coordination Agency shall invite bids directly from each Applicant who has been prequalified."*

Thus, the overall marks scored by an applicant in the prequalification exercise will not in anyway, whatsoever, give it a competitive edge over the other applicants.

9. The Panel considers that based on the detailed and clear explanations given by the Financial Expert in his report of 21 August 2009 and the strong prayer of the Bid Evaluation Committee to the Central Procurement Board at paragraph 12(iii) (pg 12) of its evaluation report, the Central Procurement Board

- should have availed itself of the provisions of paragraph 8.3 (pg 37) and requested clarifications from the two non-qualified bidders. Veolia Eau and Cascad NV should have been requested to provide information on their credit ratings, if available. This approach would have eliminated the serious inconsistencies observed by both the Financial Expert and the Bid Evaluation Committee between the two proposed methodologies for computing financial strength.
10. The Panel considers that there is merit in the application and pursuant to Section 45(10)(c) of the Public Procurement Act 2006 recommends a review of the decision of the Central Procurement Board with respect to Veolia Eau and Cascad NV based on all the grounds specified above.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated this of December 2009