

## **INDEPENDENT REVIEW PANEL**

**In the matter of:**

**Safety Construction Co. Ltd**

**(Applicant)**

**v/s**

**Ministry of Education & Human Resources**

**(Respondent)**

**(Cause No. 12/10/IRP)**

### **Decision**

#### **A. Background**

1. The Ministry of Education & Human Resources invited bids through the open advertised bidding method, for the construction of a Science and Home Economics Block at State Secondary School Rivière des Anguilles (Phase III). The identification number of the bidding process was MOECHR/works/OAB 105/2009. An addendum was issued on 07 January 2010. The deadline for the submission of bids was 19 January 2010 at 10.30 hrs and bids were opened on the same day at 10.40 hrs in the conference room of the Public Body.
2. The Public Body appointed two Bid Evaluation Committees to evaluate the thirteen bids that had been received by the deadline for bid submission of 19 January 2010. One Committee evaluated the bids for the mandatory requirements and for the technical responsiveness with respect to the civil works of the project. The second committee examined the technical responsiveness of bids found responsive by the first committee with respect to the

Electrical, Plumbing and LP Gas Installation Works. The recommendation of the report dated 17 February 2010 of the second committee were included in the final evaluation report, also dated 17 February 2010, of the first committee.

3. The Bid Evaluation Committee at paragraph 15 of its report recommended that *“the contract be awarded to the lowest evaluated and substantially complying bidder, Messrs Canakiah Associates Co. Ltd for the corrected figure of Rs39,671,826.25 (Rupees thirty nine million six hundred and seventy one thousand eight hundred and twenty six and cents twenty five) inclusive of a contingency sum of Rs1,000,000 (Rupees one million) and VAT (15%) subject to clarifications being sought regarding submission of the following:*
  - (a) *Power of Attorney*
  - (b) *Provision of one Technical Officer for post with details as laid down in Section III – para 2.5 Personnel (Name and detailed Curriculum Vitae to be submitted)*
  - (c) *Written undertaking that the gas and plumbing installation will conform to the tender specifications*

The Public Body notified all the bidders of the outcome of the bidding exercise on 12 May 2010.

4. Safety Construction Co. Ltd, a dissatisfied bidder, challenged the decision of the Public Body on 14 May 2010. The Public Body replied to the challenge on 21 May 2010 explaining to the bidder the reasons for the rejection of its bid.

The aggrieved bidder still dissatisfied with the decision of the Public Body made an application for review to the Independent Review Panel dated 26 May on 03 June 2010.

5. The Panel informed all parties concerned on 04 June 2010 that the procurement proceedings were suspended until the appeal was heard and determined. Hearings were held by the Panel on 29 June, 20 July and 28 July 2010 respectively.

## **B. Grounds for Review**

The Grounds for Review are as follows:

- “1. *Applicant is aggrieved and dissatisfied with the reason conveyed in the letter dated 21 May 2010 (reference*

MOECHR/works/OAB/105/2009) issued to applicant by the Public Body (under signature of “C. Rughoo”) in as much as:-

- (i) Applicant had duly completed section III (Evaluation and Qualification Criteria) para 2.4.2 as evidenced in applicant’s Tender Document submitted.
  - (ii) “Proof” of specific experience was not required under the said section III (Evaluation and Qualification Criteria) para 2.4.2 – vide page 1-36 of the Tender Document.
  - (iii) Should “Proof” have been required, then same could have been requested from applicant by virtue of Directive No. 3 (paragraph ITB 30.2 thereof) issued pursuant to section 7(b) of the Public Procurement Act.
2. We had additionally also submitted list of works done over the last five years (annex 5) and detail of works under way (annex 6) which appears to have not been taken into consideration by the Bid Evaluation Committee. Hence, we have not been asked to submit proof of specific Experience. We refer to the Circular No. 4 of 2010 from the Procurement Policy Office, paragraph (V) ITB 30.2 which states that “Provided that a bid is substantially responsive, the Employer may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify non material non conformities in the bid related to documentation requirements”. Please refer to circular in annex 14.”

### **C. The Evaluation Process**

The Public Body appointed a Bid Evaluation Committee to examine the 13 bids received and a sub committee to evaluate all responsive bids with respect to the Electrical, Plumbing and LP Gas Installation Works. Three bids satisfied all the mandatory requirements and were further examined for the other requirements of the bidding documents. All three bids were considered to be substantially responsive. The sub committee evaluating the bids with respects to the Electrical, Plumbing and LP Gas Installations also considered all three bidders to be substantially responsive. Canakiah Associates Co. Ltd was considered to be the lowest evaluated substantially responsive bidder and was recommended for an award for the corrected sum of Rs39,671,826.25 inclusive of VAT and a contingency sum of Rs1,000,000.

#### **D. Submissions and Findings**

1. Safety Construction Co. Ltd submitted the lowest bid at Rs38,499,171.25. However, the bid was not retained for award because according to the Public Body, the bidder had not submitted proof of Specific Experience as per Section III (Evaluation and Qualification Criteria) para 2.4.2 of the bidding documents.

The Panel accepts the document submitted in the application for review – annex 8(i):

Notification to selected bidder for an award for the Construction of a New Classroom Block at M. P. Kistnah Government School, Piton in the sum of Rs16,320,185 inclusive of VAT and a contingency sum of Rs1,000,000 (letter dated 04 December 2008 from the Ministry of Education and Human Resources).

2. The bidder indicated in annex 7 in the application for review that the award referred to above was for the construction of reinforced concrete buildings – ground + 2 levels of 900m<sup>2</sup> in the contract sum of Rs16,320,185. The Public Body which was the client for that contract confirmed that the project was satisfactorily completed.
3. Section 2.4.2 of the bidding documents deals with Specific Experience and the mandatory requirements are as follows:

*“(a) Participation as contractor, management contractor, or subcontractor, in at least one (1) contract within the last five (5) years, each with a value of at least sixteen million (Rs16,000,000), that have been successfully and substantially completed and that are similar to the proposed Works. The similarity shall be based on the physical size, complexity, methods/technology or other characteristics as described in Section VI, Employer’s Requirements.*

*(b) For the above or other contracts executed during the period stipulated in 2.4.2(a) above, a minimum experience in the following key activities: construction of reinforced concrete buildings, furniture, plumbing and gas installation works.”*

4. The aggrieved bidder is an experienced contractor in the field of civil engineering works and has also undertaken plumbing works and gas installation works for the Ministry of Health & Quality of

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Life for a contract sum of Rs8,140,735 (notification of award issued on 07 November 2008).

5. However, the bidder has never completed a single project worth Rs16m that includes construction of reinforced concrete buildings, plumbing and gas installation works. Thus, the Panel considers that the bidder does not satisfy the extremely stringent requirements specified at 2.4.2(a) and (b) and as such does not qualify for an award.
6. On the basis of the additional information received from the Public Body, the Panel concurs with the Bid Evaluation Committee that the selected bidder qualifies for an award. In fact, the selected bidder has satisfactorily completed the construction of the Rs32m SSS Solferino, Phase III and the Science Block at MGSS (boys and Girls) at Central Flacq for Rs31,758,110 which included all the required components.

In these circumstances, the Panel finds that there is no merit in this application which is accordingly dismissed.

**(Dr. M. Allybokus)**  
***Chairperson***

**(H. D. Vellien)**  
***Member***

**(Mrs. E. Hanoomanjee)**  
***Member***

**Dated 20 August 2010**