

INDEPENDENT REVIEW PANEL

In the matter of:

GFA Investments Ltd

(Applicant)

v/s

fashion&designinstitute

(Respondent)

(Cause No. 13/10/IRP)

Decision

A. Background

1. The fashion&designinstitute using the open advertised bidding method invited bids through the local press for the renting of office space of about 2,500 square metres for an initial period of three years in lower Plaine Wilhems, preferably in the Cybercity, Rose Hill, Reduit, Moka and Quatre Bornes. The deadline for the submission of bids was 22 April 2010 at 13.30 hrs and bids were opened on the same day at 14.00 hrs. Bids were submitted and opened at the Central Procurement Board. Two addenda were issued according to the Bid Evaluation Report of the Central Procurement Board dated 19 May 2010:

Addendum No. 1 - Amendment of the day should read Thursday 22 April 2010 instead of Wednesday 22 April 2010.

Addendum - Notes of a pre-bid meeting held on 07 April 2010 at the fashion&designinstitute as specified in the tender notice.

2. At paragraph 6 of the invitation for bids dated 17 March 2010 as appeared in the local press, it is indicated that “A *pre-bid meeting has been scheduled on Wednesday 07 April 2010 at 13.00 hrs. Prospective bidders are strongly requested to attend.*” The notes of the pre-bid meeting indicate that six prospective bidders attended the meeting. At the hearing held at the Independent Review Panel on 13 August 2008 the representative of the Public Body confirmed that the notes of meeting were forwarded to only those who attended the meeting.
3. The bids of the five bidders which had responded to the invitation to bid were opened in public at the Central Procurement Board on 22 April at 14.00 hrs and the name of the bidder as well as its bid price was read out. It is noted that only two of the bidders had attended the pre-bid meeting of 07 April 2010. The Central Procurement Board then appointed a Bid Evaluation Committee to evaluate the bids received.
4. The Bid Evaluation Committee submitted its report on 19 May 2010. The Central Procurement Board informed the Public Body on 23 June 2010 that it had “approved the award of contract for the renting of office space of 2646 squares metres and 20 parking slots for a period of three years to Cyber Properties Investment Ltd for the corrected sum of Rs42,705,518.76 inclusive of VAT”.

The Public Body informed all bidders of the outcome of the bidding exercise on 24 June 2010.

5. On 29 June 2010 two aggrieved bidders, GFA Investments Ltd and Rocket Design & Services Ltd challenged the decision of the Public Body. The fashion&designinstitute replied to the challenges on 05 July 2010 on the basis of information provided by the Central Procurement Board on 02 July 2010 to the effect that the bids were not responsive.
6. GFA Investments Ltd still dissatisfied with the decision of the Public Body made an application for review to the Panel on 09 July 2010.
7. The Panel, on 12 July 2010, suspended the procurement proceedings until the appeal had been heard and determined. Hearings were held on 02 August and 13 August 2010 respectively.

B. Grounds for Review

The Grounds for Review are as follows:

“The reasons put forward by the Fashion and Design Institute in its reply dated 05/07/2010 (Ref: FDI/A/RE/001) as advised by the Central Procurement Board are utterly and grossly unjustified, unfair and unreasonable for the reasons set forth in the hereto attached annexure”.

C. The Evaluation Process

1. The Central Procurement Board appointed a Bid Evaluation Committee to evaluate the five bids received by the deadline of 22 April 2010. The Bid Evaluation Committee submitted its report on 21 May 2010. From the evaluation report it is noted that:

- (i) One bidder failed to meet various mandatory requirements and as such was not retained for technical appraisal.
- (ii) Two bidders were found to be technically non-responsive and were not retained for financial appraisal.
- (ii) The two remaining bids were retained for financial appraisal and the comments made on the bids by the Bid Evaluation Committee are as follows:

(a) Nexteracom Ltd proposed three options:

Option 1: Tower 1 - 2614 sqm on 1st and 2nd floor
Option 2: Tower 2 – 2189 sqm on 6th and 7th floor
Option 3: Tower 3 – 2147 sqm on 3rd and 4th floor

Based on the requirement of the fashion&designinstitute for a floor space of about 2500 sqm option 1 was considered to be most appropriate for a quoted amount of Rs1,584,936.00.

(b) Cyber Properties Investment Ltd which proposed two floors of 1323 sqm each (total 2646 sqm) for a corrected amount of Rs1,211,441.00. The floor space is not available on two consecutive floors but rather on the 3rd floor and 6th floor.

Moreover, it is to be noted that Nexteracom Ltd attended the pre-bid meeting whereas Cyber Properties Investment Ltd did not do so.

2. The Central Procurement Board informed the Public Body on 31 May 2010 that the evaluation of the bids had been completed and that it had decided that a site visit be effected at the premises proposed by the selected bidder. On 10 June 2010 the Central Procurement Board informed the Public Body that clarifications were being sought from the selected bidder.
3. On 23 June 2010 the Central Procurement Board conveyed its approval of an award of contract for renting of 2646 sqm of office space and 20 parking slots for a period of three years to Cyber Properties Investment Ltd for a corrected sum of Rs42,705,518.76 inclusive of VAT.

D. Submissions and Findings

1. ITB 9 (pg 7) of Section I of the bidding documents refers to “*Amendment of Bidding Documents*” and indicates at:

“9.1 Before the deadline for submission of bids, the Public Body may modify the Bidding Documents by issuing addenda.

9.2 Any addendum thus issued shall be part of the Bidding Documents and shall be communicated in writing to all purchasers of the Bidding Documents. Prospective bidders shall acknowledge receipt of each addendum in writing to the Public Body.”

On the basis of the above clauses, the Panel considers that the notes of the pre-bid meeting held on 07 April 2010 at fashion&designinstitute, as specified in the tender notice is part of the bidding documents and should have been communicated to all purchasers of the bidding documents. The Bid Evaluation Committee lists the notes of the pre-bid meeting as an addendum. At the hearing the Public Body confirmed that the documents had been sent only to those who attended the meeting.

2. Section 2 of the notes of meeting reports on issues raised during the meeting and paragraph 2.5 indicates that:

“Following discussions, it was also noted that it would be preferable for the office space to be situated on the ground floor or lower floors of a building given the nature of the activity. The issue of natural light in the layout of the classes was also evoked.”

The Panel considers that this paragraph, in accordance with ITB 9.1 and 9.2, must be read in conjunction with the invitation for bid as it defines where the Public Body would prefer to have the space of 2500 sqm.

3. The requirements of the Public Body are defined in Section II (pg 10) of the bidding documents. Paragraph 23(a) specifies “*office space of about 2500 square metre on a maximum of two levels excluding toilet facilities and main circulation area i.e. staircase, lift lobby and entrance porch/verandah.*” The Panel considers that there is some ambiguity in the way the requirement is specified. The Bid Evaluation Committee observes at pg 14 of its evaluation report that with respect to the bid of Cyber Properties Investment Ltd the floor space is not available on two consecutive floors but rather on 3rd floor and 6th floor. It might not be obvious to all potential bidders in the first instance that the two levels required did not have to be on two consecutive floors. But then, it is clear, after the issue of the addendum that the specific requirements of the Public body was that the office space should be on two consecutive floors, preferably on the ground or lower floors since it was meant to house classes and offices.
4. The aggrieved bidder quoted a base offer of Rs590,000 per month for an area of 2310 sqm. However, the bidder was offering the floor space on 5 floors instead of the specified maximum of two levels. At the hearing of the aggrieved bidder explained that his Architect attended the pre-bid meeting and subsequently informed him that the issue of a maximum of two levels was not critical. Hence, its bid for the contract and ensuing challenge and application for review to the Panel.
5. The Panel considers that the notes of the pre-bid meeting do not indicate explicitly that the requirement for a maximum of two levels for the floor space had been waived. The aggrieved bidder should have requested the Public Body to correct the minutes if it felt that there were some serious omissions in it. The Panel can only conclude that the notes of meeting are a correct reporting of the matters that were discussed.

The Bid Evaluation Committee was right to consider the bid of the aggrieved bidder technically non-responsive though it was nearly 100% cheaper than the bid of the selected bidder. In the light of clear and specific requirement contained in the bidding documents and addendum which have not been met, the price alone cannot be the determining factor for selection.

6. The technical responsiveness of the bid from Cyber Properties Investment Ltd has been examined by the Panel in the light of the bidding documents and the addendum in the form of the notes of the pre-bid meeting. The offer of the selected bidder for the space to be located on the 3rd floor and the 6th floor of a 10 floor building cannot be considered to meet the requirement that *“it would be preferable for the office space to be situated on the ground floor or lower floors of a building given the nature of the activity”*.
7. The first option of the bid from Nexteracom Ltd is fully responsive – 2614 sqm on 1st floor and 2nd floor of Tower 1 together with 20 free parkings. The bid at Rs1,584,936 per month is some 27% more expensive than the bid from Cyber Properties Investment Ltd at Rs1,240,187 per month. Yet it is still within the cost estimate of the contract which is Rs63M. The fact that Cyber Properties Investment Ltd has offered a cheaper price compared to Nexteracom Ltd cannot cure its non-responsiveness.
8. From the information available on record, it is noted that only two of the six prospective bidders which attended the pre-bid meeting submitted a bid for the contract. Most probably the four prospective bidders did not submit a bid because they were informed that *“it would be preferable for the office space to be situated on the ground floor or lower floors of a building given the nature of the activity”*. Failure of the Public body to circulate the notes of the pre-bid meeting to all those that had purchased the bidding documents may have caused a serious prejudice to those who purchased the bidding documents but did not attend the pre-bid meeting.
9. The Panel considers that though the price of the aggrieved bidder is cheaper when compared to the other bids, it cannot be retained as it is technically non-responsive with respect to the specified number of floors. In view of the precision contained in the addendum, the selected bidder Cyber Properties Investment Ltd is also considered to be technically non-responsive with respect to the location of the floors within the proposed buildings. The only responsive bid is from Nexteracom Ltd.

In our view, the bidding documents in respect of location of floors was tainted with imprecision at the initial bidding process, which has not been properly cured at the pre-bid meeting, that the Panel has no alternative that to recommend annulment of the bidding process in

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accordance with Section 45(10)(b) of the Public Procurement Act 2006. Since the Panel has found that the applicant has genuine and valid reasons to appeal, the motion of Counsel for the respondent inviting the Panel to find the application frivolous, is set aside.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated