

INDEPENDENT REVIEW PANEL

In the matter of:

Sotravic Ltee (CN 14/10/IRP)

Securiclean (Mtius) Ltd (CN 16/10/IRP)
(Applicant)

v/s

Ministry of Local Government & Outer Islands

(Respondent)

Decision

A. Background

1. On 13 November 2009 the then Ministry of Local Government Rodrigues & Outer Islands using the open advertised bidding method invited bids from local eligible and qualified bidders for the “Design, Manufacture, Supply, Installation and Commissioning of five cremators and Construction of five crematorium Buildings”. The deadline for the submission of bids was 16 December 2009 up to 13.30 hrs at the Central Procurement Board. Bids received were scheduled to be opened on the same day and at the same place at 14.00 hrs. Addendum No. 3 was issued on 02 December 2009 whereby prospective bidders were informed that the deadline for submission of bid had been extended to 23 December 2009 at 13.30 hrs bid opening was scheduled to take place on the same day at 14.00 hrs.

Five addendum were issued in all.

2. The Panel notes that the Public Body on 07 October 2009 and in reply to a letter dated 02 October 2009 from the Central Procurement Board indicated that the updated cost estimate for the project was Rs98,435,925 (inclusive of VAT at 15% and a contingency of 10%). Following this information the Central Procurement Board authorised the invitation for bids and the reference was CPB/108/2009.
3. Bids were received from seven bidders by the deadline of 23 December 2009 for the submission of bids. On 24 December 2009 the Central Procurement Board wrote to the Public Body enclosing the original bids received from the seven bidders for appropriate action at its end. The letter indicated that the bid submitted by one bidder was below the prescribed amount of Rs50M and a second bidder had not submitted a Bid Securing Declaration Form.
4. The validity period of the bids was for 90 days as from 23 December 2009. On 02 April 2010 bidders were requested to extend their bid validity for a further period of 60 days as from 22 March 2010. Bidders were requested on 12 May 2010 to provide additional extension period of 60 days up to 22 July 2010. All seven bidders extended their bid validity as requested.
5. The Public Body carried out the evaluation of the bids received from the Central Procurement Board and on 07 April 2009 forwarded a copy of its evaluation report to the Central Procurement Board for consideration and approval. The bidding documents (original + 2 copies) received from the seven bidders were also forwarded to the Central Procurement Board.
6. The Central Procurement Board informed the Public Body on 29 April 2010 that it had set up a Bid Evaluation Committee to evaluate the bids received for the project and that it had selected a Project Manager of the Public Body as a Member.
7. On 22 June 2010 the Central Procurement Board informed the Public Body that it had evaluated the seven bids received and had approved the award of the contract for the project to Messrs Rey and Lenferna Ltd for the sum for the sum of Rs53,994,081 inclusive of VAT and the cost for the supply of five hydraulic biers. All bidders were notified accordingly by the Public Body on 25 June 2010.

8. Three aggrieved bidders challenged the decision of the Public body as per the following details:

- (i) Kabelek Engineering Ltd on 29 June 2010
- (ii) Securiclean (Mtius) Ltd on 01 July 2010
- (iii) Sotravic Ltee on 01 July 2010

On 08 July 2010 the Public Body after obtaining the relevant information from the Central Procurement Board informed the aggrieved bidders as follows:

- (i) Kabelek Engineering Ltd does not satisfy the mandatory requirement with respect to proven experience as specified in ITB 1.1 of Section II – Bid Data Sheet.
 - (ii) Both Securiclean (Mtius) Ltd and Sotravic Ltee submitted technically responsive bids but their quoted price was substantially higher than that of the selected lowest evaluated bidder.
9. Sotravic Ltee still dissatisfied with the decision of the Public body submitted an application for review to the Panel on 15 July 2010. Securiclean (Mtius) Ltd made a similar application for review on 21 July 2010.
10. The Panel informed all parties concerned that the procurement proceedings were suspended until the appeal was heard and determined. Hearings were held by the Panel on 06 August 2010 and 16 August 2010.

B. Grounds for Review

The Grounds for Review are as follows:

Sotravic Ltee (CN 14/10/IRP)

- “(a) As per additional details provided, I annex 1, annex 2 and annex 3 to this schedule and application, the Applicant avers that he is the lowest compliant bid as the proposed subcontractor is the only local company who has installed similar equipment as required by item 2.4.2 of section III of the bid document.*
- (b) The Applicant fully complies with all requirements of the bid document for qualification and award as stated in*

- annex 3 to this schedule including but not limited to those concerning experience, finance and personnel.*
- (c) *Not satisfied with decision of public body dated 08 July 2010.”*

Securiclean (Mtius) Ltd (CN 16/10/IRP)

“The evaluation of the bid of the said Project is flawed for the following reasons:

1. *There has been a complete failure by the Central Procurement Board to meet the requirements of transparency and equity by virtue of Section 11(2) of the Public Procurement Act 2006 since the Applicant’s bid is substantially responsive and meets all the Qualifications Criteria.*
2. *With regards to Experience, Rey & Lenferna Ltd does not meet the requirements of the Specific Experience under Section III Clause 2.4.2 of the Standard Bidding Documents with regards to participation in 2 Contracts of Rs10M per year similar to the proposed works within the last 5 years.*
3. *Under Financial Situation, Rey & Lenferna Ltd does not pass the average turnover of R10M of construction works per year (as specified Form FIN – 3.2) within the last 3 years, under Section III Clause 2.3.2 of the Standard Bidding Documents.*
4. *Under the Item Personnel, Rey & Lenferna Ltd has not been in a position to provide one registered professional civil engineer and one registered professional mechanical/electrical engineering with 5 years experience of which 2 years are to be in similar works for supervising the performance of the Contract, under Section III Clause 2.5 of the Standard Bidding Documents.*
5. *Regarding the Specific Experience of the successful bidder*
The Applicant Company is one of the few which supplied and installed incinerators equivalent to those which are being procured under Contract CPB/108/2009 locally with units installed for public

bodies in Curepipe (Feb 2000) and Quatre Bornes (end 2000). We know the Mauritian companies active on the market for incinerators and have no recollection of Rey & Lenferna Ltd having supplied such incinerators and therefore hold that they do not meet the Specific Experience criterion, nor did they tender for the Curepipe and Quatre Bornes projects.

6. *Regarding the Average turnover of construction works of the successful bidder
Rey & Lenferna Ltd communicates to the public (see print-outs from its website www.reylenferna.com as at 29 June 2010 in Appendix A) that its contracting trade had four lines of activities: (i) air conditioning, (ii) electrical, (iii) lifts & escalators, and (iv) water. It is not active in the field of construction and therefore no part of the income as per its Financial Statements can be reported into FORM FIN – 3.2 of the bidding documents which reads “Annual turnover data (construction only)”. The successful bidder does not meet the qualification criteria set in respect of bidders’ financial situation.*
7. *Regarding the Personnel that can be provided by the successful bidder.
As at 29 June 2010, Rey & Lenferna Ltd is only able to refer on its website to one person as a registered professional engineer from the personnel who run its lines of activities and departments. The registered professional engineer holds a degree in mechatronics and has overall responsibility for electrical projects. The successful bidder does not meet the qualification criteria set in respect of the key personnel to be provided for performing the Contract.”*

C. The Evaluation Process

1. The Central Procurement Board forwarded the original bids received from seven bidders to the Public body for appropriate action at its end. The details of the bids received were as follows:

SN	Name of Bidder	Bid Amount MUR (inclusive of VAT)	Bid Securing Declaration Form
1.	<i>Rajoo Contractor Co. Ltd</i>	68,333.115 <i>(including discount) Discount-800,000</i>	<i>Submitted</i>
2.	<i>Kabelek Engineering Ltd</i>	<i>Option1 - 41,015,629.75 Option2 -41,903,487.25</i>	<i>Submitted</i>
3.	<i>Wise Design (Mtius) Ltd</i>	73,956,328	<i>Submitted</i>
4.	<i>Sotravic Ltée</i>	99,402,758.15	<i>Submitted</i>
5.	<i>Forges Tardieu Ltd</i>	130,758,490	<i>Not Submitted</i>
6.	<i>Rey & Lenferna</i>	53,350,728.70	<i>Submitted</i>
7.	<i>Securiclean (Mtius) Ltd</i>	99,815,000	<i>Submitted</i>

The Public Body carried out an evaluation of the bids received and on 07 April 2010 informed the Central Procurement Board of the outcome of the evaluation exercise. The Central Procurement Board was requested to approve the report. In the statement of relevant facts submitted by the Public Body to the Panel on 21 July 2010 it is indicated that “The Bid Evaluation Committee recommended the award to Sotravic Ltee for the sum of Rs99,402,758.15, inclusive of VAT subject to clarifications being obtained from the recommended bidder.”

2. The Public Body was informed by the Central Procurement Board, on 29 April 2010, that it had set up its own Bid Evaluation Committee to evaluate the bids received. On 03 June 2010 the Central Procurement Board wrote to bidder Rey & Lenferna Ltd “to request to submit the relevant information with regards to the clarifications listed below as required under Section III – Evaluation and Qualification Criteria of the bid document.”

Information was sought on eight items and item (viii) is as follows:

(viii) CV of Personnel for key positions:-

- one registered Civil Engineer
- one registered Mechanical and Electrical Engineer
- one qualified Foreman with knowledge in Civil Engineering

- one qualified Electrician

As requested the bidder submitted the required information by deadline of 10 June 2010.

3. On 22 June 2010, the Central Procurement Board informed the Public body that it had completed the evaluation of the seven bids received and that it has approved the award of the contract to Messrs Rey & Lenferna Ltd for the sum of Rs53,994,081 inclusive of VAT and the cost for the supply of five hydraulic biers.

D. Submissions and Findings

1. Section III of the bidding documents specifies the Evaluation and Qualification Criteria and paragraph 2.5 (pg 1-37) refers to Personnel. It is specified that “Bidders shall provide details of the proposed personnel and their experience records in the relevant forms included in Section IV, Bidding Forms.

The Panel has examined the bid of Rey & Lenferna Ltd in details and noted that it had not submitted the appropriately filled forms for the proposed personnel, FORM PER I and FORM PER 2.

The Bid Evaluation Report of the Central Procurement Board dated 28 May 2010 indicates with respect to bidder Rey & Lenferna Ltd that it had not submitted information on Personnel as required.

The Panel considers that the bidder has failed to satisfy one of the mandatory requirements and this cannot be considered as a minor omission. It appears that the Central Procurement Board in its request for clarifications from the bidder was asking for the CV of personnel, still to be identified since the bidding documents fell short of revealing the name of the key personnel.

2. The Financial requirement from the bidder is defined at paragraph 2.3.3. Financial Resources as follows:

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 financial means, other than any contractual advance payments to meet: (i) the following cash-flow requirement: Twenty million rupees (20 M) and (ii) the overall cash flow requirements for this contract and its concurrent commitments.

To assess compliance with this precise mandatory requirement the Bid evaluation Report of the Central Procurement Board of 28 May 2010 indicates at Pg 12 that Rey & Lenferna Ltd has also submitted information to the effect that it can mobilize the necessary financial resources for the execution of the contract.

The Panel has examined the bid of Rey & Lenferna Ltd for its financial standing. The only information it submitted with respect to financial standing is a testimonial dated 11 April 2008 from the Mauritius Commercial Bank Ltd to support its application for registration as Contractor Grade B with the Ministry of Public Infrastructure, Land Transport & Shipping.

The Panel considers that this document does not satisfy the requirements as defined at paragraph 2.3.3 of the bidding documents. It has in past determinations indicated that it is mandatory for bidders to submit evidence of their financial resources in the format requested in the bidding documents.

3. The Public Body informed the Central Procurement Board on 7 October 2009 that the updated cost estimate for the project was Rs 98,435,925. There is no evidence on file that this figure was challenged by the Central Procurement Board and as per established procedures the estimated project value must have been approved by the Central Procurement Board prior to the launching of the invitation for bid on 13 November 2009. The Panel considers that it would not be procedurally correct to assess the bids on the basis of the estimated cost of the project as reported by the Bid Evaluation Committee of the Central Procurement Board on page 21 of its report.
4. The Panel fails to understand how a bid which fails to satisfy two well-defined and explicit mandatory criteria could have been considered to be substantially responsive to tender documents. Mr K.Reddy of Counsel for the Public Body when

Independent Review Panel – Decision No. 17/10

made aware of the documents available in the bid of Rey & Lenferna Ltd conceded that the bid was non-responsive.

In the light of all the above the Panel finds merits in the application and in accordance with section 45(10)(b) and (c) of the Public Procurement Act 2006 respectively recommends the annulment of the award in favour of Rey & Lenferna Ltd and a re-evaluation of the technically responsive bids.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated