

INDEPENDENT REVIEW PANEL

In the matter of:

Peryagh Coach Ltd

(Applicant)

v/s

The National Transport Corporation

(Respondent)

(CN 19/10/IRP)

Decision

A. Background

1. The National Transport Corporation using the open advertising bidding method invited bids on 16 April 2010 for contract OAB/NTC/10/05 for the construction of thirty six (36) standard bus bodies to be mounted on standard bus chassis. The closing date for the submission of bids was 19 May 2010. During the bidding period two addenda (dated 23 April 2010 and 17 May 2010) of technical nature were issued.
2. The two bids received by the deadline of 19 May 2010 for the submission of bids were opened in public on the same day. The Public Body appointed a three-man Evaluation Committee to evaluate the two bids received.
3. The General Manager of the Public body on 02 June 2010 requested the Board of the National Transport Corporation to pass the following resolution by circulation "*Resolved to award Contract*

OAB/NTC/10/05 for the construction of thirty six (36) Standard Bus Body to be mounted on Standard Bus Chassis, to Peryagh Coach Works Ltd, for an amount of Rs24,840,000.00 VAT inclusive”.

The evaluation report of the Bid Evaluation Committee was annexed for consideration by Board Members.

The Chairperson of the Board in a hand-written note to the General Manager and other Board Directors expressed his reservations on the evaluation report. According to him the bid of the selected bidder was non-responsive.

4. At the Board Meeting of 29 June 2010 the Chairperson of the Board maintained his position as according to him the selected bidder had been awarded tenders for major bus body reconditioning and not for body building. The Board finally resolved that a letter be sent to the selected bidder requesting for a list of companies or individuals for whom it had carried out body building.
5. The Public Body wrote to Peryagh Coach Ltd on 30 June 2010 requesting full details on all contracts for the building of new bus bodies that it had undertaken. The bidder provided the requested information on 01 June 2010. At the hearing the aggrieved bidder confirmed that the letter should have been dated 01 July 2010. The General Manager of the Public body submitted a paper dated 02 July 2010 for consideration at the Board Meeting of 08 July 2010. At that Board Meeting it was noted for the first time that Peryagh Coach Ltd was incorporated on 22 February 2006. As such it was considered that the bidder did not have the mandatory five years experience in body building from the date of incorporation. The Board resolved that fresh bids be invited for construction of bus bodies with new specifications.
6. The Board of the National Transport Corporation met for a special meeting on 13 July 2010 and considered that the bid evaluation had been wrongly carried out and that the bid from Peryagh Coach Ltd was not responsive.

The Board went on to resolve to award the contract of thirty six standard bus body to be mounted on standard bus chassis to ABC Coach Ltd, the only responsive bidder for an amount of Rs32,706,000.00 VAT inclusive.

7. The Public Body notified the two bidders accordingly on 22 July 2010. Peryagh Coach Ltd dissatisfied with the decision of the

Public Body submitted a challenge on 27 July 2010. The General Manager of the Public Body following the approval of its Board, replied to the challenge on 30 July 2010.

8. The aggrieved bidder still dissatisfied with the decision of the Public body submitted an application for review to the Independent Review Panel on 11 August 2010. Pursuant to Section 45(4) of the Public Procurement Act 2006, the Panel suspended the procurement proceedings until the appeal was heard and determined on 12 August 2010. A hearing was held on 30 August 2010.

B. Grounds for Review

The Grounds for Review are as follows:

“To take into account the experience of Mr Beenassraj Peryagh, the sole director of Peryagh Coach Ltd inasmuch as:

Mr B. Peryagh holds a degree in Mechanical Engineering and has got vast experience in the construction and maintenance of bus bodies locally.”

C. The Evaluation Process

The Public Body appointed a three-member Bid Evaluation Committee to evaluate the two bids received by the closing date of 19 May 2010. The Bid Evaluation Committee recommended in its first evaluation report that the contract be awarded to Peryagh Coach Ltd, for an amount of Rs24,840,000 inclusive of VAT. The Board of the National Transport Corporation did not approve the recommendations requested by Management through circulation. The matter came to the Board Meeting of 29 June 2010 and it was resolved that additional information be sought from the recommended bidder. The additional information were promptly provided and the matter discussed once again at the Board Meeting of 08 July 2010. The Board resolved at the Meeting that fresh bids should be invited for construction of bus bodies with new specifications. A special Board Meeting was convened for 13 July 2010 to revise the bidding documents for construction of thirty six bus body as resolved at the Board Meeting of 08 July 2010. However, at that Board Meeting it was resolved that the whole evaluation exercise had been wrongly carried out and that the bid from Peryagh Coach Ltd should not

have been considered as the bidder did not have the mandatory five years experience in the manufacturing and maintenance of bus bodies locally. The Board then went on to resolve that the contract was to be awarded to the only responsive bidder ABC Coach Works Ltd for a sum of Rs32,706,000 VAT inclusive.

D. Submissions and Findings

1. ITB 19.1 (a) specifies the qualification requirements as follows:

“Manufacturer’s authorization is not required.

Qualification requirements; (to be considered by Purchaser)

(a) The bidder/manufacturer must have at least 5 years of experience in manufacturing a similar type of good for which the Invitation of Bids is issued.”

2. The postqualification requirements are defined in Section III of the bidding documents “Evaluation and Qualification Criteria” and Section 3(b) (pg39) specifies the following:

“Experience and Technical Capacity

The Bidder shall furnish documentary evidence to demonstrate that it meets the following experience requirements(s):

At least five years of experience in the manufacturing and maintenance of bus bodies locally.

3. When the two paragraphs are read together it implies clearly that the bidder must demonstrate unequivocally that it has the mandatory minimum of five years in the manufacturing and maintenance of bus bodies locally.
4. The legal name of the bidder, as indicated on the Bidder Information Form accompanying the bid, is Peryagh Coach Ltd. However, the bidder also indicated that it was previously known as Peryagh Coach Works. The bidder’s year of registration is indicated as 2000. However, the certificate of incorporation submitted with the bid indicates that Peyagh Coach Ltd was incorporated as a private company limited by shares on 23 February 2006 and the company number was 61100.
5. It is not disputed that Mr B. Peryagh holds a degree in Mechanical engineering and had also opened his own workshop in the year 1988. Also, the records indicate that his company Peryagh Coach Works Ltd had carried out major repairs to the National Transport

Corporation bus bodies under several contracts. In some cases the complete reconstruction of the bus bodies may also have been warranted. At some point in time his company has also constructed new bus bodies for individual bus owners.

6. Mr Y. Nazroo of Counsel for the Applicant argued strongly that the experience being sought from the bidder/manufacturer as defined at ITB 19.1(a) was coming from Mr Peryagh himself as the one man company. According to him, the experience of Mr Peryagh should have been taken into consideration rather than the experience of Peryagh Coach Ltd in which name the bid was. Mr Peryagh registered the company Peryagh Coach Ltd to take advantage of the facilities provided under the “Business Facilitation (Miscellaneous Provisions) Act 2006.”

It was also pointed out that having registered as a company in accordance with the Business Facilitation Act, Mr Peryagh could no longer bid in his name.

7. Mr C. Seebaluck, Senior Attorney, representing the Public Body argued that a man and a one-man registered company are two distinct and different entities. According to him the bidder was Peryagh Coach Ltd which was incorporated on 23 February 2006. As such the company does not meet the mandatory five year qualifying experience.
8. The Panel considers that Mr Peryagh, on the basis of the unchallenged evidence on records, had carried out major repair works on bus bodies for the National Transport Corporation. In some cases he has also built new bodies as the existing bodies were beyond repairs. He has also built new bodies on new chassis for individual bus owners. Thus, Mr Peryagh personally has more than the five years mandatory experience required. However, the legal bidder is Peryagh Coach Ltd which does not have the mandatory five years experience.

Being registered in February 2006, the company does not possess the mandatory experience and as such is not responsive. For this reason, the Panel finds no merit in the application which is accordingly set aside.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated 30 September 2010