

INDEPENDENT REVIEW PANEL

In the matter of:

Tayelamay & Sons Enterprise Ltd

(Applicant)

v/s

Central Electricity Board

(Respondent)

(Cause No. 23/10/IRP)

Decision

A. Background

1. The Central Electricity Board using the open advertised bidding method, invited bids through local newspapers on 10 June 2010 for tender no. CA/3119 for the construction of an office complex at Vacoas. The scope of the works consisted of an office building with parking of a total gross floor area of 2610 sqm, site works and electrical and mechanical works. The estimated project cost was Rs68.5M, excluding VAT. The deadline for the submission of bids was 07 July 2010 and bids received were opened on the same day at 14.00 hrs.
2. Two addenda were issued during the bidding period:
 - (i) Addendum No. 1, issued on 23 June 2010 referred to M&E Contractors, and
 - (ii) Addendum No. 2, issued on 30 June 2010 referred to the specifications and capacity of the lift to be installed.

3. Following the public opening of the five bids received by the deadline of 07 July 2010, the General Manager of the Central Electricity Board appointed a three-member Bid Evaluation Committee to evaluate the bids received. The Bid Evaluation Committee submitted its report on 12 August 2010 to the Chairman of the Tender Committee of the Central Electricity Board.
4. The Tender Committee of the Central Electricity Board endorsed the evaluation report of the Bid Evaluation Committee on 13 August 2008. The Chairman of the Bid Evaluation Committee was requested by the Chairman of the Tender Committee, through the General Manager, *“to prepare paper for Finance Committee and Board highlighting the minor deviations of the preferred bidder and issues to be cleared at time of award”*.

A paper was duly submitted to the Finance Committee on 18 August 2010 and a decision was reached to seek clarifications from four of the bidders. The fifth bidder had satisfied all the requirements and was fully responsive.

5. The Panel notes that on 20 August 2010 the Chairman of the Tender Committee wrote to the four bidders to request for additional information on their bids by 24 August 2010 at latest. The four bidders complied with the request. The Board of the Central Electricity Board at its meeting of 25 August 2010 refused to endorse the recommendations of the Tender Committee and *“approved that the clarifications tabled at the Finance Committee be sent to the Evaluation Panel for their examination and recommendations”*.
6. The Bid Evaluation Committee subsequently considered the clarifications obtained from the bidders and submitted a supplementary report on 03 September 2010 to the Chairman Tender Committee. The additional report was approved by the Tender Committee and Finance Committee on 07 September 2010. The Board then approved the award of the tender no. CA/3119 to Super Construction Co. Ltd for a contract sum of Rs63,267,969 (inclusive of discount and exclusive of VAT) at its meeting of 29 September 2010.
7. All bidders were informed of the outcome of the bidding exercise on 01 October 2010.

B. Grounds for Review

The Grounds for Review are as follows:

- “1. *The Applicant’s Bid was responsive and it was the lowest bid. The Respondent was wrong to have disregarded its bid and its reason were flawed and not in accordance with its open bid documents.*
2. *The grounds of the Public Body to reject the bid of the Applicant are contrary to the instructions issued to the bidders in the bidding documents.*
3. *The Applicant has the relevant experience to participate and bid for the said office complex at Vacoas to be undertaken by the Central Electricity Board.”*

C. The Evaluation Process

1. The five bids received by the closing date of 07 July 2010 were opened on the same day. The details of the bids received are indicated in Table 1 (page 3) of the report of the Bid Evaluation Committee dated 12 August 2010 as follows:

Sr. No.	Bidder	Bid Amount Incl. VAT (MUR)	Bid Amount Excl. VAT (MUR)	Discount on Bid Amount Excl. VAT (MUR)	Bid Amount Incl. Discount Excl. VAT (MUR)
1.	Kisten Enterprise Co. Ltd	76,612,344.50	66,619,430.00	700,000	65,919,430.00
2.	Ramloll Bhooshan	85,001,542.75	73,914,385.00	Nil	73,914,385.00
3.	Tayelamay & Sons Enterprise Ltd	77,492,799.16	67,385,042.75	5,645,912.31	61,739,130.41
4.	PAD & Co. Ltd	99,175,905.00	86,239,917.39	Nil	86,239,917.39
5.	Super Construction Co. Ltd	74,750,000.00	65,000,000.00	1,732,031.00	63,267,969.00

2. At section 9 (page 4) of the evaluation report the responsiveness of the five bids received were examined to ascertain that they satisfy the mandatory requirements specified in Section III, Evaluation and Qualification Criteria of the bidding documents. The bid

Evaluation Committee noted the following at Section 11 (page 9) *“The Bid Evaluation Committee noted that the only responsive bids received are from Super Construction Co. Ltd and Pad & Co. Ltd.”*

It was then concluded that *“the offer of Super Construction Co. Ltd for the fixed lump sum of Rupees sixty three million two hundred and sixty seven thousand nine hundred and sixty nine (Rs63,267,969.00) inclusive of discount exclusive of VAT is the best evaluated offer.”*

3. Following the seeking of clarifications from the bidders on 20 August 2010 and a re-examination of the bids on 03 September in the light of the supplementary information obtained the Board approved the award of the contract to Super Construction Co. Ltd on 29 September 2010. On 01 October 2010, the Central Electricity Board informed all bidders accordingly.
4. Bidder Tayelamay & Sons Enterprise Ltd aggrieved by the decision of the Public Body submitted a challenge as provided for by Section 43 of the Public Procurement Act 2006 on 04 October 2010. The Central Electricity Board replied to the challenge on 11 October 2010. The aggrieved bidder replied to the Central Electricity Board on 13 October 2010 and the Central Electricity Board commented on the letter on 15 October 2010.
5. On 25 October 2010, still aggrieved by the decision of the Central Electricity Board, the bidder Tayelamay & Sons Enterprise Ltd submitted an application for review to the Panel. The Panel informed all parties accordingly on 26 October 2010 and on the same day suspended the procurement proceedings until the appeal had been heard and determined.
6. Hearings were held at the Independent Review Panel on 18 November 2010 and Saturday 27 November 2010.

D. Submissions and Findings

1. Section III of the bidding documents refers to “Evaluation and Qualification Criteria” and contains all the criteria that will be used by the Employer to evaluate bids and qualify bidders. The bidder is then asked to provide all information requested in the forms included in Section 4 (Bidding Forms). Part 2 of Section III defines the qualification criteria and sub-section 2.4 relates the experience of the Bidder. The experience required from the bidder is specified

in terms of General Experience (2.4.1) and very detailed Specific Experience (2.4.2). The documentations required from the bidders were the filling of Form Exp-4.1, Form Exp-2.4.2(a) and Form EXP-2.4.2(b).

2. The Panel has examined the bid of the aggrieved bidder in detail and concurs with the Bid Evaluation Committee that it had not submitted any details as per Form Exp-2.4.2(a) and (b) to substantiate that it has the minimum experience as very explicitly specified at Section 2.4. The Bidder was given an opportunity to provide any missing information in its bid by the Central Electricity Board on 20 August 2010. The bidder was asked to submit *“References of office buildings constructed within the last five years”*.
3. The Bidder replied on 24 August 2008 and submitted a testimonial from Hyvec Partners Ltd stating that it had worked as sub-contractor for the construction of Ebene Tower, an eleven storey office block of 10,000m². However, no details are provided to describe the works carried out by the aggrieved bidder or the value of the sub-contract.
4. The Panel considers on the basis of information submitted that the aggrieved bidder is an experienced contractor which had successfully completed several projects and as such fully satisfies the criterion of General Experience (2.4.1). However, it has failed to demonstrate that it satisfies the conditions required for Specific Experience (2.4.2) and this despite the fact that it was given an opportunity to clarify its bids and to submit the required documentation. The onus to demonstrate the responsiveness of the bid through the provision of all appropriate documents lies with the bidder.

Based on the above, the Panel considers that there is no merit in this application as the bid from Tayelamay & Sons Enterprise Ltd was non-responsive.

5. Section 2.5 of Part III of the bidding documents refers to Personnel and it is stipulated that *“the Bidder must demonstrate that it has the personnel for the key positions that meet the following requirements”*:

No.	Position	Total Work Similar Experience (years)	In Similar Works Experience (years)
1	Site Engineer	5	3
2	Health & Safety Officer	3	1
3	Electrical & Mechanical Coordination	3	2
4	Quality Controller	3	2
5	Foreman	10	5

The Bidders were required to provide details of the proposed personnel and their experience records using Forms PER-1 and PER-2 included in Section IV, Bidding Forms.

6. The Bid Evaluation Committee observed at paragraph 9.6 (page 8) of its report dated 12 August 2010 that Super Construction Co. Ltd had not provided details of the proposed personnel in terms of qualifications and experience records as per Form PER-2. The report goes on to add that:

- (i) *Bidder Super Construction Co. Ltd has mentioned only the name of the proposed M&E Coordinator but has not provided data on the latter’s experience and qualifications.*
- (ii) *Bidder Super Construction Co. Ltd has not made provision for a Quality Controller as per tender requirements but instead a Quantity Surveyor.”*

The Bid Evaluation Committee concludes that *“if the offer of bidder, Super Construction Co. Ltd is retained for consideration for an eventual award, details and CV of the M&E Coordinator and Quality Controller would have to be submitted.”*

7. The Central Electricity Board wrote to Super Construction Co. Ltd on 20 August 2010 and at paragraph (b) of the letter indicates the following:

- “(b) Clause 2.5 – Personnel and GCC9.1
You have mentioned only the name of the M&E Coordinator in Form PER-1, but you have not filled in Form PER-2, giving details of the latter’s qualifications and experience. Pl. provide qualifications and experience of the Quality Controller as per Form PER-2.”*

8. Super Construction Co. Ltd replied to the Central Electricity Board on 24 August 2010 and submitted:

- (i) The CV of Mr H. Hon Pin and a completed FORM PER-2, Resume of Proposed Personnel.

The Panel noted that the name of Mr H. Hon Pin was mentioned as the M&E Coordinator in the bid of Super Construction Co. Ltd and as such is acceptable.

- (ii) The CV of Mr Jagooah Jayan is submitted as Site Engineer/Quality Controller together with a completed FORM PER-2, Resume of Proposed Personnel.

The Panel notes that in its bid Super Construction Co. Ltd had proposed the name of Mr S. Unathras as Quantity Surveyor in lieu of Quality Controller. The Bidding documents do not indicate the qualifications that the Quality Controller must hold and only the number of years of work experience in similar works are specified. In the absence of more precise information from the Central Electricity Board, Mr S. Unathras though a Quantity Surveyor would have been acceptable as Quality Controller if it had been demonstrated that he met the criterion of works experience.

However, the Panel notes with concern that Super Construction Co. Ltd was still found to be responsive after it had brought a major change to the Personnel for a key position more specifically adding the name of a key personnel after the closing date of submission of bids. The letter of 20 August 2010 from the Central Electricity Board to Super Construction Co. Ltd was very clear and only the qualifications and experience of the Quality Controller was to be provided as per Form PER-2. In these circumstances, the Panel feels that the bid of Super Construction Co. Ltd should have been considered to be non-responsive.

9. On the basis of the observations of the Bid Evaluation Committee only the bid of Pad & Co. Ltd would be responsive. However, an examination of the evaluation report dated 11 August 2008 by Pro-Five Ltd with respect to the M&E offers received indicates serious deficiencies in the bid of Pad & Co. Ltd. The Panel fails to understand why the bids received were not assessed for their responsiveness with respect to the M&E component. A substantially responsive bid would then have been one that satisfies all the requirements of the works as defined by the bidding documents.

Though, as highlighted above, we find no merit in the application of the aggrieved bidder, the Panel feels that the non-responsiveness of the preferred bidder was of such a magnitude that it would fail in its duty if it does not intervene. In these circumstances, in accordance with Section 45(10)(b) of the Public Procurement Act 2006, the Panel recommends the annulment of the decision of the Central Electricity Board to award the contract for the construction of an office complex at Vacoas to Super Construction Co. Ltd.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated: 21 December 2010