

INDEPENDENT REVIEW PANEL

In the matter of:

Como Construction Ltd

(Applicant)

v/s

Fire Services Department

(Respondent)

(Cause No. 12/11/IRP)

Decision

A. Background

1. The Fire Services Department using the open advertised bidding method invited bids on 30 December through local newspapers and Government Procurement Website, for the “Construction of New Fire Station at Tamarin for the Government Fire Services”. The deadline for the submission of bids was 13.00 hrs on 16 February 2011 and bids received were to be opened in public on the same day at 13.30 hrs. Addendum no. 1 was issued to all potential bidders on 31 January 2011.
2. The Public Body appointed a four-member Bid Evaluation Committee to evaluate the eleven bids received by the closing date of 16 February 2011. The Bid Evaluation Committee submitted its report on 14 April 2011 and it was approved by the Departmental Tender Committee of the Public Body.
3. The bid from “Safety Construction Co. Ltd” was found to be the only substantially responsive one and was recommended for an award for Rs43,737,317.50. All bidders were informed about the

outcome of the bidding exercise on 09 May 2011. Como Construction Ltd as an aggrieved bidder challenged the decision of the Public Body on 13 May 2011. The Public Body replied to the challenge of Como Construction Ltd on 24 May 2011 and gave the reasons as to why its bid had not been retained.

4. Como Construction Ltd still dissatisfied with the decision of the Public Body made an application for review to the Panel on 30 May 2011. The Panel, pursuant to Section 45(4) of the Public Procurement Act 2006 informed all parties on 30 May 2011, that the procurement proceedings for contract reference no.: GFS/RFQ/35/10 for construction of New Fire Station at Tamarin was suspended until the appeal had been heard and determined. A first meeting was held by the Panel on 30 June 2011 after it had received all the necessary documents by 13 June 2011. A second meeting to hear and determine the case was held on 01 August 2011.

B. Grounds for Review

The Grounds for Review are as follows:

“Non submission of sample for waterproofing cannot be a major issue for non responsive and cannot be an item as mandatory for disqualifications. The Contractor is liable to the Public Body for 10 years under Civil code and certificate of guarantee.

Waterproofing is meant to be done by Subcontractor. We have given the name of our subcontractor who will be performing waterproofing works for the above contract. The subcontractor is Registered with Ministry of Public Infrastructure.

Therefore it is very odd to note that waterproofing sample has been considered as a mandatory issue.

Clarifications should have been sought and we would have compiled accordingly.

Non submission of technical data and technical details cannot be a mandatory requirement for disqualifications. We have given the name of the subcontractor who will perform Electrical works for us. Electrical works for us. Electrical installations is carried out by Registered Electrical Contractor with Ministry of Public Infrastructure and Energy Services Division.

Therefore clarifications should have been sought and we would have complied accordingly.”

C. The Evaluation Process

1. The Public Body appointed a four-member Bid Evaluation Committee to evaluate the eleven bids received by the closing date of 16 February 2011 and it submitted its report on 14 April 2011. The responsiveness of the bids received as determined by the Bid Evaluation Committee are detailed in a table in an executive summary to the main report.

SN	Bidder's Name	Price at Bid opening (MUR)	Responsive or not responsive (yes/no)	Reasons why bids were not responsive
1	Super Construction Co. Ltd	49,421,508.00	No	Has not submitted sample of water proofing and has not filled the schedule of equipment and material for electrical works completely
2	Tayelamay & Sons Enterprise Ltd	46,397,610.00	No	Has not submitted sample of water proofing
3	Yangtze Construction Co. Ltd	42,422,221.00	No	Has not submitted sample of water proofing, technical data for electrical components and has not filled the schedule of equipment and material for electrical works
4	Cogestimo Ltd	36,315,628.28	No	Has not submitted proof of having a minimum average annual financial amount of construction of Rs25M over the last five years
5	SNB Construction Ltd	34,241,250.00	No	Has not executed any project of similar nature and size
6	Kisten Enterprise Co. Ltd	41,738,309.30	No	Has not attained a minimum average financial amount of construction of Rs25M over the last five years
7	Building and Civil Engineering Co. Ltd	80,552,834.34	No	Has submitted qualification and reservation in the bid
8	Keep Clean Ltd	48,788,692.50	No	Has not submitted sample of water proofing
9	Mecatronics Ltd	49,058,655.00	No	Has not attained a minimum average financial amount of construction of Rs25M over the

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				last five years and has not executed any project of similar nature and size
10	Safety Construction Ltd	43,737,317.00	Yes	
11	Como Construction Ltd	41,020,000.00	No	Has not submitted sample of water proofing and technical data for electrical components

2. The Bid Evaluation Committee concludes that Safety Construction Co. Ltd is the only substantially responsive bid and as such there was no need to seek any further information from the bidders. The only responsive bidder was thus recommended for an award for the amount of Rs43,737,317.50.

D. Submissions and Findings

1. The Public Body, as informed by the Bid Evaluation Committee, put forward two reasons for determining that the bid of Como Construction Ltd was non compliant to the bid documents:

- (i) whereas Clause 3.1 of the Employer’s requirements at Section V of the Bid Document (page 43) mandatorily required submission of sample of water proofing system being proposed failing which the Bid was to be rejected and*
- (ii) whereas the General notes of the Electrical Installations Clause 32.1 (Makes) (page 80), stated that failure to submit technical data and technical details as proof of compliance with specification should entail elimination from consideration, he had failed to submit those items”.*

2. At page 10, paragraph (f) of its report the Bid Evaluation Committee observes the following with respect to electrical works:

(f) Como Construction Ltd – Bidder No. 11

The schedule of equipment and materials has been filled in and the equipment proposed in the schedule generally meet specifications. However, no technical literature has been submitted.

The Panel agrees with Mr V. Baloomoody, Counsel for the Applicant that in line Directive No. 3 of 30 April 2010 from the Procurement Policy Office the non-submission of technical

literature is a minor omission and same could have been requested prior to making an award.

3. A whole section of the bidding documents provides for the water proofing system (p 42-45). The type of material that it should be made up of as well as its performance specifications are defined in details. Furthermore, bidders are informed at Section 3.1 (p 43 of the bidding documents that *“The following shall be submitted along with the bid. Absence or incomplete submission shall lead to rejection of the bid.”*

Thus at 3.1(d) it is specified without any ambiguity that “A sample of the water proofing system of minimum size 300mm x 300mm” must be submitted along with the bid.

4. The aggrieved bidder does not dispute the fact that it had not submitted the required sample. Its Counsel explained that the bidder had proposed a subcontractor which is registered with the Ministry of Public Infrastructure for the water proofing works and that if clarifications had been sought from them they would have complied accordingly. On the other hand, Counsel for the Public Body maintained that the provision of the sample of the proposed water proofing system was a mandatory requirement and that failure to submit same must lead to rejection of the bid.
5. The Panel has examined in details the contents of the bidding documents and the contents of Directive No. 3 issued by the Procurement Policy Office on 30 April 2010. The Panel concurs with Counsel for the Public Body that the aggrieved bidder has failed to comply with the mandatory requirement specified in the bidding document. The Panel cannot question the decision of the Public Body to make the submission of a sample of water proofing mandatory. The aggrieved bidder, if for some reasons, felt very strongly about this issue it should have challenged it, pursuant to Section 48(2) of the Public Procurement Regulations 2008 within five days from the invitation to bid. The Panel notes also from the evaluation report that six of the eleven bidders failed to submit a sample of the water proofing system proposed.

For the above reasons, the Panel considers 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 17 August 2011