

INDEPENDENT REVIEW PANEL

In the matter of:

SMEC International Pty Ltd

(Applicant)

v/s

Ministry of Energy & Public Utilities

(Respondent)

(Cause No. 35/11/IRP)

Decision

A. Background

1. The Ministry of Energy & Public Utilities in September 2010 using the open advertised bidding process sought Expressions of Interest for appointing a Consultant to provide Consultancy Engineering Services for the Construction Supervision of the Rivière des Anguilles Dam. It was also specified that the Expressions of Interest is expected to lead to a call for Request for Proposal for the Consultancy Engineering Services for the construction of the Rivière des Anguilles Dam from interested parties. The deadline for the submission of Expressions of Interest was 06 October 2010 at 13.30 hrs and they were opened on the same day at 14.00 hrs. Eleven firms expressed an interest to provide the services required.
2. The Public Body invited proposals to provide the consultancy services from five short listed consultants on 21 January 2011. The invitation to the aggrieved bidder was addressed as follows:

“The Director
SMEC International Pty Limited in association
with Mega Design Ltd”

The aggrieved bidder informed the Public Body by e-mail on 25 January 2011 as follows: *“This is to confirm that we have received the Request for Proposal documents today via e-mail. We will be submitting a bid in association with our local partner, Mega Design Ltd”.*

3. The initial deadline for the submission of proposals scheduled for 22 March 2011 was extended to 06 April 2011 at 13.30 hrs through addendum no. 3 dated 17 March 2011.

Five proposals were received by the deadline and were opened on the same day at 14.00 hrs. The Central Procurement Board appointed a Bid Evaluation Committee to evaluate the five proposals received and the latter submitted its technical evaluation report on 25 June 2011, wherein it recommended that the proposals of two Consultants namely:

- Studio Ing. G. Pietrangeli Srl in association with Luxconsult Ltd
- Tractebel Engineering-Coyne et Bellier in association with Servansingh Jadav & Partners Consulting Engineers Ltd

be retained for opening of their Financial Proposals and for further evaluation.

4. The Central Procurement Board approved the recommendations of the Bid Evaluation Committee and informed all Consultants accordingly on 29 August 2011. The Financial Proposals of the two eligible Consultants were opened on 05 December 2011. The Bid Evaluation Committee submitted its “Financial and Overall Evaluation Report” on 26 September 2011.
5. The Public Body informed all Consultants about the outcome of the bidding exercise on 23 November 2011. SMEC International Pty Ltd pursuant to Section 43 of the Public Procurement Act 2006 challenged the decision of the Public Body on 07 December 2011. The Public Body after obtaining the relevant information from the Central Procurement Board, replied to the challenge on 21 December 2011. The aggrieved bidder still dissatisfied with the decision of the Public Body submitted an application for review to the Panel on 29 December 2011. The Panel pursuant to Section

45(4) of the Public Procurement Act 2006 suspended the procurement proceedings until the appeal was heard and determined.

A hearing was held in the presence of the selected bidder on 13 February 2012.

B. Grounds for Review

The Grounds for Review are as follows:

“Lack of communication for clarifications, lack of objectivity and transparency in evaluation of proposal.”

C. The Evaluation Process

1. The Central Procurement Board appointed a four member Bid Evaluation Committee to evaluate the five bids received by the deadline of 06 April 2011. The Bid Evaluation Committee held nineteen meetings to assess the technical responsiveness of the bids and submitted the technical evaluation report on 25 June 2011.
2. Section 1.11 (pg 9) of the bidding documents refers to *“Eligibility of Sub-Consultants – In case a shortlisted Consultant intends to associate with Consultants who have not been shortlisted and/or individual expert(s), such other Consultants and/or individual expert(s) shall be subject to the eligibility policy of the Client.”*

Section 3.3(a) pg 12 of the bidding documents –“Preparation of Proposals” indicates the following:

*“If a shortlisted Consultant considers that it may enhance its expertise for the assignment by associating with other Consultants in a joint venture or sub-consultancy, it may associate with either (a) non-shortlisted Consultant(s), or (b) shortlisted Consultants if so indicated in the **Data Sheet**. A shortlisted Consultant must first obtain the approval of the Client if it wishes to enter into a joint venture with non-shortlisted or shortlisted Consultant(s). In case of association with non-shortlisted Consultant(s), the shortlisted Consultant shall act as association leader. In case of a joint*

venture, all partners shall be jointly and severally liable and shall indicate who will act as the leader of the joint venture.”

3. The Bid Evaluation Committee checked the responsiveness of the five bidders with respect to the above clauses and concluded that three of the bidders had sought and obtained the approval of the Central Procurement Board to bring changes to their status/ownership/association since the start of the bidding process. One bidder did not propose any change in its composition. However, the fifth bidder had brought changes with respect to its association and this without the approval of the Central Procurement Board. On the basis of the provisions of Section 1.11 and 3.3(a) of the bidding documents respectively the proposal of the bidder was considered to be not responsive and it was not retained for further evaluation.

Thus, the conclusions of the Bid Evaluation Committee can be summarised as follows:

- (i) (a) AECOM Consultants Inc
(b) SNC LAVALIN International in association with GIBB Ltd
(c) Studio Ing. G. Pietrangeli Srl in association with Luxconsult Ltd

have proposed changes to their association while fulfilling the conditions spelt out by the Central Procurement Board. They were therefore retained for further evaluation.

- (ii) Tractebel Engineering-Coyne et Bellier in association with Servansingh Jadav & Partners Consulting Engineers Ltd did not propose any change and thus was retained for further evaluation.
- (iii) SMEC International Pty Ltd brought a change in the composition of the association bidding for the project and this without the approval of the Central Procurement Board. The bidder was considered to be non-responsive and was not retained for further evaluation.

On the basis of the above and the criteria set down for the technical evaluation of bids, the average marks scored by each bidder was as follows:

<i>Main Criteria</i>	<i>AECOM</i>	<i>Lavalin</i>	<i>Studio Ing. G. Pietrangeli Srl</i>	<i>Coyne et Bellier</i>
<i>Average Markings Lot I & Lot II combined</i>	53.6725	59.1990	72.0518	79.3193

4. The Bid Evaluation Committee then recommended that the two firms which had scored a minimum score of 70% in the technical evaluation be considered for further evaluation as per the provisions of the bidding documents.
5. The financial proposals of the two eligible Consultants were opened on 05 September 2011. As per the conditions of the bidding documents the weights given to Technical and Financial Proposals were 0.8 and 0.2 respectively. Based on this criterion the Bid Evaluation Committee calculated the total weighted score of each bidder as follows:

<i>Average Combined Markings Lot I & Lot II</i>	<i>SP</i>	<i>CB</i>
<i>Technical</i>	72.0518	79.3193
<i>Financial</i>	100	96.3409
<i>Weighted Score</i>		
<i>(i) Technical x 0.8</i>	57.641	63.455
<i>(ii) Financial x 0.2</i>	20	19.268
<i>Total Weighted Score</i>	77.641	82.723

6. The Bid Evaluation Committee concluded that the best evaluated substantially responsive bid is from Tractebel Engineering-Coyne et Bellier in association with Servansingh Jadav & Partners Consulting Engineers Ltd for a contract value of Euro 3,040,570 and MUR 29,396,500 (VAT exclusive).

D. Submissions and Findings

1. The Panel observes that the initial Expression of Interest submitted by the aggrieved bidder was in the name of “SMEC International Pty Ltd Australia in association with Mega Design Ltd” without any reference to Engineering General Consultants EGC (PVT) Ltd of Pakistan, even in its accompanying documentation. The invitation to submit a proposal was addressed to the Director of the above

firm on 21 January 2011. Paragraph 5 of the letter of invitation indicates the following:

- “5. Please inform us in writing at the above mentioned address of:
- (a) the receipt of the letter of invitation and the Request for Proposal, and
 - (b) whether you will submit a proposal alone or in association”.

The invited bidder replied by e-mail on 25 January 2011 as follows:

“This is to confirm that we have received the Request for Proposal documents today via e-mail. We will be submitting a bid, in association with our local partner, Mega Design”.

Thus, prior to the submission of its proposal the bidder did not indicate that it will bring changes to the composition of its team.

2. Engineering General Consultants EGC (PVT) Ltd of Pakistan submitted a letter dated 31 March 2011, to the Chairman of the Central Procurement Board indicating that: *“..... are pleased to confirm our association with M/S SMEC International Pty Ltd for the above mentioned project”.*

In its proposal SMEC International Pty Ltd indicated that *“this proposal is being submitted by SMEC International Pty Ltd (SMEC) Australia in association with 100% owned subsidiary Engineering General Consultants Pakistan, and also Mega Design Ltd of Mauritius”.*

It is also indicated in the bidding document that Engineering General Consultants is now a subsidiary company of SMEC International Australia and that the Lahore office will supply the specialist hydro and dam expertise required for the project.

3. At the hearing and in a subsequent written submission to the Panel, the aggrieved bidder argued strongly that Engineering General Consultants is to be considered as an integral part of SMEC by virtue of its being a 100% subsidiary or as a subcontractor, for whose inclusion in the proposal, no approval should be sought from the Client. It also argued that if a “joint venture” in the regulations (Clause 2) is defined as “an association of two or more entities for the purpose of carrying out a procurement contract” the reverse is not necessarily true, i.e. an association does not necessarily entail a joint venture.

4. The Panel considers that the arguments put forward by the aggrieved bidder are not justified. It is undisputed that SMEC International Pvt Ltd as lead partner has widened the original association with Mega Design Ltd disclosed at the Expressions of Interest stage to include Engineering General Consultants EGC (PVT) Ltd of Pakistan. The latter even though it may be 100% owned by SMEC International Pvt Ltd remains an independent firm operating under its own legal entity. This may explain why the firm Engineering General Consultants EGC (PVT) Ltd of Pakistan provided the letter of 31 March 2011 whereby it confirmed its association with SMEC for that project.
5. The bidding documents provide at ITC 3.3(a) the opportunity for short-listed firms to associate with other Consultants in a joint venture or sub-consultancy but with the prior approval of the Client.

Undoubtedly, the association of the aggrieved bidder with Engineering General Consultants EGC (PVT) Ltd of Pakistan would enhance its expertise, but this change in the composition of the status of the aggrieved bidder, though allowable, has been made without the approval of the Client.

The fact that a separate legal entity, i.e. Engineering General Consultants EGC (PVT) Ltd of Pakistan, is a wholly owned subsidiary of the SMEC International Pty Ltd does not exempt the latter to seek prior approval of the Client in case of association of both entities for the submission of the bid.

In these circumstances the Panel holds that the aggrieved bidder has not complied with the eligibility policy of the Client and concurs with the Bid Evaluation Committee that the proposal from SMEC International Pty Ltd in association with Mega Design Ltd and Engineering General Consultants EGC (PVT) Ltd of Pakistan is not responsive.

The Panel finds no merits in this application which is set aside accordingly.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated 27 February 2012