

INDEPENDENT REVIEW PANEL

In the matter of:

**Gamma Civic Ltd
(CN 34/11/IRP)**

&

**Safety Construction Co. Ltd
(CN 01/12/IRP)**

(Applicant)

v/s

Ministry of Health & Quality of Life

(Respondent)

Decision

A. Background

1. The Ministry of Health & Quality of Life using the open advertised bidding process invited bids through local newspapers on 22 June 2011, from eligible and qualified bidders for the "Construction of Neuro Surgery and Spinal Units at the OPD, Victoria Hospital – MHPQ/WKS & S/2011/Q10 (CPB/23/2011)".

The works was defined by the Public Body as *"The works consist of the supply, fixing and completion of partitioning, false ceiling, fixed furniture, flooring, finishes, sanitary and services such as electrical, plumbing, fire fighting, air conditioning, medical gas & telecommunication and other ancillary works as more fully described in drawings and specifications."*

The estimated cost of the project was Rs95.3 Million.

2. The initial deadline for the submission of bids was 27 July 2011 at 13.30 hrs. The deadline was subsequently postponed to 10 August 2011 at 13.30 hrs and all bidders were informed accordingly through addendum no. 2 issued on 19 July 2011.
3. Three bids were received by the deadline for the submission of bids and were opened in public at the Central Procurement Board on 10 August 2011 at 14.00 hrs.

The Central Procurement Board, then, appointed a five-member Bid Evaluation Committee to evaluate the three bids received. The Bid Evaluation Committee held its first meeting on 15 August 2011 and held a total of thirteen meetings. The Committee submitted its evaluation report on 04 November 2011. The Central Procurement Board approved the report on 17 November 2011 and the Public Body was informed accordingly on the same day.

4. The Public Body pursuant to Section 40(3) of the Public Procurement Act 2006, notified the selected bidder, Tayelamay & Sons Enterprise Ltd and the two unsuccessful bidders, Safety Construction Co. Ltd and Gamma Civic Ltd on 29 November 2011.
5. Safety Construction Co. Ltd pursuant to Section 43 of the Public Procurement Act 2006 challenged the decision of the Public Body on 01 December 2011. Gamma Civic Ltd submitted its challenge to the Public Body on 05 December 2011.

The Public Body requested material for reply to the challenge from the Central Procurement Board on 06 December 2011 and received the required information on 12 December 2011.

The Public Body replied to the two challenges on 23 December 2011.

6. The unsuccessful bidder, Gamma Civic Ltd, submitted an application for review to the Panel on 22 December 2011 and this pursuant to Section 48(5) of the Regulations as the Chief Executive Officer of the Public Body had failed to issue a decision within 15 days of the filing of the challenge. The other unsuccessful bidder, Safety Construction Co. Ltd, submitted an application for review to the Panel on 05 January 2012.

The Panel, pursuant to Section 45(4) of the Public Procurement Act 2006, suspended the procurement proceedings on 22 December 2011 until the appeal is heard and determined.

7. A hearing was held by the Panel on 14 February 2012 in the presence of the selected bidder.

B. Grounds for Review

The Grounds for Review are as follows:

For Gamma Civic Ltd

“Successful bidder Messrs Tayelamay & Sons Enterprise Ltd does not appear to be qualified for this contract as bidder does not have the required experience as Prime Contractor in similar nature of work i.e. experience in hospital project and similar work done in M7E Services which comprise of medical gas system, HVAC system, etc.”

For Safety Construction Co. Ltd

“1. Applicant is aggrieved and dissatisfied with the reason conveyed in the letter dated 23 December 2011 (Ref: MHPQ/WKS & S/2011/Q10) issued to applicant by the Public Body (Under signature of “P. Mawah”) in as much as:-

(a) For the Medical Gas System, the Bidding Documents at Page 152 stipulates that:

This section has to be compulsorily designed and engineered for medical gas installations existing on site, installed, tested and commissioned by a reputed Specialist Medical Gas Contractor having at least ten years experience in such works and having successfully completed at least three projects of similar nature and magnitude.

2. Applicant has proposed “Les Gaz Industriels Ltd” to subcontract the Medical Gas Installations. “Les Gaz Industriels Ltd”, has designed and installed the existing medical gas installations at the New OPD section of Victoria Hospital. Applicant has submitted with his challenge, a letter from “Les Gaz Industriels Ltd”, stating that they have engineered and installed the existing Medical Gas System at Victoria Hospital.

3. *Les Gaz Industriels Ltd has more than 10 years experience in Medical Gas Installations in Mauritius and has successfully completed more than 3 projects of similar nature and magnitude.*
4. *Applicant has contacted all the specialist contractors in Gas Installations and only Les Gaz Industriels meet with the requirements of the bid document.*
5. *Applicant feel that Gaz Carbonique Ltd does not satisfy the compulsory requirements as stated at 1(a) above. At the Tender Stage, Applicant received a response from Gaz Carbonique Ltd, that they have just recently entered the Medical Gas Installations business in association with a South African Company.”*

C. The Evaluation Process

1. Following the public opening of the three bids received on 10 August 2011, the Central Procurement Board appointed a five member Bid Evaluation Committee to evaluate the bids. The Committee held thirteen meetings and submitted its evaluation report on 04 November 2011. The list of bidders and the prices as read out at the public opening are as follows:

<i>S.No.</i>	<i>Bidder</i>	<i>Bid Amount before Discount (Rs)</i>	<i>VAT Included/Not Included</i>	<i>Discount (Rs)</i>	<i>Bid Amount after Discount (Rs) Inclusive of VAT</i>
<i>1</i>	<i>Gamma Civic Ltd</i>	<i>162,253,141.20</i>	<i>Included</i>	<i>Nil</i>	<i>162,253,141.20</i>
<i>2</i>	<i>Tayelamay & Sons Enterprises Ltd</i>	<i>100,135,112.13</i>	<i>Not Included</i>	<i>5,006,755.61</i>	<i>109,397,610.00</i>
<i>3</i>	<i>Safety Construction Ltd</i>	<i>126,968,311.05</i>	<i>Included</i>	<i>Nil</i>	<i>126,968,311.05</i>

2. A check to verify the compliance of bidders to the mandatory requirements as defined in the bidding documents indicated that:
 - (i) Gamma Civic Ltd and Tayelamay & Sons Enterprises Ltd satisfy all the mandatory requirements and are retained for technical evaluation.

- (ii) Safety Construction Co. Ltd does not have a minimum average annual financial amount of construction of Rs90M over the last five years and has not completed a project of nature and complexity equivalent to the works in the last five years. The bid was, thus, not retained for technical evaluation.
3. The Bid Evaluation Committee following an in-depth analysis of the two bids considered that both were substantially responsive and are to be retained for financial evaluation. The corrected bid amount of the two bidders are indicated at pg 9 of the evaluation report as follows:

<i>Bidder</i>	<i>Estimated Cost (Rs)</i>	<i>Bid Amount (Rs)</i>	<i>Corrected Amount (Rs)</i>
<i>Gamma Civic Ltd</i>	<i>95,300,000.00</i>	<i>162,253,141.20</i>	<i>167,683,658.63</i>
<i>Tayelamay & Sons Enterprise Ltd</i>	<i>95,300,000.00</i>	<i>109,397,610.00</i>	<i>109,397,345.38</i>

4. A detailed financial analysis of the price schedule of the two bidders were carried out and the Bid Evaluation Committee then recommended that *“The BEC recommends that the contract be awarded to the lowest evaluated and complying bidder Tayelamay & Sons Enterprise Ltd for the corrected amount of Rs109,397,345.38 (rupees one hundred and nine million, three hundred and ninety seven thousand, three hundred forty five and cents thirty eight only) subject to clarifications given at item 19”*.

D. Submissions and Findings

1. The Panel notes that bidder Safety Construction Co. Ltd challenged the decision of the Public Body on 01 December 2011 and as per Section 48(4) of the Regulations the Public Body should have issued a written decision on the challenge by 15 December 2011 at latest. In the case of Gamma Civic Ltd as the challenge was made on 05 December 2011 the written decision should have been issued at latest by 19 December 2011.
2. Pursuant to Section 48(3) of the Regulations the Public Body requested materials to reply to the challenges from the Central Procurement Board on 06 December 2011. The Central

Procurement Board provided the requested information to the Public body on 12 December 2011.

3. The Public Body replied to the challenges on 23 December 2011. The Panel holds that the Public Body was in possession of relevant materials from the Central Procurement Board, to reply to the challenges since 12 December 2011 and should have replied to the challenges within the delay prescribed by the Regulations.
4. At the hearing Mr M. Gobin of Counsel for Safety Construction Co. Ltd conceded that his client did not satisfy the mandatory requirements with respect to an amount of Rs90M of construction and the completion of a project of nature and complexity equivalent to the works in the last five years. He, however, maintained his position that *“Applicant feel that Gaz Carbonique Ltd does not satisfy the compulsory requirements as stated at 1(a) above. At the Tender Stage, Applicant received a response from Gaz Carbonique Ltd, that they have just recently entered the Medical Gas Installations business in association with a South African Company.”*

The aggrieved bidder informed the Panel that a representative of Gaz Carbonique Ltd informed it of the above over a phone conversation during the bidding stage and that it did not have any documentary evidence to substantiate same.

The Panel has examined the documentary evidence submitted by Gaz Carbonique Ltd and concurs with the Bid Evaluation Committee that it satisfies the qualification criteria specified in the bidding documents.

The Panel considers that there is no merit in the application of Safety Construction Co. Ltd. Having said so, the application for Safety Construction Co. Ltd could not be entertained being given that it has been filed outside the prescribed delay, i.e. on 05 January 2012, after having lodged a challenge on 01 December 2011.

5. Mr K. Y. Young Kim Fat, General Manager at Gamma Civic Ltd explained at the hearing that according to him the selected bidder does not have the required experience as prime contractor in similar nature of work. According to him the similarity refers to experience in hospital project including M & E Services which comprises a medical gas system.

6. ITB 5.2 (pg 6) refers to “Qualification of Bidders” and specifies that *“Bidders shall include the information and documents listed hereunder with their bids, unless otherwise stated in the BDS”*.

At ITB 5.2(d) the information required are with respect to *“experience in works of a similar nature and size for each of the last five years or as otherwise stated in the BDS”*.

In the BDS (pg18) at ITB 5.2(d) it is stated that *“Contractors should have at least five years of experience for similar works (Electrical Works, Medical Gas Installations of Air Conditioning Systems)”*.

These two sections when read together implies that the bidder must submit information on its minimum of five years experience for similar works involving Electrical Systems, Medical Gas Installations and Air Conditioning Systems.

7. To qualify for award of the contract, bidders shall meet certain minimum qualifying criteria defined at ITB 5.3. At ITB 5.3(b) it is specified *“experience as prime contractor in the construction of a minimum number of works of a nature and complexity equivalent to the works over a period as specified in the BDS”*. In the BDS at ITB 5.3(b) the number of works is specified is one and the period is five years.
8. Part 5 of the bidding documents deals with the mechanical installations required and Section 1 (pg143) defines the scope of works which includes the medical gas system. It is also indicated that *“The contractor shall supply, deliver, install, test and commission each of the above systems to the full satisfaction of the Mechanical Engineer.”*
9. Section 6 (pg152) refers to the Medical Gas System and at Sub-Section 6.1 it is emphasized that *“This section has to be compulsorily designed and engineered from the medical gas installations existing on site, installed, tested and commissioned by a reputed specialist medical gas contractor having at least ten years experience in such works and having successfully completed at least three projects of similar nature and magnitude”*.
10. This provision makes it mandatory for a bidder if ever he wishes to subcontract the medical gas installation to avail itself of the services of a specialist subcontractor which will be responsible for the installation, testing and commissioning of the system. The Panel notes that this very experienced subcontractor must have

completed three similar projects and must have a minimum experience of at least ten years. Though, the contractual liability will remain with the main contractor all the technical responsibility for this item of works lies with the sub-consultant which has to do the work to the satisfaction of the Mechanical Engineer.

11. The Panel considers that both ITB 5.2(d) (pg18) and Sub-Section 6.1 (pg152) define mandatory criteria that must be satisfied by all bidders and they must be read in conjunction with each other. The experience defined at ITB 5.2(d) (pg18) does not relate to the experience of the prime contractor in actually carrying out the work but rather to its experience in a supervisory role – one project over the last five years. However, the experience defined at Sub-Section 6.1 (pg152) lies with the appointed subcontractor of the prime contractor three similar projects over a minimum period of ten years.
12. The Panel has examined the bid of the selected bidder and can confirm that it has provided information on projects when it was prime contractor and which included all the elements of the project except for the Medical Gas Installation. However, the bidder did not submit any documents to indicate that it had been involved with the construction of Health Institutions. Directive No. 3 of the Procurement Policy Office issued on 30 April 2010 considers at Section V, the non-submission of documents related to qualifications, experience and eligibility as a minor omission. The Panel considers that requesting the additional information from the selected bidder on its experience will not unfairly affect the competitive position of the other bidder that has submitted a substantially responsive bid.

Based on all the above, the Panel holds that there is merit in the application of Gamma Civic Ltd and pursuant to Section 45(10)(c) recommends a re-evaluation of the bids.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated 13 March 2012