

## INDEPENDENT REVIEW PANEL

In the matter of:

**Tayelamay & Sons Enterprise Ltd**

**(Applicant)**

v/s

**Grand Port Savanne District Council**

**(Respondent)**

**(Cause No. 04/12/IRP)**

### **Decision**

#### **A. Background**

1. The Grand Port Savanne District Council using the open advertised bidding process invited bids on 26 August 2011 from eligible and qualified bidders for the Construction of a New Market Fair at Rivière des Anguilles. The works consist of the construction of a complex in reinforced concrete and galvanised steel roofing structure for an updated estimated project cost of Rs55.6M. The initial deadline for the submission of bids of 28 September 2011 at 13.30 hrs was rescheduled by Addendum no. 1 to 19 October 2011 at 13.30 hrs.
2. Nine bids were received by the closing date and were opened in public on the scheduled date. The submission of signed bid submission forms were confirmed and the bid price of each bidder was read out.

The Central Procurement Board then appointed a five member Bid Evaluation Committee to evaluate the bids received. Between the period 24 October 2011 and 10 November 2011 the Bid Evaluation

Committee held eleven meetings. The evaluation report was submitted on 10 November 2011. A supplementary evaluation report was submitted on 23 November 2011.

3. The Bid Evaluation Committee recommended an award to the lowest evaluated and complying bidder Como Construction Ltd for the sum of Rs48,976,000 (VAT inclusive). The Public Body informed all bidders of the outcome of the bidding exercise on 13 January 2012.
4. Tayelamay & Sons Enterprise Ltd as an aggrieved bidder challenged the decision of the Public Body on 19 January 2012. The Public Body requested material for reply to the challenge from the Central Procurement Board on 20 January 2012. The Central Procurement Board provided the requested information on 03 February 2012 and it was communicated to the aggrieved bidder by the Public Body on the same day. The Panel notes that the reply to the challenge was made outside the prescribed delay. The aggrieved bidder still dissatisfied with the decision of the Public Body submitted an application for review to the Panel on 14 February 2012.
5. The Panel pursuant to Section 45(4) of the Public Procurement Act 2006 suspended the procurement proceedings until the appeal is heard and determined.

A hearing was held in the presence of the selected bidder on 04 April 2012.

## **B. Grounds for Review**

The Grounds for Review are as follows:

- “1. *The successful bidder, Como Construction Ltd does not have a minimum average annual financial amount of construction of Rs55,000,000 over the last five years as stipulated in condition ITB 6.3(a) of the Bidding conditions.*
2. *The successful bidder, Como Construction Ltd does not have at least 5 years experience for similar works, subject matter of the bid as stipulated in condition ITB 6.2(d) of the Bidding conditions.”*

### C. The Evaluation Process

1. The Bid Evaluation Committee submitted an evaluation report on 10 November 2011 and concluded that only three bidders were substantially responsive to tender that requirements. Tayelamay & Sons Enterprise Ltd was considered to be the lowest evaluated and complying bidder and was recommended for an award for the sum of Rs63,910,760. The bid price at 14.94% higher than the estimated cost of Rs55,600,000 and was considered as acceptable by the Bid Evaluation Committee.
2. Bidder Como Construction Ltd was considered to be non-responsive by the Bid Evaluation Committee for the following reasons:
  - *“Has not submitted the average annual financial amount of construction works for the last five years. However the BEC has worked out the average as per the submitted list of projects for 2006 to 2010 and found out that the said average for the last five years met the requirements as stipulated at BDS ITB 6.3(a).*
  - *Has not submitted any project of a nature and complexity equivalent to the work as mentioned at BDS ITB 6.3(b). The BEC considers this as a material deviation.*
  - *Has submitted bank testimonial which is not up to date and not specific to the project as required at BDS ITB 6.3(e). The BEC considers this as a material deviation.”*
3. At the request of the Central Procurement Board, the Bid Evaluation Committee submitted a supplementary Evaluation Report on 23 November 2011.
  - (a) Bidder Como Construction Ltd had enclosed in its bid a letter dated 16 September 2011 from its Accounting Firm, Beedassy & Associates Ltd, which confirms that *“the net bank deposits made during the financial year ended 30 June 2011 amounted to Rs143,095,339”*. The Central Procurement Board which providing material for reply to the Public Body indicate in a letter dated 02 March 2012 that *“according to the audited accounts for period 30 June 2011, submitted by Como Construction Ltd in the context of another bid exercise, the turnover period 01 July 2010 to 30 June 2011 is Rs149,095,339”*. Directive No. 3 issued by the Procurement Policy Office on 30 April 2010 pursuant to Section 7(b) of the

Public Procurement Act considers that the non-submission of financial statements or audited accounts as applicable to be a minor omission. The bidder can thus be requested to provide the missing document which cannot be tampered with.

If it is permissible for the bidder to file a missing document, the usual practice to do so is for the bidder to file it upon request within a prescribed delay and undoubtedly before the notification of award. The Panel is not sure of the procedure that has been followed in this present case, being given of the terms used by the Central Procurement Board, i.e. “submitted by Como Construction Ltd in the context of another bid exercise”.

The Panel notes with serious concern that the aggrieved bidder was aware of the contents of the bid of the selected bidder. He stated, unequivocally, through Counsel that the figure quoted in the bid and the one quoted by the Central Procurement Board in its letter of 02 March 2012 were different. The information of the aggrieved bidder was correct in so far as the quantum was concerned. However, the latter from the Accounting Firm refers to “*bank deposits*” while the Audited Accounts refers to “*cost of sales*”. For all intent and purposes these are two different things.

The bidder is compliant to ITB 6.3(a) and has a minimum average annual financial amount of construction of Rs55,000,000 over the last five years.

Most bidders unlike the selected bidder, submitted a full list of personnel inclusive of their respective CV. The selected bidder was called upon to provide the name of its Health and Safety Officer within a specific time. The Panel considers that there was some ambiguity with respect to the mandatory requirement for key personnel.

- (b) Bidder Como Construction Ltd had enclosed in his bid a bank testimonial from the Mauritius Commercial Bank Ltd certifying that the bidder submitting a bid for that particular project has “*at present time, the financial means and resources for the proper execution of the Works up to MUR 100,000,000 (Mauritian Rupees One Hundred Million Only)*”. This renders the bidder fully compliant to BDS ITB 6.3(e).

- (c) The project consists of the construction of a complex in reinforced concrete and galvanised steel roofing structure. BDS ITB 6.2(d) stipulates that contractors should have at least five years of experience for similar works – BDS ITB 6.3(b) indicates that the bidder must have experience as prime contractor in the construction of one such project over the last five years.
4. The bidder has indicated in the Bidding Forms – Section III “*Qualification Information*” at Section 1.6 that it will sub-contract the fixing of metal sections and roof section only to a sub-contractor for a value of Rs2,000,000. The Bid Evaluation Committee in its supplementary report considers this as acceptable. The Panel accepts the value of the works, however, the Bid Evaluation Committee should have indicated on what basis it considered that the sub-contracting was acceptable. Moreover, the Panel is of the view that it is highly desirable in procurement proceedings to specify the name of the sub-contractor in the bid submission.
5. The Panel held a meeting with the Chairman of the Bid Evaluation Committee on 16 March 2012 whereby the latter clarified the discrepancies observed between the two evaluation reports. The Panel has noted his explanations.

The Panel wishes to draw the attention of the competent authority to the serious breach of confidentiality that has occurred during the procurement proceedings. The aggrieved bidder disclosed to the Panel confidential information that were found in the bid of the selected bidder. This must be viewed with serious concern. However, the proceedings of the hearing held by the Panel are available to any competent authority.

#### **D. Submissions and Findings**

At this stage the Panel wishes to draw the attention of the parties that in a recent decision of the Independent Review Panel in respect of Defence Hitech Security Services Ltd v/s Ministry of Agro Industry & Food Security (CN 19/11/IRP, Decision No. 05/12) the Panel was called upon to examine written authorisation of bidders to sign a bid.

In that matter, the Bid Evaluation Committee rejected the bid of the aggrieved bidder as his certificate of consent to act as Director which he submitted in its bid, was not in line with the requirements of Directive No. 3 pursuant to Section 7(b) of the Public Procurement Act.

Consequently the Panel examined also a document submitted by the selected bidder which was a power of Attorney signed by a Public Notary dated 2008.

After examination the Panel concludes that the documents produced by the selected and aggrieved bidder did not satisfy the requirements of the abovementioned directive.

In these circumstances, the Panel recommends pursuant to Section 45(10)(c) of the Public Procurement Act of 2006 a review of the decision of the Public Body.

**(Dr. M. Allybokus)**  
***Chairperson***

**(H. D. Vellien)**  
***Member***

**(Mrs. E. Hanoomanjee)**  
***Member***

**Dated 01 June 2012**