

INDEPENDENT REVIEW PANEL

In the matter of:

SNB Construction Ltd

(Applicant)

v/s

Ministry of Education & Human Resources

(Respondent)

(Cause No. 02/12/IRP)

Decision

A. Background

1. The Ministry of Education & Human Resources using the open advertised bidding method invited bids on 03 August 2011 from qualified bidders for the construction of new classroom block with administration, pre-primary and library on ground floor, classroom and computer rooms on first and second floor. The deadline for the submission of bids was 06 September 2011 at 10.30 hrs and the public opening of bids was scheduled for the same day at 10.40 hrs.

The project was estimated at Rs25,200,000 including VAT as at 14 July 2011 and the scheduled completion period is 180 days from start of work.

2. Seven bids were received by the closing date of 06 September 2011 and the list of bidders and the price quoted as read out at the public opening are indicated in Table A (pg 3) of the evaluation report.

Bidder No.	Bidder	Bid Amount (Rs)
1	Como Construction Ltd	25,686,700.00
2	SNB Construction Ltd	23,731,400.00
3	Safety Construction Co. Ltd	24,696,710.00
4	Onix Construction Co. Ltd	31,383,500.00
5	Cimix Construction Co. Ltd	24,864,334.00
6	Chang Cheng Esquares Co. Ltd	24,534,459.00
7	Power Contractors Ltd	20,355,000.00

The Public Body then appointed a three-member Bid Evaluation Committee to evaluate the seven bids received.

3. The Bid Evaluation Committee recommended Como Construction Ltd for an award on 06 January 2012 in the contract sum of Rs25,686,700 including a contingency sum of Rs1,000,000 and VAT.

All bidders were informed about the outcome of the bidding exercise on 26 January 2012. SNB Construction Ltd as an aggrieved bidder challenged the decision of the Public Body on 27 January 2012. The Public Body replied to the challenge on 03 February 2012. However, still aggrieved by the decision of the Public Body, SNB Construction Ltd submitted an application for review to the Panel on 09 February 2012. The Panel informed all parties of the application for review and pursuant to Section 45(4) of the Public Procurement Act 2006 suspended the procurement proceedings until the appeal was heard and determined. Hearings were held by the Panel on 16 March, 26 March, 14 June and 05 July 2012 in presence of the selected bidder.

B. Grounds for Review

The Grounds for Review are as follows:

“Being the second lowest bidder, why our company has not been retained for award”.

C. The Evaluation Process

1. The Public Body appointed a three-member Bid evaluation Committee to evaluate the seven bids received by the closing date of 06 September 2011. The Bid Evaluation Committee submitted a first evaluation report on 22 September 2011 recommending Power Contractors Ltd for the award which was subsequently modified on 08 November 2011 following comments of the Departmental Tender Committee of the Public Body on 08 November 2011 leading to the recommendation of Safety Construction Co. Ltd. Finally the Bid Evaluation Committee submitted a second supplementary bid evaluation report on 06 January 2012 following clarifications obtained from a selected bidder.
2. The bid evaluation reports indicate that five of the bidders had failed to comply with the same mandatory requirements and as such were not considered for an award. The selected bidder was considered to be non-responsive by the Bid Evaluation Committee following clarifications obtained.

The bidder Como Construction Ltd was recommended for an award in the contract sum of Rs25,686,700 including a contingency sum of Rs1,000,000 and VAT.

D. Submissions and Findings

1. The Bid Evaluation Committee indicates in its evaluation report dated 22 September 2012 (pg 4) that *“Bidder SNB Construction Ltd has not submitted the Bid submission Sheet to be a major deviation and therefore his bid is not considered for further evaluation”*.
2. In a letter to the Panel dated 03 February 2012 and received on 08 February 2012 the aggrieved bidder indicates *“we hereby confirm having submitted the Above Form retyped in our letter head together with all other requested documents (copy attached).”*
3. The Public Body in its comments on the application for review, dated 26 April 2012, submitted to the Panel explains the following with respect to the bid submission form:

“D. IDENTIFICATION OF ABSENCE OF FILLED AND SIGNED BID SUBMISSION FORM FROM SNB CONSTRUCTION LTD

When evaluation started, upon the Bids obtained for the project New Classroom Block at Midlands GS, the Bid Evaluation Committee went comprehensively through the Bid documents of SNB but did not find any other Bid Submission Form than the unfilled and unsigned Bid Submission Form, copy of which was submitted to the IRP inside the copy of the Bid Document of SNB.”

4. Section 36 of the Public Procurement Act 2006 refers to “Opening of Bids” and sub-section 36(4) reads as follows:

“The name of the bidder, the total amount of each bid, any discount or alternative offered, and the presence or absence of any bid security, if required, shall be read out and recorded, and a copy of the record shall be made available to any bidder on request.”

The Public Body explained that before the issue of Directive No. 4 of the Procurement Policy Office, issued on 07 November 2011, it used to “*announce the price seen both in the Bid Submission Form and Priced Activity Scheduled, or only that found in the Priced Activity Scheduled in case the first document could not be readily identified*”.

5. At the hearing the Public Body confirmed that the price of the aggrieved bidder as announced at the public opening of bids was read from the Priced Activity Scheduled as the Bid Submission Form was not identified.

The Public Body also confirmed that at that public opening it had not effected any recording of whether or not a properly filled Bid Submission Form was present in the bid.

The aggrieved bidder, however, maintained all along that it had enclosed in its bid a duly completed and appropriately signed Bid Submission Form as per the requirements of the bidding document.

6. There are two issues associated with this application for review:
- (i) The disputed presence/absence of the Bid Submission Form in the bid of the aggrieved bidder and,
 - (ii) The undisputed fact that the procedures at the public opening of bids were not recorded as per the requirements of Section 36(4) of the Public Procurement Act 2006.

The Panel considers that the non-recording of the procedures at the public opening by itself cannot be considered as fatal flaw that necessitates an intervention on its part.

On the other hand, the Panel is of opinion that the disputed presence/absence of the Bid Submission Form in the bid of the aggrieved bidder is an issue on which it cannot pronounce. The averments are very serious as they imply possibility of tampering with an official document whilst it was in the custody of the Public Body with a view to cause prejudice to a bidder.

The Panel accordingly recommends that the matter be referred to a competent authority for a full-fledged investigation.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated 03 August 2012