

INDEPENDENT REVIEW PANEL

In the matter of:

Eastern Properties Investment Co. Ltd (EPI)
(Applicant)

v/s

Central Water Authority
(Respondent)

(Cause No. 05/12/IRP)

Decision

A. Background

On 23 September 2011, the Central Water Authority invited bids, through public advertisement in the local press for Repairs and Maintenance of CWA Vehicles and Plant at the Mechanical Services Unit based at Bell Village (Contract No.: CWA/CCRT/2011/67 – Repairs and Maintenance of CWA Vehicles and Plant). The closing date for the submission was on 25 October 2011 at 13.00 hrs. At 13.25 hrs on the same day, the bids were opened in public by the Bid Opening Committee at the Procurement and Financial Committee room, St. Paul CWA Headquarters. Three bids were received namely:

- Eastern Properties & Investment Co. Ltd
- Diesel World Ltd
- Toyota (Mtius) Ltd

B. Grounds for Review

The Grounds for Review are as follows:

“The Applicant is not satisfied with the decision of the Central Water Authority and/or the Ministry of Renewable Energy and Public Utilities (the Ministry) on the following grounds:

1. *The Ministry and/or the CWA failed, within 15 days of the filing of the challenge application by the Applicant, to issue a written decision stating his reasons in response of the challenge served on it/them on the 9th February 2012;*
 - (a) *The challenge application dated 9th February 2012 was served on both the Ministry and/or the CWA.*
2. *The CWA failed and neglected to inform EPI of the name of the successful bidder through a notice in writing, specifying the name and address of the proposed successful bidder and the price of the contract, and this in breach of Section 40(3) of the Public Procurement Act 2006 (the Act);*
 - (a) *By letter dated 20 January 2012, the CWA informed EPI that their contract has been terminated with effect from 24 January 2012 and that a new contract has been awarded to Diesel World Ltd;*
 - (b) *The CWA failed to specify the precise date as to when the new contract had been awarded to Diesel World Ltd;*
3. *EPI has been unfairly and unlawfully deprived of the remedy provided for under S. 41 of the Act and of its right of challenge guaranteed by Section 43 of the Act and therefore EPI avers that it has been unfairly and unlawfully deprived of its constitutional right of appeal as enshrined under Section 10 of the Constitution;*
4. *The CWA has failed to ensure transparency and equity in the whole evaluation process.*
5. *The whole bidding process is in breach of Section 11 of the Act.*
6. *By letter dated 10 November 2011, EPI’s contract for Repairs & Maintenance of CWA Vehicles and Plant (C2008/75) has been extended from 01 August 2011 up to 31 December 2012*

to EPI. The scope of both contracts having references C2008/75 AND C2011/67 are similar.

- (a) The CWA had already extended the Applicant's contract for Repairs & Maintenance of CWA Vehicles and Plant (C2008/75) up to 31 December 2012;
- (b) By letter dated 20 January 2012, the CWA informed EPI that the above mentioned contract had been terminated with effect from 24 January 2012 and that a new contract has been awarded to Diesel World Ltd;
- (c) Over and above the fact that the CWA has been an "abus de droit" by putting an abrupt end to the above mentioned contract, it sought to deprive the Applicant of its right to challenge the decision of the CWA to award the contract to Diesel World Ltd by failing and neglecting to notify the Applicant of the name and address of the successful bidder."

C. The Evaluation Process

A Bid Evaluation Committee was set up to evaluate the three bids and on 09 January 2012, the Central Water Authority issued a letter of award to Diesel World Ltd. However on 13 February 2012, the Appellant challenged the decision of the Central Water Authority.

D. Submissions and Findings

The Applicant's case relies on three grounds:

- (a) The first ground is misconceived because the Public Body is not bound by Law to reply to the challenge. In fact, Regulation of 48(5) made under the Public Procurement Act 2006 contemplates for instances where the Chief Executive Officer fails to reply to the challenge to issue a decision within fifteen days.
- (b) It is the contention of Mr S. Toorbuth, Counsel for the Applicant that the Public Body failed to inform the aggrieved bidder of the name of the selected bidder in breach of Section 40(3) of the Public Procurement Act. As rightly pointed out by Counsel for the Central Water Authority, being given that the contract was for the amount of Rs6M i.e. under the threshold of Rs15M, as provided by

Regulation 38(3) of the Public Procurement Regulations 2008, the Central Water Authority was under no obligation to notify unsuccessful bidders of the particulars of the selected bidder.

- (c) Mr S. Toorbuth, Counsel for the Applicant also submitted that the legislator referred to the figure of Rs15M in respect of contract value of a fixed amount, whereas in the present matter the contract is based on rates and one cannot determine whether the value of the contract would exceed Rs15M or not.

On that issue, the Panel agrees with Mr R. Pursem, Counsel for the Central Water Authority that the amount of Rs6M has been reached after an evaluation has been carried on 1000 items of the BOQ. It is also clear for the Panel after perusing the bidding documents that the contract though based on rates was far below the threshold of Rs15M.

For all these reasons, the Panel finds that there is no merit on the grounds raised by the Applicant. The application is accordingly set aside.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated 14 August 2012