

INDEPENDENT REVIEW PANEL

In the matter of:

Deeya Construction Ltd

(Applicant)

v/s

**Ministry of Public Infrastructure, National Development Unit,
Land Transport & Shipping**

(Respondent)

(Cause No. 23/12/IRP)

Decision

A. Background

1. The Ministry of Public Infrastructure, National Development Unit, Land Transport & Shipping using the open advertised bidding method invited bids on 03 October 2011 from eligible bidders for the Maintenance, Repairs and Rehabilitation of Government Buildings (2012). The deadline for the submission of bids was initially scheduled for 10 November 2011 at 13.30 hrs with bid validity up to 07 February 2012. The bid submission date was subsequently postponed to 01 December 2011 at 13.30 hrs with new bid validity up to 28 February 2012. The public opening of bids was scheduled for the same day at 14.00 hrs.
2. Twenty four bids were received by the closing date and were opened in public on 01 December 2011 at 14.00 hrs. The Central Procurement Board then appointed a four-member Bid Evaluation Committee to evaluate the bids received. The Bid Evaluation Committee submitted its evaluation report on 22 February 2012 and on 04 May 2012 the Central Procurement Board informed the

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Public Body that it has approved the award of the contracts as follows:

<i>Lot</i>	<i>Region</i>	<i>Bidder</i>	<i>Contract Price (Rs)</i>
<i>Lot A</i>	<i>Port Louis</i>	<i>22. Keep Clean Ltd</i>	<i>52,453,665.00</i>
<i>Lot B</i>	<i>Pamplemousses</i>	<i>5. Canakiah Associates Ltd</i>	<i>49,951,028.00</i>
<i>Lot C</i>	<i>Riv. du Rempart</i>	<i>21 J. Annauth Construction Ltd</i>	<i>54,322,850.00</i>
<i>Lot D</i>	<i>Moka</i>	<i>23. Safety Construction Co. Ltd</i>	<i>38,882,155.00</i>
<i>Lot E</i>	<i>Flacq</i>	<i>9. Power Contractors</i>	<i>52,395,985.00</i>
<i>Lot F</i>	<i>Grand Port</i>	<i>11. Ajmol Enterprise Ltd</i>	<i>60,440,317.00</i>
<i>Lot G</i>	<i>Savanne</i>	<i>6. LORO Associates Company Ltd</i>	<i>40,945,199.00</i>
<i>Lot H</i>	<i>Black River</i>	<i>18. Nova Glass Waterproofing Private Company Ltd</i>	<i>48,978,575.00</i>
<i>Lot I</i>	<i>Upper Plaine Wilhems</i>	<i>17. Greenish Co. Ltd Building and Civil Works</i>	<i>76,297,905.00</i>
<i>Lot J</i>	<i>Lower Plaine Wilhems</i>	<i>10. Monesh Enterprise Ltd</i>	<i>50,956,247.00</i>

The Public Body informed all bidders of the outcome of the bidding exercise on 24 May 2012. Deeya Construction Ltd, as an aggrieved bidder, challenged the decision of the Public body on 30 May 2012. After obtaining the relevant information from the Central Procurement Board, the Public body replied to the challenge on 14 June 2012.

3. The aggrieved bidder still dissatisfied with the decision of the Public Body submitted an application for review to the Panel on 25 June 2012. The Panel pursuant to section 45(4) of the Public Procurement Act 2006 suspended the procurement proceedings on the same day until the appeal is heard and determined. Hearing were then held by the Panel, in the presence of the selected bidders on 19 July 2012 and 24 July 2012.

B. Grounds for Review

The Grounds for Review are as follows:

- “1. *The Ministry was wrong to have rejected the bid of the Appellant in as much as the Appellant submitted the lowest evaluated substantially responsive bid.*”

2. *The Ministry was wrong to have rejected the bid of the Appellant on the ground that the Appellant's bid validity period (the 'BVP') was not in conformity with the period stated in the Bidding Document (Addendum No. 1) in as much as the BVP was duly extended by the Appellant upon the request of both the Ministry and the CPB.*
3. *The CPB and the Ministry having requested the Appellant to extend the BVP waived their right to rely on the validity period stated in the Bidding Document (Addendum 1) and were accordingly precluded from rejecting the Appellant's bid.*
4. *The Ministry was wrong to have awarded the contract to Ajmol Enterprise Ltd (AEL) in as much as the Appellant's bid was the lowest evaluated substantially responsive bid."*

C. The Evaluation Process

1. The Central Procurement Board appointed a four-member Bid Evaluation Committee to evaluate the twenty four bids received by the closing date of 01 December 2011. The Bid Evaluation Committee considered that four of the bidders had failed to satisfy the minimum qualifying criteria and as such were not eligible for further evaluation. Clarifications were then sought on 26 January 2012 from fifteen of the twenty bidders which had according to the Bid Evaluation Committee satisfied the minimum qualifying criteria.
2. All fifteen bidders provided the additional information required by the deadline of 31 January 2012. Following an examination of the documentation received the Bid Evaluation Committee determined that only fifteen of the bidders were technically responsive.

The financial proposals of the fifteen bidders were then examined for the ten lots which comprise the project.

3. As per the bidding document, contract award is to be made on a lot wise basis – one contractor per lot. In case there is an insufficient number of substantially responsive and acceptable bids than a bidder may be awarded more than one contract. However, for this particular exercise the Bid Evaluation Committee considered that there were more than ten responsive bids and as such award is to be made on a lot wise basis.

The Public Body then informed all bidders of the outcome of the bidding exercise on 24 May 2012.

D. Submissions and Findings

1. The original deadline for the submission of bids was 10 November 2011 with a bid validity up to 07 February 2012. Addendum no. 1 was issued by the Public body on 08 November 2011 whereby away other modifications the deadline for submission of bids was extended to 01 December 2011 and the bid validity had accordingly to be extended to 28 February 2012.
2. The aggrieved bidder submitted a bid by the new deadline of 01 December 2011 but, however, with a validity up to 30 January 2012. Mr R. Pursem, SC for the bidder conceded at the hearing that the bid validity of his client was not compliant to either the original date of 07 February 2012 or the modified date of 28 February 2012. He however, argued that the Central Procurement Board has requested his client to extend the validity of its bid on two occasions – 24 February 2012 and 06 April 2012. On each occasion it acceded to the request of the Central Procurement Board.

On 23 May 2012 the Public body informed the bidder that the award procedure was underway and that more time was needed to finalise the award. The bidder was requested to extend its bid which was to expire on 28 May 2012 up to 31 May 2012. However, on 24 May 2012 it was notified by the Public Body that its bid had not been retained.

3. Mr R. Pursem, SC explained at the hearing that on 26 January 2012 the Central Procurement Board requested his Client to submit additional documents/information. The Applicant duly submitted the requested information on 30 January 2012.
4. According to the Counsel of the aggrieved bidder, the shortcomings in the bid of his client, with respect to bid validity, is deemed to have been cured as on three occasions it has been asked to renew its bid validity. In addition his client was asked to submit additional qualification information for evaluation purposes.
5. Directive No. 3 issued by the Procurement Policy Office, pursuant to Section 7(b) of the Public Procurement Act 2006 indicates in no

uncertain terms that “*failure to satisfy the bid validity period (i.e. the bid validity period is shorter than specified in the bidding documents)*” is a justifiable ground for rejection of a bid.

The Bid Evaluation Committee indicates the following in its report with respect to the bid validity of Deeya Construction Ltd “*Up to 31 January 2012, checked original and there is no copy of Addendum No. 1. Same to be addressed to Board*”.

The Panel considers that seeking clarification from Ministry of Public Infrastructure, National Development Unit, Land Transport & Shipping whether the bidder has acknowledged receipt of Addendum No. 1 was unwarranted as the bid validity of the bidder was not even compliant to the original date of 07 February 2012. Thus, no clarification should have been sought from the bidder.

6. The issue of bid validity period is referred to at Section 30 of Regulations made under the Public Procurement Act 2006 and paragraph 30(4) indicates that “*If, prior to the expiry of the validity period of bids, a public body considers that additional time is required to complete all steps and notify an award, the public body shall request all bidders to extend the validity by the minimum period required to do so*”.

For the Panel, it is clear that accordingly both the Central Procurement Board and the Public Body were bound to request the aggrieved bidder to extend its bid.

7. The Panel agrees that the aggrieved bidder had a legitimate expectation with respect to the outcome of the bidding exercise, so far to the extent of compliance of bid validity of the bidding exercise. Its bid was competitive for Lot I and in addition to providing clarification, on three occasions it had been asked to extend its bid validity period. However, the Panel feels that the belated rejection of the bid being given of its shorter period than specified is justified since the rejection of bids, as the Law stands can only be notified at award stage.

Furthermore, the Panel considers that the original defect in the bid of the aggrieved bidder cannot be considered to have been cured by any subsequent actions of the Central Procurement Board and concurs with the Bid Evaluation Committee in its conclusion that i.e. a non-responsive bid cannot be made responsive.

For all these reasons, the Panel finds that there is no merit in this application and dismisses it.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated 14 August 2012