

## INDEPENDENT REVIEW PANEL

**In the matter of:**

**Joint Venture Sotravic/Biwater**

**(Applicant)**

**v/s**

**Central Water Authority**

**(Respondent)**

**(Cause No. 18/14/IRP)**

### **Decision**

#### **A. History of the case**

The procurement for the construction of the Bagatelle Water Treatment Plant was launched on 09 April 2013. Request for proposals was addressed to the short listed bidders, after the pre-qualification exercise.

The revised closing date for the submission of bids was fixed to 05 November 2013 at 13.30 hrs. Six bids were received at the public opening as listed below:

1. JV-OTV Colas (Maurice) Ltée – VEOLIA WATER
2. China International Water & Electric Corp (CWE)
3. GCC/PCI Africa JV
4. Joint Venture Sotravic/Biwater C2012/13
5. JV HWPC/First Bureau/HUPD-CWA C2012/13
6. Sinohydro Corporation Limited

## **B. Scope of Work**

As regards the procurement work, it consists of the construction of a new rapid gravity sand filter with a production capacity of 60,000 m<sup>3</sup>/day comprising its ozone contact tanks, flash mixers, flocculators, dissolved air flotation units, chlorine contact tanks, clean water tanks, chemical building, administration building, dirty backwash settling tanks, sludge balancing tank, gravity thickeners, sludge holding tanks and sludge treatment building.

It also provides for some ancillary works such as construction of a boundary wall around the perimeter of the treatment plant, construction of access roads to all structures within the treatment plant compound and laying of pipeworks complete with all necessary fittings and accessories.

The closing date for submission of bids was revised on four occasions to be finally closed on 05 November 2013.

## **C. The Notification of Award**

The Central Water Authority through a letter dated 08 May 2014, informed the Applicant of the particulars of the successful bidders as follows:

*“The proposed successful bid is from JV HWPC/First Bureau/HUDP – CWA/C2012/13, Henan, Water & Power Engineering Consulting Co. Ltd, No. 16 Kangping Road, Zhengdong New District, Zhengzhou, China in the corrected Contract Sum of Rs1,024,194,437.00 (Rupees One Billion Twenty Four Million One Hundred and Ninety Four Thousand and Four Hundred and Thirty Seven only), inclusive of 15% VAT.”*

## **D. The Challenge**

On 14 May 2014, the Applicant challenged the award on the following grounds:

*“(a) The preferred bidder appears to consist of consulting/design firms which may not have eligible experience as stated in the aforesaid clause which states that experience under construction contracts has to be satisfied by each member of a Joint Venture for a minimum of 10 years;*

- (b) *Part 3 of Section 4 of the Bid document mentions that Coast is least item to be considered for award whilst Plant Reliability, Quality of the Proposed technology and designs as well as schedule have precedence over cost.*
- (c) *There has not been a detailed assessment of the proposed design to establish the reliability of the process designs and their robustness during the evaluation of the bids.*
- (d) *The bid is abnormally low since the costing of the Public Body assessed the contract at Rs1.4 billion. There may be serious omissions by the preferred bidder.”*

#### **E. The Reply to Challenge**

By letter dated 20 May 2014, the Respondent replied to the challenge on the following grounds:

- “1. *Bidder JV HWPC/First Bureau/HUPD is substantially responsive to the Employer’s requirements of the bidding documents in respect of criteria 4.1 and 4.2 of the Eligibility and Qualification Criteria.*
- 2. *The Bid Evaluation Committee has not found the contract value to be abnormally low, the moreso, as the bidder has satisfied all the requirements with respect to experience, general and Specific, and technical specifications.”*

#### **F. Grounds for Review**

On 26 May 2014, the Applicant seized the Independent Review Panel for review on the following grounds:

*“The Applicant is not satisfied with the decision of the Central Water Authority and/or the Central Procurement Board (the Board) on the following grounds:*

- (a) *The Applicant is not satisfied with the reply of the Public Body to its challenge dated 14 May 2014, the more so because the Public Body failed to consider and/or reply to all its grounds for challenge.*
- (b) *The board and/or the public body has failed to disqualify the successful bidder as the latter does not satisfy the requirements to section 4.1 and 4.2 of the eligibility and qualification criteria.*

- (c) *The decision of the Board and/or the public body to award the contract to the successful bidder is against and/or falls short of the requirements of Part 3 of Section 4 of the Bid Document which states that the Contractor shall be selected on the basis in order of importance Plant Reliability, Quality of the proposed technology and designs, schedule and last, cost.*
- (d) *The board and/or the public body have not carried out a detailed assessment of the design proposals of the bids to assess the reliability of the process design and its robustness.*
- (e) *The board and/or the public have selected an abnormally low bid for award which is more than 25% below the estimated budget for the works.”*

## **G. Evaluation Process**

The Bid Evaluation Committee under the Chairmanship of Mr P. Sookram, met for the first time on 11 November 2013.

1. The Technical Evaluation Report was submitted on 28 January 2014:

*At Para 6.1, the Committee concluded that the 5 bidders listed below were substantially responsive and were retained for further technical evaluation subject to providing satisfactory response to clarifications:*

*Bidder No. 1 - JV-OTV Colas (Maurice) Ltée – VEOLIA WATER  
Bidder no. 2 - China International Water & Electric Corp (CWE)  
Bidder No. 4 - Joint Venture Sotravic/Biwater C2012/13  
Bidder No. 5 - JV HWPC/First Bureau/HUPD-CWA C2012/13  
Bidder No. 6 - Sinohydro Corporation Limited*

2. Supplementary Bid Evaluation Report for Technical Proposals was submitted on 01 March 2014

*Following technical evaluation, the Bid Evaluation Committee concluded that the bids from the following Bidders listed below be retained for further technical evaluation, subject to the respective Bidders providing satisfactory responses to clarification requested.*

*Bidder No.1 – JV-OTV Colas (Maurice) Ltée – VEOLIA WATER  
Bidder No. 2 – China International Water & Electric Corp (CWE)  
Bidder No.4 – Joint Venture Sotravic/Biwater C2012/13*

*Bidder No.5 – JV HWPC/First Bureau/HUPD-CWA C2012/13  
Bidder No.6 – Sinohydro Corporation Limited*

*Further to the approval of the Central Procurement Board, letters of clarification were issued to the above mentioned respective Bidders on 7 February 2014.*

*The deadline for submission of clarifications was 21 February 2014.*

*All the Bidders responded with their respective clarifications by the deadline date.*

*At Para 5.1, the conclusion of the supplementary report based on the assessment and evaluation of the clarifications submitted by each bidder is as follows: the bids from Bidders as listed below were considered non-responsive to the Employer's Requirements.*

- (i) Bidder No.2 – China International Water & Electric Corp (CWE)*
- (ii) Bidder No.3 – GCC/PCI Africa JV*
- (ii) Bidder No.6 – Sinohydro Corporation Limited*

*At Para 5.2, the Bid Evaluation Committee recommends that the offers from the following remaining substantially responsive Bidders be retained for opening of their price proposals:-*

- (i) Bidder No. 1 – JV-OTV Colas (Maurice) Ltée – VEOLIA WATER – Base Offer and Alternative Offer*
- (ii) Bidder No. 4 – Joint Venture Sotravic/Biwater C2012/13*
- (iii) Bidder No.5 – JV HWPC/First Bureau/HUPD-CWA C2012/13*

3. The Financial Evaluation Report was submitted on 25 March 2014

Public opening for financial offers was carried out on 11 March 2014 at 11:00 hrs in the Conference Room at the Central Procurement Board (Annex 1). The financial proposals from the three (3) retained bidders were opened and details of the prices during the public opening are given in the table below:

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<i>Bidder No.</i>	<i>Bidder</i>	<i>Bid Amount inclusive of VAT</i>	<i>Abbreviated Name</i>
1	<i>JV-OTV Colas (Maurice) Ltée – VEOLIA WATER – BASE OFFER</i>	<i>Rs. 1,379,189,165.00</i>	<i>JV OTV – COLAS-VW</i>
	<i>JV-OTV Colas (Maurice) Ltée – VEOLIA WATER – ALTERNATIVE OFFER</i>	<i>Rs. 1,301,181,692.00</i>	
4	<i>Joint Venture Sotravic/Biwater C2012/13</i>	<i>Rs. 1,349,949,255.93</i>	<i>JV SOTRAVIC - BIWATER</i>
5	<i>JV HWPC/First Bureau/HUPD-CWA C2012/13 – Option 1</i>	<i>Rs. 979,903,967.00</i>	<i>JV HWPC–FB-HUPD</i>
	<i>JV HWPC/First Bureau/HUPD-CWA C2012/13-Option 2</i>	<i>Rs. 1,024,194,410.00</i>	

4. At Para 4.0 of the report, with respect to the financial proposals for Bidder No. 5 – JV HWPC-FB-HUPD, during the technical evaluation, it had been clarified with the bidder that his proposal consisting of a system based on continuous discharge of sludge generated, including scum from DAF, to the nearby river was not acceptable. It was further clarified that only the alternative proposal of sludge treatment complete with gravity thickness, sludge holding tank and sludge treatment building is the only acceptable proposal.

From a scrutiny of the evaluation of the Technical and Financial Evaluation report, it is clear that the successful bidder did not comply with the express requirements of the Public Body as laid down under para 20.1 which is reproduced hereunder:

*“Bidders wishing to offer technical alternatives to the Employer’s Requirements of the bidding documents must first price the Employer’s Requirements as described in the bidding documents and shall further provide all information necessary for a complete evaluation of the alternative by the Employer, including drawings, design calculations, technical specifications, breakdown of prices and proposed construction methods. All technical alternatives which*

*comply with the performance specification for the Works shall be considered by the Employer on their merits.”*

5. The Dilemma of the Bid Evaluation Committee on the Financial Proposals

The Bid Evaluation Committee has noted that in the absence of a defined mechanism and methodology, the assessment of the operating costs as required under clause 39.4 cannot be undertaken. The Bid Evaluation Committee concluded its report, that it cannot complete the financial evaluation and therefore did not make any recommendation for award.

For ease of reference, the conclusion of the Financial Bid Evaluation Committee is reproduced below.

*The Bid Evaluation Committee noted that in the absence of a defined mechanism and methodology the assessment of the operating costs as required under Clause 39.4 could not be undertaken. As highlighted, these operating costs were considered to form a major part of the life cycle cost of the facilities which were to be evaluated and added to the Bid Price for evaluation. It is observed that the O&M cost quoted for the one year post commissioning period as required under the Employer’s Requirements vary significantly from Rs32,753,941 to Rs69,989,575 as compared to the Employer’s Estimate of Rs46,495,000.*

*It is nonetheless noted that O&M cost over the life cycle of the facilities would be solely to the account of the Employer and on the basis of consumables to be purchased at commercial rates only.*

*Thus in the absence of a properly defined methodology and mechanism in the bidding document, the Bid Evaluation Committee could not conclusively assess the operating costs over the life cycle of the facilities.*

*The Bid Evaluation Committee finally concluded that they will seek the guidance of the Board on the methodology for the computation of the operating costs as at ITB 39.4(b) so that same could be used for completing the financial evaluation exercise. No recommendation for award was made at that stage of evaluation.*

## H. Review Committee Evaluation Report for Financial Proposals

1. Instead of responding to the request for guide from the Bid Evaluation Committee, the Board set up a Review Committee. Following the submission of the Technical Evaluation Report the supplementary Evaluation Report and the Financial Proposal Report from the Bid Evaluation Committee of the Central Procurement Board, a Review Committee under the chairmanship of a Barrister at Law, was set up by the Central Procurement Board to re-evaluate the financial bids for the project “Construction of Bagatelle Water Treatment Plant (Design and Build) – Central Water Authority”.
2. A report was submitted by the Review Evaluation Committee on 10 April 2014.

*At Para 6.1, the Review Committee agrees with the financial evaluation and ranking established by the BEC. However, it strongly disagrees with the conclusion reached to the effect that “in the absence of a properly defined methodology and mechanism in the bidding document, the BEC cannot conclusively assess the operating costs over the life cycle of the facilities, and add same to the Bid Price for evaluation.”*

*At Para 6.2, the Review Committee also disagrees with the recommendation that in the absence of a conclusive financial evaluation, the BEC recommends that no award be made for the contract for the project ‘Construction of Bagatelle Water Treatment Plant (Design and Build) – Central Water Authority’.*

*The Review Committee concluded at Para 7.1 that the financial evaluation made by Bid Evaluation Committee taking into account the Operation & Maintenance costs for one year, is in line with the requirements contained in the bid documents, and is therefore quite in order. As previously mentioned, there was no requirement for the BEC to carry out an additional assessment of the bid on the basis of the whole life-cycle of the facility.*

*The Review Committee therefore recommends that an award made for the contract for “Construction of Bagatelle Water Treatment Plant (Design and Build) – Central Water Authority” on the basis of the ranking established by the BEC.*



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Bidder No.	Bidder	Bid Amount as read out as Public Opening (Inclusive of VAT)	Corrected Bid Amount (Inclusive of VAT)	Ranking
1	JV-OTV Colas (Maurice) Ltée – VEOLIA WATER – BASE OFFER	Rs. 1,379,189,165.00	Rs.1,378,936,164.00	4
	JV-OTV Colas (Maurice) Ltée – VEOLIA WATER – ALTERNATIVE OFFER	Rs. 1,301,181,692.00	Rs. 1,300,928,691.00	2
4	Joint Venture Sotravac/Biwater C2012/13	Rs. 1,349,949,255.93	Rs. 1,349,835,405.93	3
5	JV HWPC/First Bureau/HUPD-CWA C2012/13 – OPTION 2	Rs. 1,024,194,410.00	Rs. 1,024,194,437.00	1

**J. Findings**

1. The Panel is of view that the failure of the successful bidder to comply with the employer’s requirement as per para G(4) disqualifies it, and to that extent the evaluation committee was wrong to have assessed the bid on the alternative offer, qualified as option 2, when the question of option does not arise at all in the requirements.
2. Following the conclusion of the Financial Evaluation Report by the Bid Evaluation Committee, guidance was sought by the Bid Evaluation Committee. At that stage the Central Procurement Board ought to have given due consideration to the problems faced by the Bid Evaluation Committee. The Panel is of considered view that the Central Procurement Board ought to have exercised its power under Section 12(1) of the Public Procurement Act particularly as defined under para 1(d) and to request relevant professional or technical assistance from any appropriate person in Mauritius or elsewhere.
3. It is the Panel’s view that the Board had no power under the law to appoint a Review Committee under the Chairmanship of a Barrister which appears to have sat as an appellate body which quashed the decision of the Bid Evaluation Committee.

4. The Panel also notes from the reply of the Chairman of the Bid Evaluation Committee during the hearing that the successful bidder has not submitted any documentary evidence as to the requirement for specific construction, operation and maintenance experience with their bids.
5. In relation to the complaint that the successful bidder has quoted an abnormally low price, the Panel is of the view that the difference in price estimated by the Public Body and the price quoted by the successful bidder, as compared to the price of its close competitors should have rung the bell for a closer assessment. Given the technicalities of a “Design-Built-Operate contract” and the qualitative nature of the product required, the least expected of the Evaluation Committee was to proceed with a detailed scrutiny of the price quoted in respect of each of the items involved in the process. As an illustration, the Panel has noted the striking difference in price with respect to one item quoted for in rapid gravity filters section. The price quoted is Rs111,583.00 by the successful bidder as opposed to the price of Rs17,640,103.00 quoted by the Applicant JV-OTV/Colas (Maurice) Ltee/Veolia Water.

However, the Panel takes note of the fact that in the final analysis the Bid Evaluation Committee concluded that they were not in a position to make any recommendation for award.

#### **K. Decision**

In the light of our findings and discussions under paragraph J hereinabove, the Panel recommends a re-evaluation of all the bids with the assistance of experts in the relevant fields.

**(Said Toorbuth)**  
***Chairperson***

**(Siv Potayya)**  
***Member***

**(Jacques C. Nauvel)**  
***Member***

**Dated 31 October 2014**