

**INDEPENDENT REVIEW PANEL**

In the matter of:

**TSK Electronica y Electricidad S.A.**

**(Applicant)**

**v/s**

**Central Electricity Board**

**(Respondent)**

**(Cause No. 03/16/IRP)**

**Decision**

## A. History of the case

The project caters for the Redevelopment of Saint Louis Power Station – Design, Supply, Install and Commissioning of Diesel Power Plant of Capacity 60 MW +/- 10%.

The components of the project are:

- Three or four medium speed reciprocating (four stroke) diesel generating sets each rated not less than 15 MWe and with a total capacity of 60 MWe +/- 10%.
- Alternators and associated equipment
- Power transformers and auxiliary transformers
- Indoor 66 kV GIS substation
- Power plant switchgear and protection system
- Control & Instrumentation system
- DC power supply system
- Cables and earthing system
- Sludge and oily water treatment and incinerator system
- Radiator cooling system
- Compressed air system
- Fire fighting and detection system.
- CCTV camera
- Hot water heating system including steam drum, pumps, treated water tank, blow-down vessel, feed pumps, fuel and tank

heaters, boiler complete with isolation dampers and inspection doors.

- Two new 1000m<sup>3</sup> HFO storage tanks and fuel treatment system
- 2 two-flue chimneys in case of 4 engines or 1 common three-flue chimney in case of three engines, minimum 45 m high above ground level. The chimneys will be equipped with necessary continuous emission monitoring system (CEMS) to monitor exhaust gases.
- A new power station building including engine hall, mechanical annexes and electrical annexes.
- An emergency standby generator set

The project caters for the Design, Installation and Commissioning of three or four Diesel Engines at Saint Louis Power Station with a total capacity of 60 MW +/- 10%.

- Procuring Entity: Central Electricity Board
- Budget Allocated: MUR 4.2 Billion (excluding VAT)
- Method of Procurement: International Open Advertised Bidding

The International Open Advertised Bidding (CPB/20/2015) was published through a SPN in the dgMarket, AfDB website, CEB website, PPO website and the press on 3 July 2015. Furthermore, the invitation for bids was sent to embassies on 3 July 2015 and the Ministry of Foreign Affairs on 6 July 2015.

Potential bidders were invited to attend a pre-bid meeting and a site visit on Tuesday 04 August 2015 at 10.30 hrs (Mauritian time) at Saint Louis Power Station, Plaine Lauzun.

The closing date for the submission of bids was 01 October 2015 up to 13.30 hours at the Central Procurement Board (CPB). Out of Forty five potential bidders who purchased the bidding documents, only five bids were received. Public Opening was carried out on the same day at 14.00 hours in the Conference Room at the CPB.

The list of bidders and prices as read out in public opening is shown in table below:

No	Bidder	Bid Amount
1	DRA Projects (Pty) Ltd <b>(DRA)</b>	<i>Proposal for a Feasibility Study</i>
2	IMM/MATELEC S.A/MPG Mauritius Consortium <b>(IMM)</b>	EUR 74,641,164 and MUR 323,854,652
3	Burmeister & Wain Scandinavian Contractor A/S <b>(BWSC)</b>	EUR 83,989,404 and MUR 908,272,408
4	TSK Electronica y Electricidad S.A <b>(TSK)</b>	EUR 61,741,177 and MUR 635,990,962
5	AVIC - INTL/CCCE/ETERN Consortium <b>(AVIC)</b>	USD 55,076,764 + EUR 36,553,979 + MUR 841,366,625

## B. Evaluation

The Bid Evaluation Committee (BEC) was composed as per table below.

The BEC by a letter dated 6 October 2015 made a request to the CPB to seek technical assistance from the CEB Consulting Engineer for this project namely, Mott Mac Donald Ireland Ltd (MMDI), due to the complex nature of the project. Following the approval of the request, MMDI delegated Mr Fergal Collins to assist the BEC from Wednesday 14 October to Wednesday 28 October 2015.

A further request was made on 8 October 2015 to the CPB to seek the assistance of a qualified accountant to examine the financial criteria of the offers received. The request was approved on 15 October 2015 and Mr Navind Rambajun, Assistant Accountant General at the Treasury, Ministry of Finance and Economic Development was appointed to examine the financial responsiveness of the bidders.

**Composition of Bid Evaluation Committee:**

Name	Designation	Organisation	Function
<b>Mr. Hemchand Rai Heeroo</b>	Former Senior Energy Specialist	World Bank	(Chairperson & Registered Evaluator)
<b>Mr. Clement Li Cheng Sin Sam Soon</b>	Former Director (Maintenance & Assets)	Airports of Mauritius Ltd	(Member & Registered Evaluator)
<b>Mr. Rajiv Gopaul</b>	Senior Engineer (Mechanical)	Central Electricity Board	(Member & Registered Evaluator)
<b>Mr. Jivarettynum Moorghen</b>	Acting Chief Supply Chain Executive	Central Electricity Board	(Acting as Secretary)

In respect of completeness of Bids, TSK was found fully compliant. In respect of ***Evaluation and Qualification Criteria as per Part 2 of Section III of SBD*** the Bid Evaluation Committee found that:

***Bidder No. 4 - TSK Electronica y Electricidad S.A (TSK)***

*Bidder No 4 has not provided enough information to demonstrate contract management experience as per criterion 2.4.2 (a). This information will be requested in the event the bidder is found responsive.*

In respect of **Compliance with Mandatory Requirements as at Section III of SBD**, the Bid Evaluation Committee reported that:

***Bidder No. 4 - TSK Electronica y Electricidad S.A (TSK)***

*Bidder No. 4 has specified that it would not be able to provide a warranty of five years covering the extended defects liability period of 5 years for the alternators as per Clause GC 5.2.10 of the bidding documents. The bidder is providing 3 years in lieu of 5 years. This is considered as a material deviation as alternator is a critical item for the smooth operation of the generating plant. It is worth underlining that other bidders have priced the five year warranty and the said price has been included in their total evaluated bid price.*

*The functional guarantee of Bidder No. 4 is not according to the format provided in the bidding documents. This is treated as a minor deviation.*

*The proposed Power Transformer (11/66 kV) has country of origin from Vietnam which is not in the list of eligible countries. This is not in accordance to ITB 5.1 which states that all goods to be supplied under the contract and financed by the Bank shall have as their country of origin an eligible country of the Bank. The Power Transformer being a major component of the generation plant, this departure is considered as a material deviation.*

*Because of the above two material deviations, the offer of Bidder No. 4 is non-responsive and will therefore not be considered for further evaluation.*

**C. Notification of Award**

The Central Electricity Board through a letter dated 04 January 2016, informed the Applicant of the particulars of the successful bidders as follows:

*“Burmeister & Wain Scandinavian Contractor A/S of Postboks 235, Gydevang 35, DK-3450 Allerød, Danmark for the total evaluated contract price of EUR 85,185,404 plus MUR 823,992,094 excluding VAT”.*

#### **D. The Challenge**

On 08 January 2015, the Applicant challenged the award on the following grounds:

- “(a) The successful bidder’s bid should have been rejected as it does not have the lowest levelised evaluated unit cost. TSK avers that it has the lowest levelised evaluated unit cost of Euro 0.0941/discounted kWh compared to estimated Euro 0.0964/discounted kWh for the preferred bidder;*
- (b) TSK Electronica y Electricidad S.A was substantially responsive and should have been determined to be so;*
- (c) TSK avers that the Board has failed in its duty, laid down in Section 11(2) of the Public Procurement Act, to strive to achieve the highest standards of transparency and equity in the execution of its duties, taking into account transparency of process and decisions, fairness of treatment to all bidders and equality of opportunity to all bidders.”*

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

On 12 January 2016, the Public Body made the following reply to the challenge:

*“We wish to inform you that we have been advised by the Central Procurement Board that your bid has not been retained for award for the following reasons:*

- (a) TSK Electronica y Electricidad S.A (TSK) has specified that it would not be able to provide a warranty period of five years covering the extended defects liability period of five years as per Clause GC 5.2.10 of the bidding documents. The bidder is providing three years in lieu of five years which is a material deviation;*
- (b) The Power Transformer (11/66 kV) proposed to be imported is from a non-eligible country. This is in contradiction with the requirements at ITB 5.1 and is therefore a material deviation;*

*In view of the above two material deviations, the bid is non-responsive and has not been considered for computation of levelised cost.*

*Furthermore, TSK Electronica y Electricidad S.A has not provided enough information to demonstrate Contract Management Experience as per criterion 2.4.2(a) of Section III of the bidding documents.”*

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

On 18 January 2016, the Applicant seized the Independent Review Panel for review on the following grounds:

- (A) Applicant’s Bid ws substantially responsive and should have been determined to be so, as there was no major deviation in the Applicant’s proposal.*
- (B) The successful bidder’s bid should have been rejected as it does not have the lowest levelised evaluated unit cost. Applicant avers that it has the lowest levelised evaluated unit cost of Euro 0.0941/ discounted kWh compared to estimated Euro 0.0964/ discounted kWh for the preferred bidder.”*



## G. The Hearing

Hearings were held on 26 January, 25 February and 01 March 2016. Written submission was made by Applicant on 23 February, 08 March 2016 and by Respondent on 08 March 2016, after submission of his Statement of Reply on 28 January.

The Applicant was represented by Mr A. Domingue, SC together with Y. Caunhye, Counsel instructed by Attorney Mrs D. Ghose-Radhakeesoon, whereas the Respondent was represented by Mr R. Chetty, SC together with Mr Y. Reesaul, Counsel. The Central Procurement Board was represented by Mr D. Bissessur, State Counsel. The Successful Bidder was also represented by Mr G. Glover, SC together with Ms S Chuong, Counsel.

At the preliminary Hearing the Chairman of the Panel informed all present that the Respondent had issued a Certificate of Urgent Public Interest, and was therefore proceeding to award, and that the Panel was not empowered by Law to intervene in this process.

During Hearings, Mr R. Lapique representative of TSK, Mr R. Chowdharry, representative of the Central Electricity Board, as well as Mr Heeroo, Chairman of the Bid Evaluation Committee deposed and were cross-examined.

Mr Lapique attempted to show that the inclusion of a sheet of paper mentioning Vietnam as the country of origin of transformers was a mistake, and was not required, since Vietnam was not listed in the list of countries (included in TSK's Tender) from where equipment was being sourced, and that transformers were being sourced from other countries.

In respect of the Manufacturer's Guarantee, he admitted that his supplier could not give a guarantee as per requirements of the tender, but that TSK was willing to complement the Manufacturer's Guarantee for a further period of 2 years so that the Central Electricity Board would, *in fine* obtain the guarantees it requires.

The representatives of the Central Electricity Board and Bid Evaluation Committee both stated that the extended guarantee was required to be priced, and failure to provide this extended guarantee in the original bid was a major deviation, and could not be corrected after the submission of tenders. This is reflected in the written submission from the Central Electricity Board:

*TSK indicated it had the intention to provide an additional warranty at the expiry of the proposed warranty of 3 years for the Alternator. In fact, the bidder stated in the 'Deviation Sheet' that MAN and their alternator supplier (ABB) could not sign the Manufacturer's authorization with the current wording and that is not possible for them to give the 5 years of warranty for all the equipment as requested by the Respondent. TSK failed to price for this deviation as required. The onus was clearly on the bidder to express its future intentions in its initial offer and not at that stage.*

The chairman of the Bid Evaluation Committee also clarified one important aspect of TSK's deposition. He stated *inter alia* that the tender required the supply of several types of transformers, and that a Manufacturer's Guarantee was required for each type, and that the **sole** Manufacturer's Guarantee provided for transformers of 11/66 kV was from a manufacturer in Vietnam.

*The bidder submitted a Manufacturer's Authorization for 25 MVA 66/ 11 kV Power Transformer' from Vietnam only, no other Manufacturer's Authorization for '11/66 kV Power Transformer' from other suppliers were submitted.*

## **H. Findings**

There is no doubt that failure to provide an extended guarantee as stipulated in the Bidding Documents is a major deviation, as there is a cost to such extended guarantee, which the Applicant failed to include. Other bidders have provided for this extended guarantee, and have therefore included the cost thereof in their pricing.

A major deviation cannot be corrected after submission of tenders by whatever measures the bidder proposes. There is also no doubt that the period of guarantee required is 5 years, contrary to the Applicant's interpretation of specific condition 5.2.10. However, TSK did provide an undertaking that it would supplement the guarantee provided by its suppliers to meet the full requirements of Clause 5.2.10

*We hereby extend our full authorization and IV guarantee and warranty in accordance with Clause 5.2. of the General Conditions, with respect to the goods offered by the above firm .*

The latter Clause does not specify that the extended guarantee should come from the manufacturer or both the manufacturer and contractor. The only document specifying the source of the guarantee as being otherwise than what is stated in the Conditions of Contract (General and Particular) is the form provided in the Bidding Documents. The Panel is of opinion that the contractor may provide a guarantee for the equipment and that this guarantee would have an equivalent value to one coming from the manufacturer. It is obvious that what the Public Body was seeking was the comfort of a manufacturer showing confidence in his own equipment, but that was not reflected in the proposed Conditions of Contract.

In regard to the sourcing of 11/66 KV transformers, the Applicant has sought to prove by a convoluted mechanism that these were to be manufactured elsewhere, and that by a "typo mistake", a manufacturer's authorisation from Vietnam, a non-eligible country, was included in the bid.

Even if the Panel was to believe in the series of "mistakes" that led to the sourcing of these transformers being specified from Vietnam, the Public Body cannot be held responsible for a bidder's "mistakes", and has no obligation to allow the latter to correct these. Should this be allowed, then any disqualifying factor in any bid may be termed a mistake *à posteriori* and allowed to be corrected after submission of bids. This would make a farce of the whole tendering process.

**I. Decision**

The Panel therefore finds that this Application is devoid of merit, and it is therefore set aside.

**(R. Lalloo)**  
***Chairperson***

**(Mrs C. Sohun)**  
***Member***

**(V. Mulloo)**  
***Member***

**Dated 10<sup>th</sup> March 2016**