



Independent Review Panel

Van Oord Dredging and Marine Contractors bv

(Applicant)

v/s

Mauritius Ports Authority

(Respondent)

(Cause No. 18/16/IRP)

Decision

A. Background

A.1

The Mauritius Ports Authority is proceeding with the extension and strengthening of the Mauritius Container Terminal Quay with a view to accommodating larger vessels at Port-Louis Harbour. The work in this Contract is for the dredging in the port basin and access channel at Mauritius Container Terminal (MCT) and the navigational channel to the Multi-Purpose Terminal.

The works comprise mainly of the following:

- (a) Mobilisation of plant and equipment to carry out the work;
- (b) Dredging of seabed materials in the basin and channel at MCT, the channel to Quay 1 and at the Cruise Terminal;
- (c) Placement and trimming of dredged material into existing reclamation bunds at Fort William and Fort George and;
- (d) Demobilisation of plant and equipment after completion of the work.

A.2

Project Description: Extension and Strengthening of the Mauritius Container Terminal Quay Project- Contract MPA 297A/2015 - Dredging Works Package

Procuring Entity: Mauritius Ports Authority

Method of Procurement: Shortlist following Pre-qualification of Bidders

Margin of preference (if applicable): NIL.

Funding Agencies: Co-funded by Mauritius Ports Authority and Agence Francaise de Development.

A.3

This procurement was initiated following the pre-qualification of six (6) firms.

Bids were invited from six (6) pre-qualified Bidders on 12 January 2016 under the aegis of the CPB and the deadline for the submission of bids was set for 10th March 2016.

A Pre-bid meeting & site visit were held on 15 February 2016 and was attended by three of the prequalified Bidders in the presence of representatives from AECOM Middle East Ltd, the Consultants on the project. The Minutes of the Pre-bid meeting have been circulated to prequalified bidders on 23 February 2016.

MPA issued 3 clarifications and 4 Addenda during the bidding period as follows:

- Addendum No 1 - issued on 18 January 2016 to include a pre-bid meeting scheduled for 15 February 2016.
- Addendum No 2 - issued on 28 January 2016 responding to four (4) queries from bidders.
- Addendum No 3 - issued on 23 February 2016 amending Clause 1.13 of Preamble to BOQ
- Addendum No 4 - issued on 26 February 2016 addressing 12 queries from bidders.

A.4

The closing date for the submission of bids was fixed for Tuesday 10th March 2016 up to 13:30 hours at latest at the Central Procurement Board (CPB).

Public Opening was carried out on the same day at 14:00 hours in the Conference Room at the CPB and three (3) bids were received.

The names of the Bidders and the corresponding Bid prices as read out at the public opening are listed in Table below:

	Bidders Name	Letter of Bid duly signed	Bid Security Submitted (MUR 5,000,000 or USD 150,000 or Euro 125,000)	Bid Price MUR (Inclusive of VAT)
1	Jan de Nul Dredging Ltd (JDN)	Yes	Yes	1,750,072,225.25
2	Van Oord Dredging and Marine Contractors bv (VO)	Yes	Yes	1,620,882,018.75
3	Dredging International nv (DI)	Yes	Yes	1,665,616,159.96 (inclusive day works) 1,466,152,083.86

B. Evaluation

B.1

The Bid Evaluation Committee was composed as follows:

Mr. Telkraj PARBHUNATH - Deputy Director(CE), Ministry of Public Infrastructure & Land Transport. (Chairperson & Registered Evaluator)

Mr. Shakeel GOBURDHONE - Deputy Director General Mauritius Ports Authority. (Member & Registered Evaluator)

Mr. Dashwanyi JHUBOO - Lead Engineer, Ministry of Public Infrastructure & Land Transport. (Member & Registered Evaluator)

Mr Niraj TACOURI - Civil Engineer, Mauritius Ports Authority (Secretary)

The BEC also consulted the technical evaluation reports submitted by Mr. Juan Recio, the representative of the Consultants Messrs AECOM.

B.2

In respect of the Applicant, the Bid Evaluation Committee noted the following:

"Van Oord

Equipment proposed and capacity

The Bidder has proposed to use a self-propelled vessel "Arthemis" having a 7, 100KW cutter power or alternatively its sister vessel, the Athena, which has the same characteristics. With this equipment the bidder has claimed that material with an UCS of up to 90 MPa can be crushed/fragmented.

However, regarding the actual site conditions, the Bidder has stated that he does not accept the amendments to sub-clause 4.10 of the standard FIDIC Contract Conditions as laid down in the Particular Conditions in the Bid Documents, notably the following additions:

"information, if any, supplied to the Contractor concerning the geotechnical characteristics of the Site and its surroundings is in no way binding." And "The Contractor must not assume that exhaustive investigations have been done on the nature of the Site, he must carry out his own investigation work any time he considers it necessary for the proper execution of the Works and at his own cost."

The Bidder has stated that his offer is based on the factual information that has been provided in the bidding documents and on his interpretation thereof, and against which he has made an assessment of the (distribution of the) dredging quantities and the soil characteristics as listed in his Technical Proposal.

Moreover, the Bidder has stated that his offer "caters for the dredging of basalt with an UCS not exceeding 30 MPa and a Rock Quality Density (RQD) varying between 0% to 51%, with an average of 16%, and an estimated hourly production varying between 500 gross m³ and 800 gross m³".

With his knowledge that the Cutter Suction Dredger (CSD) proposed has proven to be capable of dredging harder and less fragmented rock, the bidder is not proposing to mobilise additional plant for this project, but has proposed that he be remunerated:

(a) By way of the operational Daywork rate for additional time spent as compared to the estimated 500 gross m³ per operational hour when the production drops below that level.

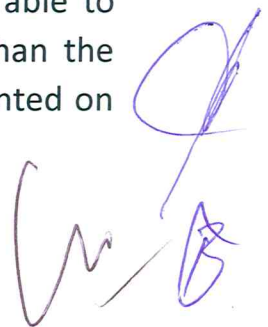
(b) For wear and tear costs for consumption of the cutter teeth in excess of 300 teeth and 2 adaptors per 10,000 gross m³ and costs of more than 3 cutter repairs per week.

The Bidder has also proposed an alternative basis for the pricing of his offer as follows:

"The Employer can execute an additional soil investigation campaign that is witnessed by the contractor, prior to commencement of the dredging operations, and which will serve as the basis to more accurately determine the actual quantitative distribution and/or qualitative conditions differing from his technical proposal, and on the basis of which an adjustment of the rates will be agreed."

AECOM's Comments on Equipment

AECOM has opined that the dredger proposed by VO is likely to be able to dredge up to 70 MPa UCS rock and there, at a much slower rate than the production rates stated by the Bidder. The Consultant has not commented on the proposal of the Bidder to carry out dredging of the hard material.



BEC Comments

1. The BEC considers that non-acceptance of the amendments to sub-clause 4.10 of the standard FIDIC Contract Conditions as laid down in the Particular Conditions in the Bid Documents to be not acceptable.

2. The BEC has taken note that as per the Bidder's statement, the equipment proposed has the capacity to undertake the dredging works. However, he has stated that dredging of materials greater than 30 MPa will be undertaken at additional costs i.e MUR 925,000 per hour for the CSD only.”

C. Notification of Award

The Mauritius Ports Authority through a letter dated 04 August 2016, informed the Applicant of the particulars of the Selected Bidders as follows:

Bidder	Address	Price of Contract (MUR)
Dredging International N.V.	Scheldedijk 30-Haven 1025, 2070 Zwijndrecht Belgium	1,665,616,159,96 Inclusive of VAT

D. The Challenge

On 09 August 2016, the Applicant challenged the award on the following grounds:

“MPA did not fairly evaluate the tender by giving insufficient weight to the lowest bid.”

E. The Reply to Challenge

On 24th August 2016, the MPA replied to the Challenge as follows:

(1) The bidding document required the Contractor to mobilize equipment capable of dredging rock having a UCS of up to 90MPa. However, Van Oord Dredging and Marine Contractors bv has qualified its proposal as hereunder:

- *Your offer was based on dredging rocks having UCS not exceeding 30MPa with RQD between 0 and 51% with an average of 16% and an estimated hourly production rate varying between 500 gross m³ and 800 gross m³.*

(2) Dredging of rock having UCS exceeding 30MPa is therefore subject to additional costs with a final bid price which cannot be determined now. In your bid, you do not propose to mobilize additional plant for this project, but have proposed that you be remunerated additionally when the production drops below the level of 500 m³ per hour:

(a) By way of the operational Daywork rate (MUR 925.000 per hour for the operational Dredger) for additional time spent; and

(b) For wear and tear costs for consumption of the cutter teeth in excess of 300 teeth and 2 adaptors per 10,000 gross m³ and costs of more than 3 cutter repairs per week.

For the above reasons, your bid cannot be considered to be the lowest.

(3) You have also submitted terms and conditions which are considered by the Bid Evaluation Committee (BEC) to be qualifications attached to your offer which transfer risks and responsibilities to the client. The BEC has noted that the qualifications are against the provisions of the tender conditions, conditions of contract and specifications in the Bid Document and therefore not acceptable.

(4) In light of the above, your bid has been found by the Bid Evaluation Committee to be non-responsive to the requirements of the Bidding Document.

F. Grounds for Review

On 22 August 2016, the Applicant seized the Independent Review Panel for review on the following grounds:

“MPA did not fairly and transparently evaluate the tenders and has not given sufficient weight to the lowest bid.”



G. The Hearing

Hearings were held on 30 August and 20 September 2016. Written submissions were received at the Independent Review Panel on 31st August and 19th September 2016, from the Respondent, and on 12th September from the Applicant.

The Applicant was represented by Ms N. Behary Panray, Counsel instructed by Mr J. Gujadhur, SA whereas the Respondent was represented by Mr L. Aujayeb, Ag. Assistant Solicitor General together with Mr D. Bissessur, State Counsel. The successful bidder was represented by Mr G Glover, SC and Mr H. Duval, SC together with Ms S. Chuong.

H. Findings

The whole case revolves around the issue of rock: its quantity, quality (in terms of compressive strength), its measurement and pricing.

It may be appropriate to summarise the intentions of the Employer as stated in the bid documents and clarifications:

1. Excavation involves the breaking and removal of material that includes silt, sand and granular material, and rock. Whereas the former do not involve different equipment or technology, rock, on the other hand is excavated by specialized equipment. Rock encountered will also be of varying hardness.
2. Rock may therefore be defined as material which may not be excavated economically by normal everyday equipment, at the same rate as other material. Depending on the “everyday” equipment intended to be used, therefore, different tenderers may have different definitions of rock, which explains the huge difference in appreciation of the amount of rock to be removed in this tender. The PB has defined rock as material that cannot be economically removed by the Cutter Suction Dredger (CSD).
3. The Employer or Public Body (PB) has caused to be made various standard investigations and has determined that the volume of rock to be excavated to be in the region of 60 000 m³.

4. The PB has also determined that the maximum hardness to be encountered in rock excavation, expressed as Unconfined Compressive Strength (UCS) in Mega Pascal (MPa) would be 90 MPa.
5. However, the PB does not want to be open to risks of extra claims, and although the results of its geo-technical investigations were communicated to tenderers, it did not ask the latter to accept those as gospel truth, and has asked each tenderer to carry out his own investigations to determine the volume and hardness of rock to be excavated, and price his unit excavation rates accordingly.
6. The PB did not also want to measure or re-measure the volume of rock during implementation. It has therefore prescribed in the Bill of Quantities an all-in unit rate for soil and rock excavation (of hardness or UCS < 90 MPa) which will apply to all excavated material. Thus measurement will involve only measurement of excavated trench from the dimensions in drawings + allowances.
7. Such all-in excavation rates are common in works involving “dry” excavation, when the Employer may or may not give his own estimates of rock. In such a case, the tenderer would estimate the amount of rock that would be excavated, and from there determine the time involvement of specialised machinery. The cost to him of total excavation will therefore determine his all-in unit rate.
8. The tenderer in the hypothetical “dry” works described above, takes a risk if he undervalues the percentage of rock, and thus the unit all-in excavation rate, but a tenderer who submits a bid under those conditions is deemed to accept the risks involved. On the other hand, if he over-values the percentage of rock in the excavation, he runs the risk of quoting a high all-in unit rate, and pricing himself out of the competition.
9. In the case under review, the PB has, in effect, similarly shifted the responsibility of evaluating the amount of rock to be excavated from itself to the tenderer. Nevertheless, it is perfectly acceptable to expect tenderers to acquaint themselves and be familiar with site conditions before submitting a tender. The Bidding Documents have also



specifically requested bidders to carry out their own investigations to assess the amount of rock to be excavated.

10. The Bidding Documents have also included in Preamble 1.13 the manner in which the excavation rates should be determined:

The Contractor to complete unit rates in the Bill of Quantities for capital dredging, together with an extra over rate for dredging rock of the basalt type. The extra over rate to include the cost of alternative dredging methods (not involving explosives) for materials of which, in the Contractor's opinion, the CSD will not be capable to achieve grade in the basalt rock area. Payment as per contract for the extra over rate to be payable for the quantity of rock, as calculated by the Contractor in its tender (Provisionally set at 60,000m³ =virtual lump sum) to be made fixed after this quantity for basalt rock has been accepted by the Employer at Award. These rates shall be inclusive of all dredging, filling and stockpiling in the reclamation, installation of bunds, water level controls, collection of fines, meeting discharge allowable standards, etc. as further described in the Contractor's Work Method Statements and required by the Specifications.

Thus, the tenderer is bound to give his own assessment of the amount of rock, whether he accepts the PB's estimates or not. The amount of rock shall not be measured thereafter, except for rock of UCS > 90 MPa, if any is encountered. There cannot be any dispute or extra claims during implementation in respect of the amount of rock.

11. The PB has similarly determined that the hardest basalt to be encountered during excavation will not exceed a UCS of 90 MPa. However, since it could not have a 100% confidence in investigations, it has provided an opportunity for the eventual Contractor to claim extra by requesting for a schedule rate for excavation of basalt of UCS > 90 MPa. This rate, however, is not included in the tender price, as it is not assorted with any quantity. The tenderer in this case is not taking any risk.

12. Lastly, the PB has provided in the Bills of Quantities (BoQ) items called "Method Related Charges", whereby tenderers may price for items not

included in the BoQ. Thus, a tenderer may price for the mobilization and running of any equipment he thinks appropriate *inter alia* to deal with any condition not anticipated by the PB, such as an unexpectedly high amount of rock.

H.2

Tenderers were uneasy about this arrangement and the risks involved. The matter was raised at the pre-bid meeting held on 15th February, as evidenced by the extract of minutes below.

Extract of Minutes of Pre-bid meeting held on 15 February 2016

Bidders queried the mechanism for payment of hard material in the bidding document indicated a provision of 60,000m³ of rock as a virtual lump sum as included at Clause 1.13 of the Preamble to the BOQ.

It was explained that as at this point in time it could not be ascertained which dredging equipment was being proposed by each bidder and therefore the hardness of material which would be treated by their respective equipment would differ from bidder to bidder.

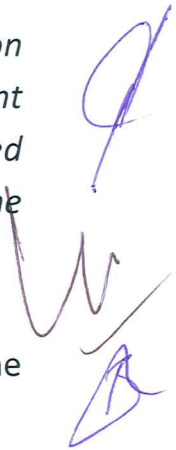
Furthermore, it was also explained that a series of geotechnical investigations (boreholes and vibrocores) had been carried out as well as a seismic survey of the area. The results are included as part of the bidding documents. It is in the light of these investigations that the Engineer had assessed that about 60,000m³ of hard material of up to 90MPa could be encountered and need to be dredged.

Accordingly, the document allows for this volume to be considered and spread in the dredging rates and same has been mentioned to be considered as a virtual lump sum.

MPA stated that the quantity of rocks payable was assessed based on boreholes, coring and seismic test results. Accordingly, the consultant determined that the volume of the rocks to be dredged will not exceed 60,000m³. The rate for this volume of rocks is to be included in the rate for the dredging.

H.3

The above lays the foundations for the determination of issues raised in the Application for Review.



All tenderers were aware that they were to make their own assessment of the amount of rock and price accordingly. However, once the all-in rate has been determined as from this assessment, no payment for rock shall be made, and rock shall not be measured.

H.4

It is obvious that the bid of the Applicant cannot be considered the lowest, since it was assorted with various conditions that would have brought the final price to unknown levels. However, the Applicant has raised several issues in his Statement of Case and subsequent submissions that deserve further consideration.

H.5

a) The Applicant rejects the assertion made by the Respondent that the bidding documents require to mobilize equipment capable of rock having an UCS of up to 90 MPa. There is no such statement or provision in the bidding documents;

b) In fact, the value of 90 MPa was only mentioned during the pre-bid meeting that was held on 15 February 2016;

The pre-bid meeting is part of the bidding process, and the Minutes of the meeting which were circulated to all bidders form part of the bidding documents.

H.6

The foregoing notwithstanding, the equipment proposed for the Works, being amongst the largest and most powerful cutter suction dredgers in the world, is perfectly adequate and capable of dredging the in-situ materials as mentioned in the bidding documents as well as material up having an UCS of up to 90 MPa and this is clearly and unequivocally stated in the Applicants bid submission

The Public Body has not contested this. The Applicant has mentioned that the same equipment will be used for rock cutting of any hardness up to UCS 90 MPa, but has qualified his tender by imposing a condition that he be paid for the extra run time and extra wear and tear of his equipment for any rock of hardness exceeding his own estimate of 30 MPa.

H.7

The Applicant rejects that the Geotechnical Report that was issued through Addendum No.4, which were the replies to Applicant's request for Clarification dated 12th February 2016, indicated the presence of "rock having a compressive strength of 90 MPa".

The Applicant from the documents provided interpreted the hardest material being "basalt with an UCS not exceeding 30 MPA or less and an RQD varying between 0% and 51%, with an average of 16%". This is a fair and reasonable interpretation of the information provided and reflects the upper range of materials identified in the said Geotechnical Report.

Subsequent documents circulated which would supersede any other document issued previously with contradictory information, unequivocally identifies the maximum hardness to be included in the tenderer's pricing as 90 MPa. It is therefore unnecessary for the Panel to check whether the geo-technical report referred to mentioned a maximum hardness of 30 MPa, or could reasonably be interpreted to mean this.

Most importantly, each tenderer was supposed to conduct his own investigation, and estimate the quantity of rock and its varying hardness at different locations and depths, and price accordingly as a "virtual lump sum" leading to an all-in rate for excavation. The tenderer takes the responsibility for his assessment so as to eliminate all possibilities of extra claims during implementation arising out information relating to rock given by the Employer/Public Body or the interpretation thereof by the tenderer/contractor. The Applicant adopts at the tender stage the very attitude that the Public Body has sought to avoid during implementation.

H.8

The Applicant has estimated that the intended cutter suction dredger (Artemis) will "achieve an hourly production varying between 500 gross m³ and 800 gross m³ based on a 80 operational hour week based on the anticipated material.

The Applicant proposed to be remunerated for material harder or less fragmented than that described above "by way of the operational Dayworks rate for the additional time spent as compared to the estimated 500 gross m³



per operational hour when the production drops below that level, supplemented with wear and tear costs for consumption of cutter teeth in excess of 300 teeth and 2 adaptors per 10, 000 gross m³ and cost of more than 3 cutter repairs per week; for your information the CSD will be equipped with a Esco 680 (rock) cutter head.

The tender was supposed to be comprehensive and unconditional. This proposal for remuneration of the Applicant was found to be unacceptable because it is linked to the amount, hardness and degree of fragmentation of the rock instead of a “virtual lump sum” that would stay fixed and independent of these factors during implementation. Moreover, the Applicant does not establish the relation between what he proposes to be measured for payment and the volume and hardness of rock, making it impossible to foretell the amount eventually payable to him.

H.9

Due to the fact that the production of a cutter suction dredger in hard material depends (amongst others) on both the UCS and the RQD, the Applicant avers that it is not possible and reasonable to give a single unit rate for the dredging of such hard material, as is evidenced by Applicant's wording in its bid to the effect that "CSD production being a function of both UCS and RQD" it is "impossible, however, to quote a single extra-over rate for the dredging material that is harder or less fragmented than that on which our offer is based". This is exactly the reason why the Applicant phrased its proposal as ... above.

The Applicant did not have to do what he suggests was an impossible task. After ascertaining the volume and quality of rock, he could in his workings determine the rate applicable for each category that he has identified. The sum of the amounts thus determined for each category would be the “virtual lump sum” for the total volume of rock, which could then be spread amongst the excavation items to provide all-in excavation rates, which would remain firm and unchanged.

H.10

The Applicant avers that in preparing the tender documents the Respondent failed to address the importance of the RQD, by only characterizing hard

material and rock by the UCS and that consequently, bidders had no other option than to address this themselves also given the replies given by the Respondent to queries raised in requests for clarification in writing and during the pre-bid meeting.

With regard to the assertion that "the bid from the Applicant was therefore considered to be open ended, as the additional operational daywork charges along with the wear and tear costs cannot be determined at this stage", the Applicant submits that it is the unconfirmed quantity and quality (UCS and RQD) of rock that is open ended and the Applicant has provided a fair a reasonable method by which the additional cost can be calculated.

Addressed in H.7 and H.8 above.

H.11

Indeed, by valuing the removal of the rock in this manner there is no mark-up included for risk.

The Applicant and any other tenderer was free to apply any mark-up for risk in the build-up of the "virtual lump sum".

H.12

The wording detailed in the preamble that is reproduced hereunder with a 'virtual lump sum' is ambiguous and lacks clarity and certainty and therefore does not create a level playing field between prospective bidders.

Unless it is proved that a bidder had privileged information not available to other bidders, the accusation of not providing a level playing field does not stand. Documentary and other evidence with the Panel indicate that the same information was made available to all bidders. The Applicant has also not been able to prove his assertions elsewhere that the information provided by the Public Body was hazy and lacking in "certainty". As indicated above, and in Clause 4.10 of the Special Conditions of Contract, the bidder is supposed to make his own assessment of the quality and volume of rock to be excavated.

H.13

The Applicant and the other bidders therefore had no choice but to select how to deal with this unresolved issue in their bid documents

It would seem that one tenderer did submit an unqualified bid. This is dealt with further below.




H.14

The Respondent avers that the Applicant has submitted terms and conditions, which comprise qualifications. The Applicant acknowledges to have addressed a number of contractual issues. However, there is no qualification in the event that the materials encountered are as foreseen in the bidding documents.

The clarifications are only relevant insofar as materials are encountered that are different from those in the bidding documents.

These clarifications were deemed necessary because of the ambiguities in the bidding documents and included to enable the Respondent to make a fair comparison of Applicant's bid with that of other bidders.

What the Applicant terms clarifications are in fact qualifications and conditions to his tender, which are contradictory to the intent of the Bidding Documents.

H.15

The other assertions of the Applicant are repetitions or unproved allegations. However, the Panel wishes to highlight that the Bid Evaluation Committee is not compelled by Law to ask for clarifications, from any bidder, and even less from one who has qualified his tender.

The Panel notes the following remarks from the Bid Evaluation Committee:

*Moreover, Van Oord has also qualified his offer by inserting " ... **and other than the exceptions and exclusions as listed in the Attachment under Section 4 of this submission**" in his bid submission form at paragraph (a).*

*Furthermore, the BEC has also noted that Dredging International NV has in its Bid Submission Form at paragraph (a) stated that "**We, the undersigned, declare that We have examined and have no reservations to the Bidding Documents including Clarifications No. 1 to 3, Addenda 1 to 4 and the Minutes of Pre-Bid Meeting issued in accordance with Instructions to Bidders (ITB) 9.**"*

The Applicant has submitted a qualified and conditional bid, which cannot be accepted. The Selected Bidder has expressed his lack of reservations to the Bidding Documents and clarifications in the form of bid which has precedence on all other parts of his bid. However, the Panel has noted that the Selected Bidder has made a number of statements in his method statement, some of which look suspiciously similar to conditions that contradict the spirit of the


tender, and to conditions imposed therein which the tenderer is supposed to accept without reservations. The Bid Evaluation Committee has rightly reported that those are unacceptable. However, if those were conditions, they cannot just be waived, as they would make the bid conditional and qualified.

The Bid Evaluation Committee further notes that: *The BEC has taken note of certain statements made by Dredging International N.V in its Proposal Assumptions and in its method statement, which do not reflect the requirements of the bid documents. Furthermore, the BEC has also noted that Dredging International NV has in its Bid Submission Form at paragraph (a) stated that "We, the undersigned, declare that We have examined and have no reservations to the Bidding Documents including Clarifications No. 1 to 3, Addenda 1 to 4 and the Minutes of Pre-Bid Meeting issued in accordance with Instructions to Bidders (ITB) 9."*

As the Bid Submission Form has priority over other submissions in the bid, the BEC considers, that the offer from Dredging International N.V is substantially responsive to the bid requirements despite the statements made which do not reflect the provisions of the bid documents. All the provisions of the bid document have to be maintained.

Nevertheless, the Panel is still uneasy about the apparent contradiction between those statements and the Bid Submission Form. Although it is true that the latter takes precedence over any statement made in the methodology statement or elsewhere, the Panel feels that the real intentions of the Selected Bidder should be ascertained before negotiations.

The Applicant has said that all tenderers have had to come up with solutions to palliate the lack of reliable information in relation to rock. If this is true, and it was the intention of the Selected Bidder to impose conditions, these cannot be waived by the Public Body. It should be the Selected Bidder who has to withdraw any statements that suggest methods of measurement or payment other than prescribed. If the assertions of the Applicant are correct, then given the chance, the Selected Bidder would insist on maintaining his statements/conditions without which, still assuming the Applicant's assertions are correct, he would stand to lose huge amounts of money.



However, the Panel cannot order a re-evaluation unless it finds merit in the Application. In the words of the Bid Evaluation Committee: *The BEC has noted that the lowest bid is from Van Oord. However, this offer cannot be accepted as the price quoted is not final and will be subject to increases in cost, given that the Bidder has proposed to be remunerated :*

i. by way of the operational Daywork rate, which is quoted at MUR 925,000 per hour, for additional time spent for dredging hard material with a production rate less than the estimated 500 gross m³ per operational hour when the production drops below that level, and

ii. for wear and tear costs for consumption of th1 cutter teeth in excess of 300 teeth and 2 adaptors per 10,000 gross m³ and costs of more than 3 cutter repairs per week.

Moreover, Van Oord has also qualified his offer by inserting " ... and other than the exceptions and exclusions as listed in the Attachment under Section 4 of this submission" in his bid submission form at paragraph (a).


Therefore, whatever be the outcome of any negotiations/clarifications with the Selected Bidder, the bid of the Applicant cannot be considered for award. Also, on the basis of his bid, and taking into account his Bid Submission Form, the Selected Bidder is compliant, and the *".. BEC has noted that Dredging International is the only bidder to have made a firm offer as per the requirements of the BOQ and has allowed extra over rates for the dredging of 26,812 m³ weathered basalt and 36, 1482 m³ high strength basalt based on the Bidder's own assessment of soil characteristics."*

The Panel, therefore, cannot find merit in the Application, and consequently cannot order a re-evaluation. Nevertheless, it strongly recommends completion of the evaluation exercise by seeking clarification from the Selected Bidder as to the contradiction between the statements made in his tender and the Bid Submission Form. If the Selected Bidder withdraws those statements unreservedly, as mere suggestions, complying thus with his own Bid Submission Form, then the Bid Evaluation Committee was correct in its conclusions. If, however, when given the chance, the Selected Bidder chooses to maintain any or all of these statements that contradict the bid documents

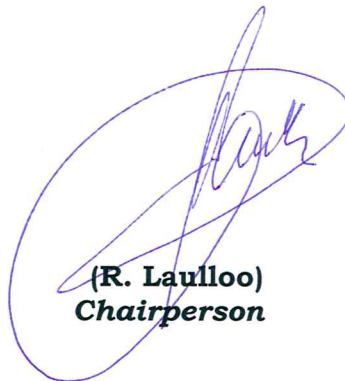
and conditions contained therein, then the Public Body would have no alternative than to annul the bidding exercise.

I. Decision

In view of the foregoing, the Panel does not find merit in the Application, which is therefore dismissed.



(V. Mulloo)
Member



(R. Laulloo)
Chairperson



(R. Ragnuth)
Member

Dated 26 September 2016



