Independent Review Panel

In the matter of:

Safety Construction Co. Ltd

(Applicant)

v/s

Commission for Agriculture and Others (Chief Commissioner's Office)

Rodrigues Regional Assembly

(Respondent)

(Cause No. 19/16/IRP)

Decision

A. History of the case

The Chief Commissioner's Office, Commission for Agriculture, Rodrigues Regional Assembly invited Sealed Bids through Open National Bidding from eligible and qualified bidders for Construction of Lycée Agri-Business in Rodrigues.

The works consist essentially of:

- Earthworks
- Construction of a two storey building with pitched roof to house 3 classrooms (each with floor area ==5012m2) and an office of floor area approximately 50m2 .
- Construction of building(s) for canteen and changing rooms/toilets.
- The structures of the buildings consist of reinforced concrete foundation, columns, beams and slab. The works shall also include, but shall not be limited to the following: blockwork, finishes, painting, doors & windows, electrical/plumbing works, etc ...
- Miscellaneous civil works including construction of masonry retaining wall, footpath, etc.

Bids were invited through Open National Bidding on 22 June 2016. The Closing date was the 22nd July 2016. Three (3) Bids were received.

S.N	Name of Bidder	Amount Quoted Exclusive of VAT (MUR)	Amount Quoted inclusive of VAT (MUR)
1.	RBRD Construction Ltd	17,038,120.00	19,593,838.00
2.	Laxmanbhai & Co (Mtius) Ltd	15,652,172.91	18,000,000.00
3.	Safety Construction Co. Ltd	14,271,810.00	16,412,581.50

B. Evaluation

The Bid Evaluation Committee was chaired by a Civil Engineer, and comprised as members another Civil Engineer and one Inspector of Works, Commission

for Public Infrastructure of the Rodrigues Regional Assembly. A General Services Executive, Commission for Agriculture acted as Secretary.

In respect of the Applicant's bid, the Bid Evaluation Committee noted in ***Criteria for Qualification***: *"Not acceptable as the Bank Certificate contains the term "testimonial" and leading to rejection as per Directive No. 24 of Public Procurement Office".*

The Bid Evaluation Committee therefore concluded that in respect of ***General Responsiveness,*** *"the BEC has decided to reject the bids of --- --- and Safely Construction Co Ltd as their Bank Certificates are not compliant to the directives of the Procurement Policy Office.*

C. Notification of Award

The Chief Commissioner's Office (Rodrigues Regional Assembly) through a letter dated 18 August 2016, informed the Applicant of the particulars of the successful bidders as follows:

Bidder	*Address*	*Price of Contract (MUR)*
Laxmanbhai and Co. (Mauritius) Ltd	*Jean Tac, Terre Rouge, Rodrigues*	*17,935,669.56 Inclusive of VAT*

D. The Challenge

On 22 August 2016, the Applicant challenged the award on the following grounds:

> *"1. Safety Construction Co. Ltd is responsive to all requirements and meet all Technical Criteria. Furthermore, all documents were submitted along the bid.*
>
> *2. Our bidding price is lower to the price of the Successful Bidder."*

E. The Reply to Challenge

On 25 August 2016, the Public Body made the following reply to the challenge:

> *"We have noticed that your Company's bidding price is lower than the price of the Successful Bidder. However, Safety Construction Co. Ltd is*

not responsive to all requirements. The document you have submitted as Bank Certificate is not substantially similar to the format provided in the Bidding documents. Therefore it is not compliant to Directive No. 24 dated 01 July 2015 (issued pursuant to Section 7(b) of the Public Procurement Act) of the Procurement Policy Office."

F. Grounds for Review

On 30 August 2016, the Applicant seized the Independent Review Panel for review on the following grounds:

- *"The Applicant is not satisfied with the decision of the Public Body for the following reasons:*

  a. The said Public Body was wrong to have determined that the Applicant's bid was not responsive to all requirements, as stated in a letter dated 25.08.16 from the Public Body.

  b. The Bank Certificate submitted by the Applicant is substantially similar and does comply with the format provided in the Bidding documents since it contains all the information that was required in substance.

  c. The said Public Body was wrong for not choosing the Applicant's bid for award inasmuch as the Applicant's bidding price was in any event lower than the price of the Successful Bidder as per the said letter dated 25.08.16 from the said Public Body.

  d. The said Public Body was wrong for failing to choose the Applicant's bid for award since the Public Body has omitted to consider the various contracts successfully performed by the Applicant during the past years

- *The Applicant is a very professional and committed to excellence construction company which has so far successfully completed several projects of similar nature and complexity such as the:*

a. *Construction of 24 Housing Units and Associated Infrastructure Works at pointe aux Sables: contract amount = MUR 36,254,150.00*

b. *Construction of New Fire Station at Tamarin: contract amount = MUR 43,373,317.50*

c. *Extension to Rose Belle Pre-Vocational School: contract amount = MUR 8,744,485*

d. *Construction of New Classroom Block at Sir Satcam Boolell Government School at Sebastopol: contract amount = MUR 20,265,127.50*

Further, the applicant is carrying a project for the Rodrigues Regional Assembly, namely the Construction of Community Centre at Coromandel, Rodrigues and has so far completed works to more than 85%."

G. Sittings

Sittings were held on 07 and 20 September 2016.

The Applicant was represented by Mr J. Maudarbaccus, Counsel whereas the Respondent was represented by Mr I. Cooshna, Counsel.

Apart for the Statement of Case submitted by the Applicant on the 30th August along with the Application for Review, and "comments" submitted by the Departmental Head of the Respondent on 20th September, no other submissions were made by either party. Counsel for the Respondent stated that he would not make any submissions, leaving the matter in the hands of the Panel. Both litigants agreed that a Hearing was not warranted. Nonetheless, the Panel will look into the merits of the case and make a determination.

H. Issues

The only reason why the Applicant's bid has been rejected is because the Bid Evaluation Committee believes that the Bank Certificate submitted with his

tender is not substantially similar to the format included in the bidding documents. The impugned Bank Certificate is reproduced below:

SBM

REF:061GFIA161970005

BANK CERTIFICATE

Procurement Reference No: **RRA/COM/AGR 20 OF 2016**
Name of Project: **CONSTRUCTION OF LYCEE AGRI-BUSINESS AT SAINT GABRIEL**

For: COMMISSION FOR AGRICULTURE
CHIEF COMMISSIONER'S OFFICE - RODRIGUES REGIONAL ASSEMBLY

We **SBM BANK (MAURITIUS) LTD** of SBM Tower, 1, Queen Elizabeth II Avenue, Port Louis certifies that the firm **SAFETY CONSTRUCTION CO LTD** (BRN: C07016028) of Royal Road Camp De Masque Pave for the purposes of submitting a bid for the above-mentioned project has, at the present time, the financial means and resources for the proper execution of the contract (if awarded) with a minimum of liquid assets and/or credit facilities of **MUR3,000,000.00 (RUPEES THREE MILLION ONLY)** net of other contractual commitments with the Bank.

This testimonial is based on available information and without in any way engaging the liability of the bank and any of its officers in case the information are found to be untrue, incorrect or erroneous.

Dated at Port Louis on 15JUL2016

The Panel is at a loss to understand how the above certificate is in any way not substantially similar to the prescribed format. The heading clearly shows the intention of the bank to issue a certificate, as required. The only difference with the prescribed format is an additional paragraph which contains a disclaimer, a not unusual procedure. This disclaimer, however, describes the certificate as a "testimonial" in the following sentence: *"This **testimonial** is based on available information ...."*

The bank is clearly using the word "testimonial" to describe a document entitled a "Bank Certificate", and intends the words to be synonymous. The use of the word "testimonial" in the additional paragraph does not alter the meaning of the Heading "Bank Certificate" or the word "certifies" in the main body of the bank certificate, which is almost an exact copy of the required format. The Panel can only conclude that the rejection of the Applicant's bid was the result of a gross mistake in evaluation, which, fortunately, is less likely to occur in the future, after the issue of Directive 31 which supersedes Directives 18 and 24.

I. Decision

The Panel therefore orders an annulment of the decision to reject the Applicant's bid because of an alleged non-conformity of his bank certificate, and of the decision to award to the Selected Bidder. The Panel also orders a fresh evaluation of bids taking the above in consideration.

(R. Laulloo)
Chairperson

(Mrs C. Sohun)
Member

(V. Mulloo)
Member

Dated 26 September 2016