



Independent Review Panel

Decision No. 23/17

In the matter of:

**ARTELIA Eau & Environnement (France)
in association with GIBB (Mauritius) Ltd**

(Applicant)

v/s

Ministry of Energy and Public Utilities

(Respondent)

(Cause No. 22/17/IRP)

Decision

A. History of the case

A.1 Background

The objective of this procurement exercise is to appoint a Consultant for the Design Review and Construction Supervision of the Rivière des Anguilles dam. The procuring entity is the Ministry of Energy and Public Utilities, represented by the Water Resources Unit. The cost for the Consultancy Services has been estimated at MUR 325 Million inclusive of 15% VAT and is planned to be totally financed by the Government of Mauritius.

A.2 Scope of Services

The services will be carried out in two phases as follows:

PHASE I (Design Review- 12 months and Pre-award services)

Study of available data, Additional data collection, Complementary Field Investigations and Analysis, Review of the proposed dam and its design features, carry out any amendments to the proposed dam design based on the review exercise, Design the partial road realignment, Review the Economic Analysis, Carry out the Detailed Design and prepare the bidding documents. Pre-Qualification of Contractors. The Consultant shall be responsible for the design of the foundation treatment and spillway appropriate to the site geological strata. The Consultant shall carry out additional geological/geotechnical investigations required to ensure that this is adequate for this purpose.

The Phase 1 is expected to be completed within a period of 12 months with an estimated 41man-months input.

PHASE II (Construction Design and Supervision services- 42 months and Defects Liability Period- 12 months)

Contract Management and Construction Supervision, Assisting the Client in day-to-day activities, Preparation of Detailed Construction Drawings, Implement recommendations of the Environmental Management Plan and to supervise and monitor same, Supervision of construction works and quarrying activities, including ensuring quality control of materials used in the works,

Processing payment certificates, Analysis and determination of contractual claims, Preparation of post completion report and as-made drawings, Assist the Client in settling of disputes and provision of post construction services during Defects Liability Period.

The Phase II is expected to be completed within a period of 54 months, including a 12 months Defects Liability Period with an estimated 223man-months input.

A.3 Bidding Process

Two Standard Bidding Documents, namely, “Selection of Consultants for Lump Sum Contract and Selection of Consultants for Time-based Contract issued in August 2016 by the Public Procurement Office were customized for this procurement process. The approval to invite proposals was received from CPB on 31 January 2017.

Proposals from qualified consultancy firms were invited on 06 February 2017. The Invitation for Proposal was uploaded on the Public Procurement Portal and advertised in the local newspaper. The Request for Proposal dated 06 February 2017 was uploaded on the Public Procurement Portal. The bidding exercise was carried out by an Open International Bidding Method.

The Technical Proposal and Financial Proposal were to be submitted in separate envelopes.

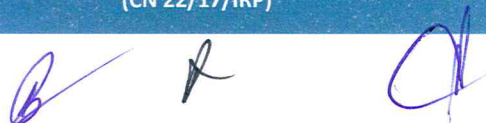
A.4 Pre-Proposal Conference

A pre-proposal Conference was held on Wednesday 08 March 2017 at 09.30 hrs at the Water Resources Unit followed by a site visit on the same day. Thirteen (13) prospective bidders attended the pre-proposal Conference and twelve (12) of them attended the site visit.

A.5 Addendum/Clarifications

During the pre-bid period, the Public Body issued the following documents which were uploaded on the public procurement portal on 28 March 2017:

- ❖ One addendum



- ❖ Clarifications to the queries received at the Water Resources Unit
- ❖ Minutes of the pre-bid conference
- ❖ (d) Extracts of documents handed over to prospective bidders during the pre-bid Conference

A.6 Bid Submission and Opening

The closing date for the submission of bids was fixed for Tuesday 11 April 2017 up to 13.30hrs (local time) at latest at the Central Procurement Board (CPB). The Public opening of bids was carried out on Tuesday 11 April 2017 at 14.00 hrs in the Conference Room at the CPB. Thirteen (13) proposals were received and the order of opening was as follows:

| Bidder No. | Consultancy Firm / Joint Venture |
|------------|--|
| 1. | Studio Ing. G. Pietrangeli.s.r.l in association with Sub-Consultants: Somah Associates Ltd, Enviro-Consult Ltd & Pem & Associates Ltd (Italy) |
| 2. | Artelia Eau & Environnement (France) in association with GIBB (Mtius) |
| 3. | Wapcos Ltd (India) |
| 4. | JV HWPC/HCSC/HEC (China) |
| 5. | ISL Ingenierie SAS (France) |
| 6. | MahabGhodss Consulting Engineering Co (MGCE) (Iran) in association with Desai & Associates Ltd |
| 7. | JV Indo Canadian Consultancy Services Ltd (ICCS)/Energy Infratech Pvt Ltd (EIPL) (India) |
| 8. | Renardet SA & Partners Consulting Engineers LLC- (Sultanate of Oman) in association with Advanced Mechanical & Electrical Service Ltd, Enviro-Consult Ltd, Pem & Associates Ltd, Kritanand Balaghee (Land Surveyor) & Somah Associates Ltd |
| 9. | SMEC International Pty Ltd (Australia) in association with VYYAASS Consulting Engineer Ltd (Mauritius) |
| 10. | Ove Arup & Partners International Ltd (UK) in association with Arup Sigma Ltd (Mauritius) & G. Karavokyris & Partners SA (Athens) |
| 11. | Idom Consulting, Engineering, Architecture S.A.U – (Spain) in association with Dohwa Engineering Co Ltd (Korea) & Mega Design Ltd – (Mauritius) |
| 12. | Zhejiang Design Institute of Water Conservancy & Hydroelectric Power (China) |
| 13. | JV Su-Yapi Engineering & Consulting Inc. (Turkey)/Consulting Engineering Centre (Jordan) and Luxconsult (Mtius) Ltd |

B. Evaluation

B.1 Composition of the Bid Evaluation Committee (BEC) and Official Status of each member including profession

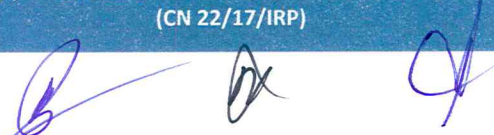
| | |
|---------------------------|--|
| Mr. R.Mungra | Engineer- Self Employed (Team Leader & registered evaluator) |
| Mr. G. Seeburrun | Head of Construction Supervision – Irrigation Authority (Member & registered evaluator) |
| Mr. D. Jahajeeah | Lead Engineer, Water Resources Unit (Member & registered evaluator) |
| Mrs R.Ramrekha Deepchand. | Engineer/Senior Engineer, Water Resources Unit (Acting as Secretary) From 17/04/17 to 24/04/17 |
| Mrs T. Ramsahai- Mirville | Hydrological Technician, Water Resources Unit (Acting as Secretary) As from 28/04/17 |

B.2 Eligibility

CIDB Registration

The Public Body was apparently confused about the requirements for registration with the Construction Industry Development Board (CIDB) and felt that it was necessary to consult the latter during the bidding process:

“--- further to a query received by a bidder during the pre-bid meeting, which was later submitted in writing to the Public Body, the advice of the CIDB was sought as to the field in which bidders shall be registered with the CIDB for this procurement exercise as the bid document did not specify any field of registration. The advice of the CIDB was sought and was communicated to prospective bidders vide a set of Clarification issued on 28 March 2017. According to the reply to Query No 34 “Under section 1.8.1 of the ITC, Consultants shall be registered with the Construction Industry Development



Board **both in the field of Civil Engineering and Project Management** to be eligible to participate in the selection process.””

The Bid Evaluation Committee therefore initially checked for compliance with the above requirement, and as a result, found that 7 out of the 13 bidders did not meet *the CIDB registration eligibility criteria*.

However, the Central Procurement Board (CPB) thereafter intervened and the Bid Evaluation Committee was informed that:

- ❖ *“A meeting was held with officers of the Ministry of Energy and Public Utilities and Water Resources Unit on Tuesday 13 June 2017 to discuss “Clarifications to queries raised by Consultants” as issued by the Public Body [---] issued on 28 March 2017. This was issued without the approval of the Central Procurement Board.*
- ❖ *The reply to one of the queries (No 34) has had the effect of changing the qualification criteria of participants to the RFP by bringing in the requirement of CIDB registration in Project Management. To be effective, the change in qualifications required should have been notified in an addendum and not in the form of clarification.*
- ❖ *Consequently, during discussions, it was agreed that since the Consultants had not been advised in the proper manner, this change in qualification requirement should not be taken into account at time of evaluation and should be ignored.*
- ❖ *In view of the foregoing, the Board has decided that evaluation of proposals should be carried out without any modification to the requirements regarding registration of consultants with CIDB (as per ITC 1.8.1).”*

As a result, the Bid Evaluation Committee reassessed the compliance of bidders with CIDB registration requirements, and found that only the following two bidders failed to *comply with the requirements of CIDB Registration as spelt out in Clause 1.8.1 of the ITC*.

| Bidder | Findings |
|--|---|
| <p><i>Renardet SA & Partners Consulting Engineers LLC- (Sultanate of Oman) in association with Sub-Consultants Advanced Mechanical & Electrical Service Ltd, Enviro-Consult Ltd, Pem& Associates Ltd, KritanandBalaghee (Land Surveyor) & Somah Associates Ltd</i></p> | <p><i>Lead Partner not registered at all with CIDB</i></p> |
| <p><i>JV Su-Yapi Engineering & Consulting Inc. (Turkey)/Consulting Engineering Centre (Jordan) and Luxconsult (Mtius) Ltd as sub-consultant</i></p> | <p><i>Only the Lead Partner in the JV, Su Yapi is registered with CIDB. The second partner in the JV, Consulting Engineering Centre (Jordan) is not registered at all with CIDB nor is there a registration for the JV.</i></p> |

The Panel does not believe that the tender process was vitiated as a result of the above tergiversations, but feels, nevertheless, that all parties should be fully aware of the processes that led to the final result of evaluation.

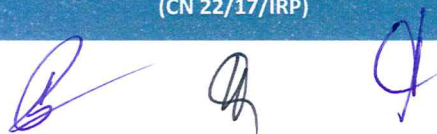
Completeness of Bids

The BEC noted that all the eleven remaining “*bidders have complied with the requirements of Clause 3.4 of the ITC. Their bids are considered responsive and are retained for further evaluation, namely for the detailed technical evaluation as per the criteria approved by the CPB [---]*”

B.3 Technical Evaluation

After checking for compliance to mandatory requirements for qualification for technical evaluation and marking, the Bid Evaluation Committee reported as follows:

“compliance of Bidders to the Mandatory Requirements to qualify for full technical evaluation and marking is given in Table [below]. It will be seen that only two Bidders, namely Pietrangeli and Artelia qualified for full technical evaluation and marking after having satisfied all the related qualification requirements.”



Summary of Bidders' Compliance to Mandatory Qualification Requirements

| Bidder (Short Form) | CIDB Registration | Specific Experience of Consultant | | | Key Staff Qualification and Competence | | | Eligible for Full Technical Evaluation (Yes/No) |
|---------------------------|-------------------|---|--|---|---|-----------------------------------|------------------------|---|
| | | General Experience in dams (Min.20yrs) | Specific Design / Rockfill dam (Min2Nos) | Specific Supervision /Rockfill dam (Min 2 Nos) | Resident Engineer | Project Manager/ Dam Expert | Geotechnical Expert | |
| Pietrangeli | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | YES |
| Artelia | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | YES |
| Wapcos | ✓ | ✓ | X | X | - | - | - | No |
| HWPC | ✓ | ✓ | X | ✓ | - | - | - | No |
| ISL | ✓ | ✓ | ✓ | ✓ | X | ✓ | ✓ | No |
| Mahab | ✓ | ✓ | X | X | - | - | - | No |
| Ghodss | | | | | | | | |
| ICCS | ✓ | ✓ | ✓ | X | - | - | - | No |
| Renardet | X | - | - | - | - | - | - | No |
| SMEC | ✓ | ✓ | ✓ | ✓ | ✓ | X | ✓ | No |
| Ove Arup | ✓ | ✓ | X | ✓ | - | - | - | No |
| Idom | ✓ | X | ✓ | X | - | - | - | No |
| Zhejiang | ✓ | ✓ | ✓ | ✓ | X | X | X | No |
| Su- Yapi | X | - | - | - | - | - | - | No |

Thereafter, after a detailed technical evaluation of the two qualified bidders, the Bid Evaluation Committee awarded the following scores to the two above-mentioned bidders:

Summary of Overall Technical Scores

| SN | Evaluation Criteria | Maximum Marks | Pietrangeli | Artelia |
|----|--|---------------|-------------|-------------|
| 1 | Specific experience of the Consultant relevant to the assignment | 10 | 10 | 10 |
| 2 | (a) Technical approach and methodology | | | |
| | (i) Understanding of the TOR | 7 | 6.3 | 6.3 |
| | (ii) Proposed Methodology | 20 | 18 | 18 |
| | (iii) Liaison | 3 | 2.7 | 2.7 |
| | (b) Work Plan | 4 | 3.6 | 3.6 |
| | (c) Organisation and staffing | | | |
| | (i) Time allocation among key Personnel | 3 | 2.4 | 2.4 |
| | (ii) Activity and Personnel Schedule | 3 | 2.7 | 2.4 |
| | Sub Total | 40 | 35.7 | 35.4 |

| SN | Evaluation Criteria | Maximum Marks | Pietrangeli | Artelia |
|--------------|---|---------------|--------------|--------------|
| 3 | Staff Qualifications and Competence | 40 | 39.12 | 33.46 |
| 4 | Transfer of Knowledge | 5 | 4.5 | 4.5 |
| 5 | Participation by Nationals among proposed key staff | 5 | 0 | 0 |
| Total | | 100 | 89.32 | 83.36 |

According to the Bid Evaluation Committee, therefore, both the above bidders qualified for financial evaluation.

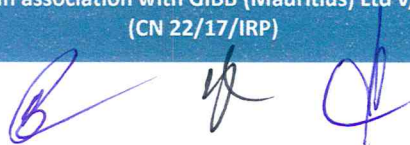
B.4 Financial Evaluation

Arithmetical Corrections

In line with the requirements of the Bidding Documents, the Bid Evaluation Committee proceeded first of all with arithmetical corrections, with the following results:

Corrected price for Pietrangeli

| Phase | | Currency | |
|---------------------|------------------|-----------|------------|
| | | (EURO) | (MUR) |
| Phase I | Quoted | 778,080 | 2,036,700 |
| Phase II | Quoted | 2,440,900 | 27,860,700 |
| | After Correction | 2,556,900 | 28,001,400 |
| Total Phases I & II | Quoted | 3,218,980 | 29,897,400 |
| | After Correction | 3,334,980 | 30,038,100 |



Corrected price for Artelia

| Phase | | Currency | |
|---------------------|------------------|-----------|------------|
| | | (EURO) | (MUR) |
| Phase I | Quoted | 924,850 | 7,139,600 |
| | After Correction | 924,850 | 7,339,600 |
| Phase II | Quoted | 2,438,450 | 44,836,100 |
| Total Phases I & II | Quoted | 3,363,300 | 51,975,700 |
| | After Correction | 3,363,300 | 52,175,700 |

Financial Scores

After application of the formula $S_f = 100 \times F_m/F$ to the converted corrected prices, the Bid Evaluation Committee awarded the following financial scores to the two bidders:

Financial Scores

| SN | Name of Firm | Financial Score (S_f) |
|----|--------------|---------------------------|
| 1. | Pietrangeli | 100 |
| 2. | Artelia | 87.20 |

Combined Scores

As a result of the above, and upon calculation of the combined scores ($S = 0.8 S_t + 0.2 S_f$), the Bid Evaluation Committee reached the following conclusion:

Total Combined Technical and Financial Scores and Ranking

| SN | Name of Firm | Technical Score (S _t) | Financial Score (S _f) | Combined Score (S) | Rank |
|----|--------------------|-----------------------------------|-----------------------------------|--------------------|-----------------------|
| 1. | Pietrangeli | 89.32 | 100 | 91.46 | 1st |
| 2. | Artelia | 83.36 | 87.20 | 84.13 | 2nd |

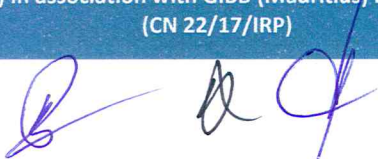
The Bid Evaluation Committee made the following recommendation:

“Following the combined technical and financial appraisal, the BEC concluded that M/S Studio Ing. G. Pietrangeli s.r.l in association with Sub-Consultants: Somah Associates Ltd, Enviro-Consult Ltd & Pem & Associates Ltd (Pietrangeli) has achieved the highest combined technical and financial score (91.46 pts) and qualifies for an award. However, during the evaluation, the BEC came across the following issues as discussed under paragraph 3.2.1 above and paragraph 11.3.3 of the technical evaluation report:

- a) *A discrepancy has been observed between the man-month input in the financial proposal and the technical proposal (Form TECH-7) during phase II as regards the following experts. The Consultant will have to confirm that the man-month input for the following experts during phase II will be as per the Technical proposal (From TECH-7) and as shown below:*

| S.N | Experts | | Input in Technical Proposal | Input in Financial Proposal | Remuneration rate |
|-----|-----------------------------|-------|-----------------------------|-----------------------------|-------------------|
| 1 | Assistant Resident Engineer | Home | 16 | 12 | EUR10,000 |
| | | Field | 28 | 24 | EUR 14,000 |
| 2 | Electrical Engineer | Home | 1.5 | 0.5 | EUR 10,000 |
| | | Field | 0 | 0 | |
| 3 | Mechanical Engineer | Home | 1.5 | 0.5 | EUR 10,000 |
| | | Field | 0 | 0 | |
| 4 | Road Engineer | Home | 0 | 0 | |
| | | Field | 2 | 1 | MUR 140,700 |

- b) *In line with the above adjustment concerning the man-month input, the contract sum has increased from EUR 3,218,980.00 and MUR*



29,897,400.00 exclusive of local taxes to EUR 3,334,980.00 and MUR 30,038,100.00 exclusive of local taxes. Accordingly, the Consultant will have to confirm the corrected bid amount.

(c) In the financial form ‘Consultant’s Representations regarding Costs and Charges’ (Re Annex 4), the Consultant has computed the daily rate based on 21 working days per month. The bid document specifies the following:

(i) For any services carried out by the Experts under PHASE I, the man-month input for periods of less than one month shall be calculated on an hourly basis for actual time spent in the Consultant’s home office and directly attributable to the services (on hour being equivalent to 1/208th of a month) and on a calendar day basis for time spent away from home office (one day being equivalent to 1/26th of a month).

(ii) For any services carried out by the Experts under PHASE II, the man-month input for periods of less than one month shall be calculated on an hourly basis for actual time spent in the Consultant’s home office and directly attributable to the Services (one hour being equivalent to 1/176th of a month) and on a calendar-day basis for time spent away from home office (one day being equivalent to 1/30th of a month)

In light of the above, the Consultant will have to confirm that the daily rates will be as per the provision of the bid document.

(d) The BEC has noted that the bidder has allowed for only 18 international flights in Phase I (lump sum contract) under Reimbursable Expenses (Form FIN-5) whereas in Form TECH-7 (Phase I), the foreign experts will effect 20 trips to Mauritius. The bidder shall be requested to confirm that the foreign experts will effect the number of trips to Mauritius as indicated in Form TECH-7 phase I at no extra cost to the client.

(e) *The proposed Electrical Engineer and Mechanical Engineer have less than 10 years' experience in their respective field of expertise and do not satisfy the minimum requirements of ten years as spelt out at clause 12.1 'Profile of Experts' of the Terms of Reference. The Consultant will have to replace these two experts by qualified personnel at no extra cost to the Client.*

In light of the above, the BEC recommended to the CPB on 6th July 2017 that clarification/ confirmation be sought from Pietrangeli on the issues mentioned above before proceeding further with the overall evaluation. In a reply to CPB's letter dated 10 July 2017, Pietrangeli confirmed their agreement to all the issues raised by the CPB [---]"

C. Notification of Award

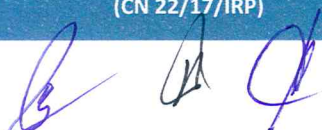
The Ministry of Energy and Public Utilities through a letter dated 28 July 2017, informed the Applicant of the particulars of the successful bidder as follows:

"Studio ING. G. Pietrangeli s.r.l in association with Sub-Consultants Somah Associates Ltd, Enviro-Consult Ltd & Pem & associates Ltd for the corrected amount of EUR 3,334,980.00 (Three million three hundred and thirty four thousand, and nine hundred and eighty only) and MUR 30,038,100.00 (Thirty million, thirty eight thousand and one hundred only), exclusive of local taxes."

D. The Challenge

On 03 August 2017, the Applicant challenged the procurement on the following grounds:

"1. It is our contention that the financial offer of the Successful Bidder is abnormally low and, as such, the capacity of the Successful Bidder to perform efficiently the Contract, as defined in the IFP, is questionable. While our prices, quoted in EURO and that quoted by the Successful Bidder is similar, the respective prices quoted in Mauritian rupees ("MUR") are far apart (the MUR price of the Successful Bidder is about 56% of price quoted by us). We believe that the price quoted by the Successful Bidder is unreasonable in relation with the MUR portion as the



requested supervision services, as per the RFP, are relatively substantial and needs a strong local component. We therefore aver that the Successful Bidder would not be in a position to execute, in full compliance with the bidding documents, the Project with the price they quoted. We are further of the opinion that the Ministry has failed to properly evaluate the bid of the Successful Bidder in light of the abnormally low price quoted by the Successful Bidder.

2. *Further, the Successful Bidder lacks regional experience for the Project as required under paragraph 3.4(a)(i) of the bidding Data Sheet (as defined in the bidding documents). It is averred that the Successful Bidder suffered from substantial difficulties in executing various contracts in the Indian Ocean Region. Two contracts which were allocated to the Successful Bidder were terminated by the Public Utilities Corporation (PUC) in the Seychelles for non-performance. The said contracts were in relation to the following projects:*

- ***Non Revenue Water Reduction, Seychelles***
- ***Weirs/Treatment Plants Rehabilitation, Seychelles.***

Furthermore, we understand also that the experience of Studio Pietrangelli is mainly as Contractor's Engineer (mostly for Salini Company) rather than Owner's engineer. We therefore aver, under this ground, that the Ministry has failed to properly evaluate the bid of the Successful Bidder in light of its past experience in similar projects. As such, we are of the opinion that the Ministry should request clarifications from the Successful Bidder on this aspect.

3. *We are also of the view that our bid has not been properly evaluated as per sections 37(9) and (11) of the Act. In our bid, we relied substantially on our recent experience in the Consulting Engineering Services for the Detailed Design and Construction Supervision of the Bagatelle Dam Project, which was successfully implemented by the Ministry. Given that the Bagatelle Dam Project and the Project bear important similarities, we of the opinion that we were the most qualified for the Project and that, as such, our bid was not properly evaluated. We*

presented our bid together with our sub-consultant, Gibb (Mauritius) Ltd, one of the biggest engineering and consulting firm in Mauritius. We failed to understand, and we seek clarifications on same, how the credentials and experience of Gibb (Mauritius) Ltd could have been discarded for the present matter. Again, we are of the opinion that the Ministry failed to give due consideration to our experience and that same resulted in our bid being wrongly evaluated.

4. *As per paragraph 5.7 of the IFP, the bid which has scored the highest combined technical and financial score shall be selected. In light of the above, it is our case that the Successful Bidder lacks the required experience and capabilities to be selected and that the Ministry should request the required clarifications from the Successful Bidder.*

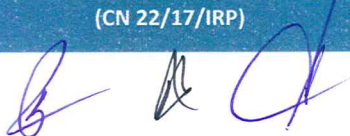
For the reasons given above, we are therefore challenging the decision of the Ministry and we request a re-evaluation of the bids on full compliance and adherence to all requirements as spelt out in the bidding documents.

We also request that all relevant documents, submitted by the Successful Bidder and considered by the Ministry, be made available to us.”

E. The Reply to Challenge

On 08 August 2017, the Public Body made the following reply to the challenge:

- “(a) Regarding paragraph 1 of the Grounds of Challenge, your contention that the price quoted by the selected bidder is abnormally low is not correct as you may wish to note that the difference in price as quoted by the selected bidder compared to your bid is less than 15% which is considered not abnormal;*
- (b) Regarding Paragraph 2 clause 3.4(a)(i) of the data sheet specifies that the consultant or the lead partner shall have at least 20 years of experience in Dam design and construction supervision;*
 - (i) In the case of a proposal from a Consultant, the latter shall have undertaken at least two (2) detailed designs and two*



(2) construction supervisions of dams of similar nature and complexity during the last twenty-five (25) years.

- (ii) In the case of a proposal of a joint venture/consortium/association, all parties combined shall have undertaken at least two (2) detailed designs and two (2) construction supervisions of dams of similar nature and complexity during the last twenty-five (25) years. The Lead Partner shall have undertaken at least one (1) detailed design and one (1) construction supervision of dam of similar nature and complexity during the last twenty-five years (25) years.*

The selected bidder has the required experience and meets the above requirements. Furthermore, according to Clause 1.8.2 of the Instructions to Consultants of the bidding document, the bidder is not ineligible. For qualification purposes, only assignments for which the Consultant was legally contracted by the client as a Corporation or as one of the major firms within a joint venture were considered during evaluation.

- (c) Regarding Paragraph 3, all the proposals have been evaluated according to the criteria and methodology set out in the bidding document. The qualifications and experience of both successful and aggrieved bidders have been properly evaluated and both bidders have achieved the required pass mark in their technical proposals for further evaluation of their financial proposals; and*
- (d) Regarding Paragraph 4, the selected bidder has both the required experience and qualifications which satisfy the requirements of the bidding document. The proposal which has scored the highest combined technical and financial score has thus been selected.*

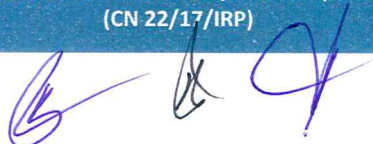
In addition, we wish to reassure you that the evaluation has been carried with due diligence. However, your request for submission of documents submitted by the successful bidder cannot be accepted in view of the following provisions contained in the Public Procurement Act:

As per Section 78(2) of the PPA “No information relating to the examination, evaluation and comparison of bids shall be disclosed to bidders or to any other person not involved officially in the examination, evaluation or comparison of bids or in the decision on which bid should be accepted, except as provided in section 37 of the Act.”

F. Grounds for Review

On 14 August 2017, the Applicant seized the Independent Review Panel for review on the following grounds:

- “1. The Public Body wrongly appraised the bid of the Successful Bidder inasmuch as the successful bidder would not be in a position to execute, in full compliance with the bidding documents, the consultancy engineering services and supervision of the Riviere des Anguilles Dam (the “Project”) with the price it quoted. Given that the prices quoted in Mauritian Rupees (“MUR”) by the Successful Bidder and the Applicant are far apart (i.e. a difference of about 56%), it is averred that the price quoted by the Successful Bidder is abnormally low and, as such, the capacity of the Successful bidder to perform efficiently the Project, especially for supervision services, as defined in the IFP, is questionable.*
- 2. The Public Body wrongly restricted itself to the wordings of paragraph 3.4(a)(i) of the Bidding Data sheet (as defined in the bidding documents) and failed to fully appraise the experience of the Successful Bidder. In fact, the Successful Bidder lacks regional experience for the Project inasmuch as the Successful Bidder suffered from substantial difficulties in executing similar projects in the Indian Ocean Region. Two contracts which were allocated to the Successful Bidder in the Seychelles were terminated by the relevant authorities for non-performance. Additionally, the Public Body failed to request relevant clarifications from the Successful Bidder as ought to.*

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3. *The Public Body failed to ensure a fair procurement process by not properly evaluated the bid of the Applicant, as per section 37(9) and (11) of the Public Procurement Act 2006, and failed to give due consideration to the experience and capabilities of the Applicant.*
4. *The Public Body is wrong to state the Successful Bidder has scored the highest combined technical and financial score inasmuch as the Successful Bidder lacks the required experience and capabilities to fully execute the Project in full compliance and adherence to all requirements as spelt out in the bidding documents.”*

G. The Hearing

Hearings were held on 22 and 31 August 2017. Statement of Reply from Respondent was received on 25 August 2017 and Reply to the Respondent’s Statement of Reply was received on 26 August 2017 from Applicant.

The Applicant was represented by Counsel, Mr B. Francois and Mr A. Goolamally whereas the Respondent was represented by Mr N. Meettook, State Counsel.

H. Issues

H.1

The main contention of the Applicant is that the Bidding Documents have been wrongly established, in that bidders were allowed to specify varying construction periods, which would allow the submission of bids based on different estimates of amount of work to be performed.

H.2

The Applicant also contends that *“the financial offer of the Successful Bidder is abnormally low and debatable, thereby effectively undermining its capacity to efficiently perform its obligations arising under the Contract, as defined in the Invitation for Proposals [----]”*

I. Findings

I.1 CIDB Speciality Registration

The Panel would like, first of all, to draw attention to the bizarre moves of the Public Body in respect of Construction Industry Development Board Registration.

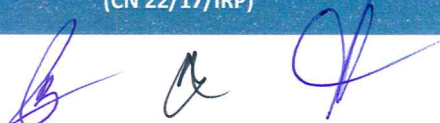
Having specified in the Bidding Documents, under ITC 1.8.1, the statutory requirements in respect of registration with the Construction Industry Development Board, the Public Body replied to a query, after consultation with the CIDB that: *“Under section 1.8.1 of the ITC, Consultants shall be registered with the Construction Industry Development Board both in the field of Civil Engineering and Project Management to be eligible to participate in the selection process.”* (Please see B.2 above)

The Panel is concerned that the Public Body was not able to specify or clarify the requirements for eligibility in respect of this tender. Nothing in the Public Procurement Act, or the Construction Industry Development Board Act or Regulations allows the CIDB to influence the outcome of a bidding exercise. Furthermore, the Panel fails to see how a contract for design and construction supervision requires registration in the field of Project Management, for which the requirements for registration are specified in Section 3 of the *“Regulations made by the Minister, after consultation with the Council, under section 34 of the Construction Industry Development Board Act*

3. Registration of consultant or contractor

(c) No firm of project management shall be registered as a consultant in the field of project management in construction unless the firm is under the control of a project manager.”

Thus, a firm of Consultants, with extensive experience in Design and Supervision of Dams and other Civil Engineering works, would be ineligible to continue participation in this tender if headed by a Registered Civil Engineer who is not a project manager as defined under the abovementioned Regulations. The ridicule of this purported advice from the CIDB is even more evident when one looks at this definition of “project manager” in the



abovementioned Regulations. However, once conveyed to prospective bidders, the requirement becomes mandatory, and the Bid Evaluation Committee was bound to take it into consideration during evaluation. It is to be noted that this change to bidding requirements was included in a list of written replies to queries for clarification, which has the same effect as an addendum. If this is not considered to be the case, then the reply to query number 21 (see below) would also have to be ignored.

However, the Panel has additionally considered the following:

- The above reply to the query did not deter any of the prospective bidders, including those who were not registered as consultants in the field of project management, from submitting a bid
- The end result of the evaluation process would not be altered, whether or not the Bid Evaluation Committee disregarded the requirement that *“Consultants shall be registered with the Construction Industry Development Board both in the field of Civil Engineering and Project Management to be eligible to participate in the selection process.”*

The Panel can therefore conclude that the process was not vitiated, but wishes to stress that Public Bodies, if unable to define their own requirements, should consult, in the first instance, the CPB, or the PPO, and their legal advisers.

I.2 Number of Qualified Bidders

The Panel could not help but notice that, out of thirteen bidders, only two survived the evaluation process to the point of financial evaluation. Although this project can be said to be far from uninteresting, yet it did not attract the better consulting firms or better bids. The only conclusion to be drawn from this fact is that this kind of “free for all” bidding process is not adapted to such specialised consultancy tenders, and the Public Body would have been better served by invitation to specific consultancy firms after establishment of a short list.

I.3 Duration of Construction Period

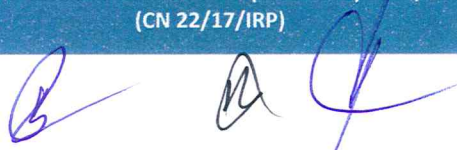
In reply to a query (number 21) to the effect that: *“We note that the fee structure for Phase 2 is time based which we assume is to allow for some variance to the contract length that may occur during the construction stage. In theory, a bidder could make his financial bid say 10% more competitive if he proposes a reduction in the construction period from 44 months to 40 months. In order to avoid a situation whereby a bidder proposes a shorter construction timescale to make his bid more competitive, please confirm that all bidders will be assessed on the same Phase 2 timeline, i.e. 44 months as stated in the RFP?”*, the Public Body replied that: ***“The tentative duration of Phase II is 42 months with a 12-month Defects Liability Period.***

The bidder may propose a different schedule for the construction period which should be within a margin of -10% of the tentative construction period of 42 months with full justifications.”

The proper reply, in the opinion of the Panel, should have been in the affirmative, that *“all bidders will be assessed on the same Phase 2 timeline, i.e. 44 months as stated in the RFP”*. However, the fact that the Public Body chose to maintain the liberty of bidders to specify their own construction periods, and be assessed thereon, does not affect the validity of the process.

The effect of the above reply was to limit variations in proposed construction periods to 10%, which the Public Body considered as having a minimal effect on the overall marking of the bidder. More importantly, the Public Body asked for ***“full justifications”*** from any bidder proposing a construction period that is different from the one proposed by the Public Body.

A bidder may use the freedom to specify his own construction period to specify an arbitrarily short period so as to derive an advantage during financial evaluation. Thereafter, if the bidder is successful, he will specify an unrealistic construction period, thereby imposing undue constraints on construction contractors, and increase construction bid prices. However, a Public Body may decide that the time gained in dam operation resulting from shorter construction periods is important enough to make those an element of competition amongst bidders for consultancy services, and to accept variations



in proposed construction periods if the bidder can show in his methodology, or otherwise, how he will achieve such shorter construction periods.

The Panel has often repeated that it will not consider such claims of flaws in Bidding Documents, if the bidder has not raised the matter at any time prior to submitting a bid. But in this case, the Applicant did submit a query, to which a reply was obtained, basically maintaining the freedom of bidders to propose varying construction periods, albeit with restrictions. The Applicant claims that, after the issue of the reply, it was no longer possible, for lack of time, to query the issue further. Time constraints could not have deterred the Applicant from commenting on the Terms of Reference in his bid, but the Applicant did not do so. Instead he chose to derive full advantage of the freedom to specify shorter construction periods, and only complained when that failed to secure him any advantage.

In the light of the above, the Panel concludes that the freedom to propose a different schedule for the construction period, with the restrictions imposed that variations ***“should be within a margin of -10% of the tentative construction period of 42 months with full justifications”*** did not vitiate the tender process. In fact, the Selected Bidder proposed a construction period that did not vary from the tentative period proposed by the Public Body, and the Applicant did propose a construction period approximately shorter by 10% of the tentative one, without any effect on the result of the evaluation process.

1.4 Financial Offer of Selected Bidder

The Applicant has claimed that, in certain aspects, the financial offer of the Selected Bidder is so low as to prevent him from successfully implement the services.

The Bid Evaluation Committee has looked into the disparity in prices between the two bidders and reported that:

- *The amount quoted by both bidders are within the estimated amount [--]*
- *The price difference between the two bidders is mainly due to the higher man month's rates quoted by Artelia as compared to Pietrangeli.*

- [–] the reimbursable expenses for Artelia is higher than that of Pietrangeli

The Panel, after careful examination of the rates quoted by both bidders, concurs with the Bid Evaluation Committee, and does not find the bid of the Selected Bidder abnormally low.

I.5 Lack of Regional Experience of Selected Bidder

Experience in the Region was not a specific requirement of the Bidding Documents in respect of bidders, but each member of proposed staff of each bidder was assessed and evaluated according to regional experience, which the Bid Evaluation Committee noted' "[–] includes experience in Small Island Development States and SADC countries." The Panel is satisfied that the evaluation of staff of each bidder as to regional experience has been correctly carried out.

J. Decision

In the light of the above, the Panel decides that there is no merit in this Application for Review.



(Reshad Laulloo)
Chairperson



(Ramsamy Rajanah)
Member



(Rajsingh Ragnuth)
Member

Dated 14 September 2017

