

INDEPENDENT REVIEW PANEL

In the matter of:

RG/EDCC TRIOLET JV

(Applicant)

v/s

Ministry of Youth & Sports

(Respondent)

(Cause No. 16/14/IRP)

Decision

A. Background

1. The project, which is to be executed on a Design and Build Basis, consists of the Construction of a New International Multipurpose Sports Complex at Triolet on a plot of land of an extent of 2A15. It is stipulated in the bidding document that the various sport facilities should be of international norm so as to be able to organise competitions and training sessions and must provide adequate infrastructure to that effect. The project must be on a design and build basis.
2. Bids were invited from local contractors through Open Advertised Bidding in the newspapers on 14 November 2013, and on the Public Procurement Office website and the closing date which was initially fixed to 09 January 2014, was, following request from potential bidders, extended by Addendum No. 1 to 20 February 2014.

3. In the meantime, Addendum No. 2 was issued on 10 February 2014 which was subsequently followed by a letter dated 13 February 2014, with a significant precision as to the manner the three Badminton Courts are to be attached to the sports hall.
4. At the public opening of the bids on 20 February 2014 in the conference room of the Central Procurement Board, the names of the eight bidders were read out.
5. A Bid Evaluation Committee was set up to look into the responsiveness of the bidders to the requirements of the employer. The Bid Evaluation Committee was subsequently assisted by a Technical Committee to assess the Mechanical, Electrical, Air-Conditioning and five tightly component of four substantially responsive bids retained for further consideration.
6. By letter dated 29 April 2014, the bidders were notified of the identity of the successful bidder, for a sum of Rs172,450,350 including of a contingency sum of Rs5 M and VAT.

B. The Challenge

In accordance with section 43 of the Public Procurement Act 2006 and Regulation 48, the Applicant challenged the decision of the Public Body on the following grounds:

- “(a) According to the Applicant’s assessment of the technical criteria, its technical submission did meet the technical pass marks of 75%.*
- “(b) The same technical submission was made by EDCC (our JV partner) for the same specs and same tender in 2013 and had passed the minimum technical evaluation mark.*
- “(c) We are not aware if there has been any change(s) to the technical criteria as listed in the tender documents for this technical evaluation.”*

C. The Reply of the Public Body

The Reply of the Public Body to the challenge is as follows:

- “(i) the Bid Evaluation Committee noted that your Company has provided the badminton courts within the main play court*

area. This is not according to the requirement of the Employer as spelt out at Section 3, Part I – Scope of Work at Paragraph (i) on pg 50/51 of bidding document and as per addendum no. 2 issued on 13 February 2014 to all prospective bidders where badminton courts should be attached to the sport hall;

- (ii) your bid has been assessed by the Bid Evaluation Committee in accordance with evaluation marking criteria at Section 3 Part III of the bidding document.

The marks allocated to your Company are as follows:

	Criteria	Marks obtained
A	Site Planning	19
B	Functional Aspect	17.6
C	Aesthetics	4
D	Structural Proposal	8.7
E	Mechanical/ Electrical Proposal	9.9
F	Proposal for energy efficient & Eco-Friendly Design	10.5
	Total	69.7

- (iii) Your Company has achieved a total of 69.7 marks which is below the pass mark of 75% overall to be considered as responsive for financial appraisal.”

D. Grounds for Review

The grounds for review are as follows:

- (a) According to the Applicant’s assessment of the technical criteria, its technical submission did meet the technical pass marks of 75%.
- (b) The same technical submission was made by EDCC (our JV partner) for the same specs and same tender in 2013 and had passed the minimum technical evaluation mark.
- (c) The Applicant’s bid is in compliance with all the requirements and technical specifications mentioned in the Bidding Documents.
- (d) In reply to paragraph (i) of the letter of the Public Body dated 12 May 2014 in reply to its challenge, the Applicant provided for an extra badminton court. The Applicant’s design includes FOUR badminton courts and all the courts are WITHIN the Sports Hall. The Applicant has complied with the requirement

set out at Section 3, Part I – Scope of Work at paragraph (i) on pages 50/51 of the bidding document and as per addendum No. 2 issued on 13 February 2014.

- (e) The Applicant's technical submission did meet the technical pass mark of 75%. The Applicant refers to the letter of the Public Body dated 12 May 2014 in reply to its challenge wherein it has been made aware that the marks allocated to it was a total of 69.7 marks. The Applicant contests the 69.7 marks for the following reasons and requests for a re-evaluation of the technical proposals in respect of the following items:

- (i) A – Site Planning – marks scored 19/25

The Applicant disputes the 19 marks scored on site planning on the fact that it has complied in all respects with the requirements of the public body and the Applicant has even given in addition the following: two gate entrances, bicycle rack, separate VIP car parking, separate entrance for youth centre, VIP lounge, athlete and public, additional car parking, ambulance and bus.

- (ii) B – Functional Aspect – marks scored 17.6/25

The Applicant contends that with regards to the functional aspect, it has again complied with the requirements of the public body and a badminton court has been implemented in the area recovered by the retracting seat system.

- (iii) D – Structural Proposal – marks scored 8.7/15

Regarding the structural proposal, the Applicant has proposed a building which complies with the international sports standard both by its clear head room and also by its self-supporting portable frame fully galvanized. The Applicant's design team on the structural parts is SERVANSINGH JADAV and PARTNERS which is one of the most reputable firms in Mauritius for such type of structure. The Applicant has also included at tender stage a full Calculation set of its structural steel building together with the drawings.

- (iv) F – Proposal for energy efficient and Eco-Friendly Design – marks scored 10.5/15

The applicant contends it should have obtained more marks under this item inasmuch as its proposal includes all aspect in relation to a green building, namely rain water harvesting, recycling bin, compost system, bicycle rack, solar heat water panel, day light

harvesting, natural ventilation hybrid system, ever green block panel in lieu of asphalt for parking, photo voltaic panel in yard lighting and in option for the supply of power to the hall, LED lights, employ of eco material in the construction of the sport complex, acoustic treatment.”

E. The Hearing

1. In the course of the hearing, Applicant, which was represented by Counsel, adduced evidence, supplemented by visual aid, in support of its claim that it was substantially responsive to the requirements of the Public Body, and that its elimination was not justified?
2. Both the Public Body and the successful bidder were duly represented by Counsel, but neither of them adduced evidence in rebuttal.
3. The Panel was however favoured with written submissions by all the parties.

F. Findings

1. The Panel observed that the letter dated 13 February 2014 following Addendum No. 2, was issued in violation of ITB 12.2, and, that, in the circumstances, the Applicant cannot be penalised for non-compliance with the request of that letter.
2. It is however to be noted that, in the course of oral evidence, the Applicant maintained that, although it had not received that letter, it had nevertheless met the specified requirement.
3. The Panel has examined the documents communicated to it in the light of the oral and written submissions, and are of the view that the markings allotted to the Applicant do not reflect its technical responsiveness, and conclude that the Applicant has been unfairly eliminated.
4. The Panel therefore recommends a re-evaluation of the bids.

(S. Toorbuth)
Chairperson

(Siv Potayya)
Member

(J. C. Nauvel)
Member

Dated 20 August 2014