

Observations of the Central Procurement Board

**on the
Findings of the Independent Review Panel in the matter**

JV Sotravic/Biwater

v/s

**Central Water Authority
(IRP decision no. 23/14)**

**Relating to the contract for the Design & Construction of the Bagatelle
Water Treatment Plant**

Following the approval of the award of contract for the above project to JV HWPC/First Bureau/HUPD, two unsatisfied bidders, namely JV Sotravic/Biwater and JV-OTV/ COLAS/Veolia Water applied to the Independent Review Panel (IRP) for the review of the decision.

2. Procurement practitioners must have been taken aback by the erroneous conclusions of the Panel. (Re. Decisions no. 22/14 and 23/14)

3. Given that IRP findings often serve as reference to our procurement officials, the Central Procurement Board (CPB) has deemed it appropriate to draw attention to the serious flaws noted in the aforesaid findings so as to avoid the officials from being misguided by same.

1. *‘The successful bidder did not comply with the express requirements of the Public Body...’ .*

One cannot understand the conclusion of the IRP to the effect that the selected bidder should have been disqualified for not complying with the express requirements of the Public Body as laid down under para 20.1 of the ITB.

It is to be noted that the procurement under reference relates to a “Design and Build” project, and for such projects it is normal for bidders to propose various “options”. However, to be responsive, the options proposed must meet the specified technical requirements. The bidding document for the project, as a matter of fact, provided at para 20.1 of the ITB that *“All technical alternatives which comply with the performance specification for the works shall be considered by the Employer on their merits.”*

Bidders were also invited to '*price for both, the discharge to the river, and for dewatering method*', as per the requirements of section 3.20. They could also offer either the '*filter press or the centrifuge system*' as per Section 3.25.18 of Section 4 (Employer's Requirements)'.

The selected bidder, as a matter of fact, priced for both options and did not propose anything alternate to what had been asked in the bidding document. The amount quoted for the two options were Rs 979,903,967.00 and Rs 1,024,194,410.00 respectively.

2. “Instead of responding to the request for guide by the Bid Evaluation Committee, the Board set up a Review Committee”.

The conclusion of the IRP to the effect that the Board did not respond to the BEC's request for guidance with regard to the methodology for the computation of the operational costs is **incorrect and misleading**. The facts of the case are as follows:-

On receipt of the BEC report on 25 March 2014, CPB's Technical team, at the request of the Board, met the BEC the same day to discuss the issue relating to life cycle cost. It was clearly explained that the question of life cycle cost does not arise, and that the BEC should be guided by the provisions under ITB 39.3 on the matter i.e "*the projected operating costs for the initial period of operation of the facilities*". Nevertheless, the BEC, in its final report, dated 2 April 2014, decided to maintain its decision to the effect that, "*in the absence of a properly defined methodology and mechanism in the bidding document, the Bid Evaluation Committee could not conclusively assess the operating costs over the life cycle of the facilities*".

3. “It is the Panel's view that the Board had no power under the law to appoint a Review Committee...”

The contention that the CPB "*has no power under the law to appoint a Review Committee.....*", clearly demonstrates that the Panel does not have a clear understanding of the provisions relating to the functions of the CPB.

Section 11(1)(e) of the Public Procurement Act clearly stipulates that the Board shall "**review** *the recommendations of a bid evaluation committee.....*". Further, section 11(1)(a) of the Act provides that the Board shall '*establish appropriate internal procedures for the operations of the Board and ensure compliance with them*'.

The review of the Bid Evaluation Report was therefore done strictly in accordance with the provisions of the Act, and the internal procedures as detailed in the Board's Operation Manual.

As per the procedures in place, once a BEC report is received, it is reviewed by the Board's Technical Team, and a decision relating to award is taken after giving due consideration to the recommendations of the BEC, and the views of the Technical Team and Management. In the present case, the Board's Technical Team reviewed the BEC report and did not concur with the conclusion reached by the BEC. The Board subscribed to the views of the Technical Committee that the question of life cycle costs does not arise and that the BEC should have taken into account only the "*projected costs during the initial period of operation of the facilities*" as spelt out in Clause 39.3(b) of the ITB.

The Board could have taken a decision regarding the approval of award of contract based on the observations/comments of the Technical Team. However, with a view to ensuring that the Board and the Technical Team were actually on the right track, the Board opted to have a second opinion, which explains the setting up of an independent review committee comprising professionals in the private to advise the Board.

The Review Committee concurred with the conclusions of the Board's Technical Team, and that gave additional comfort to the Board in the decision making process.

4. "*The successful bidder had not submitted any documentary evidence as to the requirement for specific experience*".

The remark that the Chairman of the Bid Evaluation Committee had, during the hearing, stated that "*the successful bidder has not submitted any documentary evidence as to the requirement for specific construction, operation and maintenance experience with their bids*" has been denied by the BEC Chairman in a note dated 18 November 2014 addressed to the CPB. **The successful bidder had passed the prequalification stage and there was no point of re-assessing his qualification and experience.**

5. "*Abnormally low price*" quoted by the successful bidder.

The conclusion of the IRP with regard to the complaint concerning the "abnormally low price" quoted by the successful bidder, once again demonstrates a lack of understanding of certain basic principles in public procurement.

As we all know, for 'Design and Build' projects, an indication of the amount **budgeted** by the public body, as distinct from the **estimated** cost, is disclosed to bidders so that they do not propose a solution, the cost of which will exceed the budgeted amount. It is to be noted that for the project under reference, it is mentioned in the ITB Clause 1.1(e) that "the employer's *budgeted amount* for this contract is Rs 1.4 billion inclusive of VAT". **Bid prices, in Design and Build projects, are bound to vary widely depending on the type of solutions/design/technology proposed.** To quote only one example, the budgeted amount for the Design and Construction of the Grade Separation Junction at Caudan

was **Rs 320M**, while the approved contract amount was Rs **108.2M** ! i.e > 30 % below the budgeted amount! **The offers ranged between Rs 103.4M and Rs259M!**

'Abnormally low price' is more applicable in the case of projects designed by the Employer, who, as per existing procedures and well established practice, has to work out an up-to-date estimate of costs based on prevailing market rates. The estimated cost as worked out by the public body, serves as a benchmark in the evaluation of bids. If a bid is abnormally low i.e substantially below the **estimated** cost, a thorough check of the rates quoted in the BOQ is carried out to establish whether there has been any miscalculation/error on the part of the bidder. **In the case of Design and Build projects, such checks cannot be carried out as there are no rates to be compared. The Designs/Solutions/Technology proposed by bidders may vary significantly and cannot be compared to establish whether a price is abnormally low.** The only consideration in Design and Build projects is that (i) the technical proposals should meet the technical requirements of the Employer, and (ii) the price proposal should not exceed the **budgeted** amount.