

THROUGH COURIER SERVICE



HEADQUARTERS
Civil Aviation Authority
Planning & Development Directorate
B-6, KDA Scheme-I, Shakra-e-Faisal,
Karachi Pakistan.
Tel: 9221-34313825
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Ref. HQCAA/5058/41/P&D - 1307

Dated: 19th January, 2010

Dear Sir,

COMPLAINTS ON THE VIOLATION OF PUBLIC PROCUREMENT RULES 2004 BY CAA
PACKAGE 6: HYDRANT REFUELING SYSTEM RRIAP, ISLAMABAD

1. Reference ALAC, Pakistan letter No.Nil dated 24th December, 2009 on the above cited subject.
2. At the very outset we would like state that complaint related to the subject Package-6 Work has been un-authorizedly raised on behalf of M/s. China National Precision Machinery Import & Export Corp.- Marathon Construction Company (Pvt) Ltd JV . As per Power of Attorney (copy attached) authorized representative of the JV for initiating any correspondence is Mr.Zang Yilong, General Manager and not Mr Tariq Rasheed Khan the signatory of baseless complaints. The assertions made by Mr Tariq Rasheed Khan, thus bear no legal standing.
3. Our input on the matter is , however, given as under:-

- a) Tenders for the subject Package-6 Work were opened on 5th August, 2009 and two firms submitted their bids as detailed below:-

Name of Bidder	Bid Amount (Rs. in Million)	
	Original	Corrected
M/s.China National Precision Machinery Import & Export Corp Marathon Construction Company (Pvt) Ltd.	1,290.509	1290.477
M/s.Ai-Tariq Constructors (Pvt) Ltd	1,192.394	1,187.238

- i) According to the tender conditions (Addendum No 2 dated 30th June, 2009) the bidders were required to submit their bids without duties / taxes on imported items not manufactured in Pakistan, as the same was planned to be reimbursed by CAA. The issuance of this addendum was also necessitated by the fact that custom duties, taxes etc. can be revised any time by FBR through SROs and bidders cannot thus firm up their costs inclusive of taxes / duties. It was for the same reason that subs Clause 73.2, P-38 was deleted. Since CAA was to reimburse costs to the selected Contractors, there remained no need for bidders to inflate their bids by these uncertain costs. But after the opening of both the bids representative of M/s. China National Precision Machinery Import & Export Corp.- Marathon Construction Company (Pvt) Ltd JV (M/s.CNPM) verbally informed that their bid included duties and taxes. This was contrary to the instructions / conditions given in the tender documents as already explained. The examination of their bid by the Project Management Consultant (M/s Louis Berger Group) also did not reveal any written confirmation on inclusion of duties and taxes, and their verbal announcement was considered to be an afterthought (an effort to win a lost case) as tender documents submitted did not reflect / substantiate the same. Therefore, any claim by M/s. CNPM subsequent to submission of their offer / bid has been

considered not based on terms of bidding but also against the norms and sanctity of the entire process of transparent bidding.

- j) M/s.AI-Tariq Constructors (Pvt) Ltd on the other hand submitted their bid without duties and taxes. They, however, reflected an estimated / tentative amount for the said duties and taxes.
- k) CAA informed M/s.CNPM accordingly vide letter dated 3rd December, 2009 (letter highlighted by M/s.CNPM). It was also clarified in the letter that in case of any deviation from the stipulations of contract, their bid becomes non-responsive.
- l) M/s.CNPM's subsequent reliance on Clause IB.12.3 of the Instructions to Bidders and Clause 73.1 (b) of the Particular Conditions of Contract (Part II) to assert that these provisions required bids to be inclusive of duties and taxes, is equally unfounded as explained below:-

Clause IB.12 Bid Price / Instructions to Bidders

Instructions to bidders are only to facilitate bidders and are not part of the contract. Furthermore clause IB.12 of 'Instructions To Bidders' titled 'Bid Price' comprises four Sub-Clauses 12.1 to 12.4. The first sentence of the said clause 12.1 starts with the text and we quote:

"Unless stated otherwise in the Bidding Document....."

Thus, pursuant to the above text, if any Contract Clause of the bidding document is in conflict with the text given in 'Instructions To Bidders', the text of Contract Clause (Particular Condition of Contract in this case) will take precedence.

Clause 73.1(b) Payment of Local Taxes

This refers to Clause 73.1 of Particular Condition of Contract. Its Sub-Clause 73.1(a) comprises 'Payment of Income Tax'. According to its text, the contractor is obligated to pay income tax as per prevailing tax laws of Pakistan. This Clause therefore is not in Conflict with the subsequent Clause 73.2 titled 'Custom Duties', which Pursuant to Addendum No-2 has been reinstated / reincorporated in the Bid Documents.

The 2nd part of Sub-Clause 73.1 (b) titled 'Payment of Local Taxes' lays the onus on the contractor to include the following in his bid price and we quote:

"Custom Duties import Duties, sales tax, octroi and other taxes that may be levied in accordance with the laws and regulation in force on the date 28 day prior to the latest date of submission of bids in Pakistan."

The subsequent Clause 73.2 titled 'Custom Duties' which, pursuant to Addendum No-2 stands reincorporated / reinstated in the text of Bidding Document's starts with the text,

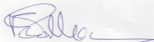
"Notwithstanding the provision of Sub-Clause 73.1 all Custom and Import Duties paid by the contractor on imported equipment and materials (not manufactured in Pakistan)..... Shall be reimbursed....." (Underline added for emphasis)

The text of the above clause 73.2 spells out that only the component of custom and export duties, as detailed in the text of this Clause, will be reimbursed to the contractor. Hence other taxes (if any) levied in accordance with laws and regulations in vogue are not payable. Therefore there is no conflict in the text. In fact the complete text of Clause 73.1 (b) and Clause 73.2, when read in conjunction and interpreted in the spirit of the text leaves no ambiguity. Thus Clause 73.1 (b) lays the onus on the contractor to pay any tax that may be levied as per tax laws of Pakistan. The only reprieve or benefit to the bidder, pursuant to Clause 73.2, now reinstated, is that the component of 'custom and import duty' is made reimbursable to the contractor, pursuant to fulfilling conditionality of this Sub-Clause.

Further, after issuance of Addendum No-2 dated 30th June, 2009, Sub-Clause 73.2 of Particular conditions of Contract titled 'Cost Inclusive of Duties and Taxes' given on Page 83 of Bid Documents, Volume-I stands deleted.

4. The Project Management Consultant (M/s Louis Berger Group) after detailed evaluation of bids considered the corrected bid of M/s. Al-Tariq Constructors (Pvt) Ltd for Rs.1,187,238 Million as lowest / responsive. They also recommended for award of work to M/s. Al-Tariq Constructors (Pvt) Ltd. CAA accordingly issued Letter of Acceptance to M/s. Al-Tariq Constructors (Pvt) Ltd on 14th October, 2009. Agreement is, however, yet to be signed, for which M/s. Al-Tariq Constructors (Pvt) Ltd are pressing hard.
5. In order to obtain Legal opinion on the matter, the case including complete copies of correspondence exchanged with M/s. CNPM were referred to our Legal Consultant. They in response have also concluded actions taken by CAA as in order and in line with contract stipulations.
6. The case may please be reviewed and disposed off in the light of above please.

Yours Sincerely,



(V. S. Sodha)
Director Planning & Development

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Chairman
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21 JUL 2009

S.No. 432
Issued to Mr. Rizwan
Through with Address: Muhammad Iqbal Ghazanfar
(Advocate)
Plot No. 100/2 (Nischood)
Karachi.
County/Village Signature

Mr Rizwan
A/C/M

POWER OF ATTORNEY

For: Aviation Authority
KDA-Scheme 4
Nischood-Phase-I, Karachi-75350.
Pakistan.

Project: Construction of New Islamabad International Airport (NBBIA)
Package -6: Hydrant Refueling System
Bid Reference: CAA/5055/C-6/2.2/PD

KNOW ALL MEN by these presents that the Joint Venture of China National Precision Machinery Import & Export Corp. and Marathon Construction Company (Pvt.) Ltd. hereby makes a joint venture authorization to Construction of New Islamabad International Airport (NBBIA) Project, Package-6: Hydrant Refueling System.

We, the Joint Venture authorize Mr. Zhang Yilong, General Manager of Fourth Business Department of China National Precision Machinery Import & Export Corp. as the representative of the joint venture, whose signature appears below, to be the true and lawful attorney, and authorized the attorney to sign the application, conduct negotiations, sign a Contract and execute all the necessary matters related thereto, in the interest and on behalf of the Joint Venture in connection with the execution, completion and maintenance of the Contract for Package No. 6 Bid Reference No: CAA/5055/C-6/2.2/PD of Construction of New Islamabad International Airport (NBBIA) Project.

The Official Seal of the Joint Venture:

Signature of the Authorized Representative:

Authorized Representative of the Joint Venture: Mr. Zhang Yilong

Date: July 22, 2009

