

INDEPENDENT REVIEW PANEL

In the matter of:

Librairie le Cygne Ltée

(Applicant)

v/s

Ministry of Education, Culture and Human Resources

(CN 01/09/IRP)

(Respondent)

Decision

A. Background

The Ministry of Education, Culture and Human Resources invited bids for the procurement of 65 Data Logging Sets for Secondary Schools on 03 September 2008 through open advertised bidding. The deadline for the submission of bids was Tuesday 14 October 2008 and two bids were received by the closing date and were opened on the same day at 14.00 hrs. As the two bids were below the prescribed amount of Rs15M they were forwarded to the Public Body by the Central Procurement Board for evaluation purposes.

B. The Evaluation Process

1. The Public Body appointed a Bid Evaluation Committee to evaluate the two bids received.
 - Editions de L'Océan Indien Ltée submitted two bids:

Alt. A: Data Harvest – UK
MRS 9,745,385 – Net value (inclusive of VAT and other charges)

Alt. B: NVIS Technologies – India
MRS 17,037,085 – Net value (inclusive of VAT and other charges)

- Librairie Le Cygne Ltée submitted one bid:

Addest Technovation – Singapore
MRS 12,640,225 (inclusive of VAT)

2. The Bid Evaluation Committee examined the bid of Le Cygne Ltée on 23 October 2008 and the bid, Alt. A from Editions de L’Océan Indien Ltée on 29 October 2008. The Bid Evaluation Committee did not examine the bid, Alt. B from Editions de L’Océan Indien Ltée. On page 3 of its report dated 05 December 2008, the Bid Evaluation Committee concludes “that both tenderers were compliant with the specifications”. On page 4 of the report the Committee recommended “that the two bidders be invited to make demonstrations of the data logging equipment they are proposing and that despite the element that both suppliers were compliant with the specifications”. The aim of the demonstrations were to “ensure that the equipment was really conclusive to the teaching and learning classroom environment”.

The report indicates on pg 5 that “the two bidders had requested for two weeks to invite their suppliers from abroad to be personally present for the demonstration sessions”. The presentations were held for Editions de L’Océan Indien Ltée (Data Harvest) on 18 November 2008 and for Librairie Le Cygne Ltée (Addest Technovation) on 19 November 2008 at the Mauritius Institute of Education. The companies were invited to give a demonstration of their equipment with reference to the following list of experiments:

*“Biology: 1) Is oxygen given off during photosynthesis?
2) Comparing heart rate at rest and after activity by monitoring the electrocardiogram.*

*Physics: 1) V-I characteristics of a resistor and light bulb.
2) Determining the pitch/frequency of a sound wave.*

Chemistry: 1) Effect of concentration on the speed of reaction

2) Titration of a strong acid with a strong base using pH sensor”.

4. The Bid Evaluation Committee recommended that the award be made to Editions de L’Océan Indien Ltée for the supply of the 65 Data Logging Sets of make Data Harvest for a tender value of MRS9,745,385. The recommendation is based upon “the evaluation of the tender documents and the observations made during the demonstration session”.
5. On 12 December 2008, the Departmental Committee approved the purchase of 67 Data Logging Sets for the sum of Rs10,045,243 from Editions de L’Océan Indien Ltée. Two of the units were to be used by the Mauritius Institute of Education. A letter of award was sent to Editions de L’Océan Indien Ltée by the selected bidder on 26 December 2008.
6. Librairie Le Cygne Ltée challenged the decision of the Public Body on 06 January 2009. The Public Body did not respond to the challenge but on 09 January 2009 invited the aggrieved bidder to put up an application for review with the Independent Review Panel if it so wished. The aggrieved bidder submitted an application for review to the Panel on 13 January 2009.

C. Grounds for Review

The Applicant’s grounds of review are as follows:

“We have submitted our bid with a special mention of a 100% compliance level with the tender specifications.

Details on the products of our competitor are published on the manufacturer’s web site and are as such in the domain of public knowledge. According to these documents, a number of items proposed by EOI do not comply with the technical specifications contained in the tender document. Analysis of the information show that compliance level with regards to the tender document for our competitors with regards to hardware is around 30%.

Additionally some items are not catered for by the competing brand.”

D. Submissions and Findings

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1. The main ground for review by Librairie Le Cygne Ltée is that the products proposed by the selected bidder with regards to hardware do not comply with the tender specifications. This clearly contradicts the contents of the report of the Bid Evaluation Committee which states unequivocally that both tenderers were compliant with the specifications.
2. The Panel at the first meeting held on 03 February 2009 requested the Public Body to carry out a detailed comparison of the sensors proposed for Biology, Chemistry and Physics respectively by both bidders to the specifications defined at annex C, F and H of the bidding documents. The requested information was submitted to the Panel on 09 February 2009.
3. The comparison information submitted by the Public Body is shown in the table below.

Item	Addestation Specs	Data Harvest Specs	Remarks
Relative Humidity Sensor 0-100%, Accuracy $\pm 2\%$, Response Time 15s in still air, Temp Range -40 to 85 °C	Relative Humidity Sensor 0-100%, Accuracy $\pm 2\%$, Response Time 15s in still air, Temp Range -40 to 85 °C	Range 0-100% Relative Humidity Resolution: 0.1% Response Time 5s for 63% response Temp range -30 °C to 70 °C	Both compliant to use in a secondary school laboratory context Differences not critical in usage at secondary school level
Temperature sensor -20 to 120 °C Accuracy ± 1 °C	Temperature sensor -20 to 120 °C Accuracy $\pm 2\%$	Range -30 ° to $+110$ °C Resolution: 0.1°C	
Gas Pressure Sensor Range: 0 to 250 kPa Accuracy = $\pm 2\%$ of operating range	Gas Pressure Sensor Range: -20 to 120 ° Accuracy = $\pm 2\%$ of operating range	Range: 1 to 200 kPa Resolution: 0.1 kPa No. of pressure ports: 2	

4. The Panel considers that based on information provided by the Public Body the bid submitted by Editions de L’Océan Indien Ltée is not responsive as they do not meet the precise specifications mentioned in the tender documents. This contradicts sharply with the conclusion of the Bid Evaluation Committee that the tenderer was compliant with the specifications.

5. However, in its submission to the Panel the Public Body modifies the statement and asserts that the bids submitted are compliant for use in secondary school laboratory or that differences are not vital. This rationale, if adopted, defeats the purpose of competitive bidding against a set of defined specifications. It was the responsibility of the Public Body to properly define a set of appropriate specifications prior to the launching of the invitation to tender. The tender specifications cannot and should not be modified at the evaluation stage.
6. The Public Body reconfirmed the stand of the Bid Evaluation Committee on 11 February 2009 to the effect that it considered that the bid from Editions de L’Océan Indien Ltée was substantially responsive. The Panel considers that a careful reading of Clause 29.2(a) of the bidding documents in conjunction with the comparison table prepared by the Public Body will clearly indicate that the bid of Editions de L’Océan Indien Ltée cannot be considered to be substantially responsive.
7. Clause 37.1 of the bidding document referred to in the same letter of 11 February 2009 from the Public Body is not relevant as it refers to the qualifications of the bidder and not the responsiveness of the goods proposed with respect to the specifications.
8. The provision of the note on page 90 of the bidding documents does not allow the Public Body to award the contract to a non-responsive bidder. In fact to qualify for the award the bidder must be substantially responsive for all items quoted.
9. The Panel draws the attention of the competent authority to the issues raised by the aggrieved bidder on page 7 of his challenge dated 06 January 2009 under the Section “Demonstration”.
10. The Public Body compared the price quoted by Editions de L’Océan Indien Ltée at Rs9,745,385 to that quoted by Librairie Le Cygne Ltée at Rs12,640,225 to conclude that the bid of Editions de L’Océan Indien Ltée was very competitive and justifies the award of the contract to that company. The Panel notes that the Report dated 28 January 2009 from the Bid Evaluation Committee on the challenge by Librairie Le Cygne Ltée is rather contradictory. In paragraph (i) it is stated that both tenders were compliant in terms of technical requirements and in paragraph (ii) it is stated where differences in specifications were noted these were not critical or vital differences. Paragraph (iii) is at best very ambiguous to

interpret “Given the compliance of both bids, the major difference in cost of equipment does not justify the purchase of the higher despite the presence of any eventual non vital differences in specifications”.

11. The Panel considers that the bid from Editions de L’Océan Indien Ltée was not substantially responsive and the price difference does not justify the selection of a non-responsive bid to the detriment of a fully responsive one. The Public Procurement Act 2006 has provision that allows a Public Body to deal with a situation where it considers that the lowest evaluated bid is substantially above the applicable updated cost estimate.
12. Based on all the above, the Panel considers that there is merit in the application. As a legally binding contract has been awarded which in the opinion of the Panel should have been awarded to the Applicant, the Panel can only recommend payment of reasonable costs incurred by the aggrieved bidder in participating in the bidding process. Taking into consideration all the costs incurred by the aggrieved bidder to participate in this bidding exercise, including the challenge and appeal, the Panel accordingly recommends the payment of Rs90,000 to the Applicant.

(Dr. M. Allybokus)
Chairperson

(E. Hanoomanjee)
Member

Dated this 17th of March 2009