

INDEPENDENT REVIEW PANEL

In the matter of:

Airport Express Ltd

(Applicant)

v/s

Mauritius Examinations Syndicate

(Respondent)

(Cause No. 03/09/IRP)

Decision

A. Background

The Mauritius Examinations Syndicate invited tenders for the supply of white gsm bond paper (1500 reams A2 size and 2500 reams A4 size) through open advertised bidding on 15 October 2008. The closing date for the submission of bids was 24 October 2008. The Public Body used its own bidding documents instead of the Standard Bidding Documents issued by the Procurement Policy Office. Seven bidders responded to the invitation for bids by the closing date of 24 October 2008.

B. The Evaluation Process

The Public Body requested its Departmental Tender Committee to evaluate the bids received. The Departmental Tender Committee met on 07 November 2008 and opened the seven bids received. The Head of Printing was requested to carry out a test and to submit a report on the quality of the samples provided by the bidders. The Committee took note

of the results of the technical evaluation on 14 November 2008 and examined the offers received as per the criteria mentioned at paragraph 5, pg 7 of the bidding documents. The Committee submitted its report on 20 November 2008. Only three bidders quoted for the 80 gsm A2 size paper and Airport Express Ltd was found to be the lowest bidder offering paper of good quality. The bidder was recommended for an award with a condition that the papers were to be delivered not later than two months as from the date of award.

Quotations were received from all seven bidders for the supply of white 80 gsm – A4 size paper. The bid from four of the bidders was rejected because of the poor quality of the paper proposed. The offer from the lowest responsive bidder was not retained because it did not indicate its proposed delivery schedule in its offer. However, it does not appear that this was a mandatory requirement that would warrant the rejection of the bid. Airport Express Ltd was recommended for the award with a condition that the paper is delivered not later than two months as from the date of award.

The Committee met again on 27 November 2008 and took cognizance of information about the poor performance of one supplier with respect to delivery time. Mr Ramrachheya, the Manager of Airport Express Ltd, represented the supplier that failed to honour its delivery obligations in a similar contract entered into with the Mauritius Examinations Syndicate. The Committee thus decided to seek additional information from four of the seven bidders that did not submit information on delivery time/arrangements in their tender. The required information was to be submitted by 01 December 2008. The Departmental Tender Committee met on 02 December 2008 and re-evaluated the bids in the light of the additional information provided. The Committee modified its decision for A4 paper and recommended an award to Ramtoola Papers Ltd, which was lowest responsive bidder. The Board of the Mauritius Examinations Syndicate at its meeting held on 06 January 2009 considered the reports of the Departmental Tender Committee and decided to annul the tender and to invite for fresh tenders.

The seven bidders were informed accordingly on 30 January 2009. On 05 February 2009, dissatisfied with the decision of the Public Body, Airport Express Ltd filed a challenge. The Public Body replied to the challenge of the bidder on 12 February 2009 and reassured him that he will be given the opportunity to resubmit a fresh bid. The aggrieved bidder still dissatisfied made an application for review to the Independent Review Panel on 18 February 2009. The panel held a hearing on 05 March 2008.

C. Grounds for Review

The grounds for review are as follows:

“Re bid is against Section 39 of the Public Procurement Act 2006. Breach of Regulation 34 and 36(2). Breach of Section 37(2), 37(9), 37(11), 37(12), 40(1), 43(4), 50(1) and 51(1)(a).”

D. Submissions and Findings

1. In accordance with Circular No. 5 of 2008 of 28 March 2008 of the Procurement Policy Office, the Mauritius Examinations Syndicate should have used the “Standard Bidding Documents” issued for open advertised bidding for this procurement exercise. The Public Body was wrong to use its own customised document for the bidding process. Additionally, the bids were not opened in public as is mandatory under the new Procurement Act.
2. The bidding document used does not specify that it is mandatory for a tenderer to submit details on delivery period. Paragraph 12 on page 8 only indicates that bidders are requested to inform the delivery period. Tenderers are required to provide sufficient relevant information on delivery lead time and delivery arrangements as the information will be used as an evaluation criteria. The Panel considers that the required information could have been sought from the bidders prior to the detailed evaluation exercise. Thus, the Panel considers that the decision of 27 November 2008 of the Departmental Tender Committee, though correct, was belated and may give rise to erroneous interpretation. On the other hand, the Panel feels that it needs not consider the alleged poor performance of the Applicant, because such alleged misconduct should be dealt with by the Public Body under other provisions of the Public Procurement Act.
3. For the reasons given above, the Panel considers that the Public Body was justified in its decision to annul the bidding process and to call for fresh tenders. The Public Body has resorted to a new invitation for the procurement in virtue of Regulation 36(1)(b) which provides as follows:

“A public body may at any time cancel the procurement proceedings where –

(b) it has become necessary, in the public interest, to modify the specifications or critical aspects of the conditions of the contract.”

The Standard Bidding Documents of the Procurement Policy Office are being utilised and clear delivery schedule are being specified. Additionally the documents make provision for the application of liquidated damages in case of a breach of contract by the selected bidder. Thus, the Panel considers that this is in line with Regulation 36 (1)(b) made under Section 61 of the Public Procurement Act 2006.

The Panel considers that there is no merit in this application which is accordingly dismissed.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated this 2nd of April 2009