

INDEPENDENT REVIEW PANEL

In the matter of:

Softpro Network and Packages Ltd.

(Applicant)

v/s

**Ministry of Social Security, National Solidarity and Senior Citizens
Welfare and Reform Institutions**

(Respondent)

(Cause No. 13/09/IRP)

Decision

A. Background

1. In order to manage its Social Services Management Information System, the Ministry of Social Security, National Solidarity and Senior Citizens Welfare and Reform Institutions launched through the Central Procurement Board procurement proceedings inviting suppliers having the capability to under such projects to offer their bids. Advertisement for invitation of bids was through Open Advertised Bidding through local newspapers and international bidding with the initial closing date being 16 December 2008 13.30 hours at Central Procurement Board (CPB) and the Public opening being on the same day at 14.00 hours. Later, through an addendum, the closing date was postponed to 13 January 2009 at 13.30 hours and the public opening on the same day at 14.00 hours and at the same place.

B. Grounds for Review

1. *The Ministry/Central Procurement Board (CPB) was wrong not to have accepted the offer of Softpro in as much as the bid submitted by the latter.*
 - a) *was the lowest evaluated bid;*
 - b) *complied with the qualification criteria specified in the bidding document; and*
 - c) *was responsive.*
2. *The Ministry/CPB was wrong to have awarded the bid to Data Communications Ltd. inasmuch as the latter's bid was not the lowest evaluated bid.*
3. *The Ministry/CPB was wrong to have rejected the bid of Softpro on the premise that it has not provided information for evaluation of the training, data migration and "Other Requirements" and was wrong to have concluded that such was a major deviation to the requirements inasmuch as the bid of Softpro did address these issues.*
4. *The Ministry/CPB was wrong to have reached the conclusion that the bid of softpro was not responsive on the premise that Softpro had not quoted in respect of (i) Front End/Back End Modules (ii) "other Requirements" in as much as upon a correct interpretation of the bid, Softpro undertook to perform these tasks at no additional costs.*

C. The Evaluation Process

1. The Evaluation Process was carried out by a Bid Evaluation Committee set up by Central Procurement Board. The shortlist of technically responsive suppliers and subsequently the ranking of bidders in terms of their prices reveal the following:
 - (i) Data Communications Ltd.
 - (ii) CiSOLVE International Ltd.
 - (iii) State Informatics Ltd.

Finally on 9 March 2009 the Bid Evaluation Committee concluded that the bid submitted by the lowest evaluated bidder, Data Communications Ltd. is substantially responsive to tender requirements and recommended that the contract be awarded to the latter for the sum of Rs 137,127,013.79 subject to some clarifications.

2. On 22 May 2009, the applicant filed a challenge to Chief Executive Officer of the Ministry of Social Security, National Solidarity and Senior Citizens Welfare and Reform Institutions.
3. On 28 May 2009, the Ministry informed the applicant that its offer has not been retained for the following reasons:
 - (a) *You have not provided important information for evaluation of the training, data migration and “Other Requirements”. This represents a major deviation to requirements.*
 - (b) *You have not quoted for the following requirements:*
 - (i) *Front End/Back End Modules (as per section 3.5)*
 - (ii) *All implications under “Other Requirements” which are essential for the successful completion of the System.*
 - (c) *The bid has been considered to be non responsive in view of (a) and (b) above.*
4. Still not satisfied with the reasons given by the said Ministry, on 11 June 2009, the applicant filed an application for review with grounds for review set out as above.

D. Submissions and Findings

1. At the start of the hearing the Panel’s attention was drawn by Mr. R. Jhuree the representative of the Ministry of Social Security, National Solidarity and Senior Citizens Welfare and Reform Institutions that as per bidding requirements, a demonstration of solution proposed should have been carried out by the bidder. Indeed clause 5.2 of the bidding documents reads as follows:

“The Bidder should be able to set up a presentation, at a suitable premises in Mauritius and at its own cost, within 4 weeks after the closing date of the tender. The overall system will have to be presented, supported by appropriate demonstration of the proposed solution”.

On 19 January 2009, the Permanent Secretary of the Ministry wrote to the Central Procurement Board requesting the latter to inform the Ministry whether for the purpose of the demonstration, representatives of the said Ministry i.e potential users of the system would be called to attend the demo session given that they are fully knowledgeable of the requirements.

On 27 February 2009, the Chairman of Central Procurement Board informed the said Ministry that its representative would be allowed to attend the demo session and they would be notified in due course of the date(s) of the session(s).

On 20 May 2009, the said Ministry notified Data Communications Ltd. that it has been selected for the award of the contract. But up to now no demonstration has been held.

The Panel is of the view that the point raised is of significance and deserves consideration.

Therefore the main issue which the Panel has to determine is to what extent the absence of demonstration affects the bid proceedings. For the public body as explained by Mr. R. Jhuree, it is an important step for users of the materials supplied to attend the presentation made by the suppliers.

It would appear according to the record that this is not the view taken by Central Procurement Board. Though initially it approved such requirements in the bidding documents and had accepted in principle the holding of the demonstration; nevertheless it ignored this exercise and awarded the contract based solely on the recommendation of the Bid Evaluation Committee.

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On this issue, Mr. R. Ramlool Acting Parliamentary Counsel, appearing for the Ministry, submitted in a convincing manner that as the end-user, the Ministry found it important to have a demonstration. This fact was accepted by the Central Procurement Board and ultimately inserted in clause 5.2 in the bidding documents. There was even an agreement between the Central Procurement Board and the said Ministry as to the schedule of the sessions of the demonstration by the Bidders. According to him, the presentation of solution proposed was a mandatory requirement of the bidding process.

We fully agree with the submission of Counsel for the said Ministry that the demonstration constitutes a mandatory step of the bidding process and as such it should have been carried out. We find that the absence of demonstration amounts to a material defect in the bidding process which can only be cured by a fresh bid. At this stage, having reached that conclusion on the issue of demonstration, we feel that there is no need to consider the grounds raised by the applicant.

For the reasons highlighted above, the Panel, recommends the annulment in whole of the decision of the Public Body.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated this 21 August of 2009