

INDEPENDENT REVIEW PANEL

In the matter of:

Anglo African Outsourcing Ltd

(Applicant)

v/s

Police Department

(Respondent)

(Cause No. 16/09/IRP)

Decision

A. Background

1. The Mauritius Police Department, through the Central Procurement Board, invited bids from local firms for the Supply of Crime Occurrence Tracking System for the Police Department. The open advertised bidding method was used and a tender notice was advertised in the local press as from 07 January 2009. The closing date for the submission of bids was 16 February 2009 at 13.30 hrs with public opening of bids on the same day at 14.00 hrs. At the request of one bidder, the closing date for bids submission was postponed to 06 March 2009 at 13.30 hrs and public opening on the same day at 14.00 hrs.
2. A site visit for the implementation of the project was held on 22 January 2009 at 10.30 hrs for potential bidders. Eighteen representatives from five potential bidders attended the site visit and they were shown the different blocks to be connected at the different sites as well as the network facilities that already existed.

3. The bidding documents provide for the seeking of clarifications from the Public Body by any potential bidder at least twenty one days before the deadline for the submission of bids. Three of the bidders, including the aggrieved one, sought clarifications within the time limit and all potential bidders were informed of the replies made well before the closing date of 06 March 2009.
4. Seven bids were received from five bidders were opened in public on 06 March 2009 at the Central Procurement Board. One of the bidders Leal Communications & Informatics Ltd proposed three options. The Central Procurement Board appointed a Bid Evaluation Committee to evaluate the seven bids received.
5. The Bid Evaluation Committee submitted its report on 15 April 2009 and concluded that the bid of State Informatics Ltd was the lowest substantially responsive bid evaluated. It went on to recommend State Informatics Ltd for an award for the sum of Rs126,582,999.00.
6. The Public body was informed by the Central Procurement Board on 22 May 2009 that after evaluation, it had approved the award of the contract for the Procurement of Crime Occurrence Tracking System to State Informatics Ltd for the sum of Rs126,582,999.00, inclusive of five years maintenance charges and VAT. The public Body notified all the bidders of the decision of the Central Procurement Board letter dated 22 May 2009.
7. Anglo African Outsourcing Ltd aggrieved by the decision of the Public Body challenged it on 28 May 2009. After obtaining material for reply to the challenge from the Central Procurement Board on 02 June 2009, the Public Body informed the aggrieved bidder on 03 June 2009 the reasons as to why its bid had not been retained.
8. The aggrieved bidder still dissatisfied with the explanations of the Public Body made an application for review to the Independent Review Panel on 18 June 2009. The Panel, pursuant to Section 45(4) of the Public Procurement Act 2006 suspended the procurement proceedings on 19 June 2009 and informed all parties concerned accordingly. Four hearings were held by the Panel during the period 08 July 2009 and 11 September 2009.

B. Grounds for Review

The Grounds for Review are as follows:

“The failure by the Public Body to duly take into consideration objective factors such as:

The quality of the solutions offered by the Applicant, which was impartially determined to be the best suited to meet the requirements of the Crime Occurrence Tracking System by leading independent consultants;

The mathematical, indisputable and considerable difference between the price for the approved contract, i.e. Rs126,582,999.00 inclusive of VAT on the one hand, and the Applicant’s bid which quoted Rs67,585,344.80 inclusive of VAT on the other hand representing a numerical difference of Rs58,997,654.20, and a percentage excess of 87.29% above the Applicant’s proposed price, which is all the more striking in light of the State’s declared wish to lower operational costs.

Breach of Section 52(3) of the Public Procurement Act, prohibiting bidders from depriving a public body from the benefit of free and open competition, given that State informatics Ltd holds itself out as a “state-owned” entity, and potential conflict of interest existing between the awarding body (being an emanation of the State), and the State-owned successful bidder, to the detriment of a private bidder (without prejudice to remedies and recourses under the Competition Act, if any).

The recommendation by the Public Body to award the aforementioned contract (and approval of such award) to a bidder that (a) proposed solutions which the Applicant does not have any reason to believe to be superior quality, and (b) quoted a much higher price than the Applicant’s, all in light of the requirement laid down in the Act to consider technical quality and price as bases for selection of successful proposals.”

C. The Evaluation Process

The Bid Evaluation Committee set up by the Central Procurement Board to evaluate the seven bids received from five bidders and submitted its report on 15 April 2009. One bidder was considered to be non-responsive with respect to the mandatory clauses as it had quoted only for the hardware and that too on a partial basis.

Four bidders and six bids were retained for technical appraisal. The bids were then evaluated in strict accordance to the procedures defined in the bidding document to determine their technical responsiveness. Two bids of Leal Communications & Informatics Ltd and the bid of Anglo African Outsourcing Ltd were considered to be non-responsive to hardware requirements with respect to the application servers. A detailed financial analysis of the three remaining responsive bids was then carried out and the bid of State Informatics Ltd was considered to be the lowest evaluated bid. The Bid Evaluated Committee, therefore, recommended State Informatics Ltd for the award.

D. Submissions and Findings

1. The bid of the aggrieved bidder was considered by the Bid Evaluation Committee to be non-responsive to hardware requirements with respect to the application servers. Section 5.0 of the Technical Specifications defines the “Hardware and System Software” and at pg 84 it is specified that *“Bidders must quote for multiprocessor servers equipped with at least four CPUs each, (base configuration) upgradeable to eight processors”*.
2. This specification appeared to be ambiguous to one potential bidder and, in accordance with the provisions of the bidding document, it sought clarification from the Public Body on 10 February 2009. The clarification sought was provided on 17 February 2009 and the information was made available to all potential bidders. The question asked and answer provided are as follows:

Question: The number of processors should be at least four CPUs. Does CPU mean cores, CPU boards or processors?

Answer: Server should be equipped with at least four processors in base configuration and the server should be upgradeable to eight processors.
3. The Panel has been provided with a photocopy of P1027B of the postal book of the Police Tender Unit which clearly indicates that the clarification referred to above had been sent to all potential bidders by registered post. Based on this reliable piece of evidence, the Panel finds that all the potential bidders were aware of the clarification brought by the Public Body.

4. The clarification may appear to be a mere repetition of the specification provided at pg 84 of the bidding document. For the Panel the clarification removes all ambiguities that may have existed and confirms that by CPU the Public Body meant processor.
5. Thus, the Panel considers that in the light of the technical specification and the clarification provided on 17 February 2009, the Bid Evaluation Committee correctly considered the bid of Anglo African Outsourcing Ltd to be non-responsive. The bidder was proposing two CPUs upgradeable to four. The Panel does not dispute the fact that the aggrieved bidder may be proposing an appropriate solution to the requirements of the Public Body. But, that would be an alternative bid which is prohibited by ITB 12 (pg 33), “Alternative Bids shall not be considered”.

The Panel finds that, based on the above, there is no merit in the application and consequently sets it aside.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated this 23rd of September 2009