

INDEPENDENT REVIEW PANEL

In the matter of:

Total Mauritius Limited

(Applicant)

v/s

The National Transport Corporation

(CN 20/09/IRP)

(Respondent)

Decision

A. Background

Advertisement for invitation of bids for the supply of Automotive Diesel to the five (5) Depots of the National Transport Corporation was through Open Advertised Bidding through local newspapers with the closing date being Friday 12 June 2009 at 13.30 hours at the Central Procurement Board (CPB) and Public Opening being on the same day at 14.00 hours. The five (5) Depots of the National Transport Corporation are as follows: Lot No 1 – Bonne Terre/Remy Ollier Depots(BTD/ROD), Lot No 2 - Forest Side Depot (FSD), Lot No 3 – Souillac Depot (SOD), Lot No 4 – La Tour Koenig Depot (LTKD) and Lot No 5 – Riviere Du Rempart Depot (RRD).

Three Addendum were made to the ITB.

Addendum No 1 (dated 11 May 2009 made changes to the Amount of Bid Security for each lot, Addendum No2 (dated May 2009) refers to the deletion of a paragraph on performance level and Addendum No 3 regarding price and delivery schedule.

The validity period of the bid was up to 09 September and the bid security expires on 09 October 2009.

Bids were invited from petroleum product distributors.

B. Grounds for Review

The Applicant's grounds for review are as follows:

“Due to a typing error in para (i) the Bid Submission Form – the word NOT having been omitted – TOTAL Mauritius has been disqualified in the tender process and has lost all contracts for the supply of Automotive Diesel to the 5 Depots of the Corporation. TOTAL Mauritius has been supplying products (Diesel & Lubricates to the Corporation over the past years) and has been a good standing supplier without any major complaints.

Note that TOTAL Mauritius is a good standing supplier in Mauritius and worldwide and is an eligible supplier to international organizations and locally to local companies. In fact TOTAL is currently supplying fuels & LPG to government, parastatal organizations and Municipal Councils.

We sincerely firmly believe that having identified this error the Central Procurement Board could have clarified this mistake with us before furthering the award process.

We believe that this genuine typing error should not have had an impact on the award of the tender as the product quality, price and terms of trade are not impacted.”

Based on a Table presented by Total, it was the lowest bidder for three of the Lots – Lot 1 – Bonne Terre, Lot 3 – Souillac and Riviere Du Rempart.

C. The Evaluation Process

According to the Bid Evaluation Committee (BEC) report dated 22 June 2009 all the bids had been checked as to whether the bids received met the mandatory requirements.

The mandatory requirements were:

- (1) *Bid Information Form*
- (2) *Bid Submission Form*
- (3) *Price Schedule/BOQ*
- (4) *Delivery Schedule*
- (5) *Bid Security*
- (6) *Specifications of product as regards to quality*
- (7) *Copies of Certificate of Incorporation*

Prior to undertaking any in-depth analysis, the Bid Evaluation Committee (BEC) has checked whether the bids received met the mandatory requirements.

Table 6 Observations on Mandatory Requirements

		<i>Total Mauritius Ltd</i>	<i>Indian Oil (Mauritius) Ltd</i>	<i>Shell Mauritius Ltd</i>	<i>Chevron Mauritius Ltd</i>	<i>Remarks/ Deviations (to be specified)</i>
(a)	<i>Bid Information Form</i>	√	√	√	√	
(b)	<i>Bid Submission Form</i>	X	√	√	√	<i>See note 1</i>
(c.)	<i>Price Schedule/BOQ</i>	√	√	√	√	
(d)	<i>Delivery Schedule</i>	√	√	√	√	
(e)	<i>Bid Security</i>	√	√	√	√	
(f)	<i>Specifications of product as regards to quality</i>	√	√	√	√	<i>See note 2</i>
(g)	<i>Copies of Certificate of Incorporation</i>	√	√	√	√	

√ - denotes compliance
X - denotes non compliance

The BEC found that the bid of Total was non compliant for the following reasons:

Section (i) of the Bid Submission Form in the bidding documents should be read as follows:

Quote:

“Our firm, its affiliates or subsidiaries – including any subcontractor or supplier for any part of the contract – have not been ineligible by an international financing agency such as the World Bank, African Development Bank or any other international agency or under the laws of Mauritius or official regulations in accordance with ITB Sub-Clause 4.3;”
Unquote.

However, Total Mauritius Ltd has altered the Bid Submission Form and stated the following:

“Our firm, its affiliates or subsidiaries – including any subcontractors or suppliers for any part of the contract – has been declared ineligible by the Government of Mauritius, under the Purchaser’s country laws or official regulations, in accordance with ITB Sub-Clause 4.3” Unquote.

D. Submissions and Findings

First, it has omitted the word “NOT” in the second line of section (i) of the Bid Submission Form, and secondly, it has omitted and amended the words *“by an international financing agency such as the World Bank, African Development Bank or any other international agency or under the laws of Mauritius”* with *“Our firm, its affiliates or subsidiaries – including any subcontractors or suppliers for any part of the contract – has been declared ineligible by the Government of Mauritius, under the Purchaser’s country laws or official regulations, in accordance with ITB Sub-Clause 4.3”*.

It is the contention of Mr M. Sauzier, that of Counsel for the Applicant that the word “NOT” having been omitted in the para (i) of the Bid Submission Form, renders the sentence absurd in the sense that it means that the bidder is not eligible to bid. According to him, this amount to an “absurdité” which could have been cured by seeking clarifications from the Applicant.

This submission appears attractive if the Applicant has only failed to insert the word “NOT”. But a scrutiny of the contents of the Bid Submission Form reveals other alterations than the word “NOT”. They are as follows:

- (i) In para (a), there is omission of dates of the addenda
- (ii) In para (g), it is mention “have nationality from eligible countries” whereas in the Applicant’s submission form there is reference to “have the following nationality”.

In our view, the above shortcomings in the submission form constitute significant alterations which are prohibited by clause 12.1 of the Bidding Documents.

We find therefore that the Central Procurement Board was right to conclude that the bid of the Applicant was non compliant.

For these reasons, we find no merit in this appeal which is accordingly set aside.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated this of October 2009