

## **INDEPENDENT REVIEW PANEL**

**In the matter of:**

**Worldwide Marketing & Services**

**(Applicant)**

**V/s**

**Ministry of Public Infrastructure, Land Transport and shipping**

**(CN 24/10/IRP)**

**(Respondent)**

### **Decision**

#### **A. Background**

1. The tender for the supply of 1450 Led Aspects for Traffic Signal Equipment (2008 – 2009) TMRSU/OAB/17/0809 was launched through the Open Advertised Bidding Method on 17 March 2009 by the Ministry for Public Infrastructure, Land Transport & Shipping. The closing date was 16 April 2009 at 13.30 hours at the Central Procurement Board.

The Central Procurement Board forwarded the fifteen proposals received from ten bidders to the Public Body on 20 April 2009 as most of the bids were below the prescribed amount of Rs.15m.

However all bidders were requested to extend the validity period of their bids for a further period of 30 days on 14 July 2009 and a second time on 11 August 2009 up to 31 August 2009 as the Departmental Tender Committee was awaiting for further clarifications from the Bid Evaluation Committee.

2. The Departmental Tender Committee of the Public Body appointed a Bid Evaluation Committee on 22 April 2009 to examine the bids received. The Committee submitted a first report on 7 July 2009 and at paragraph 5(b) Assessment it is reported that: “Sobany & Son Co. Ltd with optional equipment of Make Hang Zhoo Chia Hong Kong Figures Technology Ltd did not provide the requested sample. Thus, this equipment could not be tested on site and was therefore rejected from further consideration”. Annex B of the report is a “technical report of tested Samples”.

3. The Bid Evaluation Committee submitted a second evaluation report dated 31 August 2009. The new report indicates at 6(c): Committee’s Assessment that upon request of the Departmental tender Committee bidder *Sobany & Sons Co. Ltd* was again contacted for the submission of requested samples. The samples were delivered on 11 August 2008 and as indicated in the second report of “Tested Samples” were put to test on the same day. The Panel notes that both technical reports are undated.

4. The Bid Evaluation Committee in its report of 31 August 2008 maintains the recommendation made in its report of July 2009 that the contract be awarded to *Sobany & Sons Co. Ltd* for equipment of Make Envoys Electronics (Alternative 3 of the bidder). The Bid evaluation Committee observed that the recommended bid at Rs.10,797,807.70 exceeded the lowest bid from *Schensen Spark Optoelectronics B & T Co. Ltd* by some Rs.2,426,681.62 (USD 242,993.50 @ Rs.34.45/USD).

5. The Public Body approved the recommendation of the Bid Evaluation Committee and issued the notification of award on 31 August 2009. All unsuccessful bidders were informed accordingly.

6. Worldwide Marketing & Services Ltd an aggrieved bidder, challenged the decision of the Public Body on 5 September 2009. The Public Body replied to the challenge on 22 September 2009. The aggrieved bidder still dissatisfied with the decision of the Public Body made on application for review to the Independent Review Panel on 02 October 2009.

**B. Grounds for Review**

The Applicant’s grounds for review are as follows: Breach of Section 37(2) and 40 of the Public Procurement Act . Breach of Section 38 and 39 of the regulation, 30 (4). Breach of Section 35, 36 and 39 of the instruction to Bidders of the Bid Documents. Breach of Section III 1 of the Bid Documents.

**C. The Evaluation Process**

1. Fifteen proposals were received from ten bidders at the Central Procurement Board by the closing date of 16 April 2009. As the lowest bid submitted was below the prescribed amount of Rs.15m, the Central Procurement Board, in accordance with clause 12(3) (b) of the PPA 2006 forwarded all bids received to the Public Body for evaluation.

2. The following bids were received:

	Tenderer	Total Bid Price (Rs)
1.	Schenzen Spark Optoelectronics B & T Co. Ltd	8,371,126.08
2.	Central Business Equipment Ltd	42,247,339.55
3.	Ramselect Co. Ltd	14,697,960.60
4.	Sociedad Iberica de Construcciones Electricas S.I.C.E – Spain	14,711,326.46
5.	Sobany & Sons Co. Ltd – Alt 1	9,727,327.90
6.	Sobany & Sons Co. Ltd – Alt 2	9,369,685.85
7.	Sobany & Sons Co. Ltd – Alt 3 India	10,797,807.70
8.	Sobany & Sons Co. Ltd – Alt 4	27,310,665.75
9.	Prosec Ltd	12,973,936.36
10.	Neetoo Industries C. Ltd – Alt 1	22,121,278.00
11.	Neetoo Industries C. Ltd – Alt 2	28,727,788.76
12.	Rey & Lenferna Ltd	35,002,241.22
13.	Dionics Ltd	14,005,936.00
14.	Worldwide Marketing & Services Ltd – Alt 1	10,030,042.00
15.	Worldwide Marketing & Services Ltd – Alt 2	11,545,658.00

All the bids received were considered to be responsive with respect to the qualification criteria a technical specifications as defined in the bidding documents.

The Bid Evaluation Committee (BEC) consequently opted to carry out an in-depth technical evaluation of the five lowest bids received and the details are as follows:

	<b>Tenderer</b>	<b>Proposed Equipment</b>	<b>Total Bid Price (Rs)</b>
1.	Schezen Spark Optoelectronics B & TC. Ltd	Schenzen Spark Optoelectronics B & T Co. Ltd (China)	8,371,126.08
2.	Sobany & Sons Co. Ltd – Alt 1	Cixi Deita Electronics Ltd (China)	9,369,685.85
3.	Sobany & Sons Co. Ltd – Alt 2	Hang Zhou China Hong Kong Figures Technology Ltd (China)	9,727,327.90
4.	Worldwide Marketing & Services Ltd – Alt 1	Schenzen Spark Optoelectronics B & T Co. Ltd (China)	10,030,042.00
5.	Sobany & Sons Co. Ltd – Alt 3	Envoys Electronics (India)	10,797,807.70

Then, based on paragraph 28 of Section 1, Instruction to Bidders, of the bidding documents, the Bid Evaluation Committee (BEC) opted to request samples from some of the five short-listed bidders. It is observed that:

- (i) Samples were not deemed necessary from bidder *Sobhany & Sons Co. Ltd* for its alternative 3 *“due to the fact that the proposed model of Make Envoys is presently being used on site with satisfactory performance by the TMRSU”*.
- (ii) The alternative proposed by Worldwide Marketing & Services Ltd was similar to the one proposed by bidder No. 1 Schezen Spark Optoelectronics B & TC. Ltd, WMMS Ltd agreed to submit the samples as the local representative.

- (iii) The Departmental Tender Committee of Public Body asked the Bid Evaluation Committee to once again contact bidder *Sobhany & Sons Co. Ltd* to submit the requested sample. It was argued that as a bid of a higher price by the same bidder was being recommended, the bidder should submit the requested sample for its alternative 1.

The Bid Evaluation Committee recommended the award of the contract to *Sobany & Sons Co. Ltd* for equipment of Make Envoy's Electronics (alternative 3 of the bidder) for a sum of Rs 10,797,807.70.

#### **D. Submission and Findings**

1. The fifteen bids received were all considered to be responsive with respect to the qualification criteria and the technical specifications as defined in the bidding documents. The quoted prices ranged from Rs. 8,371,126.08 to Rs.35,002,241.22 and the equipment proposed were of European and Asian origin. The price of the European equipment were on the very high side when compared to those of Asian origin. The decision of the Bid Evaluation Committee to carryout an in-depth technical evaluation of the five lowest bidders is considered to be fair and reasonable. The decision of the Bid Evaluation Committee to request samples from the short listed bidders is also correct and is within the ambit of the provisions of the bidding documents.

2. Paragraph 2(b) of section III: evaluation and Qualification criteria, for the bidding documents (pg 35) states clearly that the bidder shall furnish documentary evidence to demonstrate that the goods it offers meet the following usage requirement:

- *Proven record of use of the proposed LED aspects (The bidder will be required to cite the respective country/city and any other relevant information).*
- *LED aspects shall be fully adaptable to existing signal controllers which are of SAGEM, SEA and SILEC models.*

3. Though the bidding documents do not explicitly provide for the field testing of equipment the Panel considers that it was reasonable on the part of the Public Body to carryout the tests.

The provision of paragraph 1 (pg 35) of section III, according to the Panel, allows such an exercise to be carried out.

4. The Technical Evaluation report indicates that:

- (i) All three samples tested were compatible with Sagem Controllers; no modifications were required for adapting the samples and no disturbance to the functioning of the controller was observed. (69% of the signalised sites are equipped with Sagem Controllers).

Thus, the Panel concludes that all samples passed the field testing experiment with respect to installation and adaptability.

5. The Bid Evaluation Committee rejected alternatives 1 and 2 from bidder *Sobany & Sons Co. Ltd* on the basis that the proposed equipment were identical in all aspects to another make of traffic signal equipment, Bang-Bell Electronics LED, which had been found not to be reliable by both the Public Body and the supplier itself. The Panel considers the decision of the Bid Evaluation Committee to be in line with the requirements of the bidding documents i.e proven record of use as defined at section 2(b) (pg 35) of bidding documents.

6. The bid from *Worldwide Marketing & Services Ltd – Alt 1* (similar to the bid from Schenzen Spark Optoelectronics) has, according to the Bid Evaluation Committee itself, satisfied all the qualification criteria and technical specifications. The sample it provided, upon request from the Public Body, passed the field-testing experiment with respect to installation and adaptability. However, the report of the field testing indicates the following with respect to the equipment:

<b>Equipment</b>	<b>Remarks</b>
Cixi Delta Electronics Ltd (China)	The proposed equipment is identical in all aspects to another make of traffics signal equipment, (Bang-Bell Electronics LED) which has been used previously by this department and which has been found to be not very reliable by the maintenance contractor, who also happened to be the supplier of this same equipment. (Reference: TMRSU/TL/8 V.5 folio 208)
Schenzen Spark Optoelectronics B & T Co. Ltd (China)	<ul style="list-style-type: none"> <li>• The intensity of the light emitted from the equipment appears to be slightly lower than the intensity of other LED equipment presently used on other sites.</li> <li>• The aspects (excluding pedestrian) are fitted with a translucent lens, meant for dispersing the emitted light which is quite effective at night time, but lowers the apparent light intensity further during daytime.</li> </ul> <p>A joint site visit was carried out with Mr. S. Soopramanien who also confirmed the lower apparent intensity of the emitted lights during daytime.</p>

- On the basis of the field-testing report the Bid Evaluation Committee considered the bid from *Worldwide Marketing and Services Ltd* to be operationally non-responsive. However, the Panel finds it difficult to accommodate the visual observations of the Technical Evaluation Committee within the provisions of the bidding documents. If visual observations was to be an evaluating criterion then a proper protocol had to be defined for the assessment. The Panel considers that the observations made “*The intensity of the light emitted from the equipment appears to be slightly lower than the intensity of other LED equipment presently used on other sites*” and “*A joint site visit was carried out with Mr. S. Soopramanien who also confirmed the lower apparent intensity of*

*the emitted lights during daytime*” are not conclusive evidence to reject a bid which has satisfied all the technical specifications specified in the bidding documents.

7. The Panel considers that it would have been more rationale for the Public Body to take advantage of sections 2 and 4 of Section V: Schedule Requirements of the bidding documents (pg50) to require the bidder to carry out any test to confirm the conformity of the colour and luminosity of the lights with the Technical Specifications.

8. The Panel considers that there is merit in this application but as the Applicant was not the lowest bidder it cannot, as per 45 section (10) (d) of the PPA 2006, recommend payment of reasonable costs incurred in participating in the bidding process.

**(Dr. M. Allybokus)**  
***Chairperson***

**(H. D. Vellien)**  
***Member***

**(Mrs. E. Hanoomanjee)**  
***Member***

**Dated this ..... of February 2010**