

## INDEPENDENT REVIEW PANEL

In the matter of:

IFRAMAC Ltd

(Applicant)

v/s

The National Transport Corporation

(Respondent)

(Cause No. 03/10/IRP)

### Decision

#### A. Background

1. The National Transport Corporation, using the Open Advertised Bidding method, invited bids on 28 October 2009, for the procurement of thirty (30) standard bus chassis and/or thirty fully built standard buses.

The closing date for the submission of bids was the 04 December 2009 at 10.00hrs and the bids received were opened on the same day at 10.30hrs.

2. The Bid Evaluation Committee appointed by the National Transport Corporation submitted its report on 29 January 2010 and at Section 10 (pg 10) of the report it recommended:

- (i) Rejection of all bids received for the supply of the fully built buses as they were all considered to be non-responsive and

- (ii) Procurement of thirty (30) standard bus chassis from ABC Motors Ltd for an amount of Rs.50,919,000/- VAT inclusive.

3. As the bidding documents provide for a variation of  $\pm 20\%$  in the quantities to be procured. The Bid Evaluation Committee accordingly recommended that the number of chassis to be procured be increased from 30 to 36 as fully built buses were not to be procured under the contract. The contract value would thus increased to Rs.61,102,800/- VAT included.
4. Pursuant to Section 40(3) of the PPA 2006, the General Manager of the CNT notified all bidders on 26 February 2010 that the evaluation of bids received had been completed and that ABC Motors Ltd was the successful bidder for a contract price of 61,102,800 VAT inclusive.
5. IFRAMAC Ltd, an aggrieved bidder, challenged the decision of the Public Body on 02 March 2010. The Public Body promptly replied to the challenge on 03 March 2010. The reasons as to why the bid submitted by IFRAMAC Ltd was considered to be non-responsive and as such rejected were explained in details. The Public Body also indicated to the aggrieved bidder that they were replying to the challenge *“Notwithstanding the fact that your challenge has not been made in the form set out in the Second Schedule of the PPA (Regulations 2008)”*.
6. The aggrieved bidder submitted a fresh challenge to the Public Body on 05 March 2010 *“in full compliance with the second schedule of the PPA (Regulations 2008)”*. The Public Body on, 08 March 2010, replied to the arguments raised in the challenge of 05 March 2010 and re-iterated its earlier decision to the effect that the bid from IFRAMAC Ltd was non-responsive.
7. IFRAMAC Ltd still dissatisfied with the decision of the Public Body submitted an application for review under section 45 of the PPA 2006 to the Independent review Panel on 23 March 2010. The Independent Review Panel, on 24 March 2010, suspended the procurement proceedings until the appeal was heard and determined. The Public Body and aggrieved bidder were informed accordingly.
8. The Public Body was requested for its comments on the application for review made by IFRAMAC Ltd on 25 March 2010. The Public Body provided the required comments on 06 April 2010 but went on to add that it had already awarded the contract to ABC Motors Ltd on 22 March 2010.

**B. Grounds for Review**

The Grounds for Review are as follows:

*Bid submission form and price schedule are compliant to CNT Tender Requirements.*

**C. The Evaluation Process**

The National Transport Corporation appointed a 4 member bid evaluation committee to evaluate the three bids received for the supply of 30 fully built buses and the three other bids received for supply of 30 standard bus chassis. The Evaluation process was carried out in strict accordance with the provisions of the bidding documents. The Chairperson of the Bid Evaluation Committee wrote to IFRAMAC Ltd on 11 January 2010 to request it to submit its “Manufacturer Authorisation” in accordance with ITB 19.1 (a) Manufacturer’s authorisation is required.

The Bid Evaluation Committee submitted its evaluation report on 29 January 2010.

**D. Submission and Findings**

1. At the hearing held on 12 April 2010 Mr. Gilbert Ithier of Counsel for the respondent submitted that the application for review was lodged outside the prescribed delay and moved for dismissal of same. His submission is two-fold:

First, he submitted that the reply of the public body namely in response to the challenge of the aggrieved bidder was sent on 8 March 2010 by fax. It is assumed that it was received on the same date as no evidence to the contrary was adduced by the aggrieved bidder. The present application was lodged on 23 March 2010. According to him, in the light of the decision of the Supreme Court in the matter of High Security Guards Ltd v/s S.M.H. Fareedun (SCJ 48 of 2009) where it was held that “*under the clear provisions of section 38(1)(d) of the Interpretation and General Clauses Act 1974, the 6 March 1981, should be included in the fifteen days stipulated and the time limit then ended on the 20 March 1981*”, the last day to file the application for review should be 22 March 2010.

Secondly, for the public body, the first complaint dated 2 March 2010 of the aggrieved bidder by way of letter was considered as a challenge, though admittedly, it was not made in the prescribed manner. Therefore the reply of the public body, dated 3 March 2010 is the starting date for counting of the delay of 15 days prescribed by Regulation 48(5) made under the Public Procurement Act 2006. This argument cannot stand, because, the public body cannot even consider challenges which are not made in the prescribed manner.

2. But on the other hand, the Panel agrees with the counsel for the respondent on its first submission that the counting of the prescribed time should be governed by the provisions of section 38 of the Interpretation and General Clauses Act and the principles laid down in the above-named decision of the Supreme Court.

In these circumstances the application for review should have been lodged at latest 22 March 2010.

For this reason, the application for review is dismissed as it has been filed in an ultimately manner with respect to deadlines for filing an application for review by the Independent Review Panel. In the same breath, the Panel notes with concern that the Public Body awarded the contract on the 22 March 2010 at 13.10, at a time when the prescribed limit for appeal had not yet lapsed.

3. Having reached the above decision, the Panel cannot proceed further on the merits of the application. However, it strongly feels that the point raised by the applicant in respect of the differences in price contained in the covering letter with reference to exchange rate fluctuations and the price quoted in the bidding document which is in strict accordance with the Instructions to Bidders is well taken. In our view the Public Body should have at least requested for clarifications on the different prices from the aggrieved bidder.

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

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

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

**Dated this 11<sup>th</sup> of May 2010**