

## INDEPENDENT REVIEW PANEL

In the matter of:

**Total Mauritius Ltd**

**(Applicant)**

**v/s**

**Ministry of Public Infrastructure, Land Transport & Shipping  
(Public Infrastructure Division)**

**(Respondent)**

**(Cause No. 05/10/IRP)**

### Decision

#### **A. Background**

1. The Ministry of Public Infrastructure, Land Transport and Shipping (Public Infrastructure Division) invited bids for the supply of Petroleum Products for the Ministry through Restricted Bidding with the closing date being 15 March 2010 at 13.30 hours at the Central Procurement Office and public opening being on the same day at 14.00 hours.
2. The estimated cost of the Project is MUR 488, 620,000 inclusive of VAT at 15%. Bids were valid up to 13 May 2010.
3. The Ministry of Public Infrastructure issued two Addendum dated 5 and 11 March 2010 respectively. These were Addendum 1 and 2.

*Addendum No.1 dated 5 March 2010 -*

*Amendments to bidding documents regarding interest payable (Annex 2).*

*Addendum No. 2 dated 11 March 2010 - Removal of the word 'annual' from pages 21, 21, 22 of the bidding documents (Annex 3).*

4. The following four suppliers were invited to bid:
- Indian Oil Mauritius Ltd
  - Total Mauritius Ltd
  - Shell Mauritius Ltd
  - Chevron Mauritius Ltd
5. The Central Procurement Board set up an Evaluation Committee, which had its first meeting on 24 March 2010 and on 1 April 2010 the Central Procurement Board informed the Ministry of Public Infrastructure, Land Transport and Shipping that it has approved the award of the contract to Indian Oil (Mauritius) Ltd. Pursuant to section 40 of the Public Procurement Act 2006, the successful and unsuccessful bidders were notified regarding the award on 5 April 2010. The details of the award made were as follows:

Item	Name of Bidder	Address	Contract Price
Motor Gasolene Bulk Supplies	Indian Oil	Mer Rouge, Port Louis	Wholesale Price per litre fixed by Govt less Rs0.475
Gas Oil Bulk Supplies	Indian Oil	Mer Rouge, Port Louis	Wholesale Price per litre fixed by Govt less Rs0.475
Motor Gasolene retail Supplies at filling station	Indian Oil	Mer Rouge, Port Louis	Retail Price per litre fixed by Govt less Rs0.80
Motor Gasolene retail Supplies at filling station	Indian Oil	Mer Rouge, Port Louis	Retail Price per litre fixed by Govt less Rs0.80

6. On receiving the notification letter dated 5 April 2010 regarding the procurement of petroleum products, Total Mauritius Ltd submitted their challenge in accordance with Regulations 48 of the PPR 2008 on 09 April 2010.
7. The reply given by the Public Body in a letter dated 21 April 2010 in response to the challenge of 09 April 2010 was that:-
- (i) the bidding documents did not specify the number of retail outlets

- (ii) the bid of Indian Oil (Mauritius) Ltd is the lowest evaluated bid and is responsive to the requirements of the bidding documents.

Dissatisfied with this response, Total (Mauritius) Ltd applied for a Review of the decision on 4 May 2010.

## **B. Grounds for Review**

The Grounds for Review are as follows:

*“Total Mauritius Ltd challenged the decision of the Ministry of Public Infrastructure, Land Transport and Shipping on the award of the abovementioned contract. We are unsatisfied with the written decision of its Chief Operating Officer and hereby apply for a review.”*

## **C. The Evaluation Process**

The Central Procurement Board set up an Evaluation Committee, which had its first meeting on 24 March 2010 and on 1 April 2010 the CPB informed the MPI that it has approved the award of the contract to Indian Oil (Mauritius) Ltd. Pursuant to section 40 (3) of the Public Procurement Act 2006, the unsuccessful bidders were notified on 5 April 2010 that their bids had not been retained.

## **D. Submissions**

According to the Applicant, the attachment No 3 of the Instruction to Bidders paragraph 1.4.1 of the tender documents underline the importance of the bidder to have a good network of filling stations closely and conveniently located to depots and sub officers of contracting public bodies. *“By omitting the fact that Indian Oil (Mauritius) Ltd has only 17 service stations partially spread on the territory (which constitutes the smallest retail network among the four bidders), we believe that the financial impact of the limited number of Indian Oil (Mauritius) Ltd retail outlets on the procurement of petroleum products has not been properly evaluated in the comparison of bids.”*

The aggrieved bidder also raised the following points during the sitting of 31 May 2010,

- The limited network of the successful bidder should have made its bid non-responsive. Thus although the successful bidder may be the lowest bidder and offer the highest discount, the travelling cost to the Public Bodies such as the Police and the Ministry of Health and Quality of Life for refuelling of vehicles may be higher than from the Respondent. The cost and the inconvenience of refuelling from a limited number of retail outlets would be in particular difficult and costly for the above mentioned Public Bodies which offer services throughout the island and are called upon to provide emergency services on a regular basis.
- Clause 26.4 of the Instruction to Bidders provides that “*the Central Procurement Board’s evaluation of the bid shall include all charges*”. The cost of travelling to a retail filling station should therefore be included when working out the charges for refuelling to be incurred by the Public Body. The aggrieved bidder has worked out the cost to the Public Body of using the successful bidder network of retail outlets based on some assumptions which include the (i) cost of travelling to a retail outlet taking into consideration the distance and (ii) the percentage of petroleum products supplied in bulk and on a retail basis. According to the Public Body the “Charges” refer to the cost to the supplier for delivery at retail outlets and for bulk.

The Public Body has the following reasons for maintaining its stand:

- (a) *where refuelling of vehicles is effected from bulk network facilities available at the level of the public body, no additional cost is involved; and*
- (b) *where refuelling of vehicles is effected at retail outlets, drivers usually refuel their vehicles while performing their usual trips, but do not perform specific trips for refuelling purposes only.*

The views of the Counsel for the Respondent on the above points are as follows:

- (a) The issue of non-responsiveness of the successful bidder cannot be entertained as it was not raised as part of the Review submitted by the Aggrieved bidder.

- (b) At Paragraph 1.4 of the Bid documents for Local companies, it is stated that bidders should be “duly licensed to provide for retail services through a good network of Filling Stations” but no definition of what is a good network is provided so there is no benchmarking to decide whether 17 filling stations around the island is adequate to meet the requirements.
- (c) The Terms of Reference for the evaluation of the bids as set out in Para 26 of the Bid document has been on the basis of the discount provided by the bidder and the discount was the sole determining factor for the award of the contract.

### **Findings**

After having heard both Counsel and examined all the bidding documents submitted by the Central Procurement Board, the Panel has reached the following findings:

- Indian Oil (Mauritius) Ltd did indicate that it has 17 retail outlets but did not mention their location. This prompted the Panel on 01 June 2010 to request information on the location of the retail outlets from the Central Procurement Board. In a letter dated 07 June 2010, the Central Procurement Board informed the Panel as follows:

*“A technical committee of the Central Procurement Board set up to submit views on Evaluation Reports has confirmed the assertion of the bidder by visiting the website of the latter.”*

- For the Public Body, there was no need to specify the number of retail outlets. However, in Annex 2 to Framework Contract, Section 3, emphasis is laid upon the close proximity of the filling stations with sub-offices of the Contracting Public Bodies.

It is significant to note that price schedule Annex 2 to Framework Contract is a mandatory requirement as laid down in para 12 of the Evaluation Report. The successful bidder indicated the number of outlets but did not fill in the list of the filling stations as requested in para 4 of Section V of Annex 2 to Framework Contract. By that, the Panel insists to stress that it does not mean that the bidder having the greatest number of outlets should succeed, but in conformity with the need for

proximity, most probably for economic reasons, the outlets should be located near the sub-offices.

We do not agree with Counsel for the Public Body that bidding at a loss is immaterial for the evaluation exercise and the Panel should consider only the discount factor. We say so, because, this is not promoting fair competition among the bidders to consider bids performing at a loss. Secondly, it is clearly specified in Clause 27(1) of the Instruction to Bidders, that “*the Central Procurement Board shall compare all substantially responsive bids to determine the lowest-evaluated bid, in accordance with ITB Clause 26*”, which means that all charges should be carefully examined.

The evidence before us reveals that around 35 sub-offices are situated in Port Louis and five in Beau Bassin – Rose Hill. However, up to now there is no outlet of the selected bidder in Port Louis and Beau Bassin – Rose Hill. The nearest ones are indeed found in GRNW and Pailles.

If it is admitted as contended by the Central Procurement Board, that there was no need for the number of outlets, on the other hand because of proximity requirement, it is obvious to the Panel that the outlets should be close to contracting Public Bodies. From the evidence on record, it would appear that the selected bidder does not satisfy this requirement.

- Furthermore, it is agreed by all parties that the Evaluation Committee should take into consideration the provisions of Clause 26 of the Instruction to Bidders. Indeed, since it is a controlled price commodity, the Evaluation Committee should take into account:

*“ITB 26.4            The Central Procurement Board’s evaluation of a bid shall include all charges*

*ITB 26.5            The evaluation shall be based on a lot for the supply of both items for the estimated quantities and the two mode of delivery.”*

In the evaluation report, there is no mention that the above issues were given proper consideration. Even Counsel for the Respondent conceded that discount was the determining factor, which would support our view that indeed all charges have not been properly canvassed.

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In these circumstances, the Panel feels that it was material for the Evaluation Committee to consider these factors in view of determining which one is the lowest substantially responsive bid.

For all these reasons, the Panel holds that it is proper to review the decision of the Public Body. The Panel therefore pursuant to section 45(10)(c) of the Public Procurement Act 2006 recommends a review of the decision for the award subject matter of the review.

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

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

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

**Dated 30 June 2010**