

INDEPENDENT REVIEW PANEL

In the matter of:

Securiclean (Mtius) Ltd

(Applicant)

v/s

Municipal Council of Beau Bassin - Rose Hill

(Respondent)

(Cause No. 06/10/IRP)

Decision

A. Background

1. The Municipal Council of Beau Bassin – Rose Hill using the open advertising method invited bids from eligible and qualified service providers for Street Cleaning, Refuse Collection and Disposal, including carting away of Post Cyclonic Waste related to commercial areas and town centres of Beau Bassin and Rose Hill. The procurement reference number was CPB/11(2010).
2. The representatives of the two companies which bought bidding documents, Maxi Clean Co. Ltd and Securiclean Ltd, were convened for a pre-bid meeting on 24 February 2010 by the Public Body. The notes of meeting indicated that only the representative of Securiclean Ltd attended the meeting.
3. The deadline for the submission of bids at the Central Procurement Board's office was 04 March 2010 up to 13.30 hrs. Bids received were opened on the same day and at the same venue at 14.00 hrs.

4. The Central Procurement Board appointed a Bid Evaluation Committee to evaluate the two bids received by the closing date of 04 March 2010. The Bid Evaluation Committee submitted its evaluation report to the Central Procurement Board on 01 April 2010. The Public Body informed the two bidders about the outcome of the bidding exercise on 26 April 2010. The successful bidder was Maxi Clean Co. Ltd for a contract price of Rs12,787,500 inclusive of VAT.
5. On 28 April 2010, Securiclean (Mtius) Ltd as an aggrieved bidder challenged the decision of the Public Body. The Public Body sought the necessary explanations from the Central Procurement Board and replied to the challenge on 13 May 2010. On 26 May 2010, Securiclean (Mtius) Ltd still dissatisfied with the decision of the Public Body submitted a request for review to the Independent Review Panel.
6. The Independent Review Panel informed the Public body and the aggrieved bidder on 27 May 2010 that the procurement proceedings were suspended until it had heard and determined the appeal.

The Independent Review Panel held a hearing on 18 June 2010.

B. Grounds for Review

The Grounds for Review are as follows:

- “1. As per Clause 5.1 (c), (d), (e) of the Bidding Documents under the Heading “Qualification of the Bidder”, the Applicant has provided more than adequate information regarding the list of Human Resources, Logistic Support as well as the qualifications and experiences of Supervisory personnel proposed to ensure good performance of the service.
2. In the light of the experience of the Applicant over the island (more than 20 years), Criterion C(ii) of Section VI – Evaluation Criteria, ought not to have been used against the Applicant the more so that such criterion would only apply to a “Newcomer” on the market.
3. Applicant is not a “Newcomer” on the market for that particular service and it has already been providing the very same services to the Public Body for the past three (3) years

without any complaint whatsoever and its Labour Force and Supervisory Staff is well known to the Public Body.

4. *Criterion C(ii) does not apply to the Applicant since at pages 34 to 43 of the Bidding Documents; the Applicant has been very explicit as to its Labour Force and Supervisory Staff. The information submitted therein “per se” reveals the strategy of recruitment in respect of the Labour Force and Supervisory Staff. The Labour Force proposed in the Bidding Documents are already working “on Site” for the same Public Body under similar conditions for a similar specific Contract, albeit for the past three (3) years (2007 – 2010). Hence, the Public Body is already aware of the backbone Labour Force and Supervisory Staff of the Applicant and cannot plead ignorance of same.*
5. *The Applicant’s bid is “substantially responsive” notwithstanding Criterion C(ii) as explained above (which criterion should not be applied to and penalize the Applicant), since as per the Public Body’s own evaluation, the Minimum Pass Mark is 45 and Evaluation of Lot 1 and Lot 2 for the Applicant resulted in a score of 64.25. However, on the Financial evaluation, the Applicant scored the full Mark of 30 whilst Maxi Clean Co. Ltd scored 28.1. This is reflected in the Financial Bid of the Maxi Clean Co. Ltd being MUR 794,286.20 higher than that of the Applicant. Logically speaking, a tender ought to be awarded to be lowest substantially responsive Bidder so as not to penalize taxpayers and the public at large.*
6. *The Evaluation Exercise appears to be flawed and devoid of any rationale since it tends to play down the “Financial Aspect” of this Contract since it would appear that the Public Body is not at all minded to award this Contract to the lowest substantially responsive bidder.”*

C. The Evaluation Process

The Central Procurement Board appointed a Bid Evaluation Committee to evaluate the two bids received and the Committee submitted its evaluation report on 01 April 2010. The Committee noted at pg 13 of its report that the bank testimonial submitted by Maxi Clean Co. Ltd did not comply with the requirements of ITB 5.1(j) and recommended at paragraph 17.3 “*However, the award should be made subject to Maxi Clean Co. Ltd confirming from his bank the amount of the*

necessary working capital representing 20% of the annual contract amount.”

Maxi Clean Co. Ltd is recommended for an award of both Lot 1 and Lot 2 for a total sum of Rs12,787,500 inclusive of VAT.

D. Submissions and Findings

1. The Central Procurement Board informed the Public Body on 11 May 2010 that with respect to the challenge made by Securiclean (Mtius) Ltd for the contract CPB/11(2010), *“The Bid Evaluation Committee has reported that with regard to strategy to cater for contingencies, Securiclean (Mtius) Ltd has not provided any information on its methodology of recruitment in respect of the labour force and supervisory staff. The Bid Evaluation Committee has therefore not allocated any mark under criterion C(ii).”*

The technical score of Securiclean (Mtius) Ltd was 64.25 marks on a maximum of 70. The other bidder, Maxi Clean Co. Ltd scored 68.65 marks.

2. The Panel has examined the bids submitted by the two bidders to compare the approach they have used to address the specific issue of *“C(ii) Method of recruitment in respect of labour force and supervisory staff to cater with contingencies.”*

- (i) Securiclean (Mtius) Ltd explained in the Section “Site organisation and Methodology” that the company “has always in reserve a stand-by team (cleaners, drivers) to respond to special needs.” Then, there is a technical proposal for carrying out post cyclonic service. Section 3 of this specific proposal deals with the methodology and in the sub-section on “personnel” the deployment of extra personnel is detailed.

Pg 49 of the bidding documents (Section IV – Activity Schedule) contains the tables to be filled by bidders to indicate their contract price for the different items forming part of the contract. For each zone there is particular table to be filled: *Table 2 – Contract Rates (Dayworks Schedule) for carting away of post-cyclonic wastes, when needed.* Securiclean (Mtius) Ltd has not quoted any specific amount for Item C: Supervisor and Item D: Labourers of that Table 2.

The Panel considers that this is consistent with what is described by the bidder in its methodology and the availability of a stand-by team in reserve.

- (ii) Maxi Clean Co. Ltd has stated in its bid that it will have an updated data base of all persons interested to work with the company after the passage of a cyclone. All necessary details such as name, address, phone numbers, Identity Number and Social Security Number will be on that database. The persons would be requested to report to work as may be needed after the passage of a cyclone. The bidder has indicated a rate for the additional supervisor and labourers that may be needed and this is consistent with its proposed methodology for dealing with post cyclonic wastes.
3. During the hearing the representative of the Public Body confirmed that the bidding documents did not specify what was required from the bidder to fully address the issue of *“Method of recruitment in respect of labour force and supervisory staff to cater with contingencies”*. He opined that it was an open-ended question.

Thus, Maxi Clean Co. Ltd which has described its recruitment methodology scores 5 marks. However, Securiclean (Mtius) Ltd stated that it has a stand-by team in reserve for such events and as such does not have to recruit. In a fairly consistent and rationale approach the bidder does not quote for additional labour to cater for the carting away of post cyclonic wastes. The bidder is allocated a score of zero under the criterion mentioned above by the Bid Evaluation Committee.

The Panel considers that it would be most unfair to penalise a bidder because it does not have to recruit extra labour force to cope with a given event. The moreso that the bidder scored 14.55 marks out of a maximum of 15 marks for the criterion “Site Management and Organisation/Methodology and Management Approach” and maximum marks for the sub-criterion organisation of resources and resource persons. As the methodology proposed by the bidder has been accepted with respect to all defined criterion. In our view, it should have been likewise for sub-criterion C(ii).

4. The Bidding Documents at ITB 5.3 (pg 8) indicate that to qualify for award of the contract, bidders shall meet a series of minimum qualifying criteria and 5.3 (g) provides:

“Liquid assets and/or credit facilities, net of other contractual commitments which may be made under the Contract, of no less than the amount specified in the BDS.”

The BDS at pg 23 of the bidding documents indicates:

“The minimum amount of liquid assets and/or credit facilities net of other contractual commitments of the successful Bidder shall be 20% of the annual contract amount.”

Maxi Clean Co. Ltd submitted a bank testimonial from Barclays Bank PLC which states that the bidder has at the present time, *“adequacy of working capital for the above Contract and access to line(s) of credit and availability of financial resources”*.

This opinion is given in strict confidence and without any guarantee or responsibility on the part of the Bank or any of its officials.”

5. The Bid Evaluation Committee noted this short-coming in the bid submitted by Maxi Clean Co. Ltd and recommended that it be cured at the award stage: *“Maxi Clean Co. Ltd to confirm from his bank the amount of the necessary working capital representing 20% of the annual contract amount”*. In our view, this shortcoming cannot be cured at award stage being given that it is specific requirement which should be satisfied at bidding stage.

The Panel considers that the bank testimonial submitted by Maxi Clean Co. Ltd represents an absolute non-compliance of the requirements set in 5.3(i) and as such the company does not qualify for an award. The Panel reached a similar conclusion in the case of Keep Clean Ltd v/s Ministry of Local Government (Cause No. 04/08/IRP). It is worth noting that in Directive No. 3 dated 30 April 2010, it is indicated at (iv)(k) that failure to submit evidence of adequacy of working capital as required in the bidding document is a justifiable grounds for rejection of a bid.

For all the reasons given above, the Panel considers that there is merit in this application and in accordance with Section 45(10)(b) of the Public Procurement Act 2006 recommends annulment of the decision to award the contract CPB/11/2010 to Maxi Clean Co. Ltd.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated 30 June 2010