

INDEPENDENT REVIEW PANEL

In the matter of:

Defence Hitech Security Services Ltd

(Applicant)

v/s

Ministry of Agro Industry & Food Security

(Respondent)

(Cause No. 19/11/IRP)

Decision

A. Background

1. The Ministry of Agro Industry & Food Security using the open advertised bidding method invited bids on 10 June 2011 from service providers for security services on its stations/compounds. The deadline for the submission of bids was 13 July 2011 at 10.00 hrs. Bids received were to be opened on the same day.
2. A six-member Bid Evaluation Committee was appointed to evaluate the four bids received by the deadline for the submission of bids. The Committee submitted its evaluation report on 27 July 2011. The Public Body notified all bidders of the outcome of the bidding exercise on 11 August 2011.
3. Pursuant to Section 43 of the Public Procurement Act 2006 Defence Hitech Security Services Ltd as an aggrieved bidder challenged the decision of the Public Body on 15 August 2011. The Public Body promptly replied to the challenge on 18 August 2011 giving the reasons to the aggrieved bidder as to why its bid had not been retained.

The bidder still dissatisfied with the decision of the Public Body submitted an application for review to the Panel on 23 August 2011.

4. The Panel informed all parties concerned about the application for review on 24 August 2011 and then on the same day suspended the procurement proceedings until the appeal was heard and determined.

The Panel held hearings on 09 September 2011, 21 October 2011, 06 December 2011 and 28 February 2012. The last hearing was held in the presence of the selected bidder.

B. Grounds for Review

The Grounds for Review are as follows:

- “1. *Failure to take into consideration the fact that Defence Hitech Security Services Ltd is the lowest bidder.*
2. *RSL Security Company is the highest bidder.*
3. *All requirement in the tender documents have been met and fulfilled by Defence Hitech Security Services Ltd.*
4. *All security equipments used by Defence Hitech Security Services Ltd all around the island for a proper monitoring of all our security guards.*
5. *Our control rooms are manned on a 24hr basis are fully equipped.*

The ministry erred in as much as the documents were signed by the director of Defence Hitech Security Services Ltd a director is an agent of a company and under the companies’ act 2001, a director signing a document commits the company towards the other party.

In the present situation there is no need of a written authorization in the form of a power of attorney from the company to a director.

With regards to other evidence demonstrating that the representative signing, the director and managing director of Defence Hitech Security Services Ltd have submitted a copy of record of the registrar of the companies file showing clearly that he is a director of the company.

Over and above Defence Hitech Security Services Ltd has been in the security field and the act done is in the ordinary course of business.”

C. The Evaluation Process

1. The six-member Bid Evaluation Committee appointed by the Public Body met on 19 July 2011 to determine the responsiveness to commercial terms and conditions of the four bids received.
2. At paragraph 2(a) of the report it is noted that two of the bidders were considered to be non-responsive because of the absence of written confirmation authorising the signatory of the bid to commit the bidder. A third bidder was considered to be non-responsive for the same reason as above in addition to the fact that it did not submit an original bid submission form.
3. The bid from RSL Security Services Ltd was found to be substantially responsive but the bidder had to submit some documents and information which are considered to be non-material omissions.
4. The Committee met on 26 July 2011 and after examining documents submitted by RSL Security Services Ltd considered that it was responsive to the commercial requirements. The bid was then assessed according to an approved Technical Evaluation Marking System and was considered to be fully responsive. The Bid Evaluation Committee then recommended that *“RSL Security be awarded the contract for the provision of security services to all stations/compounds. The contract price of Rs32,199,264.00 does not exceed the estimated cost of Rs45 Million.”*

D. Submissions and Findings

1. ITB 5.1 (a)-(i) provides a list of information and documents which bidders should include with their bids.

Paragraph 5.1 indicates that *“Bidders shall include the information and documents listed hereunder with their bids. If, after opening of bids it is found that any document is missing the Employer may*

request the submission of that document subject to clause 27.1. The non-submission of the document by the Bidder within the prescribed period may lead to the rejection of its bid.”

Then paragraph 5.1(a) indicates that one of the documents required is *“a written authorization in the form of a power of attorney accompanying the proposal or any other evidence demonstrating that the representative signing the bid has been duly authorized to commit the Bidder”*.

2. Directive No. 3 issued by the Procurement Policy Office pursuant to Section 7(b) of the Public Procurement Act 2006 provides “guidelines for the determination of responsiveness of bids”. At paragraph (iv)(k) it is indicated that failure to submit evidence of authorisation for the signatory to sign the bid on behalf of the company, where applicable is a justifiable ground for rejection of a bid.
3. The bid form of the aggrieved bidder dated 07 July 2011 is signed by Mr D. Hosanee in his capacity as Managing Director of the company, Defence Hitech Security Services Ltd. As a supporting document in its bid the bidder provided a “CONSENT AND CERTIFICATE OF DIRECTOR” from the Registrar of Companies dated 18 August 2006. The document confirms that Mr D. Hosanee is the Managing Director of the company Defence Hitech Security Services Ltd.
4. The selected bidder for its part provided a document dated 07 October 2008 from a Notary Public which certified that “the signature and initials of Mr Jay Kumar Chuttoo affixed in this document are the true and proper signature and initials J. K. Chuttoo and the latter is authorised to sign on behalf of the Company RSL Security Services Ltd”.

Both documents of the selected and aggrieved bidder do not refer to a Board Resolution which confers upon the Director the authority to sign on behalf of the company.

5. Mr F. Shipkolye of Counsel for the aggrieved bidder submitted that Mr D. Hosanee in his capacity as Managing Director was duly authorised by the provisions of Section 29 of the Companies Act to bind the company in any form or shape as long as he was acting within the ordinary course of the business. In the absence of specific restrictions he contended that the provisions of Section 29 of the Companies Act empowers Directors of the company to

commit the company and the certificate of consent to act as director of Mr D. Hosanee is a statutory document contrary to the certificate drawn up by the Notary submitted by the selected bidder. According to him, the Notary was not empowered to state in the absence of a Board Resolution to that effect that Mr J. K. Chuttoo was authorized to sign on behalf of the company. The moreso, the said certificate dates back to October 2008 and the Notary in the performance of his duties could only authenticate the signature of Mr J. K. Chuttoo.

6. In her reply, Mrs P. Ramjeeawon-Varma referred to para 5(1) of the ITB and submitted that the certificate of consent is not sufficient to comply with the requirement of para 5(1) of the ITB and Section (iv)(k) of the Directive No. 3. There was a clear requirement for “*a written authorization in the form of a power of attorney accompanying the proposal or any other evidence demonstrating that the representative signing the bid has been duly authorized to commit the Bidder*”.

According to her there was a need for a specific Board Resolution which would confer upon the director an authorization to commit the company in respect of the specific bid. As far as the certificate of the Notary is concerned, it is her contention that the said document amounts to *other evidence demonstrating that the representative signing the bid has been duly authorized to commit the Bidder* as contemplated by Section 5(1)(a) of the ITB.

7. The Panel has heard the submission of both Counsel and has reached the following conclusions:

In respect of the present bid there was a specific requirement laid down in clear terms in para 5.1(a) in the ITB for “*a written authorization in the form of a power of attorney accompanying the proposal or any other evidence demonstrating that the representative signing the bid has been duly authorized to commit the Bidder*”.

The Panel holds that the contents of the documents submitted by the selected bidder and the aggrieved bidder do not constitute the authorization contemplated by the Public Body as per para 5.1(a) of the ITB. For the selected bidder, it was merely a certificate from a Notary which dates back to 2008, authenticate the signature and initials as being those of Mr J. K. Chuttoo, the Director of the Company RSL Security Services Ltd. As far as the certificate of consent to act as Director is concerned, submitted by the aggrieved

bidder it dates back to 2008 and as the terms indicate refers only the consent of Mr D. Hosanee to act as Director.

The Panel is of the view that both documents are valid but not for all intents and purposes. In the present matter, in order to fulfil the requirement of Section 5.1(a) of the ITB there should be a written specific authorization from the bidder for someone to sign the bid on behalf of the company. This authorization usually takes the form of a Board Resolution. Both the selected and the aggrieved bidders have failed to enclose the appropriate authorization in their respective bid.

Having reached this conclusion, the Panel feels that there is no need to consider the other grounds of appeal. In view of the reasons given above, the Panel recommends the annulment of the decision of the Public Body pursuant to Section 10(b) of the Public Procurement Act.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated 20 April 2012