

INDEPENDENT REVIEW PANEL

In the matter of:

Island Chemicals Ltd

(Applicant)

v/s

Central Water Authority

(Respondent)

(Cause No. 13/12/IRP)

Decision

A. Background

1. The Central Water Authority using the open advertised bidding method invited bids from experienced and qualified bidders, on 22 December 2011, for the supply of liquid chlorine and maintenance of chlorine cylinders 70/100 kg and tonners 900 kg. The deadline for the submission of bids was 22 December 2011 at 13.00 hrs and the public opening of bids was carried out on the same day at 13.05 hrs.
2. Four bids were received by the deadline for the submission of bids and the name of the bidders and their bid price as read out at the public opening is as follows:

S.No.	Bidder	Total Bid Sum (Exc. VAT)	Remarks
1	<i>JV Sotravic Limitee/ SOC</i>	24,775,954.56	
2	<i>Desbro Trading Ltd</i>	34,345,305.00	<i>In words – amount is written Rs34,345,304 on bid submission form</i>
3	HPL Chemicals Ltd	25,565,200.00	
4	Island Chemicals Ltd	23,733,000.00	

The Public Body appointed a four-member bid Evaluation Committee to evaluate the four bids received.

3. The Bid Evaluation Committee submitted its evaluation report on 06 March 2012 and recommended the award of the chlorine contract to the joint venture Sotravic Limitée and Sharjah Oxygen Company for a total bid amount of Rs24,775,952.71 (exclusive VAT). All bidders were notified of the outcome of the bidding exercise on 05 April 2012 and this pursuant to Section 40(3) of the Public Procurement Act 2006.
4. Island Chemicals Ltd as an aggrieved bidder challenged the decision of the Public Body on 13 April 2012. The Public Body replied to the challenge on 20 April 2012. However, the bidder still dissatisfied with the decision of the Public Body submitted an application for review to the Panel on 23 April 2012.
5. On 23 April 2012 the Panel notified all parties concerned about the application for review pursuant to Regulation 52 made under Section 61 of the Public procurement Act 2006. Furthermore, pursuant to Section 45(4) of the Act, the procurement proceedings were suspended until it had heard and determined the appeal. All relevant information, documentation and comments on application for review were requested from the Public Body.
6. The Panel held two hearings on 31 May 2012 and 06 June 2012 in the presence of the selected bidder.

B. Grounds for Review

The Grounds for Review are as follows:

- “1. That the Central Water Authority is wrong to reject the challenge made by the Applicant and to hold that such challenge was “not in order and out of delay” in as much as there is no record of any notification having been received by fax by Island Chemicals Ltd. Or otherwise, the only notification having been received on 16 April 2012 by registered post.*
- 2. Because the alleged notification referred to in the decision of the Central Water Authority, i.e. a notification by alleged facsimile of 05 April which was never received by Island Chemicals Ltd is, in any event, null and void to all intents and purposes.*
- 3. That the Central Water Authority unlawfully and in breach of the Act in that it failed to award the procurement contract under reference to the applicant, Island Chemicals, the applicant being a bidder which has submitted the lowest evaluated substantially responsive bid, such bid meeting all the criteria specified in all bidding documents.*
- 4. That the Central Water Authority ought to have considered the bid made by the present applicant which was in the sum of Rs23,733,000.00 and ought to have rejected the bid made by the Jointy Venture Sotravac Ltee/Sharjah Oxygen Company which was for a higher value.*
- 5. That after the Independent Review Panel has taken an initial decision to annul a previous decision (v. Cause No. 17/11/IRP of 09 September 2011) of the Central Water Authority, the latter has used all possible colourable devices and schemes to inflict damage and prejudice to the Applicant so as to ensure non-compliance with the decision of the Independent Review Panel before calling for further tenders leading to the present decision, thereby indicating the bad faith of the Central Water Authority and the latter’s persistent attempts not to award the tender to the applicant.”*

C. The Evaluation Process

1. The Public Body appointed a four-member Bid Evaluation Committee to evaluate the four bids received by 22 December 2011, the deadline for the submission of bids. The Bid Evaluation Committee submitted its evaluation report on 06 March 2012.
2. The bid from HPL Chemicals Ltd was considered to be non-responsive and was not retained for further evaluation as it had failed to comply with ITB 12.1(c) of the BDS – written confirmation for authorising the signatory to sign the bid.
3. The bid from Island Chemicals Ltd was considered to be non-responsive and was not retained for technical evaluation. The bidder had failed to satisfy the criterion of experience and technical capacity.
4. The bids received from JV Sotravac Ltee/Sharjah Oxygen Company and Desbro Trading Ltd were considered to be fully compliant with all the technical terms and were retained for financial evaluation. The Bid Evaluation Committee then concluded that the offer from Bidder No. 1 JV Sotravac Ltee/Sharjah Oxygen Company was the lowest responsive bid for a total amount of Rs24,775,952.71 (exclusive of VAT).

D. Submissions and Findings

1. At the hearing, Counsel for the Public Body informed that it would not press for a dismissal of the application for review on the basis that it was untimely. However, he did produce documentary evidence from the Mauritius Telecom indicating that a fax was actually delivered to the aggrieved bidder on 05 April 2012 at 15.48.53 hrs.
2. The bidding documents clearly indicate at ITB 20.1(c) (page 14) that the bidder must submit documents to establish that it meets the post-qualification criterion specified in Section III – Evaluation and Qualification Criteria.

ITB 39 (pg23) refers to the Post-qualification of the Bidder and Section 39.2 indicates that the qualification of the bidder will be based upon an examination of the documentary evidence submitted, pursuant to ITB Clause 20.

The Post-qualification Requirements (ITB 39.2) are specified at paragraph 2 of Section III – Evaluation Criteria (pg 34) of the bidding documents. Section (c) of paragraph 2 specifies the Experience and Technical Capacity of the bidder.

It is clearly specified that:

“The Bidder shall furnish the following documentary evidence at bidding stage to demonstrate that it meets the following experience requirement(s):

- (i) During the last ten (10) years, the bidder must have completed successfully at least one contract for the supply of liquid chlorine for treatment of raw water for portable use. The following details must be provided*
 - (a) Name of the client*
 - (b) Original contract sum, and*
 - (c) The actual date for completion of the contract.”*

3. The aggrieved bidder failed to submit the required documents in its bid and in-line with the provisions of the Public Procurement Act 2006 the Public Body requested the information from the bidder on 02 February 2012. On 06 February 2012, the aggrieved bidder replied to the Public Body and provided a document in the name of its supplier, Prakash Chemicals International Pvt Ltd. This led the Bid Evaluation Committee to conclude that Island Chemicals Ltd has not performed any contract of supply of chlorine during the last ten years and that it does not have any experience in the handling of orders of similar value. Thus, the bid was considered to be non-responsive.
4. During the hearing, the aggrieved bidder conceded that it failed to meet the criterion of Experience and Technical capacity and as such was non-responsive.

The Panel has examined the bid of the selected bidder and concurs that it was the lowest responsive bid. However, the Panel wishes to point out that upon scrutiny of the documents produced by the selected bidder in respect of handling of works of similar value, the Panel has observed that a certificate from Sharjah Oxygen Company reveals the names of four major chlorine customers and their completed period which are as follows:

Customer Name	Contract Period
<i>Abu Dhabi Sewerage Services Company (ADSSC)</i>	<i>16/08/11 – 15/08/12</i>
<i>Dubai Municipality</i>	<i>17/04/11 – 16/04/12</i>
<i>Siyana FZC</i>	<i>01/09/11 – 30/09/12</i>
<i>Ras Al Khaimah Municipality</i>	<i>Purchase Order Basis</i>

This was found acceptable by the Central Water Authority.

Based on all the above, the Panel finds that there is no merit in this application which is accordingly dismissed.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated 15 June 2012