

INDEPENDENT REVIEW PANEL

In the matter of:

Felix Consortium

(Applicant)

v/s

National Transport Corporation

(Respondent)

(Cause No. 38/12/IRP)

Decision

A. Background

1. The National Transport Corporation using the Open Advertised Bidding method invited bids on 03 August 2012 from National and International bidders for the Procurement of Retread Consumables. The deadline for the submission of bids was 03 September 2012 at 14.00 hrs with public opening scheduled on the same day at 14.15 hrs. The bidding documents were purchased by three potential bidders.
2. Four bids were received by the deadline for the submission of bids:
 - *Bremels Rubber Industries PVT Ltd*
 - *Backslide International Ltd*
 - *New Era Equipment PTE Ltd*
 - *Kayel Rubber Products*

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The bidder Kayel Rubber Products did not purchase the bidding documents and as such its bid was not opened. The list of bidders and prices as read out at the public opening is as follows:

<i>S/N</i>	<i>Name of Bidders</i>	<i>Country of Origin</i>	<i>Bid Amount (Rs)</i>
1	<i>Bremels Rubber Industries PVT Ltd</i>	<i>India</i>	<i>CIP Retread Plant FSD-USD 483,549</i>
2	<i>Backslide International Co. Ltd</i>	<i>India</i>	<i>USD 503,034.10 Delivery Ex. Stock Retread Plant FSD VAT & Local charges incl.</i>
3	<i>New Era Equipment PTE Ltd</i>	<i>Italy, Singapore, USA, Japan, Denmark, China, Taiwan</i>	<i>CIF USD 137,140.80</i>

3. The Public Body appointed a three-member Bid Evaluation Committee to evaluate the three bids received. The Bid Evaluation Committee submitted its evaluation report on 04 October 2012. The recommendations of the Bid Evaluation Committee were approved by both the Financial Committee and the Board of the Public Body on 01 November 2012. The Public Body informed all three bidders of the outcome of the bidding exercise on 09 November 2012. Felix Consortium, as an aggrieved bidder, challenged the decision of the Public Body on 12 November 2012. The Public Body replied to the challenge on 15 November 2012 and provided the bidder with a detailed explanation as to why its bid had not been retained.

The bidder still aggrieved by the decision of the Public Body, submitted an application for review to the Panel on 29 November 2012.

B. Grounds for Review

The Grounds for Review are as follows:

“The National Transport Corporation has acted in bad faith towards our company, referring to clauses that do not exist in the original bidding document. Furthermore, the National Transport Corporation has referred to a logo on the letterhead of the Manufacturer to reject the authenticity of Manufacturer’s Authorization.”

C. The Evaluation Process

1. The Public Body appointed a three-member Bid Evaluation Committee to evaluate the three bids received by the deadline for the submission of bids. Two of the bidders, Backslide International Ltd and New Era Equipment PTE Ltd were considered to be non-responsive to the commercial terms and were not evaluated any further.
2. The bid of Bremel Rubber Industries PVT Ltd was considered to be technically responsive. However, the Bid Evaluation Committee considered that the price as quoted by the bidder was not in conformity with the requirements of the bidding document. The bid considered to be non-responsive with respect to the financial requirements was rejected.
3. The Bid Evaluation Committee recommended:
 - (i) the rejection of all three bids received for OAB/NTC/12/28 – Procurement of Retread Consumables
 - (ii) Invitation of fresh bids for same.
4. The recommendations of the Bid Evaluation Committee was approved by both the Finance Committee and the Board of the Public Body on 01 November 2012. The decision was then communicated to all bidders on 09 November 2012.

D. Submissions and Findings

1. The bid of the aggrieved bidder ‘Felix Consortium’ was submitted on its behalf by ‘Backslide International Co. Ltd’ its Authorised Representative. The appropriate document from Felix Consortium authorizing Backslide International Co. Ltd to participate in bids on its behalf was enclosed.
2. Clause 20.1(a) of the ITB stipulates that *“if required in the BDS, a Bidder that does not manufacture or produce the Goods it offers to supply shall submit the Manufacturer’s Authorization using the form included in Section IV, Bidding Forms, to demonstrate that it has been duly authorized by the manufacturer or producer of the Goods to supply these Goods in Mauritius.”*

The BDS for ITB 20.1(a) confirms that Manufacturer’s authorization is required and it is stipulated that *“the Manufacturer’s Authorisation Form shall be in the format given at*

Section IV – Bidding Form and shall be included in the bid. The Manufacturer’s authorization form shall be from the country of origin where the critical items i.e. procured tread rubber, black vulcanizing cement and the bonding gum will be manufactured and shall be the original form.”

3. The Manufacturer’s Authorization Form enclosed in the bid is on the letter head of Felix Consortium but is signed by an authorised signatory of Backslide International Co. Ltd. The Panel considers that if as claimed, Felix Consortium is in fact the manufacturer of the goods then there was no need for it to submit the Manufacturer’s Authorization form. However, it should have submitted documentary evidence to demonstrate that it was the actual manufacturer of similar goods with at least five years experience as required by the bidding documents.
4. The Panel is also of the view that as per the provision of the bidding documents the bidder/manufacturer should have supplied documentary evidence in respect of the clients in Mauritius to which it had supplied retread consumables for the last five years. Felix Consortium submitted a letter listing companies worldwide to which it claims to have been supplying retread materials for the past seven years. The list included one Mauritian Company, Universal Tyre Retreading. However, no documentary evidence as required by the bidding documents was included.
5. During the hearing the representative of Felix Consortium tried to explain that “Indag” was the producer of the retread materials and that it was a member of the ‘Felix Consortium’. However, no documentary evidence has been submitted to that effect. In its application for review, the aggrieved bidder at 1(c)(iv) states “*the word Indag has been used by Felix Consortium as they are sister companies both manufacturers of tread and other rubber products*”. At 1(c)(v) it is stated that “*the bidder is Felix Consortium and not Indag. Indag has never purchased and documents from the National Transport Corporation*”. The bidder Felix Consortium is thus referred to as manufacturer on its own right.

The Panel holds on the basis of all documentary evidence available that the National Transport Corporation was right to consider the bid of Felix Consortium as non-responsive. Thus, the Panel finds no merit in this application which is accordingly set aside.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated 27 February 2013