

INDEPENDENT REVIEW PANEL

In the matter of:

Sotravic Limitee

(Applicant)

v/s

Ministry of Local Government & Outer Islands

(Respondent)

(Cause No. 09/14/IRP)

Decision

A. History of the case

- 1.0 On 19 December 2013, the Ministry of Local Government & Outer Islands invited bids from bidders for the Operation and Maintenance of Roche Bois Transfer Station and the Transportation of all daily wastes from aforesaid station to Mare Chicose Landfill. According to ITB 4.1 the bidding exercise is open to national bidding and the participation is limited to citizens of Mauritius or entities incorporated in Mauritius.
- 1.1 The contract period would be for a period of three years. The closing date for submission was 18 February 2014 up to 13.30 hrs at latest. The bids were publicly opened on the same day at 14.00 hrs.
- 1.2 The Bid Evaluation Committee so appointed was to determine and recommend to the Central Procurement Board the lowest responsive offer.

B. Scope of Works

The work consisted in the operation and maintenance of Roche Bois transfer Station and the transportation of wastes from the aforesaid station to Mare Chicose landfill.

C. Bids Opening

The quoted prices at the public opening is as follows:

<i>SN</i>	<i>Bidder</i>	<i>Bid Amount after Discount Incl. of VAT (Rs)</i>
1	<i>Interwaste (Pty) Ltd – South Africa</i>	<i>128,150,443.90</i>
2	<i>Multitransport Co. Ltd</i>	<i>575,000,000.00</i>
3	<i>Securiclean (Mauritius) Ltd</i>	<i>167,480,480.00</i>
4	<i>Maxi Clean Co. Ltd</i>	<i>216,854,120.00</i>
5	<i>Atics Ltd</i>	<i>229,042,280.00</i>
6	<i>Sotravic Limitee</i>	<i>159,390,299.00</i>
7	<i>Compagnie regionale de services et de L'Environnement Ltee</i>	<i>169,625,000.00</i>

D. Notification of award

On 02 April 2014, the Ministry of Local Government & Outer Islands notified all bidders that after carrying out the evaluation exercise of the bids received, the successful bidder was Interwaste (Pty) Ltd for the corrected sum of Rs128,150,439.70 (VAT inclusive).

E. The Challenge

On 08 April 2014, the Applicant challenged the award on the following grounds:

- “(a) The modification of the ITB by deleting ITB 4.1 in section II was irregular since the bidding process had already started and in any case before Circular No. 4 of 2014 was issued.*
- (b) The bid is abnormally low since the costing of the Public Body assessed the contract at Rs175 Million.*
- (c) The selected bidder was not a legal entity in Mauritius capable of furnishing the required supporting documents.*

- (d) *The chronology of events shows that the date for submission was extended (addendum No. 2) in order to await for the Circular No. 4 to be published so that the selected bidder could bid and be awarded the contract.”*

F. The Reply to challenge

By letter dated 14 April 2014, the Respondent replied to the challenge on the following grounds:

“(i) Ground (a)

ITB 11.1 and ITB 11.2 allow the Public Body to modify the bidding documents before the deadline for submission of bids by issuing Addenda which would be part of the bidding documents. The decision to delete ITB 4.1 in Section II of the Bidding Data Sheet was initiated following a letter from the Procurement Policy Office dated 20 December 2013. The latter informed the Ministry that ITB 4.1 in Section II of the Bidding Data Sheet is not in conformity with the provision of Section 17 of the Public Procurement Act as the criteria for limitation for participation in open national bidding proceedings to citizens of Mauritius or entities incorporated in Mauritius, has not been prescribed and therefore, the clause mentioned in the Bidding Data Sheet is not in order.

Further, the deletion of ITB 4.1, in Section II of the Bidding Data Sheet was approved by the Central Procurement Board. At no point in time, during the bidding process had Sotravic Limitee stated its disagreement and agreed to participate in the bidding process on the basis of the bidding documents floated then.

(ii) Ground (b)

The price of the successful bidder is not considered to be abnormally low (about 27% lower than the cost estimates). Even Sotravic Ltee has quoted a bid price 10% lower than the cost estimates. The successful bidder has the ability to perform the contract, in view of its extensive experience in landfill management in South Africa.

(iii) Ground (c)

Bidding was not restricted to legal entities registered in Mauritius. The successful bidder has satisfied all the requirements of the bidding documents including inter-alia – adequacy of working capital/evidence of liquid assets and/or credit facilities for the project under reference.

(iv) Ground (d)

Four local potential bidders had requested the Ministry to extend the deadline for submission of bids by 2 to 3 weeks. The requests for extension were mainly motivated due to end of year festivities. The Ministry was agreeable for an extension of one week only and sought approval from the Central Procurement Board (CPB) accordingly. However, the CPB conveyed approval for an extension of 13 days, on the basis of which Addendum No. 2 was issued on 10 January 2014.”

Further the Government takes strong exception to challenge 8(d) (sic) and disagrees totally to the statement.

G. Grounds for Review

On 18 April 2014, the Applicant seized the Independent Review Panel for review on the following grounds:

“The Applicant is not satisfied with the decision of the Ministry and/or the Central Procurement Board (the Board) on the following grounds:

- (A) The Central Procurement Board (the Board) failed and neglected to disqualify Interwaste (Pty) Ltd for non-responsiveness on the ground that is it (sic) not a legal entity in Mauritius.*
- (B) The Board ought to have rejected the bid of Interwaste (Pty) Ltd on the ground that the price quoted by it was abnormally low.*

As further described in Annexure A1.”

H. The Issue

1.0 The first complaint, as per ground (A) above arises as a consequence of the subsequent issue of addenda no. 1, 2 and 3.

1.1 ITB 4.1 under section II, as it originally appeared in the Bidding Data Sheet, reads as follows:

“The Bidding exercise is open national bidding and participation is limited to citizens of Mauritius or, entities incorporated in Mauritius”.

1.2 ITB 4.1 is deleted by addendum no. 1 dated 07 January 2014.

- 1.3 By addendum no. 2 dated 10 January 2014 the submission of bids was extended to 18 February 2014 at 13.30 hrs.
- 1.4 At a pre-bid meeting held on 10 January 2014, it was clarified that with the deletion of ITB 4.1 the procurement exercise was no longer restricted to citizens of Mauritius or entities incorporated in Mauritius, and this clarification was incorporated in Addendum No. 3 dated 29 January 2014.
- 1.5 *“Before the deadline for submission of bids, the Employer may modify the bidding documents by issuing addenda” (ITB 11.1).*
- 1.6 *“Any addendum thus issued shall be part of the bidding documents and shall be communicated in writing or by cable to all purchasers of the bidding documents. Prospective bidders shall acknowledge receipt of each addendum in writing to the Employer” (ITB 11.2).*
- 1.7 *“To give prospective bidders reasonable time in which to take an addendum into account in preparing their bids, the Employer shall extend, as necessary, the deadline for submission of bids, in accordance with ITB Sub-Clause 21.2” (ITB 11.3).*

I. Discussions and Findings

- 1.0 After going through the relevant addenda and the respective stand and written submissions of the parties, the Panel is of the view that there was nothing sinister in the manner the procurement exercise was initiated and pursued.
- 1.1 The Panel therefore is of the view that the complaint of the Applicant on the ground (A) is not justified.
- 1.2 Similarly, the Panel is not persuaded that the price quoted by the successful bidder was abnormally low.

J. Decision

In view of our above findings, we conclude that there is no merit in the application, which is accordingly dismissed.

(Said Toorbuth)
Chairperson

(Siv D. M. Potayya)
Member

(Jacques C. Nauvel)
Member

Dated: 19 September 2014