

# **INDEPENDENT REVIEW PANEL**

**In the matter of:**

**Enterprise Data Services Ltd**

**(Applicant)**

**v/s**

**Police Department**

**(Respondent)**

**(Cause Nos. 21/14/IRP)**

## **Decision**

### **A. History of the case**

The Police Department (MPF) issued Restricted Bidding for the Procurement of an Integrated Software, Hardware, & Services for Port Louis/Grand Bay CCTV Street Surveillance system, Procurement Reference RB/205/2014, and received bids on Wednesday 14<sup>th</sup> May 2014.

Project Description

The project “ Procurement of an integrated software, hardware & services for Port Louis and Grand Bay CCTV surveillance system” consists of supply of:

- (i) One (1) Professional Video management software (VMS) for CCTV street Surveillance.
- (ii) NVR for video recording of all 342 cameras for Port Louis and Grand Bay CCTV System (lots).
- (iii) Fifty (50) Full HD Fixed IP Cameras (Outdoor) + appropriate power supply as per the features and conditions in the tender document.
- (iv) Fifty (50) Housing for the proposed Full HD fixed IP Camera at item 3 and Accessories
- (v) Seventy-five (75) Megapixel Full HD IP External PTZ Dome Cameras 30X or better (outdoor type) together with housing including the wall and pole mounted bracket including appropriate arms with the following conditions and features.
- (vi) Eight (8) 3D Joystick.
- (vii) Twenty-five (25) SHDSL Routers.
- (viii) Fifty (50) Vari focal lens at least 6-60mm or better DC IRIF1.4 CS-mount for fixed cameras. .
- (ix) One hundred and twenty five (125) onsite storage device\NAS with at least two IP inputs + HDD of at least 2TB + power supply with the following conditions and feature.
- (x) Fifty (50 )IR ILLUMINATORS
- (xi) One Hundred (100) Industrial type Gigabyte switch with at least Six (6) RJ45 ports + power supply

Bidding

A Restricted bidding exercise was carried out on 18th April 2014 during which the following six (6) potential Bidders were invited to submit their offers:-

- (1) Secupro Ltd

- (2) Proguard Limited
- (3) Brinks Mtius
- (4) Enterprise Data Services Ltd
- (5) Security & Property Protection Agency Co. Ltd
- (6) Harel Mallac Technologies Ltd

The deadline for submission of bids was Wednesday 14th May 2014 up to 13.30 hrs at latest.

#### Corrigendum/Addendum

(a) Addendum No 1 & 2 was issued on 28th April 2014 whereby suppliers were given replies of queries raised by them and the closing date was remained unchanged.

(b) Corrigendum No 1 was issued on 30th April 2014 whereby suppliers were informed on correction made to item 9 paragraph (y) page 100 of the bidding document whereby item 9 will form part of lot wise together with items 1 to 6.

(c) Addendum No 3 was issued on 2nd May 2014 whereby suppliers were informed that the closing date has been postponed for Wednesday 14th May 2014 up to 13.30 (Local time) at latest.

#### Pre-bid Meeting

A pre-bid meeting was carried out on Friday 25th April 2014 up at 09.30 hrs at PPRU Conference Room, five (5) prospective Bidders attended and all their queries were cleared up on spot in presence of all Bidders.

#### The Opening of bids

The opening of bids was held on Wednesday 14 May 2014 up at 14.00 hrs at Police Tender Unit. Out of the six (6) prospective Bidders who were invited to submit their offer, only five (5) bids were received.

#### Public Interest and Award

Apart from challenges and request for review, one important feature of this History was that on 20<sup>th</sup> August 2014, the Commissioner of Police requested under Section 45 (4, 5 & 6) of the PPA that the suspension be lifted. The Panel did not have any objection to that, and it is our

understanding that the contract has been awarded to Brinks and Secupro, and that its implementation is almost complete.

## B. Evaluation

The Bid Evaluation Committee was composed of the following:

Name of officers nominated on BEC	Profession/Occupation	Official Status on the BEC
Mr. K. JHUGROO	ACP OC SSU/ IC Infrastructure/ Comms Br	Chairperson
Mr. K. LOCHEE	DASP IC Communication Branch	Member
Mr. S. PERIACARPEN	Police Sergeant Dept No. 6797 IT Unit	Member
Mr. A.K. SEETARAM	Police Sergeant Dept No. 870 Comms. Br	Member
Mr. S.M.A. TOORAB	Police Sergeant Dept No. 7632 Comms.Br	Member
Mr. M.MAUDARBOCUS	Police Inspector	Secretary

The Committee gave its report on 23<sup>rd</sup> June 2014, and concluded as follows:

### **“Conclusion**

*The BEC notes the following:*

*The "lowest evaluated substantially responsive bids" in this evaluation exercise is as follows:*

*(i) For items 1 to 6 & 9 on a Lot wise is Bidder 1 Brinks Electronic Services. The BEC views that the quantity for item 9 (NAS) to reduce from 125 units to 66 units as in item 1 Bidder 1, Brinks Electronic Services, has already catered for 234 units out 300 unit in its offer. Thus, BEC propose the purchase of only required 66 units.*

*(ii) For item 7 & 8 item wise is Bidder 1 Brinks Electronic Services.*

*(iii) For items 10 to 11 item wise is Bidder 3 Secupro Safety First.*

*The BEC views that item 11 has already been catered by Bidder 1 Brinks Electronic Services in its offer at item 1 and as such same should not be awarded to Bidder 3 Secupro Safety First.*

**Recommendation**

The BEC recommends that, though the lowest responsive bid exceeds the estimated cost, the award of this contract is advisable as this is the third launch of this tender for the "Procurement of an integrated software, hardware & services for Port Louis and Grand Bay CCTV surveillance system" Also, Mauritius Telecom and CEB are charging the MPF for their respective services on a monthly rental basis for all cameras, faulty or not. Any further delay in restoring the faulty cameras will cause further 'loss of use' of CCTV services to MPF.

A new re-launch will inevitably leads to the same result and would be wastage of Police resources, as the lowest evaluated responsive system product proposed (Indigo Vision by Bidder 1 Brinks Electronics services) is fair, reasonable and of high quality. Same is being used by Police since 2009 for the Flic en Flac CCTV System.

BEC noted that the product proposed by the lowest bidder, i.e. Secupro Safety First, which fits the estimated cost, is still under development and does not fully comply to the technical specifications. An earlier version of same was being used by the Police Communication Branch and same had crashed several times after warranty period. In light of above, the BEC is of opinion that the contract for the "Procurement of an integrated software, hardware & services for Port Louis and Grand Bay CCTV surveillance system" be awarded as follows:

- (i) Lot wise for items (1 to 6 & 9) to Bidder 1 Brinks Electronic Services being the lowest evaluated substantially responsive bid for the fixed sum of Rs. 21,972,434.68 (Rupees twenty one million nine hundred and seventy two thousand four hundred and thirty four and cent sixty eight only} Exclusive of VAT and related services (as per table below).

No	Description	Qty	Awarded to	Amount Rs exclusive of Vat
	Professional Video management software (VMS) for CCTV street Surveillance with E-MAPs	1	Brinks Electronic Services	10,626,649.78
2	NVR for video recording of all 342 cameras for Port Louis and Grand Bay CCTV System	Lot		3,434,907.27
3	Full HD Fixed IP Cameras (Outdoor) + appropriate power supply	50		1,135,910.10
4	Housing for the proposed Full HD fixed IP Camera and accessories	50		355,297.88

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5	Megapixel Full HD IP External PTZ Dome Cameras 30X or better (outdoor type) together with housing including the wall and pole mounted bracket	75		4,247,326.21
6	3D Joystick	8		170,542.98
9	Onsite storage device/NAS with at least two IP inputs + HDD of at least 2TB + power supply	66		2,001,800.46
<b>Total</b>				<b>21,972,434.68</b>

(ii) *Item wise for items 7 & 8 be awarded to Bidder 1 Brinks Electronic Services being the lowest evaluated substantially responsive bid for the fixed sum of Rs 329,300.50 (Rupees three hundred and twenty nine thousand three hundred and cent fifty three hundred and cent fifty only) exclusive of VAT as per table below*

No	Description	Qty	Awarded to	Amount Rs exclusive of Vat
7	SHDSL Routers	25	Bidder 1 Brinks Electronic Services	216,645.00
8	Vari focal lens at least 6-60mm or better DC IR/F1.4 CS-mount for fixed cameras	50		112,655.50
<b>Total</b>				<b>329,300.50</b>

(iii) *Item 10 to be awarded to Bidder 3 Secupro Safety First the lowest evaluated substantially responsive bid for the fixed sum of Rs 900,627.00 (Rupees nine hundred thousand six hundred and twenty seven only) exclusive of VAT ( as per table below)*

No	Description	Qty	Awarded to	Amount Rs exclusive of Vat
10	IR ILLUMINATORS	50	Bidder 3 Secupro Safety first	900,627.00
<b>Total</b>				<b>900,627.00</b>

**C. Notification of award**

The Police Department through a letter dated 27 June 2014, informed the Applicant of the particulars of the successful bidders which are as follows:

<b>Name of Bidder</b>	<b>Contract Price (Rs) (excl. VAT)</b>
Brinks (Mauritius) Ltd	22,301,735.18 (Items 1-9)
Secupro	900,627.00 (Item 10)

#### **D. The Challenge**

On 02 July 2014, the Applicant challenged the award on the following grounds:

*“Tender award was made to bidder whose price was higher than the two lowest bidders; and*

*“Our bid was compliant in every respect to the tender specifications and was priced lower than the bidders to whom an award was made by the public body.”*

#### **E. The Reply to challenge**

On 07 July 2014, the Police Department made the following reply to the challenge:

*“This is to inform you that your offer was not retained as it did not meet the following specifications of the tender:*

- 1. For item (5K), you have proposed electronic shutter speed 1/1 – 10,000 sec instead of electronic shutter speed 1/1 – 30,000 sec.*
- 2. For item (4p), you have proposed 12 x digital zoom or better instead of 16x.*
- 3. For item (5ff), you have proposed 128 presets instead of 255 presets.*
- 4. For item (6j), you have proposed USB instead of Ethernet port 10 base-T/100 Base TX, RJ 45.*
- 5. For item (6k) you are not complying with input/output port RS 485, full duplex.*

6. *For item (610, you are not complying with D-Sub Connector serial port.*
7. *For item (6 n iv), you are not complying with the alarm acknowledgment button.*
8. *For item (6 N iiv), you are not complying with search/time and date button.*
9. *or item (6 n x), you are not complying with LCD display.*
10. *For item (6t), you are not complying with SATA HDD of at least 2TB capacity instead you are proposing 5 days recording.*
11. *For item (10g), you are not complying with surge protective feature.*
12. *For item (11i), you are not complying with integrated with cooling fans.”*

#### **F. Grounds for Review**

On 11 July 2014, the Applicant seized the Independent Review Panel for review on the following grounds:

- “(i) The tender was awarded to a bidder whose price was higher than the 2 lowest bidders.*
- (ii) The specifications proposed by the Respondent were, in some respects, less favourable than the specifications proposed by the Applicant so that it is wrong to state that the Applicant did not meet the specifications imposed by the Police Department. Applicant had submitted its bid with a fully functional system as specified by the Respondent. Alternatively, should the bid be found to be not fully compliant, such deviations can only be considered as minor.*
- (iii) The Applicant’s bid was the second lowest bid and cheaper than the successful bidder by Rs1,199,849. It had the advantage of providing better specifications.*
- (iv) The Applicant has reasons to believe that the successful bidder may not also have complied with all the specifications which amount to more than 350.*
- (v) The Police Department did not have the necessary expertise to evaluate the bid. Such statement has been proven recently in the case of previous tenders for CCTV of Beau-Bassin/Rose-Hill/Quatre-*



*Bornes (2013) and also in the previous CCTV Spares for Port-Louis & Grand Baie (2013) which had to be cancelled and re-tendered.*

*(vi) Each of the points listed in the reply to challenge by the Police Department has been commented upon.”*

### **G. The Hearings**

Hearings were held on 11 May, 25 May and 10 June 2015. The Applicant was represented by Mrs S. A. Carrim, Counsel whereas the Respondent was represented by Mr K. Reddy, Principal State Counsel and the members of the Bid Evaluation Committee. Mr J. N. Cornette (Brinks Ltd) and Mr T. Seenevasseen (Secupro Ltd) from the successful bidders attended hearings, but were not represented by Counsel.

Written submissions were made by the Applicant and the Respondent respectively on 19 May 2015 and 29 May 2015.

### **H. Findings**

The Panel has to decide on the following issues:

- Whether the Respondent was justified in finding the bid of the Applicant non-responsive.
- Whether the Respondent was justified to find the bid of the successful bidder responsive and proceed to an award.
- Whether there were inconsistencies and incompatibilities in the Specifications as to make it impossible to propose a completely responsive tender

*Whether the Respondent was justified in finding the bid of the Applicant non-responsive*

The Applicant has not contended that he has been able to respect all the specifications laid down. Rather he has endeavoured to show that for compatibility with other parts of the required system, or otherwise, his proposals represented an improvement on requirements.

Going through the submission of the Applicant, it is quite obvious that departures from the specifications were made in the belief that they were necessary. The Applicant maintains that all so called deviations were minor and could be resolved through clarifications.

In a written submission on the 19<sup>th</sup> May, the Respondent reduces the number of deviations to just one, which he considers the most significant and important, namely that the Applicant has proposed in his bid only 1TB on-site storage whereas the requirement of the tender was 2TB of such storage.

The Applicant does not deny this, but avers that he was deliberately misled through addenda and corrigenda into believing that the specifications had been changed to 1TB storage.

For whatever reason, the Applicant failed to meet specifications which defined the very nature of the required system.

We find therefore that the Applicant's bid was not responsive in one major aspect, namely that of on-site storage.

*Whether the Respondent was justified to find the bid of the successful bidder responsive and proceed to an award*

Not unjustifiably, the Applicant wonders why deviations in the tender from the Successful Bidder were accepted/clarified. The Respondent has always maintained that such deviations as occurred were minor.

It is appropriate to mention that deviations can be classified as minor or material according to well established criteria, namely the impact of such deviations on the substance of the tender. A deviation is not minor simply because the Respondent declares that it is, or the tenderer describes it as such.

At the Panel's request, the Respondent has produced on the 29<sup>th</sup> May a list of deviations (termed "minor") from the tender of the Successful Bidder.

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Item No.	Specifications	To be filled by Bidder			Remarks
		Is it as per asked Specification & Yes or No	If no describe Specification And state advantages	Standard Fitment item Yes or No	
1 (iii) h	If disk array/NVR has a fault, skip its storage; when it recovers, reload the storage automatically from on-site storage onto the disk array/NVR. <i>Make sure Video Recording</i>	No	Alternative Solution (Same result is achieved) * See below	Yes	
1 (iv) i	Single Server shall transfers video stream at no less than 600 MBits	No (Alternative option but effective)	500 Mbps will be available	Yes	500 Mbps is fully sufficient for the purpose of.
5 w	Shall have Micro SD card port	No	See in Remarks section	No	We have onsite local storage system 1 TB

5 x	Shall be provided with 64 GB micro SD card	No	See in Remarks section	No	We have onsite local storage system 1 TB size compact
6 j	Shall have Ethernet port 10 base-T/100BaseTX, RJ45	No (Alternative connection to system)	It is connected via serial com to a PC for control of PTZ cams	Yes	

The Panel shall avoid lengthy technical discussions and emulate the Respondent in highlighting just one item to illustrate its argument. The Successful Bidder has not provided a micro SD port nor a 64 GB micro SD card to the camera for local storage. The MPF have argued that such micro SD storage is entirely unnecessary in view of the large on-site storage already available on the hard disks, and that the system will work as well. They have further stressed that they were looking for a “solution”, by which it is supposed that they meant that system designs had to be proposed by the tenderers.

The Panel wishes to highlight the following principles applicable to all tender exercises:

- a. Something should not be specified if it is “not really needed”. The Respondent cannot specify local storage and declare that it was not necessary AFTER the tender of the Successful Bidder was found not compliant in that respect. The acid test here would be: “did the

other tenderers have this information before they submitted their tender?”

- b. “Rules cannot be changed after the game has started.” In particular, if a specification is found extraneous, or incompatible with other parts of the tender, then it should be corrected by way of an addendum or corrigendum. In all cases, all tenderers should have the same information as to what is or is not acceptable.
- c. In the analysis of tenders, the same principles should apply to all tenderers. There is no room for subjectivity in procurement exercises.

While the Panel can understand that the MPF’s reticence to repeat an exercise it had already carried out 3 times, apparently in vain, this is not an excuse for arbitrariness and subjectivity.

The Panel is of the opinion that the tender from the Successful Bidder was also non-compliant in more than one respect.

*Whether there were inconsistencies and incompatibilities in the Specifications as to make it impossible to propose a completely responsive tender*

Without going in depth into the specifications, the fact that the tender exercise did not, for the third time, elicit any responsive tender is an indication of the difficulty of tenderers to respect all specifications. The Applicant has pointed out several instances where the specifications could have been improved, and we are bound to agree with him in this respect.

That is of course no excuse to submit a non-complying tender. The proper procedure would be to draw the attention of the Employer before submission of tenders, or at the very least, submit a list of comments to the specifications along with the tender. A bidder may also then propose alternatives based on different specifications but better suited to the requirements of this particular project.

The Panel is of the opinion that the specifications for this tender were not correctly drafted. However, it is not for the Panel to say whether this was

done on purpose to favour any tenderer, or whether the specifications of a particular supplier were reproduced.

## **I. Decision**

After careful consideration of submissions from all parties, and in the light of the Grounds for Review stated by the Applicant, the Panel finds that:

1. The Respondent did not fault in finding the bid from the Applicant non-responsive. The Applicant was also at fault in not drawing the attention of the Respondent to the faulty specifications, but chose to submit a non-conforming tender.
2. The bid from the Successful Bidder was also non-compliant, and the Respondent was wrong in his decision to award to the Successful Bidder.
3. The only decision the Respondent could have taken in these circumstances would be to re-launch with new specifications.
4. By invoking Public Interest, the Respondent has been allowed to make an award, and contract implementation is almost complete. Any discussions on re-launch would now be only of academic interest.
5. The Applicant has suffered prejudice in that he has not been allowed to re-tender when such should have been the outcome of the tender exercise. However the Panel cannot offer any adequate compensation to the Applicant, even if any was warranted, nor has any been prayed for in this application for review. The remedies prayed for by the Applicant are no longer available.

The Panel therefore finds that there is no merit in this Application.

**(R. Lalloo)**  
**Chairperson**

**(R. Rajanah)**  
**Member**

**(R. Ragnuth)**  
**Member**

**Dated 08 July 2015**