

INDEPENDENT REVIEW PANEL

In the matter of:

Emtel Ltd

(Applicant)

v/s

Ministry of Information & Communication Technology

(Respondent)

(Cause No. 41/14/IRP)

Decision

A. History of the case

On 22 of July 2014, the Ministry of Information and Communication Technology issued an Open International Bidding bearing reference CPB/15/2014 for the **Procurement of a Turnkey Solution for Connectivity in Secondary Schools (School Net II, Wireless Access Points Connectivity, Next Generation Firewall & International Internet Connectivity)**.

The school connectivity project involves deploying a school wide area network based on fibre optic or alternative technologies. This network will connect all secondary schools including Private Grant Aided and PSSA approved secondary schools in Mauritius/Rodrigues, public libraries and the Mauritius Institute of Education (MIE) to the Government Online Centre (GOC). This project will enhance ICT access in schools, improve computer

Independent Review Panel – Decision No. 16/15

literacy and equip students with ICT skills and knowledge to function effectively in today's knowledge society.

During the Tender Period, addenda were issued as follows:

1. Addendum No1: On 03rd September 2014, following query from a Bidder.
2. Addendum No 2: On 03rd September 2014, following query from a Bidder.
3. Addendum No 3: On 15th September 2014, following query from a Bidder.

Addendum No.4: On 17th September 2014, following query from a Bidder

Bids were submitted on the 30th September 2014 at the Central Procurement Board. The Public Opening of bids was carried out on the same day at 14:00 hrs.

Four bids were received as follows:

| Bidder No. | Bidder Name | Discount(MUR) | Bid Amount after Discount Inclusive of VAT(MUR) |
|------------|--|-----------------|---|
| 1. | Data Communications Ltd(DCL) | 2, 500,000.00 | Alt1 - 122, 457, 992.00 |
| | | Nil | Alt2 - 128, 747, 018.00 |
| 2. | Emtel Ltd | Nil | 77, 895, 866.32 |
| 3. | China International Telecommunication Construction Corporation (CITCC) | 15, 000,000.00 | 222, 641, 546.75 |
| 4. | Mauritius Telecom(MT) Ltd | 13, 842, 266.00 | Main offer -172, 197, 196.00 |
| | | Nil | Optional offer 1(Cisco) – 137, 095, 957.00 |
| | | | Optional offer 2(Cloud proposal) Capex Model over 5 years – 39, 586, 661.10 excl of VAT Opex Model over 5 years(monthly rental) – 659, 777.68 excl of VAT |

The objectives of the project are:

1. To enhance teacher-student and student-student interactions.
2. To improve students learning by providing them with anytime, anywhere opportunities to become independent learners through technology.
3. To induce a paradigm shift in the teaching and learning process at secondary level by increasing accessibility to pedagogy through multimedia tools.

Scope of project:

The project consists of the following components:

1. Deployment of the wide area network based on fiber optic or alternative technologies which will connect all secondary schools and other institutions as mentioned above.
2. Deployment of WI-FI access points (hotspots) at secondary schools located in Mauritius and Rodrigues. The hotspots will allow students to access Internet and educational content hosted centrally at the Government Online Centre (GOC). A total of 62 state secondary schools and 93 Grant Aided Schools will be targeted with a number of wireless access points ranging from 1 to 11 per school.
3. Provision of next generation firewall at the Government Online Centre.
4. Provision of international Internet connectivity for the purpose of providing Internet access to the SchoolNet II users.

The project is planned to be implemented and commissioned through a phased approach. The contractor would be required to supply, implement and commission within the phases and time frames as specified by the purchaser in the bidding document.

B. Evaluation

A Bid Evaluation Committee (BEC) was set up by the Central Procurement Board composed of the following officials:

| Name of Officer | Official Status | Institution | Function in BEC |
|------------------------------|----------------------------------|---|--|
| Mrs D.D.Ramlowat | Lecturer | Université des Mascareignes | Chairperson & Registered Evaluator |
| Mr K.Valaydon | Project Manager | Central Informatics Bureau | Member & Registered Evaluator |
| Mr N.Rungasamy | Financial Controller | The District Council of Savanne | Member & Registered Evaluator |
| Mrs B. Kisson- Luckputtya | Assistant Permanent Secretary | Ministry of Information and Communication Technology | Acting as Secretary |

The Bid Evaluation Committee submitted its Report on the 31st October 2014, and its Conclusions and Recommendations were as follows:

“The proposal of Bidder No. 1 - Data Communications Ltd is the lowest evaluated substantially responsive bid ...

Recommendations

The BEC recommends that the contract be awarded to the lowest evaluated substantially responsive bid from Bidder No.1 - Data Communications Ltd for the Procurement of a Turnkey Solution for Connectivity in Secondary Schools (School Net II, Wireless Access Points Connectivity) Next Generation Firewall & International Internet Connectivity) mentioned in its proposal for the total contract value of MUR 122,457,992.00 inclusive of VAT subject to the bidder confirming its agreement on the following issues:

(i) *The bidder will have to ensure that monitoring can also be performed on a site-to-site basis.*

(ii) *The SLA proposed by the selected bidder should additionally make provisions for the assessment of penalties and credits or alternatives provided for failures.*

(iii) *The bidder will have to ensure that these cables are physically separate so as to ensure resiliency of the 3 x 60 Mbps. In the event that one cable is being damaged, all traffic may be routed onto the remaining cables/links.”*

C. Notification of award

The Ministry of Information & Communication Technology through a letter dated 28 November 2014, informed the Applicant of the particulars of the successful bidder as follows:

| Name of Bidder | Address | Contract Price |
|--------------------------------|--|--|
| <i>Data Communications Ltd</i> | <i>1st Floor, Cnr MGR Gonin & Lislet Geoffroy Streets, Port Louis</i> | <i>Rs 122,457,992.00 VAT inclusive</i> |

D. The Challenge

On 03 December 2014, the Applicant challenged the award on the following grounds:

- “1. Our bid was compliant in every respect to the tender specifications and was priced lower than the bidder to whom an award was made by the public body.*
- 2. Emtel is a licensed Telecom Operator with a nationwide coverage within Mauritius and the outer-islands, Agalega and Rodrigues.*
- 3. Emtel has been providing innovative cost-effective solutions for similar projects.”*

E. The Reply to Challenge

On 18 December 2014, the Public Body made the following reply to the challenge:

“The bid of Emtel was not retained for the following reasons:

According to ITB 14.1, Bidders wishing to offer technical alternatives to the Purchaser’s requirements must first price the Purchaser’s Requirements as described in the bidding documents and shall further provide all information necessary for a complete evaluation, of the alternative by the Purchaser including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methods. Only the technical alternatives, if any, of the lowest evaluated Bidder conforming to the basic technical requirements shall be considered by the Employer.

Emtel Ltd did not provide a base bid, instead it proposed only an alternative solution and hence failed to meet the technical requirements as specified in the bidding document.

Therefore the proposal did not conform to ITB Clause 14.1. This non-conformance to technical requirements as specified in the bidding document is considered as a major deviation rendering the bid non-responsive.

Furthermore, the following additional observations have been made by the Evaluation Committee:

(a) Manufacturer Authorization

As per ITB clause 20.1(a), “if the Bidder does not manufacture or produce the Goods it offers, it should 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.

Emtel Ltd did not provide any Manufacturer’s Authorization letter/s and therefore did not meet the above requirement.

(b) *Reference sites*

As per Section 1.3 on Reference sites, Technical Specifications, Chapter IV of the bidding document, the bidder should provide evidence regarding its experience in the Supply, installation and configuration of a server with 15 workstations within a LAN in the last five years.

It has been noted that the testimonial provided by Emtel Ltd was in the name of its subcontractor Synergis Network Ltd.

Hence, since Emtel Ltd did not comply with the above mentioned requirements, its bid has been considered as non-responsive and therefore not retained.”

F. Grounds for Review

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

- “(i) Applicant has received no communication from the public body to the challenge submitted on the prescribed format and submitted on 03 December 2014.*
- (ii) The tender was awarded to a bidder whose price was higher than Applicant’s offer.*
- (iii) The Applicant’s bid was the lowest bid and cheaper than the successful bidder by a significant amount namely Rs44,562,125.68. In addition to meeting the requested specifications, the bid also had the advantage of providing additional features such as managed services, fully scalable and flexible and guaranteed island wide coverage for mainland Mauritius, Rodrigues and even Agalega.*
- (iv) Applicant’s bid is fully compliant with the requirements of Respondent as specified in Bid bearing reference number CPB 15 of 2014.”*

G. The Hearings

Hearings were held on 19 May, 08 June, 17 June, 24 June and 08 July 2015. Written submissions were received from the Applicant and Respondent on 05 June 2015 and 08 June 2015 respectively.

The Applicant was represented by Mr R. Pursem, SC, whereas the Respondent was represented by Mr K. Boodhun from the State Law Office.

During hearings, Mr Samfat of Synergis and Mrs D. Ramlowat Chairperson of the Bid Evaluation Committee, representing the Applicant and Respondent respectively were cross examined.

Mr Samfat maintained that Synergis was not a sub-contractor but a “partner” of Emtel. Moreover, he strongly opposed the assertion that the bid of Emtel was non-conforming, and endeavoured to show that the equipment proposed by the Respondent was equivalent, and in some ways superior to, and did the same job as the equipment requested.

In the face of very stringent cross examination, the chairperson of the BEC maintained the findings, conclusions and recommendations of the Evaluation Report.

H. Issues

After going through submissions from both parties, it is clear that the Panel has to determine two main issues, on which all others depend:

1. The status of Synergis in the Tender from Emtel
2. The responsiveness or otherwise of the bid from Emtel

I. Findings

THE STATUS OF SYNERGIS IN THE TENDER FROM EMTTEL:

This is important in view of the fact that the required evidence of past experience has been given in the name of Synergis, and the authorisation from the equipment manufacturer has also been issued to that same Company.

The Respondent has deduced from Emtel's Bid that Synergis is a sub-contractor for Emtel, and has so stated in the Bid Evaluation Report. The Applicant, on the other hand has variously described Synergis as a "partner", "strategic partner", or "main partner" in his submissions.

The word "partner" does not appear in the Public Procurement Act except in relation with PPP projects. The only ordinary dictionary meaning that could apply to the issue under discussion is the following: *business: an owner of part of a company, usually a company he or she works in, who shares both the financial risks and the profits of the business.* There is no averment or evidence that Synergis is a shareholder of Emtel, but even if such was the case, that would have no bearing in this case.

The relationship between Emtel and Synergis is ill defined, but it definitely is not a Joint Venture or any other relationship defined and acceptable under the Public Procurement Act.

In its submission received at the Panel on 05 June 15, the Applicant at p10 states that the manufacturers have authorised Emtel to submit a bid. This is misleading, as the authorisation from Cisco authorises Synergis to resell, distribute, bid, negotiate etc.

The Panel is therefore of the opinion that mandatory documents such as Manufacturer's Authorisation or those establishing the "experience of the bidder in the supply, installation and configuration of a server with 15 workstations ..." established in the name of Synergis are unacceptable, as the status and responsibility of the latter in this tender exercise are not defined. Moreover, the relationship between the bidder and Synergis is not one which is defined or recognised under the Public Procurement Act.

THE RESPONSIVENESS OR OTHERWISE OF THE BID FROM EMTTEL

From submissions and depositions, including during cross examination of Mr Sam Fat, it is clear that the Applicant has relied on a schematic diagram in the bid document to show that the equipment proposed is "equivalent" or "does the same job" as the equipment requested. It is not disputed that the proposed equipment will achieve the same results and in certain aspects superior results than those specified. However, the Respondent is of the opinion that Emtel has proposed only an alternative

solution which is not acceptable as it has not been submitted along with a conforming bid.

The Panel has had occasion to comment on the practice of assorting requests for turnkey solutions with very detailed component specifications, thus eliminating potentially interesting bids. However, it is noted that there have been no representations from bidders at any time prior to the submission of bids in regard the proposed specifications. All bidders were bound therefore to propose at least a base solution conforming exactly to the specified equipment, and optionally alternatives which they consider more appropriate solutions to the requirements of the project.

The specifications required all bidders to propose physical and dedicated web proxy server. Emtel has proposed a solution which by its own admission *avoids the use of a dedicated web proxy server, and does not require a physical dedicated web proxy server.*

The Panel is therefore of the opinion that the bid from Emtel did not conform to the equipment specifications.

J. Decision

For the above reasons, the Panel finds that there is no merit in this application.

(R. Laulloo)
Chairperson

(R. Ragnuth)
Member

(R. Rajanah)
Member

Dated 06 August 2015