

## INDEPENDENT REVIEW PANEL

In the matter of:

**State Informatics Ltd**

**(Applicant)**

**v/s**

**Central Information Systems Division**

**(Respondent)**

**(Cause No. 14/15/IRP)**

### Decision

#### **A. Background**

On 01 April 2015, the Central Information Systems Division issued an invitation for bids through a Restricted Bidding Method to seven (7) suppliers for the purpose of the procurement of IT equipment. The Procurement reference number was CISD/RB/03/2015 and the deadline for the submission of bids was not later than Wednesday 29 April 2015 at 14.00 hours (Local Time) and the opening of bids was scheduled on the same day at 14.30 hours in the presence of the bidders if they chose to do so.

By the closing date, two (2) bids were received namely those of:

1. Anglo African Systems Ltd; and
2. State Informatics Ltd.

## **B. The Evaluation Process**

The Bid Evaluation Committee which submitted its report on 06 May 2015 was chaired by Mr. A.K. Dulthummon, Ag. Technical Manager who was assisted by three (3) other members. The Bid Evaluation Committee selected Bidder 1, Anglo African Systems Ltd as the successful bidder, for an amount of Rs 1,020,705.50 inclusive of VAT. All bidders were informed on 13 May 2015, of the outcome of the bidding exercise.

## **C. Challenge and Grounds for Review**

According to the documents provided to the Panel, the Applicant challenged the decision of the Respondent by way of letter dated 22 May 2015, which was received by the Respondent on the 25 May 2015.

The Respondent replied to the challenge on the same day (i.e 25 May 2015).

The Applicant filed an application for review to the Independent Review Panel (the “**Panel**”) on the 03 June 2015.

The Grounds for Review are as follows:

- “1. The Bidder had submitted the *“lowest evaluated substantially responsive bid which meets the qualification criteria specified in the prequalification or bidding documents”* and yet, the public body chose not to award the contract to the Bidder. This Act/ omission of the Public Body constitutes a flagrant breach of the provisions of the Public Procurement Act (PPA) 2006, Public Procurement Regulations (PPR) and Instructions to Bidders (ITB).
2. The Public Body ought to have notified the Bidder of the award of the contract to Anglo African Systems Ltd under section 40(3) of the PPA but instead chose to notify the Bidder under section 40(7) of the PPA, thereby reducing the delay of the Bidder’s right to appeal.
3. The Chief Executive Officer of the public body did not issue a decision on the challenge within the time specified in section 43(4) of the PPA.

4. The Bidder claims that it will suffer loss or injury due to the unlawful acts/omissions of the Public Body, as set out in the Challenge.”

On 04 June 2015, the Panel requested the Respondent to comment on the Applicant’s review, pursuant to Regulation 55 of the Public Procurement Regulations 2008.

The Respondent provided its comments to the Panel on 10 June 2015.

Of relevance, is the Respondent’s comment in respect of Ground No. 3 which reads as follows:

“Ground 3

- (a) *Date Award was issued: 13 May, 2015*
- (b) *Official period of challenge: 7 days*
- (c) *Date challenge received at CISD: 25 May 2015*
- (d) *In that context, challenge was received after 7 days from issue of letter of Award and therefore was not entertained.”*

The Panel gave an opportunity to the Applicant to respond to the Respondent’s comments by way of letter dated 15 June 2015.

The Panel further sent a letter to the Applicant dated 16 June 2015 requesting the Applicant to give reasons why the Applicant’s application for review should not be rejected based on the fact that it has been submitted outside the prescribed delay.

The Applicant through its counsel, responded on the 22 June 2015. The gist of its response is reproduced below:

“ 1.3 *In reply to ground 3, it is contended by CISD that the challenge was received outside delay. SIL avers that the notice of award of the contract was received at SIL on 18/05/15 and the delay for challenge expired on 24/05, which was a Sunday. By operation of law, the delay was automatically extended to Monday 25/05/15, date on which the challenge was indeed submitted.*

2. *Reply to letter date 16/06/15*

2.1 *The internal approval process prevailing at SIL is that all reviews to be lodged before the IRP requires the approval of the Management, and*

2.2 *The Management could not give its approval on time, because there was a week-end break in the prescribed delay period.*

2.3 *SIL submitted on the day immediately following the expiry of the delay.*

*[...]*”

#### **D. Findings**

The Panel has examined the case carefully and is of the view that the application for review cannot be entertained for the following reasons:

(1) the challenge filed by the Applicant to the public body was effected outside the statutory delay of 7 days, as rightly pointed out by the Respondent in its comments dated 10 June 2015 substantiated by documents on file.

(2) The application for review filed by the Applicant to the Panel was also effected outside the statutory delay of 7 days, as admitted by the Applicant’s counsel in its reply to the Panel on 22 June 2015.

For the above reasons, the application for review is hereby dismissed in accordance with Regulation 56 (c) of the Public Procurement Regulations 2008.

**(G. Athaw)**  
***Vice-Chairperson***

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

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

**Dated 31 August 2015**