

**INDEPENDENT REVIEW PANEL**

**In the matter of:**

**Defence Hitech Security Services Ltd**

**(Applicant)**

**v/s**

**Mauritius Cane Industry Authority**

**(Respondent)**

**(Cause No. 19/15/IRP)**

**Decision**

**A. History of the case**

- Procurement Entity: MAURITIUS CANE INDUSTRY AUTHORITY
- Project: Supply Security Services
- Procurement Ref. no MCIA/SS/2015/006
- The Funding Agency is: MCIA
- Procurement Method: Invitation of Bids through Local Press

**Bidding Process**

General Procurement Notice: The invitation for bids has been issued through the Local newspapers. The Bidding Documents were issued on 27 February 2015

The deadline for bid submission was on 31 March 2015 at 13 00 Hrs. Ten Bids were received and were opened by the MCIA- DBC on the 31 March 2015 at the Head Office, Réduit. The Bidders were

1. SOS GUARD LTD.
2. CENTRAL SECURITY GUARD LTD
3. EDMOND SECURITY SERVICES LTD
4. KEEP PACE SECURITY GUARD LTD
5. QUICK SECURITY GUARD LTD
6. PROGUARD LTD
7. DEFENCE HI-TECH SECURITY SERVICES LTD
8. NEW SECURITY GUARD LTD
9. RAPID SECURITY SERVICES LTD
10. SMART SECURITY SERVICES LTD

**B. Evaluation****Read-Out Prices of Bidders at Opening of Bids**

The following table shows the details of the bids with the read-out prices at bid opening.

Bidder	Bidder name	Bid Price(Incl VAT) Rs
1	SOS Guard Ltd	1,181,875.00
2	Central Security Guard Ltd	1,040,175.00
3	Edmond Security Services Ltd	2,023,797.60
4	Keep Pace Security Guard Ltd	1,320,800.00
5	Quick Security Guard Ltd	1,108,715.00
6	Proguard Ltd	1,017,060.07
7	Defence Hi-Tech Security Services Ltd	852,200.00
8	New Security Guard Ltd	1,407,166.00
9	Rapid Security Services Ltd	1,401,390.00
10	Smart Security Services Ltd	1,168,400.00

The Bid Evaluation Committee was composed as follows:

Name	Status	Designation
MUNGROO .I	Field Manager – AMU	Chairperson
JOHAHEER.B	Project Officer - Corporate	Member
PAYANDI PILLAY.K	Research Manager - MSIRI	Member
TEELONAH.R	Finance Officer - Corporate	Member
RAMLOGUN.S	Procurement & Supply Officer	Member

Secretary: Hauzaree.K.D (Mrs)

In respect of the Successful Bidder and the Applicant, the Bid Evaluation Committee found that:

**Bidder 6 : Proguard Ltd**

(i) *The total monetary value for each of the last three years been given for 2011, 2012 and 2013 and not for 2014.*

*(ii) The reports for financial standing of the bidder for the last three years, such as certified copies of financial statements/ audited accounts as filed at the registrar of companies before deadline set for such submission of bids has not been submitted for 2014.*

*(iii) The copy of license from the Commissioner of Police to operate as "private security service provider" has been submitted with its expiry date as April 2015.*

*(iv) The safety and health policy is not well elaborated.*

*(v) The proposals for timely acquisition or arrangements (of additional resources and logistics) in case the contract or part thereof is awarded have not been mentioned.*

**Bidder 7 : Defence Hi-Tech Security Services Ltd**

*(i) The total monetary value for each of the last three years has not been submitted.*

*(ii) A list of contracts that have been terminated prior to their expiry dates in the last three years and reasons for such occurrences have not been submitted.*

*(iii) The Management Plan has not been submitted.*

*(iv) No safety and health policy has been provided as such.*

*(v) Information on how the service provider will manage the provision of replacement security guards during sick leave and annual leave needs elaboration.*

*(vi) Leave entitlement for the staff and method of managing staff leave entitlements has not been submitted.*

*(vii) The professional indemnity insurance cover is for the period 2011-2012.*

*(viii) The Third Party Liability Cover has not been submitted.*

*(xii) As per sub-clause 5.2(a) of ITB, the average annual amount of services provided over the last three years should represent at least half of the*

*annual contract value or part thereof for which the Bidder is selected for award. Bidder 7 does not meet this criteria (sic).*

*(ix) The checklist for bid submission has not been submitted.*

As a result, the Bid Evaluation Committee found the Applicant's bid non-responsive.

This first phase of evaluation was followed by the Technical Evaluation, of which the results are summarised in the following table:

Bidder No	Bidder Name	Marks Obtained	Outcome (Pass/Fail) for further evaluation
6	Proguard Ltd	64	Pass
8	New Security Guard Ltd	51	Pass
9	Rapid Security Services Ltd	70	Pass
10	Smart Security Services Ltd	42	Fail

The Bid Evaluation Committee noted that

- (i) Only Bidders 6,8 and 9 have obtained above 50 marks and could be considered further for Financial Evaluation.
- (ii) Bidder 10 having obtained 42 marks, hence below the 50 mark threshold could not be considered any further.

The Technical Evaluation was followed by Financial Evaluation, of which the results were tabulated by the Bid Evaluation Committee as follows:

Responsive Bidder	Quoted Price (Monthly incl VAT-Rs)	Marks Calculated (Financial)	Marks Allotted (Technical)	Total Marks (Financial + Technical)	Successful Bidders
Bidder 6	1,017,060.07	30	64	94	First
Bidder 8	1,407,166.00	21.68	51	72.68	Third
Bidder 9	1,401,390.00	21.77	70	91.77	Second

The Bid Evaluation Committee recommended that the contract be awarded to the lowest evaluated responsive bidder, i.e Bidder 6 - Proguard Ltd for the quoted amount of ONE MILLION SEVENTEEN THOUSAND AND SIXTY RUPEES SEVEN CENTS (INCLUSIVE OF VAT) i.e (MUR 1,017,060.07 VAT INCL) - MONTHLY, as it is the complying bidder having fulfilled all the requested criteria as per the Bid Document.

Nevertheless, the Bid Evaluation Committee recommended that clarifications be sought from the Successful Bidder in regard to the following items:

**ITB No - 5.1(c)**

*The total monetary value of the Security Services performed for each of the last three years submitted are for years 2011, 2012, 2013. .*

*The Bidder is being requested to submit its monetary value for Year 2014.*

**ITB No 5.1 (g)**

*The Reports on the financial standing of the Bidder for the last three years, such as certified copies of Financial Statements/ Audited Accounts as files at the Registrar of Companies before the deadline set for such submission of bids have not been submitted for 2014.*

*The Bidder should submit the above information for Year 2014.*

**ITB No 5.1 (j)**

*The license from the Commissioner of Police to operate as "Private Security Service Provider", submitted in the Bid is valid until April 2015.*

*The Bidder should submit a copy of the renewed license or to submit information whether the license is in the process of being renewed.*

**ITB No 5.2 (c)**

*Proposals for timely acquisition or arrangement (of additional resources and logistics) in case the contract or part thereof is awarded, has not been submitted.*

*Same must be submitted.*

**ITB No 13.1 (c)**

*Safety and Health Policy - The Bidder should produce its Safety and Health Policy and describe the arrangements made to fulfill its obligations to ensure compliance of the duty of the employer, as defined under the Occupational Safety and Health Act.*

*The information submitted is very brief. The Bidder should elaborate fully.*

**C. Notification of award**

The Mauritius Cane Industry Authority through a letter dated 21 July 2015, informed the Applicant of the particulars of the successful bidder as follows:

<i>Name of Bidder</i>	<i>Address</i>	<i>Contract Price/Month (Incl. VAT)  Rs</i>
<i>Proguard Ltd</i>	<i>Seeneevassen Road, Palma, Quatre Bornes</i>	<i>1,017,060.07</i>

**D. The Challenge**

On 24 July 2015, the Applicant challenged the award on the following grounds:

“A. *Failure to take into consideration relevant facts that*

- (i) *Why the award is in favour of a higher bidder when I am the lowest bidder*
- (ii) *All requirements in the tender document have been met and fulfilled by my company*
- B. *Failure to give clarifications as to why the award is in favour of a higher bidder.*
- C. *Failure to take into consideration Paragraph 5.1 of the Tender Documents (Qualification of the Bidder)*
- D. *Failure to submit a proper letter of intent as prescribed by Law.”*

**E. The Reply to Challenge**

On 29 July 2015, the Public Body made the following reply to the challenge:

*Our analysis of your document has shown the following:*

<b>ITB</b>	<b>Description</b>	<b>Remarks</b>
<b>12.1 (b)</b> Sub clause 5.1 c	<i>The total monetary value of security services performed for each of the last three years</i>	<i>Not submitted</i>
Sub clause 5.1 i	<i>A list of contracts that have been terminated prior to their expiry dates in the last three years and reasons for such occurrences</i>	<i>Not submitted</i>
<b>13.1(a)</b>	<i>The Management Plan</i>	<i>Not submitted</i>
<b>13.1(c)</b>	<i>Safety and Health Policy</i>	<i>No policy as such</i>
<b>13.1(d)-3</b>	<i>Information on how the Service Provider will manage the provision of replacement security guards during sick leave and annual leave</i>	<i>Not well elaborated</i>
<b>13.1(e)-a</b>	<i>The Professional Indemnity Cover</i>	<i>Submitted only for 2011-2012</i>



<b>13.1(e)-b</b>	<i>The Third Party Liability Cover</i>	<i>Not submitted</i>
<b>5.2(a)</b>	<p><i>To qualify for award of the Contract, Bidders shall meet the qualifying criteria:</i></p> <p><i>The average annual financial amount of services provided over the last three years should represent at least half of the annual contract value or part thereof for which the Bidder is selected for award</i></p>	<b>NOT QUALIFIED</b>

*In the circumstances, the Evaluation Committee held the view that your Company did not meet the qualifying criteria as per the ITB 5.2(a) and was not retained for further evaluation.*

*Furthermore, we wish to inform you that the contract for the security services has been awarded to the lowest responsive bidder and Notification to unsuccessful bidders was not sent because the amount of contract is less than the prescribed threshold as per the Public Procurement Act 2006 40(3) and Regulations 38(3).”*

**F. Grounds for Review**

On 31 July 2015, the Applicant seized the Independent Review Panel for review on the following grounds:

- “1. *MCIA failed to take into consideration the fact that Applicant Defence High Tech Security Services Ltd is the lowest bidder.*
2. *MCIA failed to take into consideration All requirements in the Tender documents have been met and fulfilled by the Applicant.*
3. *The intention to award the above contract to the highest bidder and MCIA failed to confirm the following:*
  - (d) *The major items of resources logistic support and strategies including licenses proposed to deploy for execution of this contract for island wide*
  - (e) *The information regarding any litigation, current and during the last five years in which the bidder is involved, the party concerned and disputed amount*

- (f) *List of contract that have been terminated prior to their expiry dates in the last three years and reasons for such occurrences*
4. *All requirements in the tender document have not been met and fulfilled by the highest bidder.*
  5. *MCIA to give clarifications as to why the award is in favour of a higher bidder.*
  6. *MCIA failed to give reasons for its decision.*
  7. *MCIA failed to give account of and/or give due consideration to relevant considerations, including the Applicant's experience.*
  8. *During evaluation process MCIA failed to comply with section 37(1) of Public Procurement Act 2006 concerning missing documents as per above paragraph 5."*

#### **G. The Hearing**

Hearings were held on 24 August, 14 September and 21 September 2015. Written submissions were made on 14 September 2015 by Applicant and 03 September and 17 September 2015 by and Respondent respectively.

The Applicant was represented by Ms S. Chuong, Counsel together with Mr R. Rajroop, Attorney whereas the Respondent was represented by Ms K. Domah, State Counsel.

#### **H. Findings**

Under ITB 13 (d) (1), the Bidding Documents request that each bidder provide the *“Number of qualified security staff (Male/Female) available, including their level of experience.* Clearly, this is an important element of the proposed Plan of Work of the Bidder, itself an essential criterion in evaluation.

The Bidding Documents are silent on what constitutes a *“qualified security staff”*. The Applicant has argued that the interpretation of this term should be obtained from the Private Security Service Act 2004 which provides the following definition: *“security guard” means a person employed by a private security service who guards, patrols or provides any*

*other security service for the purpose of protecting person or property.* An Amendment in 2008 expanded this definition, but did not alter its import and meaning for the purposes of this discussion. That same Act under section 7 provides that:

***Security guards to be registered***

- (1) *Any person who wishes to perform the duties of a security guard shall make an application for a certificate of registration to the Commissioner in such form as may be approved by the Commissioner.*
- (2) *The Commissioner may require an applicant to furnish such additional information, and make such investigations and conduct such examinations, as he considers necessary respecting the character and competence of the applicant.*
- (3) *The Commissioner may refuse to register an applicant who –*  
  
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- (4) *Where the Commissioner is satisfied that the applicant meets the requirements of this section, he may, subject to such conditions as he thinks fit to impose, issue a certificate of registration and a badge to the applicant on payment of the prescribed fee.*

The Respondent has argued that 1. The above provisions of the PSS Act do not apply to employees of a licensed operator, but to individuals who wish to offer security services as security guards, and 2. That the Bidding Documents did not contain any provision that the “*qualified security staff*” requested should be registered.

After consideration of the arguments from both parties, and after deliberation, the Panel is of the view that:

1. It is clear from the definition provided in the PSS Act 2004, as well as from a reading of other parts of the same Act, that any agent proposed by a licensed operator as a “security guard” should be registered. Furthermore, in the absence of any definition in the Bidding Documents, and from the functions that the “*qualified security staff*” would be required to perform, the Panel is of opinion

that the latter refer in fact to security guards as defined in the PSS Act of 2004, as later amended.

2. The provisions of the Bidding Documents cannot override the Laws of the land.

In view of the above, it is not necessary for the Panel to delve further into the merits of the Application, but would like to record that a Public Body would be right not to proceed further with the evaluation of a bid if the latter has been found lacking in a major criterion in a way that cannot be corrected through clarification.

**I. Decision**

For the above reasons, the Panel finds that the tender process was vitiated, and therefore orders the annulment of the tender exercise.

**(R. Laulloo)**  
***Chairperson***

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

**(V. Mulloo)**  
***Member***

**Dated 17 November 2015**