

INDEPENDENT REVIEW PANEL

In the matter of:

Central Business Equipment Ltd

(Applicant)

v/s

**Ministry of Education and Human Resources, Tertiary
Education and Scientific Research**

(Respondent)

(Cause No. 32/15/IRP)

Decision

A. History of the case

On 13 May 2015, the Ministry of Education and Human Resources, Tertiary Education and Scientific Research (hereinafter referred as the “Respondent”), invited bids for the supply and commissioning of 600 Personal Computers, 600 Antivirus Software and 300 A4 laser Printers for Primary and Secondary schools via and open advertised bidding process.

According to the Bidding document, the bidders were permitted to bid on an item basis and likewise the contract could be awarded on an item by item basis. The closing date of the bids was on 16 June 2015.

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The Bid Evaluation Committee carried out the evaluation of bids and recommended the award of the whole contract to the lowest evaluated substantially responsive bidder that is Leal Communications and Informatics Ltd of the award of the contract. Given that the bidding document permitted bidders to bid on an item basis instead of the entire contract, the Central Business Equipment Ltd (hereinafter referred as the “Applicant”) chose to bid for the supply and commissioning of 300 A4 Laser Printers.

On 13 November 2015 the Applicant challenged the bid and on 23 November 2015 the Independent Review Panel received an application for review for the said bidding exercise.

B. Notification of Award

The Ministry of Education and Human Resources, Tertiary Education and Scientific Research through a letter dated 10 November 2015, informed the Applicant of the particulars of the successful bidders as follows:

<i>Description</i>	<i>Name of Bidder</i>	<i>Address</i>	<i>Contract Amount (Rs)</i>
<i>Option 2: Supply and Commissioning of:</i>			
<i>1. 600 Personal Computers Make and Model: PCTECH-Intel model (Processor: AMD FX 6350-3.9 GHz) with antivirus software</i>	<i>Leal Communications and Informatics Ltd</i>	<i>Motorway M1, Pailles</i>	<i>13,475,700</i>
<i>2. 300 units A4 Laser printers Make and Model : Lexmark – MS 610 dn</i>			<i>3,519,000</i>

C. The Challenge

On 13 November 2015, the Applicant challenged the award on the following grounds:

- “(1) The decision of the Ministry is unjustifiable, wrong, unreasonable and irrational inasmuch as: which itself attest the good quality of product irreproachable after sale service provided by Applicant.*
- (2) The Applicant several times in the past supply printers of the make Kyocera to the Ministry and no complaint was ever received, and the product of the Applicant is of the same standard that of Leal Communications and Informatics Ltd.*
- (3) The Applicant quoted for the supply of 300 units of Printers for the sum of Rs1,470,000 (including VAT), which is more than half less than the quote of Leal Communications and Informatics Ltd which is at Rs3,519,000 (including of VAT).*
- (4) The Bid offered by the Applicant has met the specification of the Ministry on all four corners.*
- (5) In view of the above, the Applicant had the legitimate expectation of being awarded the contract.”*

D. The Reply to Challenge

On 19 November 2015, the Public Body made the following reply to the challenge:

- “(i) The lowest evaluated substantially responsive Bidder has been selected for award of contract.*
- (ii) The evaluation of bids was not based on the make of IT equipment.*
- (iii) The offer of Central Business Equipment Ltd. (CBE) has not been found technically responsive.*
- (iv) The bid of CBE is not compliant with Section V of bidding document – schedule of Requirements – Support Staff Qualifications & Experience at least 2 IT related technical staff should be degree holders in an IT related field.”*

E. Grounds for Review

On 23 November 2015, the Applicant seized the Independent Review Panel for review on the following grounds:

- “1. The schedule of requirements documents for the Ministry of Education and Human Resources, Tertiary Education and Scientific research (the “public body”) was for supply of:*
 - a. 600 personal computers*
 - b. 300 A4 laser printers*
 - c. 600 antivirus software*
- 2. The Applicant quoted for the supply for and commissioning of 300 units of only A4 Laser Printers of the make KYOCERA for the sum of Rs1,470,000 (including VAT), which is more than half less than the quote of Leal Communications and Informatics Ltd which is at Rs3,519,000 (including VAT). The offer of the Applicant was the therefore lower, if not the lowest, evaluated bid.*

3. *The Applicant has, on the basis of similar tenders of the public body in the past, wherein the requirement was for several IT related items, applied for and obtained the tender for the supply of printers only.*
4. *The Bid offered by the Applicant has met ALL the specifications and/or requirements and exigencies of the public body on all four corner as per the schedule of requirement documents, as far the A4 laser printer is concerned.*
5. *The Applicant has several times in the past supply printers of the make KYOCERA to the public body and no complaint was ever received which itself attests the high quality of the product and irreproachable after-sale service provided by the Applicant in the past.*
6. *All the IT technical staffs of the Applicant are accredited, licensed and approved by Kyocera Document Solutions South Africa Pty Ltd and are fully versed with the product that was quoted as well as all other products of the Applicant. This is to the knowledge of the public body for which the Applicant has supplied similar products in the past.*
7. *The requirements of the IT related staffs with at least 2 being degree holders, cannot by any stretch of imagination, apply for the supply of A4 Laser printers and can only apply to the supply of personal computers and antivirus software which were part of the bidding documents, but not bid for by the Applicant.*
8. *It cannot therefore be argued that the offer of the Applicant was not substantially responsive or less substantially responsive than that of*

Leal Communications and Informatics Ltd, as far as the supply of A4 Laser printers is concerned.

9. *Moreover the tender itself was awarded 4 months after the Applicant has bid for the supply and commissioning which delay is itself unfair and prejudicial. Since, circumstances have changed and the Applicant now have at least 2 IT related staffs who are degree holders.*

10. *In view of the above, the Applicant had the legitimate expectation of being awarded the contract and the decision of the Ministry is unjustifiable, unwarranted, wrong, unreasonable and irrational.”*

F. The Hearing

Hearings were held on 07 December 2015, 18, 26 January and 02 February 2016. The Applicant was represented by Ms W. Dulmar Ebrahim, Counsel whereas the Respondent was represented by N. Meettook, State Counsel.

G. Findings

In light of the submissions given by the Applicant and Respondent, for the supply and commissioning of 600 personal computers, 620 Anti-virus software and 300 A4 laser printers, for primary and secondary schools, the Panel has reached the following conclusions:

Firstly the Public Body made it very clear in its advertisement in respect of the tender procedure, to wit the prospective bidders were required to provide in their bidding document, **“a minimum of 2 support staff, with a qualification and experience in the field of I.T/IT related field.”**

In a simplistic term, the two staff should be holder of a degree in IT/IT related field. Furthermore, they must be available at the request of the Public Body to provide technical assistance if need be.

A specification in any Bid document has a mandatory significance and thus very important in the evaluation stage of a particular bid.

The Panel finds that the Applicant has omitted this part of the requirement which would naturally tend to eliminate the latter from the selection exercise. As matter stand, the Panel further observed that the Applicant was wrong to state that the decision of awarding the contract to another bidder, is nonsensical and prejudicial.

The Applicant admitted that “there was no reason for the applicant to have entered into a joint venture of whatsoever nature in order to comply with a requirement which at the outset is nonsensical.”

Therefore, the Panel is of the view that Applicant is non compliant with the general specification of the Bid document.

The Panel finds that there is no merit in this application.

(A. Kallee)
Vice-Chairperson

(R. Rajanah)
Member

(R. Ragnuth)
Member

Dated 18 July 2016