

INDEPENDENT REVIEW PANEL

In the matter of:

**Defence Hitech Security Services Ltd
(Applicant)**

v/s

**Ministry of Ocean Economy, Marine Resources, Fisheries,
Shipping & Outer Islands
(Respondent)**

(Cause No. 34/15/IRP)

Decision

A. History of the case

The present application for review relates to the Procurement of Security Services (MOF/OAB1/2015/SS). On 14 January 2015, the Ministry of Ocean Economy, Marine Resources, Fisheries, Shipping & Outer Islands hereinafter referred to as the Respondent issued bidding documents for the Procurement of Security Services.

On 16 February 2015 the Defence Hitech Security Services Ltd hereinafter referred to as the Applicant submitted its bids. By way of letter dated 28 July 2015 the Respondent requested the Applicant to extend the validity of its bid up to 31 August 2015 and the bid was further extended until 30 November 2015.

By way of letter dated 13 November 2015 the Applicant was informed by the Respondent that the contract for Provision of Security Services at different sites of the Ministry will be terminated with effect 1st December 2015.

On 25 November 2015, the Applicant challenged the bid and on the 27 November 2015, the Applicant applied for review at the Independent Review Panel

B. Letter of Termination of Contract

The Ministry of Ocean Economy, Marine Resources, Fisheries, Shipping and Outer Islands through a letter dated 13 November 2015, informed the Applicant as follows:

“I am directed to inform you that the contract for the “Provision of Security Services at Different Sites of the Ministry” (AFRC, FITEC, Fish Auction Market, Blue Bay Marine Park and Mahebourg Fish Landing Station) will be terminated with effect from 01 December 2015.”

C. The Challenge

On 25 November 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 take into consideration Paragraph 5.1 of the Tender Documents (Qualification of the Bidder).*
- C. *Failure to disclose the selected bidder following my letter dated 16 November 2015 in good faith as I am a participated bidder.*
- D. *Failure to consider that the selected bidder is not qualified under ITB 13(d)(1) stating that each bidder should provide the “number of qualified security staff (Male/Female) available, including their level of experience”.*
- D. *A list of contract been terminated prior to their expiry dates in the last three years and reasons for such occurrences have not been submitted.*
- E. *Failure to submit a Management plan, how he will execute the contract in case this been awarded to the company.*
- F. *The said Ministry has failed to confirm the following:*
 - (i) *The major items of resources logistic support and strategies including licences proposed to deploy for execution of this contract for island wide*
 - (ii) *The information regarding any litigation, current and during the last five years in which the bidder was involved, the party concerned and deputed amount*
- G. *All requirements in the tender have not been met and fulfilled by the highest bidder.”*

D. Grounds for Review

On 27 November 2015, the Applicant seized the Independent Review Panel for review on the following grounds:

- “1. *The Public Body ought to have been awarded the contract to the Applicant which is the lowest substantially responsive bidder;*
2. *The Applicant has submitted a bid which complies with all the requirements and criteria of the bidding documents and therefore it should have been awarded the contract being the lowest substantially responsive bidder;*
3. *The Public Body has failed to carry out a proper evaluation and assessment of the bid of the selected bidder in as much as:*
 - (a) *The selected bidder does not have the qualifications and experience of supervisory personnel to ensure good performance of the service;*
 - (b) *The selected bidder did not provide the number of qualified security staff (male/female) available, including their level of experience and it failed to provide a list of security guards properly trained with copies of their certificates duly signed by a registered trainer approved by the Mauritius Qualifications Authority and also registered at the office of the Commissioner of Police;*
 - (c) *The selected bidder fails to submit to give the list of contract/s which has/have been terminated prior to their expiry dates in the last three years and the reasons for such occurrences;*
 - (d) *The selected bidder fails to provide the major items of Service Provider’s Equipment and logistics for carrying out the services (Section II: Bidding Forms, item 1.4);*

- (e) The selected bidder fails to submit documentation to the effect that it is able to communicate with the security guards and to respond promptly in case of any major incident to assist its personnel on site including the list of vehicles, control centres linked to their vehicles as well as on their respective sites of works; and*
 - (f) The selected bidder fails to submit a Management plan concerning the execution of the whole contract.*
4. *The bid of the selected bidder fails to meet the requirements of the bidding documents and therefore its bid should have been rejected.”*

E. The Hearing

Hearings were held on 10 December 2015, 25 January, 11 February and 25 March 2016. Written submissions were made on 30 March 2016, by Applicant and Respondent respectively.

The Applicant was represented by Ms S. Chuong, Counsel whereas the Respondent was represented by Ms A. Ombrasine, Senior State Counsel.

F. Findings

After taking into consideration the written submissions of both counsel the Panel observed the following:

Section 1-ITB of the bidding documents at page 5.21(c) it is stipulated that *experience in services in similar nature and of similar size as far as possible, in each of the last three years and details of services under way or contractually committed; and the names and address of clients who*

may be contacted for further information on those contracts. The Panel is of the view that the Applicant has experience in providing security services. Furthermore it is not disputed that the Applicant has been providing security services to the Respondent in different sites since July 2013 on a two years contract and the said contract has been renewed on a month to month basis with no adverse reports. At the hearing the Respondent stated that marks were allocated depending on the number of contracts with private companies. It transpired that the Applicant submitted 17 contracts out of which three were with private bodies and thus scored only one mark. The Panel took note that no mention was made in the bidding document that marking were given according to the number of contracts with private bodies. Thus on this particular issue the Panel is of the view that the Applicant has relevant experience in providing security services and the Applicant has been wrongly marked.

In relation to Section V1- schedule- Evaluation Criteria 3, i.e. Organisational Chart & Key Personnel, the Panel observed that no mention was made that the names of personnel have to be inserted on the Organisational Chart. The Panel noted with great concern that Mr Gopaul who represented the Respondent was very confused and could not give a clear answer regarding this issue. However, the Panel took note that Mr Gopaul conceded that the Applicant did give the name of key personnel.

During cross examination a question was put to Mr Gopaul by counsel for the Applicant, whether height was one of the evaluation criteria. Mr Gopaul replied that he does not know despite the fact that he was in the Bid Evaluation Committee. Thus, the Panel is of the view that the bidding documents did mention height as criteria.

Regarding Section v1- Schedule – Evaluation Criteria, the Panel observed that Applicant did provide a list of vehicles and deployment for rapid response. Thus, the Panel is of the view that full marks should have been allocated to this part of the evaluation criteria.

As far as the badge issue is concerned the Panel observed that during cross examination Mr Gopaul conceded that a certificate of registration from the Commissioner of Police do have the National Identity Card number of the personnel. He further stated that this is a mean of identification. The Panel concludes that if same is a mean of identification and if it has been registered by the office of the Commissioner of Police there cannot be any better form of identification.

Lastly the Panel observed that the Applicant did not mention the seven days basis. It is very important to understand the nature of this bidding process. It goes without saying that security services is 24hrs on a daily basis. The contract cannot be for one day. The Panel is of the view that the 24hrs also implies seven days basis.

G. Decision

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

(A. Kallee)
Vice-Chairperson

(R. Rajanah)
Member

(R. Ragnuth)
Member

Dated 18 July 2016