

INDEPENDENT REVIEW PANEL

In the matter of:

Mechanization Co. Ltd

(Applicant)

v/s

Mauritius Cane Industry Authority

(Respondent)

(Cause No. 09/16/IRP)

Decision

A. History of the case

The present application for review relates to the procurement of New Equipment in particular Crawler Tractors with Accessories for the Mauritius Cane Industry Authority hereinafter referred as the Respondent.

The Respondent had invited bid for the procurement of new Equipment through an open bidding exercise in July 2015.

On 28 January 2016 notification letter was sent to the successful bidder that is UMCL and as well as to Mechanization Co. Ltd hereinafter referred as the Applicant.

On 04 February 2016, the Applicant submitted its challenge to the Respondent. The latter responded to the applicant's challenge on 09 February 2016.

On 15 February 2016, the Applicant filed an application for review at the Independent Review Panel.

B. Notification of Award

The Mauritius Cane Industry Authority through a letter dated 28 January 2016, informed the Applicant of the particulars of the successful bidders as follows:

| <i>Item</i> | <i>Name of Bidder</i> | <i>Address</i> | <i>Contract Price (Incl VAT) (Rs)</i> |
|-------------|-----------------------|--|---|
| <i>1</i> | <i>UMCL</i> | <i>354 Royal Road, Bonne Terre, Vacoas</i> | <i>24,390,000.00 (for 2 units only)</i> |

C. The Challenge

On 04 February 2016, the Applicant challenged the award on the following grounds:

“We are an established company since 1974. We represent amongst others the brand Komatsu a Japanese manufacturer and world leader. We sold dozers to contractor’s sugar estate as well as to the SPMPC since 1976. We run a reputed and well equipped workshop and our mechanics regularly follow refreshing courses from the supplier. We also run a top class spare parts with specialised employees. Our offer is for the model D65 new generation, the same supplied 10 years ago to the SPMPC, but obviously with new technologies for increase production and economic running cost. Our offer was some 11% cheaper, representing Rs2,432,470.04 for the two units. ITB clause 12.1(k) refers “Bidders shall submit the following additional documents in the bid (List of their local customer TO WHOM THEY HAVE PROVIOUSLY SOLD THE EQUIPMENT).”

None of the dozers proposed by UMWL was ever sold in Mauritius. The name is unknown therefore no past sale experience from the preferred dealer, no spare parts available at this stage no sales & service experience, no real garage facility equipped with overhead cranes and required spaces for such heavy equipment.

No data concerning the projected operating and maintaining cost during the lifetime of the machine

No data about the performance and productivity of the equipment offered.”

D. The Reply to Challenge

On 09 February 2016, the Public Body made the following reply to the challenge:

“We would wish to advise Mechanisation Co. Ltd that the MCIA has based itself on the recommendations of a Bid Evaluation Committee (BEC) as per the standard procedure adopted by the Authority in evaluating tenders.

The analysis are as follows:

- *Not as per requirement*
- *Not as per requirement*
- *The bidder has submitted the name of one customer and the quantity ordered for same type of equipment*
- *Details as regards after sales experience, after sales (maintenance and repair) commitment and parts stocking obligations.*
- *UMCL Ltd confirms that spare parts shall be produced by their suppliers, Dressta and Rockland, for the period of time the goods are expected to be functioning – being not less than 10 years (with suppliers’ statements).*
- *UMCL Ltd confirms being fully equipped for structural repairs and after sale service.*
- *UMCL Ltd abides to its suppliers’ requests for special tooling and technical trainings in order to achieve industry best practices and offer the most professional after sales service to its customers.*
- *UMCL Ltd confirms to keep a satisfactory level of parts in stock (actual parts stock value – MUR9.5M) and ensure rapid parts supply for non-stock items.”*

E. Grounds for Review

On 15 February 2016, the Applicant seized the Independent Review Panel for review on the following grounds:

“(1) Applicant was the lowest complying bidder in the bidding exercise inasmuch as the Applicant’s bidding value under Item 1 was 11% cheaper than that of the successful bidder’s (UMCL), making a difference of Rs2,432,470.04;

(2) Applicant did comply with all the requirements and specifications or Item 1 under the Description of Goods of the bidding documents.

(3) Applicant is not satisfied with the information given by the Public Body by way of letter dated 09 February 2016 inasmuch as:

(i) Regarding the analysis made by the Bid Evaluation Committee

Independent Review Panel – Decision No. 17/16

| <i>Technical Specifications</i> | <i>Proposal made by</i> <i>MECOM</i> | <i>Analysis</i> |
|---|---|-------------------------------|
| <i>Radiator cooling fan driven system: Mechanical and belt driven</i> | <i>Hydraulic Driven</i> | <i>Not as per requirement</i> |
| <i>Steering type: Differential</i> | <i>Hydrostatic</i> | <i>Not as per requirement</i> |

The Applicant denies having submitted a bid which was not as per requirement according to the analysis of the Bid Evaluation Committee inasmuch as:

A. The Applicant’s specifications for the New Crawler Tractors complete with Multi-Shank Toolbar Assembly, Rippers and Rakes, which form part of the Applicant’s Tender, itemised as Item 1(G) and 1(I), relating to the

- 1(G) Radiator Cooling Fan driving system and*
- 1(I) Steering Type respectively,*

Whereby the Applicant stated that the Radiator Cooling fan was “Hydraulic Driven” rather than being “mechanical and belt driven” as per the Required Specifications

And that the Steering Type was “hydrostatic” rather than “Differential” as per the Required Specifications

Were included in the “Details of Non-compliance/Deviation (if applicable)” section and the presence of the “slash” symbol is used as being the substitute for the conjunction “or” and therefore, alternatively to being a detail of “non-compliance”, there was also the introduction of a “deviation” rather by the Applicant in its Tender;

B. The Applicant further states that its tender Specifications regarding the Radiator Cooling Fan driving system as being “hydraulic driven” rather than being “mechanical and belt driven” and the Steering Type as using the “hydrostatic” rather than “Differential” type, cannot in any way be interpreted as being non-compliant but should in fact be considered as a deviation, which is to be assimilated as an improvement, inasmuch as:

a. The hydraulic driving of the radiator Cooling Fan, as per the proposal of the Applicant, is of a much advantageous system compared to the mechanical and belt driving system. The

Applicant herewith annexes an article dated the 06 March 2008, to that effect, stating the advantages of hydraulic driving

- b. On the issue of the Hydrostatic Steering Type, as per the Tender of the Applicant, such system proposes various advantages, amongst which are the shorter turning radius and a smoother and more precise operation being enabled, which system is undeniably the newest and the most widely adopted steering type of most renowned manufacturers.*

Therefore, it cannot be stated by the Bid Evaluation Committee that the Specifications provided by the Applicant are non-compliant, inasmuch as there is a difference between non-compliance and deviation, in so far as the Applicant has provided an improvement and a much better offer than what was initially required.

(ii) Regarding the bid of the successful bidder

According to Clause 12.1(h) of the Bidding Documents, relating to Documents Comprising of the Bid, same were to include any other document required in the Bid Data Sheet, which in turn provided that:

“The Bidder shall submit the following additional documents in its bid:

List of their local customers to whom they have previously sold the equipment”.

It is the Applicant’s stand that ever since its incorporation in Mauritius in 1974, and as representative of the KOMATSU brand for the past 40 years in Mauritius, which in turn is a world leader in the manufacturing and selling of construction and mining equipment, utilities, forest machines and industrial machinery, has up to the date of closure of the Bid, not heard about the name DRESSSTA, as well as the sale of such Dozers in Mauritius, which is the equipment which has been proposed by the successful Bidder, UMCL.

The Applicant therefore submits that the Tender having been awarded to the successful bidder, UMCL is not a compliant one, inasmuch as:

- A. The successful bidder, UMCL has failed to comply with Clause 12.1(h) of the Bidding Documents, by providing a list of its local customers to whom it has previously sold the equipment; and*
- B. Furthermore, it is most unlikely that the successful bidder has sold such a dozer in Mauritius, up to the date of the closure of the Bid, and therefore the successful bidder cannot have submitted the name of one customer and the quantity ordered for same type of*

equipment, as stated in the Public Body's letter of 09 February 2016.

In the light of those discrepancies relating to the successful bidder's Tender document, which according to the Applicant were not compliant, the Applicant therefore maintains being the lowest complying bidder and should therefore have been awarded the Bid."

F. The Hearing

Hearings were held on 24 February and 11 March 2016. Written submissions were made on 18 March and 24 March 2015, by Applicant and Respondent respectively.

The Applicant was represented by Ms J. Mootoosamy, Counsel whereas the Respondent was represented by Mrs P. D. R. Goordyal-Chitto, Assistant Parliamentary Counsel together with Ms A. Mohun, Temporary State Attorney.

G. Findings

After the submission of Counsel for the Applicant and the Respondent the Panel conclude the following:

The Applicant, in his testimony has purported to adduce evidence of his own knowledge concerning the use of a rare model of crawler/dozer in Mauritius, by the successful bidder which is in fact not to be found anywhere in Mauritius.

However, failure to submit such document to the Panel by the Applicant would render the statement as hearsay. It is trite law, that the law of hearsay applies and thus admissible, only if, the maker of the statement in a hearing could come and prove the facts and circumstances, of any such evidence relied upon.

Furthermore, the Panel observed that the Applicant in his submission failed to argue and disprove the report of the Bid Evaluation Committee. If the requirements of the Respondent that the radiator cooling fan driving system should be one of the “**Mechanical and belt driven**”, rather than the “**Hydraulic driven**”, irrespective of whether it is a fast improving system or not. Moreso, the Panel is of the view that this is a very important element for determining the responsiveness of the bid.

The Panel also took note of the requirement of the Respondent which are as follows:

- a. *“all Lots and items to be listed and priced separately in the price schedule-“* **vide ITB15.2**
- b. *“the price to be quoted in the bid submissions form shall be the total price of the bid, excluding any discount offered.”* **Vide ITB 15.3**

The Panel observed that the Applicant failed to comply with the above requirements and had neither challenged same in its statement of reply. Thus the Panel is of the view that failure to comply with the above requirements would disqualify the applicant in this bidding process.

The Panel therefore concludes that the Applicant in his application for review has failed to prove that the grounds of review are solid and convincing. The Panel is of the view that the arguments canvassed by the Applicant during the course of the hearing were non supportive which led the Panel to conclude that the said application was unfounded.

The application is therefore set aside.

(A. Kallee)
Vice-Chairperson

(R. Rajanah)
Member

(R. Ragnuth)
Member

Dated 18 July 2016