



Independent Review Panel

In the matter of:

Scomat Ltee

(Applicant)

v/s

Mauritius Cane Industry Authority

(Respondent)

(Cause No 08/16/IRP)

Ruling

Introduction

On 15 February 2016, Scomat Ltd (hereinafter referred to as the Applicant) requested specific documents to be disclosed by Mauritius Cane Industry Authority (hereinafter referred to as the Respondent).

This request pertains to the communication and production before the Independent Review Panel (IRP) of “all documents submitted by the party to whom the tender was awarded as well as all the documents submitted by the Applicant”.

By way of letter dated 2nd March 2016, the Respondent objected to the request of the Applicant for the communication and production of documents in light of regulation 68 of the Public Procurement Regulations 2008.

Arguments

The Applicant submits that the above objection is misconceived on the following grounds:-

- (a) The disclosure is not contrary to Public Interest, not contrary to the legitimate commercial interest of the parties and will not inhibit competition.
- (b) The documents requested do not fall within the ambit of regulation 68(b) of the Public Procurement Regulations 2008.
- (c) The Panel has the power to request a public body to submit the requested documents under Regulation 53 of the Public Procurement Regulations 2008

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(d) The communication and production of the documents is essential to enable the Panel to determine the live issues and more specifically at this stage to show that the Applicant's grounds for review are warranted and justified.

The arguments were heard on the 9th of March 2016 and both parties were represented by Counsel.

Counsel of the Applicant submitted that no reasons have been advanced as to why the information requested is contrary to public interest and would prejudice legitimate commercial interest of either party to the proceedings or would inhibit competition. Furthermore Counsel of the Applicant submitted to the fact that since the Applicant is requesting their own document thus an objection under Regulation 68 of the Public Procurement Regulations 2008 cannot be sustained. The Applicant further submitted to the fact that the types of documents requested do not fall within the ambit of section 68(b). Finally the Applicant referred to Regulation 53 and submitted that the Panel has the power to request the Respondent to submit the requested documents.

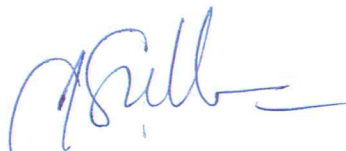
The Panel observed at this juncture that all documents requested are already before the IRP thus there is no longer any live issue. For this reason grounds (c) and (d) above fail.

The Panel observed that Regulation 68 stipulates that:

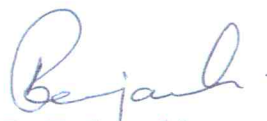
Except as otherwise ordered by a Court, a public body shall not disclose-

- (a) Information if its disclosure is contrary to public interest, will prejudice legitimate commercial interest of the parties or will inhibit competition;
- (b) Information relating to examination, evaluation and comparison of bids other than reports report prepared pursuant to section 37 of the Act.

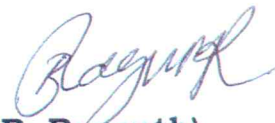
Conclusively, the Panel is of the view that the Respondent has the right not to disclose the requested documents and the Applicant can choose appropriate forum to request same.

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(A. Kallee)
Vice-Chairperson

A handwritten signature in blue ink, appearing to read "R. Rajanah", is positioned above the name and title.

(R. Rajanah)
Member

A handwritten signature in blue ink, appearing to read "R. Ragnuth", is positioned above the name and title.

(R. Ragnuth)
Member

Dated 12 September 2016