



Independent Review Panel

Decision No. 26/16

In the matter of:

Manser Saxon Facilities Ltd

(Applicant)

v/s

Ministry of Health & Quality of Life

(Respondent)

(Cause No. 38/15/IRP)

Decision

A. History of the case

The present application for review relates to Procurement Contract bearing reference number MHPQ/WKS &/2015/Q1, that is procurement for Operation and Maintenance of the Wastewater Treatment Plant at SSRN Hospital.

The Respondent had invited bid for the procurement of Operation and Maintenance of the Wastewater Treatment Plant through an open advertised bidding exercise on 12 August 2015.

On the 14 December 2015 notification letter was sent to the successful bidder that is Sotravic Ltd and as well as to Manser Saxon ltd hereinafter referred as the Applicant.

On the 18 December 2015 the Applicant submitted its challenged to the Respondent. The latter responded to the applicant's challenged on the 23 December 2015.

On the 29 December 2015, the Applicant applied for review under Section 45 of the Public Procurement Act at the Independent Review Panel.

B. Notification of Award

The Ministry of Health & Quality of Life through a letter dated 14 December 2015, informed the Applicant of the particulars of the successful bidders as follows:

Name of Bidder	Contract Price
Sotravic Ltee	Rs 12,514,400.00 (Inc of a provisional sum of Rs500,000 and VAT at 15%)

C. The Challenge

On 18 December 2015, the Applicant challenged the award on the following grounds:

"The Bid Evaluation Committee has not fully examined and evaluated bids that meets the qualification criteria appropriately, under paragraphs 30 and 32 ITB and ; ss 37(9) and (11) PPA, in as much as it failed to evaluate

that the bid price quoted by the successful bidder is highly insufficient for the proper operation and maintenance of the wastewater treatment plant, as per the criteria of the bidding documents.

We therefore conclude that the minimum cost to operate and maintain the works as per tender requirements amounts to

- (a) Rs4,715,361.26 per annum without P&Gs and mark up;*
- (b) Rs14,146,083.78 for a period of three (3) years, excluding the provisional sum of Rs500,000.00 and 15% VAT; and*
- (c) Rs16,842,996.34 inclusive of the provisional sum of Rs500,000.00 and 15% VAT.*

As such, the bid price submitted by the successful bidder, amounting to Rs12,514,400.00, inclusive of a provisional sum of Rs500,000.000 and 15% VAT will not be sufficient to operate and manage the Sewage Treatment Plant in full compliance with the requirements in the bidding documents.

Also, being given the strategic location of the Sewage Treatment Plant inside a major health facility, the consequences ahead could be very disastrous for the client, the patients and for the public at large as it may cause serious Bacteriological risks in case the plant is not managed properly.

The Award of the Procurement Contract

- 1. The notice of the award by the Ministry should have been done under s40(3) PPA in the Notification to Unsuccessful Bidders form as prescribed on the website of the Procurement Policy Office, instead of s40(7) PPA in a letter from the Ministry.*
- 2. The Ministry failed to inform unsuccessful bidders of the possibility to challenge the award and the time frame of doing so in the above mentioned letter.
Notifying us of the timeframe was very important given the strict delay of 7 days to challenge the decision and we are being seriously prejudiced by the omission of the Ministry as we received the letter dated 14 December 15 only on the 16 December 15 near close of business by fax and we had only 2 working days to submit our challenge.*
- 3. The Ministry also failed to inform unsuccessful bidders that they may request for a debriefing within 30 days from the publication of the notice of the procurement award as per s 41 PPA.”*

D. The Reply to Challenge

On 23 December 2015, the Public Body made the following reply to the challenge:

- “2. You are hereby informed that your bid has not been retained for the following reasons:
- (a) Your company is incorporated since December 2013 and has less than three years of existence and hence you cannot satisfy the requirement for total monetary value of Services performed for each of the last three years;
 - (b) Your audited reports submitted for year 2011, 2012 and 2013 are not under the name of Manser Saxon Facilities Ltd; and
 - (c) Your company has submitted a letter indicating that it has not been involved in any arbitration or litigation on projects executed during the last seven years. Since your company has less than three years of existence, the letter is not acceptable.
3. As per ITB 32, the Ministry of Health and Quality of Life has awarded the contract to the lowest substantially responsive evaluated bidder.
- (a) As per your breakdown of costs, the grade Technical support Specialist has been included on a full time day only basis. This grade has not been mentioned as such in our bid requirements. However, the need for support specialists has been requested as and when required. We are of opinion that the cost for this full time staff appear to be a surplus in your bid price;
 - (b) A Project Manager has been designed by the Ministry of Health and Quality of Life to supervise and monitor the performance of the selected contractor;
 - (c) As per sub section 2.0, the contract includes a three months trial period and should the contractor fail to maintain and operate the plant as per bid requirements, the client reserve the right to terminate the contract;
 - (d) The management fee has been included as a lump price in the main bill. The cost for each staff has not been requested in the bidding document and therefore, the selected bidder has not included a breakdown of his staff cost and therefore comparison under this item cannot be done;
 - (e) The cost for laboratory testing has been included as a lump price in the main bill. The cost for each test as you have indicated cannot be compared as same are not available for the selected bidder. The breakdown cost for each test has not been requested in the bidding document; and
 - (f) The cost for carting away of wastewater as indicated in your letter is on a very high side as compared to the proposal of the selected bidder.

4. *This Ministry wishes to inform you that the prescribed threshold for a contract which requires notification before the award in accordance to Section 40(3) of the Public Procurement Act 2006 is Rs15 Million. A copy of Public Procurement Regulations 38(3) is herewith enclosed.*
5. *This is the reason why the award of the selected bidder which amounts to Rs12,514,400.00 inclusive of a provisional sum of Rs500,000 and VAT at 15% has been issued and then all bidders were notified.”*

E. Grounds for Review

On 29 December 2015, the Applicant seized the Independent Review Panel for review on the following grounds:

- (a) *The Public Body acted wrongfully and perversely in changing the rules regarding the interpretation of ITB 5.3, as amended by the Bidding Data Sheet when in relation to “Procurement of Maintenance and Repairs Services for Air Conditioning and Ventilation System at New Souillac Hospital – Procurement MHPQ/NMRD/2014/Q76 (Exhibit A to the Statement of Case) and ‘24/7 Operation, Inspection, Preventive Management/Routine Servicing & Eventual Repairs of Mechanical & Plumbing Installation Services & Equipment at New Dr A. G. Jeetoo Hospital – MHPQ/WKS & S/2015-2016/Q5 (Exhibit B to the Statement of Case) where both set of bidding documents refer at ITB 5.3, as amended by the Bidding Data Sheet, to the wordings “total monetary value of Services performed for each of the three years, respectively, the Public Body did not reject the Applicant’s bid and on the contrary awarded the contracts to the Applicant’s bid and on the contrary awarded the contracts to the Applicant in respect of these two procurement exercises.*
- (b) *The Public Body wrongly restricted itself to the wordings of ITB 5.3 as amended by the Bidding Data Sheet (at page 25) and fails to determine and understand the underlying rationale of the requirement why a bidder must provide information relating to the “total monetary value of Services for each of the last three years”.*
- (c) *The Public Body wrongly disregarded the Applicant’s auditors report on the ground that the audited reports submitted for the years 2011, 2012 and 2013 are not under the name of Manser Saxon Facilities Ltd. Manser Saxon Facilities which is a well known trade name and business unit of Manser Saxon Contracting Ltd and the fact that the business unit ‘Manser Saxon Facilities’ chose to have its own legal personality by*

incorporation on 06 December 2013 (Exhibit C to the Statement of Case) cannot render it ineligible.

- (d) *The Public Body wrongly rejected the Applicant's bid on the ground that the letter relating to litigation and arbitration information mentions "Seven years" when the Applicant was incorporated in 2013. Reference is made to ITB 5.3 as amended by the Bidding Data Sheet (at page 25) which requires a bidder to provide "information regarding any litigation, current or during the last three years...."*
- (e) *The Public Body is wrong and acted unreasonably when it states in its letter dated 23 December 2015 that the grade 'Technical Support Specialist' has not been mentioned as such" in the bidding documents.*
- (f) *The Public Body failed to ensure a fair procurement process by not making use of ITB 26.1 to request for clarification of the selected bidder's bid, including breakdowns of prices and therefore, bidders were not treated on the same level playing field.*
- (g) *The Public Body is wrong to state that, having regard to the prevailing market rate, the costs quoted by the Applicant for the carting away of wastewater is on the very high side as compared to the proposal of the selected bidder. "Reference is made to Exhibit F of the Statement of Case."*

F. The Hearing

Hearings were held on 18 January and 18 March 2016. Written submissions were made on 28 January and 16 February 2016, by Respondent and Applicant respectively.

The Applicant was represented by Mr M. Oozeer together with Ms K. Narraido, Counsel whereas the Respondent was represented by Ms N. Pem and Mr D. Bissessur, State Counsel.

G. Findings

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

The general rule is that a bidder must comply with all the requirements laid down in a bidding document. The Panel observed that under ITB5.3 (c) and (j) as amended by the Bid Data Sheet, the bidder must provide documentary evidence with respect to the total monetary value of services performed and as well as information regarding any litigation for the last three years.

The Panel notes that at the time of closing the bids the Applicant had less than two years of operation. The Applicant was incorporated on the 6th of December 2013.

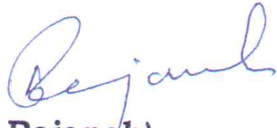
Furthermore Section 26 of the Companies Act stipulates that “A company incorporated under this Act shall be a body corporate with the name by which it is registered and continues in existence until it is removed from the register of companies”

In the light of Section 26 above, the Panel note that a company is a separate entity as from the date the said company was incorporated. As far as the Applicant is concerned the Panel is of the view that the Applicant is a separate entity from Manser Saxon Contracting Ltd. Furthermore since the Applicant made the offer and signed the bid submission form, it is crystal clear that the Applicant was a separate corporate body and not as a business unit of Manser Saxon Contracting Ltd. Finally the Panel observed that not only that the Applicant has failed to satisfy the qualifying criteria but also the cost quoted for carting away wastewater is on a very high side as compared to the cost quoted by the successful bidder.

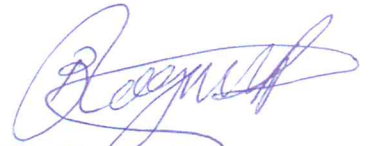
For the reason set out above the Panel concludes that the application is devoid of merits and is therefore set aside.



(A. Kallee)
Vice-Chairperson



(R. Rajanah)
Member



(R. Ragnuth)
Member

Dated 14 October 2016

