



Independent Review Panel

Decision No. 29/16

In the matter of:

State Informatics Ltd

(Applicant)

v/s

Office of the Commissioner of Police

(Respondent)

(Cause No. 24/16/IRP)

Decision

A. Background

A.1

Introduction: The Mauritius Police Force invited bids for the Supply, Installation and Commissioning of (i) Document Management System (ii) Road Eye Project System for the Traffic Branch.

A.2

Procurement Method: The Procurement Method used for this bidding exercise was Open Advertised Bidding.

A.3

Bidding Document: The standard bidding document chosen is 'Standard Bidding Document for Goods' which has been customized to suit this bidding exercise.

A.4

Addendum and Corrigendum:

(a) Addendum No. 1 was issued on 26 May 2016.

(b) Corrigendum No. 1 was issued on 26 May 2016.

A.5

Invitation of Bids: The Invitation for Bids (IFB) was published in local newspapers and posted on the Public Procurement Portal.

A.6

Submission of Bids: Bidders were required to deposit bids in the Tender Box of the Police Department, situated at the Line Barracks, Conference Room, Port Louis on or before Wednesday 01 June 2016 up to 13.00 hrs (local time). The closing date for submission of tenders was rescheduled for Wednesday 15 June 2016 up to 13.00 hrs (local time).

A.7

Opening of Bids: Bids were opened on Wednesday 15 June 2016. Bids were received from six bidders as follows:

Bid No.	Bidders	Bid Price (Rs.)
1	Leal Communications & Informatics Ltd	41,463,991.00
2	Blanche Birger Co Ltd	75,495,119.90
3	Harel Mallac Technologies Ltd	48,183,220.95
4	State Informatics Ltd	Option 1 – 34,270,279.05 Option 2 – 35,123,314.78
5	Data Communications Ltd	Option 1 – 34,559,505.15 Option 2 – 38,542,397.70 Option 3 – 41,851,022.65
6	Anglo African Ltd	Option 1 – 42,321,769.71 Option 2 – 36,355,184.13

B. Evaluation

B.1

Composition of Bid Evaluation Committee: The Bid Evaluation Committee set up to evaluate the bids was composed as follows:

Name	Occupation	Designation
Mr. M. Deena	Superintendent of Police- Traffic Branch	Chairperson
Mr. B. Rambhursy	Chief Inspector of Police- Traffic Branch	Member
Mr. S. Periacarpen	PS 6797, Police IT Unit	Member
Mr. K. Baguant	Programme Manager, Central Informatics Bureau	Member
Mr. P. Mohabeer	Programme Manager, Central Informatics Bureau	Member
Mrs. J. Awotar-Nagapillay	Programme Manager, IT Security Unit	Member
Mr. M. Maudarbocus	Police Tender Unit	Secretary

B.2

Technical Evaluation: In respect of the selected bidder, Messrs Anglo-African, the Bid Evaluation Committee found that:

- *Bidder did not provide List of Goods and Delivery Schedule. However as per para (b) of Bid Submission Form, the Bidder has agreed to supply in conformity with the bidding documents and in accordance with delivery schedule.*
- *The Bidder is retained for Option 2 only. Bidder did not submit complete technical specifications compliance sheets for Option 1. The Option 1 is therefore not retained.*

In respect of General Technical Responsiveness:

- *Incomplete Information - clarifications required with regard to reference sites and testimonial for server and PCs only if proposal meets all other requirements.*
- *Incomplete Information - clarifications required with regard to manufacturer authorization if proposal meets all other requirements.*

No remarks were made in respect of the Applicant. However, in Detailed Technical Responsiveness, the Bid Evaluation Committee was of opinion that a number of clarifications be sought from all retained tenderers, but did not consider that there was any material deviation in the bids which have survived previous stages.

B.3

Financial Evaluation: The Bid Evaluation Committee made the following remarks and/or changes in respect of the bid of the Selected Bidder:

(a) Bidder has not provided the annual maintenance charges for years 3 and 5 for the Top of Rack fibre optic switch. As such, the Bidder should agree to maintain the two Top of Rack fibre optic switches at no cost during years 3 and 5.

(b) Bidder should agree with the following correction of arithmetical errors:

(i) Total Cost (including VAT) :

- *The Total - for part B - Road-Eye Project System (Rs 3,060,267.13) did not include the cost for IBM Aspera (Rs 927,311.70). The Total Cost (including VAT) for Total - for part B - Road-Eye Project System should be adjusted to Rs 3,987,578.82 (instead of Rs 3,060,267.13).*
- *Consequently, the Total Cost (including VAT) for the Grand Total - for Part A – Document Management System & Part B - Road Eye Project System should be adjusted to Rs 32,310,011.31 (instead of Rs 31,382,699.61 as per Price Schedule Form and Rs 36,355,184.13 as per Bid Submission Form).*

(ii) Annual Maintenance charges for years 3, 4 and 5:

- *The Total - for part B - Road -Eye Project System (Yr 3 - Rs 323,939.55, Yr 4 – Rs 666,048.60 and Yr 5 - Rs 616,542.03) did not include the annual maintenance costs for blade server (Yr 3 - Rs 17,029.15, Yr 4 – Rs 68,116.61 and Yr 5 - Rs 68,116.61) & annual maintenance charges for antivirus software for blade server (Yr 4 - Rs 4,989.85 and Yr 5 - Rs 4,989.85). As such, the annual maintenance charges for years 3 to 5 for the Total - part B - Road-Eye Project System should be adjusted to Rs 340,968.70, Rs 739,155.06 and Rs 689,648.49 respectively).*
- *Consequently, the Grand Total - for Part A - Document Management System & Part B - Road Eye Project System with regard to maintenance charges for years 3 to 5 should be corrected (from Rs 2,955,690.55, Rs 5,465,221.60 and Rs 5,525,285.03 l respectively) to Rs 2,972,719.30, Rs 5,538,328.17 and Rs 5,598,391.29 respectively.*

C. Notification of Award

The Office of the Commissioner of Police through a letter 12 October 2016 informed the Applicant of the particulars of the successful bidders as follows:




Contract No.	Name of Bidder	Address	Contract Price (Rs) INCL. VAT
OAB 4 of 2015/16	Anglo African Ltd	Royal Road, Coromandel	32,310,011.31

D. The Challenge

On 18 October 2016, the Applicant challenged the award on the following grounds:

- (a) *“The Public body failed to take into consideration the fact that the State Informatics Ltd was the lowest evaluated bidder at the Opening Stage as compared to Anglo African Ltd;*
- (b) *The Public body failed to appreciate that the State Informatics Ltd was more substantially responsive to the bidding documents as compared to Anglo African Ltd;*
- (c) *The Public body acted contrary to the relevant clauses of the bidding documents, inter alia, Clauses 27.3 and 28.2 of the Instructions to Bidders, when it awarded the bid to Anglo African Ltd on an alleged ‘Corrected Amount’;*
- (d) *The Public body failed to convene the State Informatics Ltd, as a shortlisted bidder at evaluation stage, to give a demonstration, at its own costs, of the proposed solution, at the Traffic Branch, contrary to Section V ‘Schedule of Requirements’ of the bidding documents;*
- (e) *The Public body acted in an unwarranted and arbitrary manner, in awarding the bid to Anglo African Ltd on a ‘Corrected Amount’, resulting in a serious change in substance and price of the bid.”*

E. The Reply to Challenge

On 21 October 2016, the Public Body made the following reply to the challenge:

- (a) *“The evaluation and comparison of bids have been duly carried out as per ITB clauses 29 and 40 of the bidding document. It has been*

determined that the lowest evaluated substantially responsive bid is from Anglo African Ltd.

- (b) The evaluation has been carried out by a team of evaluators including qualified technicians. The assertion of State Informatics Ltd is not correct. The bid of Anglo African Ltd has been found to be substantially responsive and lowest as per the evaluation criteria in the bidding document.*
- (c) The Public body avers that no award has been made so far but the offer from Anglo African Ltd (option 2) has been selected for award. Also, relevant clauses of the bidding document, amongst others, Clauses 27.3 and 28.2 of the Instructions to Bidders (ITB) have been duly adhered to. The corrected amount is the result of correction of arithmetical errors in the bid of Anglo African Ltd as per provisions at ITB 30.1 and 32.3 of the bidding document.*
- (d) As per point (a) above, it was determined that Anglo African Ltd is the lowest evaluated substantially responsive bid and was therefore requested to carry out a demonstration of its proposed solution and same was carried out to the satisfaction of the Public body. As such, it would have been futile to request other bidders to demonstrate their proposed solutions at that stage as it would have changed the outcome of the bidding exercise.*
- (e) The Public body has acted legally, as per the provisions of the Public Procurement Act 2006, and in fairness to all Bidders including State Informatics Ltd. Correction of arithmetical errors was carried out as per provisions of the bidding document and established procedures laid down for evaluation (Refer to Section 30.1 ITB of the Bidding Document)."*

F. Grounds for Review

On 27 October 2016, the Applicant seized the Independent Review Panel for review on the following grounds:



- (1) *“Because the Public body failed to appreciate that the Applicant’s Bid was the lowest evaluated substantially responsive bid, in breach of provisions of the Public Procurement Act and the bidding documents;*
- (2) *Because the Public body in selecting the Anglo African Ltd.’s bid (option 2) for award on the “Corrected Amount’ in lite acted in breach of, inter alia, Sub-Clause 30 and 32 of the Instructions to Bidders;*
 - (a) *The Applicant states that at the opening of bids, Anglo African Ltd (option 2)’s bid was Rs 36,355,184.13 Vat incl whilst the Applicant (option2)’s bid was Rs 35,123,314.78 Vat incl;*
 - (b) *And yet the Public body selected Anglo African Ltd (option 2)’s bid for award on a ‘Corrected Amount’ of Rs 32,310,011.31 Vat Incl.*
- (3) *Because the Public Body in selecting the Anglo African Ltd’ bid (option 2) for award on the ‘Corrected Amount’ in lite, altered the price and substance of the bid, in breach of, inter alia, the provisions bidding documents;*
- (4) *Because the Public body in selecting the Anglo African Ltd’ bid (option 2) for award on the ‘Corrected Amount’ in lite, cause a material deviation to the bid, in breach of, inter alia, the provisions of the bidding documents;*
- (5) *Because the Public Body erred in applying and/or wrongly and arbitrarily applied the provisions in respect of correction of arithmetical errors in reaching the ‘Corrected Amount’ in lite, in breach of, inter alia, the provisions of the bidding documents.*
- (6) *Because the Public body erred in failing to convene the Applicant to give a demonstration, in breach of the relevant provisions of the bidding documents.*
- (7) *Because the Applicant has suffered or is likely to suffer, loss or injury due to a breach of duties imposed on the Public Body in lite, by the Public Procurement Act and relevant provisions of the bidding documents, as set out in the Grounds of Review.”*

G. The Hearing

Following Applicant's Statement of Case, written submissions were made by the Respondent and Applicant on 11 November and 15 November 2016 respectively.

Hearings were held on 08 November and 17 November 2016.

The Applicant was represented by Mr A. H. Sookhoo, of Counsel whereas the Respondent was represented by Mr S. Boodhoo, (Principal State Counsel).

H. Issues

H.1

The Applicant has raised issues which may generally be catalogued in two categories:

- a. Those relating to the responsiveness of the Selected Bidder.
- b. Those relating to corrections made by the BEC to the selected bid, and which the latter have described as mere "Arithmetical Corrections"

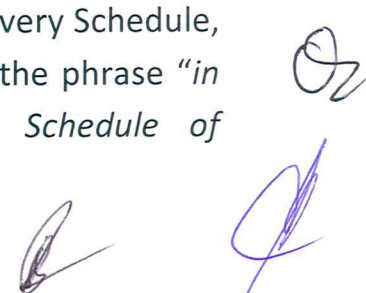
H.2

Responsiveness: The Panel did not verify the actual bid of the Selected Bidder, but has relied exclusively on the findings of the Bid Evaluation Committee.

Bidder did not provide List of Goods and Delivery Schedule. However as per para (b) of Bid Submission Form, the Bidder has agreed to supply in conformity with the bidding documents and in accordance with delivery schedule.

Paragraph (b) of the Bid Submission Form states: *"(b) We offer to supply in conformity with the Bidding Documents and in accordance with the Delivery Schedules specified in the Schedule of Requirements the following Goods and Related Services _____ [insert a brief description of the Goods and Related Services];"*

Thus paragraph (b) of the Bid Submission Form refers to the Delivery Schedule, but if the latter is non-existent, or left blank by a bidder, then the phrase *"in accordance with the Delivery Schedules specified in the Schedule of Requirements"* becomes meaningless.



Throughout the Bidding Documents, mention is made of the “Schedule of Requirements” in Section V, which is the schedule that the Selected Bidder failed to fill in and submit. It may be appropriate to reproduce here the “**Notes for Preparing the Schedule of Requirements**”

The Schedule of Requirements shall be included in the bidding documents by the Purchaser, and shall cover, at a minimum, a description of the goods and services to be supplied and the delivery schedule.

The objective of the Schedule of Requirements is to provide sufficient information to enable bidders to prepare their bids efficiently and accurately, in particular, the Price Schedule, for which a form is provided in Section IV. In addition, the Schedule of Requirements, together with the Price Schedule, should serve as a basis in the event of quantity variation at the time of award of contract pursuant to ITB Clause 41.

The date or period for delivery should be carefully specified, taking into account (a) [.....] (b) the date prescribed herein from which the Purchaser’s delivery obligations start (i.e., notice of award, contract signature, opening or confirmation of the letter of credit).

H.3

Financial Evaluation: The arithmetical corrections made by the Bid Evaluation Committee are quite in order. However, the latter did more than just correct arithmetical mistakes:

Consequently, the Total Cost (including VAT) for the Grand Total - for Part A – Document Management System & Part B - Road Eye Project System should be adjusted to Rs 32,310,011.31 (instead of Rs 31,382,699.61 as per Price Schedule Form and Rs 36,355,184.13 as per Bid Submission Form).

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Bid No.	Option	Bidder	Total Cost (Rs) inclusive of VAT	Corrected Total Cost (Rs) inclusive of VAT	Total Maintenance charges (Rs) inclusive of VAT	Total Adjusted Cost (Net Present Value)	Ranking	Remarks
		Ltd			Yr 4: 5,877,968.10 Yr 5: 5,794,504.71			para 5.1
6	2	Anglo African Ltd	36,355,184.13	32,310,011.31	Yr 1: 0.00 Yr 2: 2,097,882.69 Yr 3: 2,972,719.30 Yr 4: 5,538,328.17 Yr 5: 5,598,391.29	44,658,774.68	1	Subject to clarifications as per para. 4.5 and para. 5.1

The figure of MUR 36 355 184.13 does not correspond to the total as per Price Schedule Form, which was also erroneous. But while the latter mistake was due to arithmetical errors, and therefore could be legitimately corrected, the discrepancy represented by the figure in the Bid Submission Form is unexplained. It would look as if the discrepancy is a result of faulty transposition from the schedule to the Bid Submission Form. If the figure in the latter corresponds to the figure inserted by the tenderer in the schedule total, then correction of the latter would automatically entail similar correction to the figure in the Bid Submission Form. But this is not the case here. There are three sets of figures: 1. the one in the Price Schedule Form, which was erroneous, and 2. corrected by the Bid Evaluation Committee to MUR 32,310,011.31, and 3. the one in the Bid Submission Form of MUR 36 355 184.13.

The Bidding Documents provide at Clause 32.3 of the ITB that arithmetical errors may be corrected in the following circumstances:

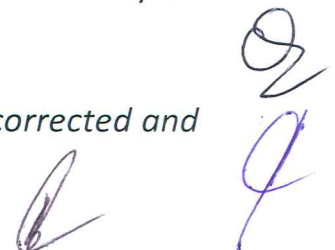
(a) if there is a discrepancy between the unit price and the line item total that is obtained by multiplying the unit price by the quantity, the unit price shall prevail and the line item total shall be corrected, unless in the opinion of the Purchaser there is an obvious misplacement of the decimal point in the unit price, in which case the line item total as quoted shall govern and the unit price shall be corrected;

(b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and

(c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.

Nowhere in the above is it mentioned that transposition discrepancies may be corrected. Also, the Public Procurement Act provides in S 37

(5) Where a bid discloses an arithmetical error, the error shall be corrected and the bidder notified.



(6) Where there is a discrepancy between figures and words, the amount in words shall prevail, and the mistake shall be corrected and the bidder notified.

Here again, there is no provision for correction of a discrepancy between the price schedule and the Bid Submission Form. This discrepancy which may not be considered as an arithmetical error, which by definition is one arising out of an arithmetical operation.

H.4

It is also brought to the attention of the Respondent that where the Bidding Documents provide for reducing annual costs to a Present Value, then the Documents should also mention the discount rate to be used. If no such rate is mentioned, then the Bid Evaluation Committee should perform a sensitivity analysis to show how the evaluation may be affected using likely values of discount rates. There is nothing “normal” about the use of 10% as discount rate as stated by the representative of the Bid Evaluation Committee, as this choice is subjective. In the absence of published values of discount rates to be used in similar circumstances, the documents should set this value for evaluation purposes, same as for any other evaluation criterion. If not the Bid Evaluation Committee should demonstrate that a value has not been chosen to influence the outcome of the evaluation, for example by a sensitivity analysis. The representative of the Bid Evaluation Committee has stated during the Hearing that because of the huge difference in prices, the choice of another discount rate would not have changed the outcome of the Bid Evaluation. Such intuitive statements should normally be supported by sensitivity analyses.

Moreover, it is quite legitimate, where a bidder fails to insert a price, for the Bid Evaluation Committee to consider that the price-value is 0 for that particular item. However, that decision is made by the Bid Evaluation Committee and the bidder should not be given the option to confirm or not that such was his intent, even if one of the two available choices would automatically entail his disqualification. The principle that the bidder should not be given the opportunity to amend his price implies that he should not be given the opportunity to say whether or not he maintains his price as has been done in regard to the selected bidder. This is a given, not open to discussion.

H.5


In fine, the Respondent has gone out of his way to justify and/or clarify the various lacking, omissions, shortcomings, and deviations of the Selected Bidder's tender, when the sheer mass of such discrepancies should have alerted him as to the advisability of making an award to a bidder capable of such sloppiness. However, what has proved fatal to the Respondent's case are

1. Failure of the Selected Bidder to submit the *List of Goods and Delivery Schedule and*

2. Correction of the Bid Price of the Selected Bidder to the corrected sum of MUR 32,310,011.31 from MUR 36 355 184.13, when the discrepancy between those 2 figures is certainly not the result of an arithmetical error.

I. Decision

The Panel therefore decides that there is merit in this Application for Review, and hereby orders an annulment of the decision to award to the Selected Bidder, and further orders a re-evaluation of the bids for the reasons mentioned above.



(M Reshad Laulloo)
Chairperson



(Mrs Christelle Sohun)
Member



(Robin Rajanah)
Member



Dated 28 November 2016

