

INDEPENDENT REVIEW PANEL

In the matter of:

Fresh Noor Vegetables Limited

(Applicant)

v/s

Mauritius Prisons Service

(Respondent)

(Cause No. 02/16/IRP)

Decision

A. History of the case

The present application for review relates to the Procurement of vegetables and fruits for the Financial Year 2016-2017, bearing Ref No. MPS/OAB/QN11/2015-2016.

Bids were invited through Open Advertised Bidding under section 16(1) of the Public Procurement Act and the deadline for submission, with extension of closing date was on 18 Nov 2015.

Opening was on same day at 13.30 hrs. Only 5 bidders have responded. The read-out prices were as listed in table below:

S/N	Bidder	Bid Amount (Rs.)
1.	Fresh Noor Vegetables Ltd.	16,110,230.00
2.	D. Ramchurn & Sons Ltd.	17,297,765.00
3.	SKC Surat & Co. Ltd	28,227,208.00
4.	Abdool Ahad Burahee	23,298,670.00
5.	S.D Farms & Co. Ltd.	17,823,100.00

B. Evaluation

The Bid Evaluation Committee appointed to evaluate the bids was composed of:

S/N	Name	Official Status	
1.	Mr. Parboteeah	Assistant Commissioner of Prisons	Chairman
2.	Mr. Boganee	Principal Prisons Officer	Member
3.	Mr. Mooruth	Prison Officer/Senior Prison Officer	Member
4.	Mr. Daiboo	Prison Officer/Senior Prison Officer	Secretary

The Bid Evaluation Committee noted that:

10.1 *M/S Fresh Noor Vegetables Ltd. – The Bidder has complied with all mandatory requirements of the bidding document, the bid is retain for further evaluation.*

10.4 *M/S Abdool Ahad Burahee. has not submitted (i) Company Profile, (ii) Documentary evidence where similar goods have been delivered, (iii) a bank Certificate with a minimum of liquid assets and/or credit facilities of (MUR 1.1M/-) net of other contractual commitments, (iv) List of Goods and delivery schedule not submitted & (v) Technical Specifications sheet not submitted. Non submission of the first two documents is considered to be a minor deviation by the Bid Evaluation Committee. But the bidder has not submitted the List of Goods and*

delivery schedule & Technical Specifications sheets which constitute a major deviation and Bid Evaluation Committed decided not to retain the bid for further evaluation as being substantially non responsiveness to the requirements of the Bidding Document.

10.5 *M/S SD Farms & Co. Ltd. - The Bidder has complied with all mandatory requirements of the bidding documents, the bid is retain for further evaluation.*

All the substantially responsive bids have been adjusted in respect of arithmetical errors and the corrected prices are as listed in Table hereunder.

Bidders Name	Corrected Price	Ranking	Variation Percentage.
Fresh Noor Vegetables Ltd.	16,110,230.00	1	-
D. Ramchurn & Sons Ltd.	17,297,765.00	3	-
SKC Surat & Co. Ltd	28,227,208.00	4	-
S.D Farms & Co. Ltd.	17,173,100.00	2	-3.64%

M/S S.D Farms & Co. Ltd. has been notified of the arithmetical error --- and the arithmetical corrections have been accepted by the bidder ---

The Bid Evaluation Committee further noted that:

11.1.1 *M/S Fresh Noor Vegetables Ltd.: The price quoted by the bidder is abnormally low in relation to the subject matter. The Bid Evaluation Committee has concerns as to the ability of the supplier to perform the procurement contract for the period of 1 ½ years, in terms of quality of Vegetables to be supplied, as recently, from January 2015 to April 2015, there has been around 150% - 200% rise in the price of vegetables in the local market and such situation may arise due to the change in climatic conditions.*

11.1.4 *M/S SD Farms & Co. Ltd. - The price quoted by the bidder is within the acceptable range of the cost estimate.*

Since the final recommendation of the Bid Evaluation Committee was decided on the application of the Margin of Preference, its findings in relation thereto are reproduced below:

11.2 *Margin of Preference*

M/S SD Farms & Co. Ltd. is the only bidder who has applied for Margin of Preference applicable to Small and Medium manufacturing enterprises and has submitted a cost structure declaration, certified by an Accountant stating that the local input accounts for at least 30 % of the cost of production.

Bidders Name	Bid Price (A)	Cost of Goods Imported (B)	Cost of Goods Manufactured in Mauritius (A – B) = C	Margin of Preference (10%) (C*10%) = D	Bid Price after application of Margin of Preference (B+D)	Ranking
Fresh Noor Vegetables Ltd.	16,110,230	2,862,000	13,248,230	14,573,053	17,435,053	2
D. Ramchurn & Sons Ltd.	17,297,765	2,673,575	14,624,190	16,086,609	18,760,184	3
SKC Surat & Co. Ltd	28,227,208	2,584,190	25,643,018	28,207,319	30,791,509	4
S.D Farms & Co. Ltd.	17,173,100	2,602,100	-	-	17,173,100	1

The Margin of preference has been calculated on goods manufactured in Mauritius only as the cost of structure submitted by M/S S.D Farms Co. Ltd. is based only on those goods.

The calculation has been based on the following:

- I. *Cost of Goods Imported – Total Sum of quoted price for Fresh Apples, Oranges, Grapes & Pears (Imported Goods)*

II. *Cost of Goods Manufactured in Mauritius – Sum of all goods manufactured in Mauritius.*

The conclusions and recommendations of the Bid Evaluation Committee were as follows:

Conclusion

In consideration of the above, the Bid Evaluation Committee concludes that, M/S SD Farms & Co. Ltd satisfies both criteria as follows:

The price quoted by the bidder is within the acceptable range of the cost estimate.

The bid submitted by the bidder is substantially lowest & responsive to the requirements of the Bidding Document after application of the Margin of Preference.

Recommendation

The Bid Evaluation Committee recommends that the contract for Supply of Fresh Vegetables & Fruits, for the period of 1st January 2016 to 30th June 2017, be awarded to M/S SD Farms & Co. Ltd for a contract price of Rs. 17,173,100/- being the lowest evaluated substantially responsive bid.

C. Notification of Award

The Mauritius Prisons Service through a letter dated 22 December 2015, informed the Applicant of the particulars of the successful bidders as follows:

Item	Name of Bidder	Address	Contract Price
<i>Supply of Vegetables & Fruits</i>	<i>S. D. Farms & Co. Ltd</i>	<i>La Grotte Lane, Riviere du Poste</i>	<i>17,173,100.00</i>

D. The Challenge

On 28 December 2015, the Applicant challenged the award on the following grounds:

“Having submitted the lowest responsive bid and having met all the necessary requirements and in the absence of any valid reason, the bidder should have been awarded the contract straightaway for the procurement of vegetables and fruits at the Mauritius Prison Service.”

E. The Reply to Challenge

On 31 December 2015, the Public Body made the following reply to the challenge:

“I have to inform you that SD Farms & Co. Ltd is the only bidder who has applied for Margin of Preference applicable to Small and Medium enterprises in accordance with paragraph 4 of Section III of the Bidding Data Sheet.

After application of the Margin of Preference, the bid submitted by the bidder is substantially the lowest and responsive to the requirements of the Bidding Document.”

F. Grounds for Review

On 06 January 2016, the Applicant seized the Independent Review Panel for review on the following grounds:

“The Public Body mentioned above has wrongly applied the ‘Margin of Preference’ in relation to the successful bidder and therefore the successful bidder cannot be considered as the lowest substantially successful bidder.”

G. The Hearing

Hearings were held on 14 and 28 January 2016.

The Applicant was represented by Mr N. Moonesamy, Counsel whereas the Respondent was represented by Mr D. Bissessur, State Counsel. Written submissions were made on 28 January 2016 by Respondent and 02 February 2016 by Applicant respectively.

H. Findings

The Panel wishes first of all to dispose of matters which arise on perusal of the Bid Evaluation Report.

11.1.1 *M/S Fresh Noor Vegetables Ltd.: The price quoted by the bidder is abnormally low in relation to the subject matter. The Bid Evaluation Committee has concerns as to the ability of the supplier to perform the procurement contract for the period of 1 ½ years, in terms of quality of Vegetables to be supplied, as recently, from January 2015 to April 2015, there has been around 150% - 200% rise in the price of vegetables in the local market and such situation may arise due to the change in climatic conditions.*

The above extract from the Bid Evaluation Report begs comment from the Panel, although it has not influenced the final recommendation of the Bid Evaluation Committee. For future reference, however, the Panel would like to highlight that the price of Fresh Noor is found low in relation only to an estimate, of which the accuracy cannot be established. Furthermore, both SD Farms and Fresh Noor have quoted prices much below the estimated price, but Fresh Noor by a marginally higher percentage. Finally, all the arguments above apply equally to the selected bidder, SD Farms.

Secondly, there is nothing sinister in the Bid Evaluation Committee's decision to correct the amount quoted by the Successful Bidder in item 34. Correction of arithmetical mistakes in similar circumstances is an established and accepted practice. However, it is regretted that the Bid Evaluation Committee did not include an extract of the price schedule showing the mistake and the correction in the Bid Evaluation Report. The Panel has had to examine the bid from the Successful Bidder and is therefore able to confirm that the correction was warranted.

The Application of Fresh Noor rests largely on the latter's conviction that the margin of preference has been wrongly applied by the Public Body, and on his belief that the cost structure document, submitted by the Successful Bidder in support of his request for preference, *should have been analysed by the Bid Evaluation Committee as to the correctness of the figures submitted and not taken as correct only based on the fact that the cost structure document was certified by an Accountant.*

According to his own admission, the Applicant has not seen this cost structure document, and the Panel finds it hard not to follow the Respondent and find this ground frivolous.

However, the Panel wishes to delve further into this question of application of margin of preference raised by the Applicant, and which is also the source of much confusion amongst bidders and Public Bodies alike.

In this case, to be eligible for a margin of preference, a bidder should:

- (a) *be a Small and Medium Enterprise having an annual turnover not exceeding Rs 50m, incorporated in the Republic of Mauritius; or*
- (b) *in case of a Joint Venture between Small and Medium Enterprises; or between Small and Medium Enterprises and foreign manufacturers, the entity should be incorporated in the Republic of Mauritius and the domestic manufacturers be individually eligible for the preference as per (a) above; and*
- (c) *where the local manufacturing input in terms of material, labour and overhead accounts for at least 30 per cent of the cost of production of the goods.*

Moreover,

Small and Medium Enterprises shall be eligible for a margin of preference of 10 %, provided they satisfy the criteria mentioned (-) above as applicable to domestic manufacturers.

Bidders applying for Margin of Preference as Small and Medium manufacturing enterprises should submit, as part of their bidding documents, details of:

- (a) *their registration as enterprises within Mauritius;*
- (b) *their Joint Venture Agreement, where applicable; and*
- (c) *a declaration stating that the local input accounts for at least 30 % of the cost of production. (Bidders shall submit a cost structure of the goods in the format provided at section IV certified by an Accountant, at Bid Evaluation stage if requested.)*

Bidders who wish to be considered for the margin of preference need only to give a declaration that the *local input accounts for at least 30 % of the cost of production*, followed by a *cost structure of the goods in the format*

provided at section IV certified by an Accountant, at Bid Evaluation stage if requested. In this case, the cost structure document has been submitted by the Successful Bidder along with his bid.

The Panel shall comment further below on the contents, format and author of this cost structure. The Panel would like to highlight for future reference that it defeats the purpose of giving preference to SME's to impose such constraints as submission of the cost structure. The cost structure would be more or less the same for all local bidders, and the Public Body may itself judge whether any particular tender would meet the requirements of the proportion of local input (30%) to entitle SME's to a preference.

Also, the Panel believes that once a bidder satisfies the conditions above, it should be automatically entitled to the preference provided for SME's in the Bidding Documents. Nothing in the Public Procurement Act or Regulations specify that to be eligible for such preference a tenderer would have to apply for it.

However, the tenderer would have to show that he is eligible by the fact that he is registered as an SME or that the annual turnover is less than MUR 50 million. The Applicant has not produced any evidence that he is entitled to a preference. The Public Body or the Bid Evaluation Committee on behalf of the Public Body did not seek any clarification in that respect from the Applicant, nor were they compelled to do so under the Public Procurement Act.

The Panel should also mention another element of the Bid Evaluation Report which does not impact on the final recommendation, but which it cannot leave unobserved. The preference of 10% by the Bid Evaluation Committee has been wrongly calculated. Such preference is applicable to the bid amounts, not to the local component thereof.

In fine, was the Successful Bidder entitled to a preference of 10% as an SME, at the expense of all other bidders who were not granted such preference? As stated above, Bidders who wished to be considered for the margin of preference had only to give a declaration that the *local input accounts for at least 30 % of the cost of production*. The Successful Bidder has not submitted this. Instead, he has submitted a statement from his accountants relative to the accounts of the Company, and not to the bid. He has also submitted a cost structure, although none was required at

bid stage. However, the cost structure submitted is not according to the format given in the Bidding Documents. The “Accountant” has added as local costs vehicle running expenses and hire of vehicles and equipment which can hardly be considered as fully local costs. More to the point, whereas the declaration mentioned above bears two signatures, one of which is specified to be that of a Chartered Certified Accountant Licensed by FRC, the cost structure is signed by an unknown person from an unknown accounting firm, without any indication of whether that person is a qualified Accountant, as required in the Bidding Documents. That document was not required at bid stage, and according to the Panel, should not be requested even at evaluation stage. However, it cannot, in the state it was submitted, take the place of the declaration required for eligibility to a 10% preference.

The Panel has no alternative than to conclude that the Successful Bidder was no more entitled to the 10% preference for SME’s than other bidders.

I. Decision

The Panel therefore decides that there is merit in the Application, and hereby orders a re-evaluation of the bids and a review of the decision for award in the light of the above reasons.

(R. Lalloo)
Chairperson

(Mrs C. Sohun)
Member

(V. Mulloo)
Member

Dated 23 February 2016