

INDEPENDENT REVIEW PANEL

In the matter of:

Schneider Electric France

(Applicant)

v/s

Central Electricity Board

(Respondent)

(Cause No. 37/15/IRP)

Decision

A. History of the case

On 07 July 2015, the Respondent launched an invitation for bids through an Open International Bidding Procedure for the procurement of Ring Main Unit (Ref No: OAB-TD-3925), to which the Applicant submitted a bid.

- ❖ Scope of contract: Procurement of Ring Main Unit SF6 22KV Indoor SF6 2+2 (Qty: 50)
- ❖ Procurement method used: Open Advertised Bidding.
- ❖ Date of invitation of bids: 21.07.2015
- ❖ Closing date for submission of bids: 02.09.2015
- ❖ Date and place of opening of bids: 02.09.2015 at Central Electricity Board Head, Office, Curepipe
- ❖ Number of bids received by closing date: 9 bids

The following bids were received at Tender Opening:

Bid Ref No.	Bidders	Manufacturer	Country of Origin	Total Quoted Price/Quoted Currency	Total Quoted Price (Excl VAT)/MUR	Remarks
1	Rini International	BVM Technologies Private Limited	India	USD 1,420,998.00	50,996,634.12	DDP Basis
2	Aberdore Soluciones Integrales S.L	Schneider Electric Espana	Spain	EUR 437,250.00	17,636,741.10	DAP Basis
3	Schneider Electric France	Schneider Electric France	France	EUR 375,000.00	15,125,850.00	DAP Basis
4	ABB Ltd Mauritius	ABB High Voltage Switchgear Co. Ltd	China	MUR 15,600,000.00	15,600,000.00	DDP Basis
5	Rousant International Limited	CYG Electric Co. Ltd	China	USD 485,806.50	17,434,575.09	DAP Basis

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6	Societe Negoce International (France)	Efacec Energia	Portugal	EUR 452,800.00	18,263,959.68	DAP Basis
7	Maritech Ltd	Schneider Electric France	France	MUR 21,331,520.00	21,331,520.00	DDP Basis
8a	Kabelek Engineering Ltd	Ormazabal Power Projects (Pty) Ltd	South Africa	MUR 19,605,775.00	17,048,500.00	DDP Basis
8b	Kabelek Engineering Ltd	Siemens Aktiengesellschaft	Germany	MUR 20,897,800.00	18,172,000.00	DDP Basis
9	ENTEC Electric & Electronic Co. Ltd	ENTEC Electric & Electronic Co. Ltd	South Korea	USD 404,000.00	14,498,711.60	DAP Basis

B. Evaluation

The Evaluation Committee was composed of:

1. S. Khodaboccus - Senior Engineer (Materials) - Chairman
2. M. Beebeejaun - Engineer (Materials)
3. V. Ramdoss - Ag. Financial Operations Officer

The Bid Evaluation Committee submitted its Report on 7th October 2015 and found that only 2 bids out of nine were fully responsive.

Bid Ref No.	Bidder's Name	Price at Bid Opening (Ccy)	Price at Bid Opening (MUR)	Responsive (Yes or No)	Reasons why bids were not responsive
1	Rini International	USD 1,420,998.00	50,996,634.12	No	Local bidder quoting in foreign currency.
2	Aberdore Soluciones Integrales S.L	EUR 437,250.00	17,636,741.10	Yes	
3	Schneider Electric France	EUR 375,000.00	15,125,850.00	No	Incomplete Guaranteed Particulars
4	ABB Ltd Mauritius	MUR 15,600,000.00	15,600,000.00	Yes	
5	Rousant International Limited	USD 485,806.50	17,434,575.09	No	Noncompliant type test reports
6	Societe Negoce International (France)	EUR 452,800.00	18,263,959.68	No	Noncompliant delivery terms
7	Mauritech Ltd	MUR 21,331,520.00	21,331,520.00	No	Incomplete Guaranteed Particulars
8a	Kabelek Engineering Ltd/Ormazabal Power Projects (Pty) Ltd	MUR 19,605,775.00	19,605,775.00	No	Incomplete type test reports
8b	Kabelek Engineering Ltd/Siemens Aktiengesellschaft	MUR 20,897,800.00	20,897,800.00	No	Incomplete type test reports
9	ENTEC Electric & Electronic Co. Ltd	USD 404,000.00	14,498,711.60	No	Incomplete type test reports

The Bid Evaluation Committee then proceeded to analyse further the (only) two bids it found responsive, to finally recommend an award to ABB.

C. Notification of Award

The Central Electricity Board through a letter dated 07 December 2015, informed the Applicant of the particulars of the successful bidders as follows:

“Asea Brown Boveri Ltd of Lot 211, Moka Business Centre of Mount Ory Road Moka the total DDP Price of MUR 15,600,000 excluding VAT.”

D. The Challenge

On 11 December 2015, the Applicant challenged the award on the following grounds:

“Schneider’s bid was fully compliant with the specifications. The proposed material is high quality and the installed base is the testimony of this good quality.”

E. The Reply to Challenge

On 16 December 2015, the Public Body made the following reply to the challenge:

“We wish to inform you that the evaluation of bids has been carried out in line with the evaluation criteria and methodology specified in the bidding documents.

Your offer was not retained for award as the Guaranteed Particulars Schedule submitted with your offer was incomplete. No information was provided for items 8, 10, 12, 15 and 16.

You may wish to note that this is a requirement of the bidding document and should have been submitted completely filled.”

F. Grounds for Review

On 21 December 2015, the Applicant seized the Independent Review Panel for review on the following grounds:

“Pursuant to Part 2 Section V of the Bidding documents (Supply requirements – Technical Specifications – p.66) “Bidders shall also supply all relevant data where applicable by filling in the Schedule of Guaranteed Particulars”. Applicant provided all relevant data and its bid was the lowest. At no time did the Public Body inform the Applicant of any missing mandatory information.”

G. The Hearing

Hearings were held on 07, 14 and 28 January, and the 04 and 11 February 2016. Written submissions were made by the Applicant on 11 and 12 January, and 18 Feb 2016 and by the Respondent on 29 Dec 2015 and 11 January and 18 Feb 2016.

The Applicant was represented by Mr N. Bheekhun, joined at the last Hearing by Mr Nitish Hurnam, both of Counsel whereas the Respondent was represented by Ms S. A. Carrim, of Counsel.

At the first Hearing of the 07th January, the Central Electricity Board raised an objection that the Application for Review had not been properly made for lack of a proper Statement of Case. This objection was later followed by arguments in writing from both sides. The Panel gave its written ruling on 04th February and overruled the objection of the Central Electricity Board:

In the light of the above, the Panel overrules the objection raised by the Respondent, and hereby rules that the Review proceedings should continue without further delay.

At the same Hearing of the 07th January, the question of representation of Schneider arose. Mr Noormahomed, the country manager for Mauritius who represented Schneider, was neither a signatory of the bid nor of the Application for Review, nor had he been granted a Power of Attorney from the bidder, Schneider France. At the Hearing of 28th January, the Applicant was represented by Mr. Pierre Grandry, Director, who was the signatory of the bid and of the Application for Review. At the subsequent hearing, the Panel was informed that Mr Grandry had gone back to France, but that Mr Noormahomed was now duly empowered by the bidder through a properly constituted Power of Attorney.

Because of the specific nature of the proceedings, both parties were allowed to adduce evidence by examination and cross-examination.

H. Issues

The only reason that the Applicant was eliminated from further participation in the evaluation of bids was his failure to provide information in regard to certain items in the Schedule of Guaranteed Particulars, more specifically items 8, 10, 12, 15 and 16, for which the Applicant had specified that data was not available. The Applicant contends that the Public Body should have sought clarifications to elicit this information, whereas the Respondent maintains that it was not under any obligation to do so.

During the course of the hearings, other issues cropped up which are discussed further below.

I. Findings

During the course of examination and cross examination, the Applicant has given several and varied explanations as to why the information required in the Schedule of Guaranteed Particulars was not given. He has variously stated that the information was confidential, that it was not relevant and that it was included in other places in his bid. However, none of these “explanations” appeared in his bid, and the decision of the Bid Evaluation Committee not to seek clarifications from the Applicant was taken only on the basis that the information was “not available” at the time of tender.

The Panel would like first of all address this issue of whether clarification should have been sought from the Applicant so as to elicit the missing information. The latter has stated in his bid that the information is “not available”, and therefore should not expect the Public Body to move mountains in order to elicit this information. But from the point of view of the tax paying public, a Public Body has a duty to identify the most cost effective solution, and the evaluation exercise is not meant to punish bidders for not following strictly the rules laid down in the Bidding Documents.

Section 37 (1) of the Public Procurement Act is reproduced below:

37. Examination and evaluation of bids

(1) The Board, in the case of a major contract, or a public body may seek clarification during the examination of bids from any bidder to facilitate

evaluation, but it shall neither ask nor permit any bidder to change the price or substance of his bid.

The word “may” is emphasised above to highlight an argument used regularly by Public Bodies that they are not bound to seek clarifications from any bidder. The Panel does not believe that it was the intent of the Legislator to give such license to the Board or Public Bodies. The latter have the power to decide whether or not to seek clarifications depending on conditions laid down in Directives, but if the conditions for clarifications are met, the Panel believes that it would be the duty of the Board or Public Body, in furtherance of principles of fairness and transparency, to seek such clarifications.

Be that as it may, there are fortunately, in this case, other factors that are determining.

It came out during hearings that in **Technical Specifications** of the Bidding Documents, the Public Body had asked for the following:

Certificates/Reports

Type Test Reports and other qualifying documents shall be submitted as per the requirements set out in Section II – Bidding Data Sheet of the Tender Documents.

All information as listed in IEC 62271-200, clause 9.102 should be submitted.

Guaranteed Particulars

Bidders shall also supply all relevant data where applicable by filling in the Schedule of Guaranteed Particulars

The Emphasis on the standard mentioned has been added for the purposes of this discussion.

Clause 9.102 of IEC 62271-200 does not exist. It appears that the Central Electricity Board has referred here to a former (outdated) edition (2003), which has been replaced by a more recent edition (2011), which *"cancels and replaces the first edition, published in 2003"* and does not contain any clause 9.102, although it does contain other clauses, numbered differently, to the same intent and purpose.

When anyone quotes a standard, without specifying the edition, it is taken to mean the latest edition, which is in fact the only one in existence, as all previous editions stand “*replaced and cancelled*”. No reasonable bidder would refer to an outdated edition to look for that particular clause. How, then, would the Public Body expect bidders to supply “*All information as listed in IEC 62271-200, clause 9.102*”?

The Applicant should have brought this to the notice of the Public Body before submitting his tender. However, other bidders were eliminated also on the basis of missing information, and the question inevitably arises: could they have been misled by the fact that the Public Body demands information as listed in a non-existent clause?

Moreover, it was also brought out at the Hearings that the information requested in items 8, 10, 12, 15 and 16 of the Schedule of Guaranteed Particulars were not specified, that is the desired values to be entered in the applicable fields of the schedule were not specified. How then would bids be evaluated if the desired values were not known? Upon query, the representatives of the Public Body gave a most surprising reply: the information would not be used to evaluate or rate bids. The values that bidders entered in the desired fields were immaterial, as long as they submitted some information. If bidders may enter any of the possible values in the applicable fields, then surely the required information is immaterial? As an offshoot of this, if bidders were required to supply the missing information after opening of bids, this would not represent a change in the substance of the tender.

The above discussion leads to another argument raised by the Applicant, that the wording of the Public Body in the Bidding Documents is confusing: *Bidders shall also supply all relevant data where applicable by filling in the Schedule of Guaranteed Particulars*. Whereas all bidders should be able to identify *applicable* fields, the word *relevant* does seem to lead to confusion. The Public Body expected all tenderers to identify *relevant* information. Then can it blame a tenderer for not considering certain information relevant? And if there is thereafter a difference of opinion as to what constitutes *relevant data*, should not the Public Body seek clarifications to elicit the missing data?

The bidding exercise reeks of something else. The Panel could not help but notice that three bidders proposed equipment from the same manufacturer, 2 from Schneider France, and one from Schneider Spain.

The latter, surprisingly, had submitted all information, including those not supplied by the Applicant. The two other tenders were found non-conforming for identical reasons, the same information having been found missing. The Public Body would do well to seek advice as to what would constitute “related parties” in relation to a Bidding Exercise, which could lead to collusion and fraudulent practice. There are some elements in this exercise that the Panel finds quite disturbing, but the latter can neither submit definite proof nor seek evidence of any collusion.

However, because of the various lacking in the Bidding Documents, the Panel believes that the principles of fairness to all bidders, and transparency are best served by a new tender with revised Bidding Documents. Unfortunately, the Panel can only order a re-tender if it finds for the Applicant.

J. Decision

The Panel therefore finds that there is merit in the Application, and orders an annulment of the Bidding Exercise.

(M. Reshad Laulloo)
Chairperson

(Mrs C. Sohun)
Member

(V. Mulloo)
Member

Dated 26 February 2016