

INDEPENDENT REVIEW PANEL

In the matter of:

Fairy Textiles Ltd

(Applicant)

v/s

Police Department

(Respondent)

(Cause No. 35/15/IRP)

Decision

A. History of the case

On 26 May 2016, the Respondent launched an invitation for bids for the Supply of Ready Made Trousers for the Police Department bearing procurement reference number OAB/08/2015. The deadline for submission of the bids was on 08 July 2015. The Applicant submitted its bid on 07 July 2015. In total five bids were received and they are as follows:

1. Noshie Enterprise Ltd
2. Global & Strategic
3. New Bombay
4. Caustat & Sons Ltd
5. Fairy Textiles

B. Evaluation

The Bid Evaluation Committee was composed of:

- Chairman – Mr Rassen M, ACP
- Member – Mr Kistamah N, Associate Professor

- Member – Mr Ramkorun H, PS 3713
- Secretary – Mr Valaydon S, PC 2861

On 20 November 2015, the Respondent informed the Applicant that an evaluation of bids have been carried out and its bid for Item 1 & 4 was not substantially responsive and thus was not retained for award. However, the Applicant was substantially responsive and was awarded for Item 2 and 3. The successful bidder for Item 1 was Caustat & Sons.

C. Notification of Award

The Police Department through a letter dated 20 November 2015, informed the Applicant of the particulars of the successful bidders as follows:

Name of Bidder	Address	Contract Price
Caustat & Sons Ltd	Padaruth Lane, La Caverne, Vacoas	Item 1 – Rs15,500,000 (Exclusive of VAT)

D. The Challenge

On 26 November 2015, the Applicant challenged the award on the following grounds:

- “(a) The Public Body erred in finding that the colour of the swatch of cloth submitted by the Applicant in relation to Item 1 was allegedly not of the Pantone Colour Code specified in the tender document;*
- (b) The Public Body ought to have objectively evaluated the bid of the Applicant and held same to be the lowest substantially responsive evaluated bid in respect of Item 1 and thus awarded the contract for Item 1 to the Applicant, especially in light of the test report of the sample submitted by the Applicant and updated pantone references; and*
- (c) The Public Body should not have retained the bid of Caustat & Sons Ltd for award in respect of Item 1 in as much that it did not provide the lowest substantially responsive evaluated bid in relation to that item.”*

E. The Reply to Challenge

On 01 December 2015, the Public Body made the following reply to the challenge:

- “(a) The Bid Evaluation Committee made a visual assessment of the Colour of the fabrics swatch submitted by the Applicant for Item 1 of the bidding document. It was found that the colour of the fabric swatch was not as per the colour of the Pantone Colour Code mentioned in the bidding document.*
- (b) All bids have been evaluated fairly and as per guidelines of the bidding document. The colour of the fabric is of prime importance when it comes to the manufacture of the uniforms of the Police Department and any major deviation in colour is deemed unacceptable.*
- (c) After evaluation Bid evaluation Committee recommended Caustat & Sons Ltd to be the lowest evaluated substantially responsive bid.”*

F. Grounds for Review

On 04 December 2015, the Applicant seized the Independent Review Panel for review on the following grounds:

- “(a) The Public Body erred in finding that the colour of the swatch of cloth submitted by the Applicant in relation to Item 1 was allegedly not of the Pantone Colour Code specified in the tender document;*
- (b) The Public Body ought to have objectively evaluated the bid of the Applicant and held same to be the lowest substantially responsive evaluated bid in respect of Item 1 and thus awarded the contract for Item 1 to the Applicant, especially in light of the test report of the sample submitted by the Applicant and updated pantone references; and*
- (c) The Public Body should not have retained the bid of Caustat & Sons Ltd for award in respect of Item 1 in as much that it did not provide the lowest substantially responsive evaluated bid in relation to that item.”*

G. The Hearing

Hearings were held on 25 January and 03 February 2016.

The Applicant was represented by Mr N. Hurnaum, Counsel whereas the Respondent was represented by Ms S. Gareeboo, Ag. Assistant Parliamentary Counsel.

Counsel for the Applicant submitted to the fact that the tender documents made no mention of a visual assessment. Applicant's Counsel further submitted that Mr Kistamah, an expert who sat in the Bid Evaluation Committee stated that the first test carried out was that of a visual assessment. Counsel of the Applicant reiterated to the fact that the Respondent's decision not to award the Applicant Item 1 was based solely on something inexistent in the tender document.

On the other hand, Counsel for the Respondent submitted to the fact that there has been a specification made in the bidding document, that is the Pantone Code. Counsel for the Respondent further submitted that the code specifies firstly the colour, that is "post navy blue" and the shape of the "navy blue". In her submissions, Counsel for the Respondent stated that the Applicant himself has in fact carried out a visual assessment. Counsel of the Respondent is of the opinion that there has to be a visual assessment to match the colour otherwise there would be no need to submit a sample. Respondent's Counsel further submitted that the burden of proof rests on the Applicant for the latter to show that his sample matches with the pantone colour code and the fact that the bidding documents do not mention visual assessment is of no importance.

H. Findings

This is a very sensitive issue. We are dealing here with the uniform of the Police Force. The Panel is of the view that there is a need to send samples so as to ascertain the correct match of the colour as requested in the bidding documents.

The Panel is of the opinion that a visual assessment will give a precise match of the colour code, as requested in the bidding documents. At the hearing Mr Kistamah gave a detailed account on how and why a visual assessment was carried out.

The Panel took note that the panel composed of Mr Kistamah and two other observers concluded that there was actually a colour difference in relation to the sample submitted by the Applicant himself, who stated

that he actually carried out a visual assessment. The Panel is of the view that since a sample and code were provided, it is of vital importance to carry out a visual assessment so as to ascertain the correctness of the colour and the visual assessment carried out by the Respondent has in fact detected a difference in the colour submitted by the Applicant.

The Panel therefore finds that there is no merit in this application.

(A. Kallee)
Vice-Chairperson

(R. Rajanah)
Member

(R. Ragnuth)
Member

Dated 09 March 2016