

Decision No.: 04/17

In the matter of:

Atics Ltd

(Applicant)

v/s

The District Council of Pamplemousses

(Respondent)

(Cause No. 02/17/IRP)

Decision



A. Background

A.1

<u>Name of Project</u>: Procurement for Street Cleaning, Refuse Collection and Disposal, Cleaning of Market/Fair, Public Places, Public Toilet, including carting away of post Cyclonic Waste at:

- 1. Baie du Tombeau
- 2. Le Hochet
- 3. Triolet

Public Body Ref No: OAB/DCP/02/2016

<u>CPB Ref. No:</u> CPB/35/2016

<u>Contract Description:</u> Supply of services for street cleaning, refuse collection and disposal, cleaning of market/fair, public places, public toilet, including carting away of post cyclonic waste at

- (1)Lot 1-Baie du Tombeau
- (2)Lot 2-Le Hochet
- (3) Lot 3-Triolet

Method of Procurement: National Open Advertisement

Margin of preference (if applicable): N/A

A.2

The District Council of Pamplemousses invited bids for the supply of services for street cleaning, refuse collection and disposal, cleaning of market/fair, public places, public toilet, including carting away of post cyclonic waste at:

- ❖ Lot 1- Baie du Tombeau
- Lot 2- Le Hochet
- Lot 3- Triolet



A.3

(a) General Procurement Notice:

The National Open Advertised bidding process was used for this procurement exercise. Invitation of bids was made on the 4th October 2016 through the local press and the website of the Public Procurement Portal.

(b) List of addendum issued with details:

One addendum was issued on 28 October 2016 with respect to clause 6.6 of the ITB.

A.4

The closing date for the submission of bids was fixed for Wednesday 09 November 2016 up to 13.30 hours at latest at the Central Procurement Board (CPB).

Four bids were received and Public Opening was carried out on the same day at 14.00 hours in the Conference Room at the CPB.

The prices of the bids were as read out are as follows:

SN	BIDDER	LOT 1	LOT 2	LOT 3
		Rupees (Excluding VAT)		
1	MAXI CLEAN CO. LTD	45,393,000	32,100,000	43,200,000
2	ATICS LTD	38,347,920	25,200,000	45,145,000
3	SECURICLEAN (MAURITIUS)LTD- UNDER ADMINISTRATOR	34,632,000	27,792,000	34,632,000
4	NORBA NETTOYAGE LTÉE	21,600,000	20,520,000	N/A

B. Evaluation

B.1

The Bid Evaluation Committee was composed of:

4 W



IVIr. S. Purmessur	Deputy	Permanent	Secretary,	Ministry	of
	Foreign	Affairs,	Regional In	tegration	and
	Internatio	nal Trade	e (Chairp	erson	and

Registered evaluator)

Mr. N. Moorlah Project Officer/Senior Project Officer, Ministry

of Environment (Member and Registered

evaluator)

Mr K. Ramessur Chief Health Inspector, District Council of

Pamplemousses (Member and Registered

evaluator)

Miss S. Kureemun

(Secretary)

Accountant, District Council Pamplemousses

B.2

The BEC carried out arithmetic check of the bid prices and found that the bid price of Atics Ltd for Lot 3 should read Rs 45,144,999.99 instead of Rs 45,145,000 and the prices quoted by the other bidders were correct.

It was noted that Securiclean (Mauritius) Ltd has not submitted the power of Attorney and documentary evidence showing that it has credit facility/cash flow arrangements as required under ITB 6.3(g). In fact, in his submission, the Administrator of Securiclean (Mauritius) Ltd has requested that consideration be given for him to submit the line of credit facility at a later stage as negotiations with the company's bank were still ongoing.

The BEC considered the non-submission of documentary evidence showing the adequacy of cash flow as required by the bidding document as a major deviation and did not retain the bid of Securiclean (Mauritius) Ltd for further evaluation.

As regards the Tax Clearance Certificate and taking into consideration the provisions in Directive No.33 of the Procurement Policy Office which reads as follows: "A public body shall prior to award, request the lowest substantially responsive bidder to submit a Tax Clearance Certificate from the MRA within a period of one week", the BEC considered that non submission of the Tax Clearance Certificate was not material at the bid evaluation stage and the issue



should be taken up at the time of award. Consequently, only the bids of Maxi Clean Co Itd, Atics Ltd and Norba Nettoyage Co Ltée were retained for further evaluation.

B.3

The BEC calculated the percentage variation with respect to the cost estimate for Lots 1, 2 and 3 and the BEC found that the bid price for Maxi Clean Co. Ltd was 77.11% higher than the cost estimate for Lot 1, 40.23% higher than the cost estimate for Lot 2 and 49.59% higher than the cost estimate for Lot 3. Being given that the percentage variation of bid prices of Maxi Clean Co. Ltd was more than 15% of the cost estimates for the three lots, the BEC did not retain the bid of Maxi Clean Co Ltd for detailed evaluation.

Furthermore, since the bid of Atics Ltd for Lots 1 and 3 exceeded the cost estimate by 49.62% and 56.33% respectively, the BEC decided not to retain the bids for these two lots for Atics Ltd for evaluation at the marking stage.

B.4

In detailed examination of bids, the Bid Evaluation Committee noted that: "According to the figures submitted by Norba Nettoyage Ltée in Table 1 'Annual Monetary Value of services' in its bid, it qualified for the 60% of the annual volume of services required according to ITB 6.5(a). However, some discrepancies were noted in the supporting documents.

According to the supporting documents submitted by Norba Nettoyage Ltée in its bid to substantiate the experience required in collection and carting away of solid waste, some discrepancies were noted.

The BEC considered the above discrepancies as minor deviations and decided to seek clarifications from Norba Nettoyage Ltée."

After clarification, the Bid Evaluation Committee concluded that the Selected Bidder was eligible for either lot 1 or 2.

B.5

The Bid Evaluation Committee produced a supplementary report, at the request of the CPB, to correct its mistake of putting the cart before the horse.



"The BEC was convened in front of the Board on the 26 December 2016 and was requested to:

- (i) carry out the technical assessment of the bids submitted by Maxi Clean Co. Ltd for all Lots and for Atics Ltd for Lot 3 though their bid prices exceeded the cost estimate by more than 15%; and
- (ii) seek clarifications from Norba Nettoyage Ltée as regards the scavenging services it claimed it had provided on behalf of Securiclean (Mauritius)Ltd."

The Bid Evaluation Committee concluded that "The BEC met on 30 December 2016 and noted that Securiclean (Mauritius) Ltd had confirmed in a letter dated 27 December 2016 [--] that the services of Norba Nettoyage Ltée was hired not only to provide lorries but also for waste collection, carting away, and disposal of refuse as follows:

- 1. Waste Collection, carting away and disposal of refuse at the respective transfer stations.
- 2. The period during which the services of Norba Nettoyage Ltée were hired for Refuse Collection, carting away and disposal of wastes were Year 2008,2009,2010,2011,2012,2013,2014 and 2015.

[---]"

The evaluation of bids which had been discarded after financial evaluation did not materially alter the recommendation of the Bid Evaluation Committee, which concluded the supplementary report thus:

- "(1) The BEC recommends the award of the contract to the lowest evaluated substantially responsive bidders as follows:
 - Lot 1: Norba Nettoyage Ltée for the sum of Rs 21,600,000(excl. VAT); and
 - Lot 2: Atics Ltd for the sum of Rs 25,200,000 (excl. VAT).
- (2) The tender for Lot 3 be either:



- (a) awarded to Maxi Clean Co Ltd after negotiations to have its bid price reduced up to a maximum of 15% above the cost estimate; or
- (b) re-launched.
- (3) The District Council of Pamplemousses shall prior to award request the bidders to submit a Tax Clearance Certificate from the MRA within a period of one week as required under Directive No.33 of the Procurement Policy Office."

C. Notification of Award

The District Council of Pamplemousses through a letter dated 17 January 2017, informed the Applicant of the particulars of the successful bidder for lot 1 as follows:

SN	Lot No.	Bidder	Address	Total Amount for 3 years Excluding VAT (Rs)
1	Lot 1: Baie du Tombeau	Norba Nettoyage Ltée	28, Rue de Rosnay, Beau Bassin	21,600,000

D. The Challenge

On 20 January 2017, the Applicant challenged the award on the following grounds:

"I. The Applicant has taken note that, at the opening of bids, the following bids were received:

Name of Bidder	Price Quoted for Lot 1
Maxi Clean Ltd	45,393,000
Atics Ltd	38,347,920
Securiclean Ltd	34,632,000
Norba Nettoyage Ltée	21,600,000

Norba Nettoyage Ltée has been retained for award but the financial offer of the bidder is abnormally low. The capacity of Norba Nettoyage Ltée to perform the contract efficiently is debatable.



II. The selected bidder lacks the experience as required under ITB 6.5(b) of the Bidding Data Sheet. The main experience of the selected bidder consists mainly of having provided taxi lorries to local authorities over a period of time, and this in itself cannot qualify as experience in line with the requirements of the contract, as listed in ITB 6.5(a) of the BDS, as listed below:

"The minimum required annual volume of Services for the successful Bidder shall be at least 60 % of the annual contract amount for the lot(s) to be allocated to him".

The actual turnover of the selected bidder is derived from providing taxi lorries to local authorities. This cannot be reconciled with the requirements of the contract.

- III. The capacity of Norba Nettoyage Ltée to perform the contract efficiently, whilst respecting Labour laws/Remuneration Orders is debatable. The labour costs estimates based on remuneration orders together with the associated costs of employing cleaners exceeds the price quoted by the selected bidder. The reasonable costs associated with the exercise are listed at Annex 1.
- IV. Clause n(iii) of the Bid Submission Form stipulates as follows:

"We shall not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelisation in the bidding process."

The selected bidder shall not seek to rely on certifications provided by other bidders to substantiate experience, thus using the procurement proceedings to obtain an unfair advantage over other bidders.

V. Under Clause n(iii) of the Bid Submission Form, bidders undertake not to use falsified documents, erroneous data or deliberately not disclose requested facts to obtain a benefit in a procurement proceeding. Substituting experience obtained from provided taxi lorries with



- experience of contract is a blatant act of using erroneous data and/or of misleading the Bis Evaluation Committee.
- VI. To qualify for award, a bidder must display, as a minimum, at least one year in the provision of services for collection and disposal of solid waste, as specified in Clause 6.5(b) of the Instructions to Bidders. The selected bidder lacks the required experience and ought thus to be disqualified.
- VII. As per 7.1(d) of the Instructions to Bidders, a "Bidder shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if:
 - (a) They have a controlling partner in common; or
 - (b) They receive or have received any direct or indirect subsidy from any of them; or
 - (c) They have the same legal representative for purposes of this bid; or
 - (d) They have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the Bid of another Bidder, or influence the decisions of the Employer regarding this bidding process; or"...

To qualify for the contract, the selected bidder should not have a relationship with another bidder and/or seek to rely on experience, as certified by another bidder. Failure to maintain this code of conduct shall disqualify the concerned bidders.

- Viii The Bid which has scored the highest combined technical and financial marks is deemed to be the "Lowest Evaluated Bid". Norba Nettoyage Ltée lacks the required experience and capabilities to be the lowest substantially responsive bidder. The Public Body should request clarifications from the selected bidder as regards the above statements.
- IX For the reasons given above, the Public Body ought to disqualify the selected bidder for Lot No. 1."



E. The Reply to Challenge

On 27 January 2017, the Public Body made the following reply to the challenge:

"Paragraph 7 – Specific Act or Omission in relation to the procurement.

- I. Failure of the public body to disqualify Norba Nettoyage Ltée for Lot No. 1, as the selected bidder has submitted an abnormally low bid.
 - After comparing the bid of Norba Nettoyage Ltée and the cost estimates, the BEC considers that the price quoted by Norba Nettoyage Ltée is not abnormally low.
- II. Failure of the public body to disqualify Norba Nettoyage Ltée for Lot No. 1 as the selected bidder does not have the required experience to undertake the services of similar nature, as specified in the scope of services, and even as a prime contractor.
 - The experience of the bidder has been examined and found to be complying with ITB 6.5(b).
- III. Failure of the public body to disqualify Norba Nettoyage Ltée for Lot No. 1 as the financial and technical offer of the selected bidder does not match the minimum resources to be deployed on site in compliance with the Remuneration Order for cleaning Services and the associated costs.
 - Upon examination of the submission of Norba Nettoyage Ltée, it was concluded that the bidder has the technical and financial resources to perform the contract. In addition, it has submitted an undertaking that it will comply with the relevant laws and remuneration orders.
- IV. Failure of the public body to disqualify Norba Nettoyage Ltée for Lot No. 1 for non-compliance to clause 6.5(a) of the contract.
 - During examination of the bids, the BEC concluded that Norba Nettoyage Ltée complied with the requirements of ITB 6.5(a), i.e. minimum average annual financial amount of cleaning services.
- V. Failure of the public body to disqualify Norba Nettoyage Ltée for Lot No. 1 for non-compliance to Clause 6.5(b) of the Contract.



Norba Nettoyage Ltée has satisfied the requirement of at least one year experience in the provision of services for collection and disposal of solid waste.

VI. Failure of the public body to disqualify Norba Nettoyage Ltée for Lot No. 1 for non-compliance to Clause 7.1 of the contract.

Our examination of the bid of Norba Nettoyage shows that the bidder is not in breach of any element of clause 7.1, Conflict of Interest.

Paragraph 8 – Bidder grounds for Challenge

- Please refer to paragraph 7(i) above;
- II. The information is erroneous, false and malicious. The bidder has provided adequate information and is compliant to ITB 6.5(a) and (b);
- III. Refer to 7(iii) above;
- IV. Refer to 7(IV) above; There has been no breach of Clause n (iii) of the Bid Submission Form;
- V. Clause n(iii) has not been breached;
- VI. Refer to 7(V); and
- VII. Please refer to paragraph 7(VI).

All points raised by you have been considered by the Central Procurement Board and the Bid Evaluation Committee and no shortcomings have been identified."

F. Grounds for Review

On 02 February 2017, the Applicant seized the Independent Review Panel for review on the following grounds:

"Regarding Lot 1 of the contract

(I) The following bids were received at the opening of bids for Lot 1

Name of bidder	Price Quoted (Lot 1) (Rs)		
Maxi Clean Ltd	45,393,000		



ATICS LTD	38,347,920	
Securiclean Ltd	34,632,000	
Norba Nettoyage Ltée	21,600,000	

Norba Nettoyage Ltée (the "selected bidder") has been retained for award but the financial offer of the bidder is abnormally low. Computation of labour, health and safety and associated costs for operatives have been carried out by ATICS LTD, and it has been noted that the minimum cost to be borne on the contract, exclusive of profits and contingencies, is Rs37,868,258.17.

This figure takes into account labour costs as per remuneration orders and the following items which must be catered for by a bidder:

- 1. Salary of operatives, as per Remuneration Order for Cleaning Services;
- NPS/NSF Levy fees;
- 3. Meal allowances for operatives;
- Transport costs;
- 5. Costs for equipment/detergents, etc;
- 6. Costs for medical examinations and vaccination of operatives;
- 7. Costs for uniforms.

The ability of Norba Nettoyage Ltée to perform the contract efficiently while complying with the above is therefore debatable.

II. The selected bidder lacks the experience as described in ITB 6.5(b) of the Bidding Data Sheet. At least one year in collection and carting away of solid waste is required. The selected bidder is mostly known for providing taxi lorries to municipal councils as and when required. This experience cannot be reconciled with the one year experience as contractually required. The selected bidder is required to submit a list of contracts that it has obtained over the last year.

ITB 6.5(b) is listed below:



"ITB 6.5(b) – The experience required by the Bidder should be at least one year in collection and carting away of solid waste."

III. ITB 6.5(a) of the Bidding Data Sheet stipulates that the successful bidder must meet an annual volume of Services equivalent to at least 60% of the annual contract amount for the lot allocated to him. The selected bidder cannot have a claim in this respect as its annual volume of services consists mainly of providing taxi lorries, and thus he fails to comply with ITB 6.5(a).

ITB 6.5(a) is listed below:

"ITB 6.5(a) – The minimum required annual volume of Services for the successful Bidder shall be at least 60% of the annual contract amount for the lot(s) to be allocated to him."

- IV. Under Clause n(iii) of the Bid Submission Form, bidders undertake not to use falsified documents, erroneous data or deliberately not disclose requested facts to obtain a benefit in a procurement proceeding. (i) If the selected bidder has substituted experience obtained from providing taxi lorries to relevant experience required for the contract, then it can be safely assumed that data provided by the selected bidder is erroneous. (ii) Further, if labour legislation (Remuneration orders and Occupational Safety and Health legislation cannot be complied with, then the undertaking to comply with legislation, as given by the selected bidder, is void and null to all intents and purposes.
- V. Norba Nettoyage is not the lowest evaluated substantially responsive bidder in the procurement exercise for Lot 1."

G. The Hearing

Hearings were held on 08 and 22 February 2017. Written submissions were made on 17 February 2017 and 13 February 2017, by Applicant and Respondent respectively.

The Applicant was represented by Mr N. Hurnaum, Counsel whereas the Respondent was represented by Mr S. Sauhoboa, Counsel.



The Selected Bidder for lot 1 (Norba) was also present at the Hearing, and was represented by Mr A Daby, SC.

H. Issues

The Applicant has averred and attempted to show that:

- 1. The bid of Norba was abnormally low
- 2. The bid price of Norba would not allow the latter to meet his contractual obligations
- 3. Norba did not have the required experience as per the requirement of ITB 6.5(b) to qualify for this contract
- 4. Norba did not meet the requirement of ITB 6.5(a) of "an annual volume of Services equivalent to at least 60% of the annual contract amount for the lot allocated to him".

I. Findings

1.1

Before proceeding with the specific issues raised by the Applicant, the Panel wishes to make the following remarks, based on observations in the Bid Evaluation Report. These issues have not been raised by the Applicant who is not aware of the contents of the Bid Evaluation Report.

I.1.1 The Cart Before the Horse

The Bid Evaluation Committee, in an unprecedented procedure, undertook financial evaluation before the technical evaluation, whereas, in section III of the Bidding Documents, it is clearly stated that "Bidders should score at least 18 marks out of a maximum of 30 for their Technical assessment in order to qualify for further evaluation. Bidders not scoring the minimum score of 18 marks shall be disqualified for this contract." This clearly demonstrates that bids should be evaluated technically first, and only those with a score of at least 18 marks out of a maximum of 30 for their Technical assessment shall participate in the financial evaluation.



I.1.2 Elimination of Bids

Astonishingly, the Bid Evaluation Committee compounded its "mistake" by eliminating from further participation in the evaluation process, all bids with a price variation of "more than 15% of the cost estimates". The figure of 15% is, of course, completely arbitrary, as there is no such requirement in the Bidding Documents. Had there been such a requirement, or if the Bid Evaluation Committee had attempted to be consistent, it would have had to eliminate Norba from lot 1, as its price variation from the cost estimates exceeds the magic figure of 15%.

1.1.3 The Supplementary Report

The CPB rightly requested the Bid Evaluation Committee to review its first report, by effecting technical evaluation of those bids which it had rejected for reasons that appear idiosyncratic. The Bid Evaluation Committee did effect this evaluation, but maintained its views in regard to the arbitrary limit of 15% variance with cost estimates. Surprisingly, the CPB accepted this report.

1.2

Both the Respondent, and the Selected Bidder appear to be of the opinion that there is no such thing as an "abnormally low" bid. The Respondent, supported by the Selected Bidder, seems to hold the view that the lower the bid, the better it is for the Public Body, and by extension, the taxpayer. The Panel would like to stress, once again, that it is the duty of the Public Body to ensure that the Selected Bidder shall be able to meet all his obligations under the contract. Even if it is not mentioned specifically in the Bidding Documents, any contractor has the obligation to perform the contract in the respect of the Laws of the land. A fortiori, since it is mentioned in Clause 6.5(f) of the ITB that bidders have to provide "an undertaking from the bidder that the salaries and wages to be paid to its personnel in respect of this bid are compliant with the relevant Laws, Remuneration Order and Award where applicable and that it will abide to the sub-clause 6.8 of the General Conditions of Contract, if it is awarded the contract", it is the duty of the Public Body, through the Bid Evaluation Committee, to ensure that a bidder who complies with all laws and regulations shall not be penalised vis à vis one who does not.



1.3

The Applicant has produced calculations based on required inputs, and regulatory rates, and has reached a figure which is much higher than Norba's bid for lot 1. Admittedly, those calculations included items which seem extraneous (such as meal allowances). Nevertheless, the Respondent has dismissed these calculations without attempting an in-depth analysis. It is true that the Bidding Documents require only an undertaking from bidders "that the salaries and wages to be paid to its personnel in respect of this bid are compliant with the relevant Laws, Remuneration Order and Award", but if the figures quoted by any bidder tend to show that he cannot abide by this undertaking, it would be the duty of the Bid Evaluation Committee and the Public Body to clarify this issue, by asking the bidder to produce calculations based on the requirements of the tender and regulatory rates.

1.4

The Bid Evaluation Committee, through its representative at the Hearing, stated that it was satisfied with the bid of Norba for lot 1, because it was lower than estimates, by a margin of less than 25% (another arbitrary figure). When queried how estimates were established, he replied that the Public Body has added 25% to the contract value of a past contract in the region concerned to reach the estimated contract price. However, to use a contract as benchmark, or standard, one would need to ascertain that it was implemented under the same conditions as imposed in this tender. This, the Public Body failed to do. It was also stated that the Public Body has a short experience of performing, in house, similar services in the same region, and can therefore assess the real costs of such services. The Panel doubts whether such costs may be ascertained over a short period, as long term costs, such as uniforms, bonuses, equipment depreciation costs etc., and even overhead costs would not be taken into account.

1.5

ITB 6.5(b), as modified in the BDS states: "The experience required by the Bidder should be at least one year in collection and carting away of solid waste". Any experience acquired in the carting away of wastes from one collection point would not qualify as required experience, as it would not include the essential



component of collection from dispersed locations, as required under this exercise. The Selected Bidder has provided, in his bid, a series of attestations from various clients for *removal of wastes*. The Panel is of opinion that this does not qualify as experience in *collection and carting away of solid waste*, as lacking in the essential element of *collection*. The Selected Bidder also provided a testimonial from Securiclean Ltd, for scavenging services, which the Bid Evaluation Committee felt necessary to clarify. The Selected Bidder did provide a more explicit letter from Securiclean during clarification, which, if accepted, would provide evidence of experience of at *least one year in collection and carting away of solid waste*. This letter is discussed further below.

1.6

In regard to ITB 6.5(a) that "The minimum required annual volume of Services for the successful Bidder shall be at least 60 % of the annual contract amount for the lot(s) to be allocated to him", all services provided by Norba would qualify, including those of "removal of wastes" from premises. However, the following issues were noted by the Panel:

- It is not clear whether figures of payments and contract values given in the attestations are inclusive of VAT.
- The Bid Evaluation Report states that Securiclean (Mauritius) Ltd is being administered by an administrator who could not provide a Power of Attorney, or evidence of cashflow. It is in fact common knowledge that this company is in receivership, having failed to meet its financial obligations. It is not clear whether Mr Maurel, the signatory of the clarification letter from Securiclean, was still authorized to sign for that company, and whether he was on 27th December 2016 the General Manager of that company.
- The letter dated 27th December from Securiclean, signed by Mr Maurel, certifies that Norba provided services to Securiclean at Baie du Tombeau in 2016.
- The specific nature of services provided by Norba to Securiclean has not been specified. Services could have been in the nature of subcontracting, "wet" lease (equipment and personnel), "dry" lease (equipment only).





The specific contracts on which Securiclean required the services of Norba have not been mentioned.

J. Decision

J.1

For the above reasons, the Panel finds that there is merit in the Application. The Respondent has not properly carried out his duty to ascertain that the Selected Bidder is qualified under ITB 6.5 (a) & (b), and that he would be able to carry out his obligations under the Contract.

J.2

The Panel therefore orders a re-evaluation of bids after clarification of the various issues raised above.

(M. Reshad Laulloo)

Chairperson

(Virjanan Mulloo)

Member

(Ramsamy Rajanah)

Member

Dated 01 March 2017