



Independent Review Panel

Decision No. 09/17

In the matter of:

Scomat Ltée

(Applicant)

v/s

Mauritius Cane Industry Authority

(Respondent)

(Cause No. 08/16/IRP)

Decision

A. History of the case

The present application for review relates to the procurement of New Equipment that is Crawler Tractors with Accessories for the Mauritius Cane Industry Authority hereinafter referred to as the Respondent. The latter had invited bids through an open National Bidding exercise in July 2015.

The letter of Notification to the UMCL Ltd (hereinafter referred to as the Successful Bidder) and as well as to Scomat Ltee and Mechanisation Co. Ltd (hereinafter referred to as the Applicant).

The Applicant submitted its challenged on 03 February 2016 and the Respondent to the Applicant's challenge on 09 February 2016. Pursuant to section 45 of the Public Procurement Act, the Applicant has applied for review of the procurement proceedings.

B. Notification of Award

The Mauritius Cane Industry Authority through a letter dated 28 January 2016, informed the Applicant of the particulars of the successful bidders as follows:

<i>Item</i>	<i>Name of Bidder</i>	<i>Address</i>	<i>Contract Price (Incl VAT) (Rs)</i>
1	UMCL	354 Royal Road, Bonne Terre, Vacoas	24,390,000.00 (for 2 units only)

C. The Challenge

On 03 February 2016, the Applicant challenged the award on the following grounds:

- “1. *Product to be supplied by successful bidder does not meet all technical specifications as required by tender specifications.*

2. *Successful bidder has never supplied the equipment to any local customer as required in ITB 12.1(h) of tender documents.*”

D. The Reply to Challenge

On 09 February 2016, the Public Body made the following reply to the challenge:

“We would wish to advise Scomat Ltee that the MCIA has based itself on the recommendations of a Bid Evaluation Committee (BEC) as per the standard procedure adopted by the Authority in evaluating tenders.

SN	Challenge	Analysis
1	<i>Product to be supplied by successful bidder does not meet all technical specifications as required by tender specifications</i>	<i>The MCIA has based on the recommendations of BEC</i>
2	<i>Successful bidder has never supplied the equipment to any local customer as required in ITB 12.1(h) of tender documents</i>	<i>The bidder has submitted the name of one customer and the quantity ordered for same type of equipment</i>

E. Grounds for Review

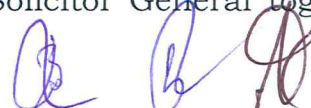
On 15 February 2016, the Applicant seized the Independent Review Panel for review on the following grounds:

- “1. The product to be supplied by the successful bidder does not meet all the technical specifications as required by the tender specifications.*
- 2. The successful bidder has never supplied the equipment to any local customer as required in ITB 12.1(h) of the tender documents.”*

F. The Hearing

Hearings were held on 24 February, 09 March, 14 October, 07 November and 14 December 2016 and 20 February 2017. Written submissions were made in March 2016 by both Applicant and Respondent.

The Applicant was represented by Mrs N. Behary Paray, Counsel, instructed by Mr A. Robert, Senior Attorney whereas the Respondent was represented by Mrs P. D. R. Goordyal-Chitto, Ag. Assistant Solicitor General together with Mr N. K. Reddy, Principal State Counsel.



G. Findings

The Application for Review rests mainly on two issues:

1. That the product to be supplied by the Successful bidder does not meet all the technical specifications required by the tender specifications.
2. That the Successful Bidder has never supplied the equipment to any local customer as required by ITB 12.1H of the tender documents.

After taking into consideration all evidences on record and submissions of Counsel, the Panel concludes the following:

We are dealing here with a Public Bid which encompasses Public Funds. It is inconceivable with the way the Bid Evaluation Committee has assessed this Tender exercise and with the way they have selected a Successful Bidder.

A Bid Evaluation Committee is constituted for the purpose of evaluating bids. The said Committee is constituted with a specific mandate of looking at the bid documents and to make sure that all the specifications are being met and more importantly to cross check and verify all information provided by bidders. If a Bid evaluation Committee is to open a seal envelop and to just check tick boxes of “yes” and “no” then such a committee would not be needed. It is worth to note here that the representative of the Respondent stated during this hearing that *“We don’t always check...we rely on what bidders said...we check if we have doubts ...but we don’t always check..”*.

The Panel also took note that the Respondent has not provided any document to prove that the steer of the machine of the Successful bidder is a differential steer. Furthermore, when questions were put to Mr. Mungroo from the Respondent in relation to the two geared steering module he simply said he could not answer and outlandishly he stated *“we are all engineers and we stick to what to whatever is in the compliance sheet”*.

The second issue is that the Successful Bidder must have supplied the equipment to any local customer as required by ITB 12.1H of the tender documents. Once again the Bid Evaluation Committee relied only on what the Successful Bidder stated in its bidding document. It is the contention of the Applicant that the Successful bidder could not have supplied a Dressta machine to a local customer. During the hearing it came into light that the said machine could have been exported. Nevertheless, no evidence on record from the Respondent proves who the local company was, no name was provided. Moreover, no verification from customs or documents were produced to prove that the Successful Bidder did supply the equipment to a local company as per ITB 12.1H. On the other hand, the only information provided was the testimony of Mr Mungroo from the Respondent who stated that the technical team was satisfied with the requirements.

H. Decision

For the reasons stated above, the Panel has come to the conclusion that the Bid Evaluation Committee has fallen short of its duties conferred by the Public Procurement Act and that the whole tender process was vitiated.

Since the contract has already been awarded the Panel orders for a refund of cost of participation in this review exercise.


(Ramsamy Rajanah)
Member


(Arassen Kallee)
Vice-Chairperson




(Rajsingh Ragnuth)
Member

Dated 09 May 2017

