



Independent Review Panel

Decision No. 19/17

In the matter of:

Maxi Clean Co. Ltd

(Applicant)

v/s

The District Council of Pamplemousses

(Respondent)

(Cause No. 17/17/IRP)

Decision

A. History of the case

On 25 May 2017, the District Council of Pamplemousses, hereinafter referred to as the Respondent, invited bids for the procurement for services of street cleaning refuse collection and disposal, cleaning of market/fair, public places, public toilets, including carting away of post cyclonic waste at Baie du Tombeau and Triolet bearing procurement reference number ONB/DCP/03/2017 - CPB/25/2017.

The closing date of the said bid was on 28 June 2017 and its opening was scheduled at 14.00 hrs on the same day.

The present application for review is purely and simply due to the participation of a bidder namely Norba Nettoyage Ltd.

B. The Challenge

On 30 June 2017, the Applicant challenged the procurement on the following grounds:

- “1. *The bidder Maxi Clean Co. Ltd (herein referred to as Maxi Clean) contends that the bidder Norba Nettoyage Ltee should be debarred under s53(1)(a)&(d) of the Public Procurement Act and should be disqualified from the present procurement exercise for the following reasons:*
 - (a) In a previous procurement exercise Norba Nettoyage Ltee attempted to misguide and/or mislead the Bid Evaluation Committee (BEC) and this was severely criticized by the BEC (as contained in IRP Decision 42/15 Annex A): “the attempt of Norba Nettoyage Ltee to misguide/mislead the Bid Evaluation exercise is deplored and the BEC recommends that serious actions be taken against the bidder.”*
 - (b) It has been reported in the Executive Summary of Bid Evaluation Report Annex B of Contract No.: CPB/26/2014 – Cleaning of Public Beaches under Item 9. Responsiveness of bids at page 2 of such Executive Summary – Norba Nettoyage Ltee – N (not responsive) – Financially not responsive and falsification of financial accounts.*
2. *At page 46 of the Bidding Documents the bidder is required to give its Financial Situation. As per table provided such information is extracted from audited accounts for the past three years 2014, 2015, 2016. Maxi Clean contends that the information provided by Norba Nettoyage Ltee:*

- (a) *Is not from audited accounts. The accounts of Norba Nettoyage Ltee have been prepared, filled, signed and filed by the director of the company himself. Maxi Clean herewith annexes as Annex C1, C2, C3 the accounts of Norba Nettoyage Ltee obtained from the Registrar of Companies for 2014, 2015, 2016 as submitted by its Director.*
- (b) *is erroneous, false and fabricated, in as much as the accounts do not tally with the real workload and contracts which the bidder Norba Nettoyage Ltee has had for the last three years.*
- (c) *Maxi Clean contends that during these years Norba Nettoyage Ltee did not have any such contract to justify the turnover reflected in the accounts. The figures have inflated on purpose to meet the requirements of the Bid Documents.*
- (d) *By way of example Maxi Clean refers the Public Body to the following entries*

For the years ending 30 June 2014 and ending 30 June 2015:

- (i) *Distribution costs entries at page 2 of year 2014 have been altered for the same year when preparing accounts for year 2015. These figures relating to 2014 should have remained the same;*
- (ii) *Short term borrowing entries at page 4 of year 2014 have disappeared when preparing accounts for year 2015. These figures relating to 2014 should have remained the same;*

For the year ending 30 June 2014, 2015, 2016

- (i) *The figures for Turn Over, Trade and Other Receivables and Retained Earnings have been inflated on purpose to show a positive profit for each year, whereas in reality this company should have entered negative figures in Profit/Loss.*

- b. *Maxi Clean further contends that the bid submitted by Norba Nettoyage Ltee is non-responsive and is non-compliant because the figures quoted in Norba's bid are abnormally low.*
- c. *By proposing to work at such low figures as quoted, the Successful Bidder has already shown that it does not intend to comply with the employment laws of Mauritius, namely the Employment Rights Act, the Employment Relations Act (as amended) and the cleaning Enterprises (remuneration) Regulations 2013 and Cleaning Enterprises (Remuneration) (Amendment) Regulations 2016, since the quoted figures of Rs16,470,000 for Lot No. 1 and Rs20,791,673.26cs for Lot No. 3.*
- a. *Will not be sufficient to pay the salaries and wages of the employees in compliance with the aforesaid laws.*
- b. *It is Maxi Clean's contention that the sole undertaking on the part of the selected bidder to comply with the remuneration orders is not sufficient to allow the Bid Evaluation Committee of the CPB to conclude that it is a compliant bid.*



- c. *Maxi Clean contends that Norba Nettoyage Ltee does not have the required experience required for this tender.*
 - d. *Maxi Clean further contends that in a previous bid launched on 4 October 2016 through invitation to bids for the same project (OAB/DCP/02/2016; CPB/35/2016) Norba Nettoyage Ltee entered into a private agreement with another bidder in an attempt to hoodwink the Public Body and the Central Procurement Board. Maxi Clean relies on IRP Decision No. 04/17 at Annex D to establish this.*
 - e. *Norba Nettoyage Ltee had once more bid abnormally low figures and had been sanctioned by IRP Decision No. 04/17. The IRP had also called the Public Body and the Bid Evaluation Committee of the Central Procurement Board to its responsibilities.*
3. *For all the above reasons the bid of Norba Nettoyage Ltee should be rejected.”*

C. Grounds for Review

On 11 July 2017, the Applicant seized the Independent Review Panel for review on the following grounds:

“Challenging the participation of Norba Nettoyage Ltee to the present procurement proceedings ONB/DCP/03/2017, CPB/25/2017

1. *The bidder Maxi Clean Co./ Ltd (herein after referred to as Maxi Clean) contends that the bidder Norba Nettoyage Ltee should be debarred under s53(1)(a)&(d) of the Public Procurement Act and should be disqualified from the present procurement exercise for the following reasons:*
 - (a) *In a previous procurement exercise Norba Nettoyage Ltee attempted to misguide and/or mislead the Bid Evaluation Committee (BEC) and this was severely criticized by the BEC (as contained in IRP Decision 42/15 Annex A): “the attempt of Norba Nettoyage Ltee to misguide/mislead the Bid Evaluation exercise is deplored and the BEC recommends that serious actions be taken against the bidder.”*
 - (b) *It has been reported in the Executive Summary of Bid Evaluation Report Annex B of Contract No.: CPB/26/2014 – Cleaning of Public Beaches under Item 9. Responsiveness of bids at page 2 of such Executive Summary – Norba Nettoyage Ltee – N (not responsive) – Financially not responsive and falsification of financial accounts.*
2. *At page 46 of the Bidding Documents the bidder is required to give its Financial Situation. As per table provided such information is extracted from audited accounts for the past three years 2014, 2015, 2016. Maxi Clean contends that the information provided by Norba Nettoyage Ltee:*

- (a) is not from audited accounts. The accounts of Norba Nettoyage Ltee have been prepared, filled, signed and filed by the director of the company himself. Maxi Clean herewith annexes as Annex C1, C2, C3 the accounts of Norba Nettoyage Ltee obtained from the Registrar of Companies for 2014, 2015, 2016 as submitted by its Director.
- (b) is erroneous, false and fabricated, in as much as the accounts do not tally with the real workload and contracts which the bidder Norba Nettoyage Ltee has had for the last three years.
- (c) Maxi Clean contends that during these years Norba Nettoyage Ltee did not have any such contract to justify the turnover reflected in the accounts. The figures have inflated on purpose to meet the requirements of the Bid Documents.
- (d) By way of example Maxi Clean refers the Public Body to the following entries
For the years ending 30 June 2014 and ending 30 June 2015:
- (i) Distribution costs entries at page 2 of year 2014 have been altered for the same year when preparing accounts for year 2015. These figures relating to 2014 should have remained the same;
- (ii) Short term borrowing entries at page 4 of year 2014 have disappeared when preparing accounts for year 2015. These figures relating to 2014 should have remained the same;
- For the year ending 30 June 2014, 2015, 2016
- (i) The figures for Turn Over, Trade and Other Receivables and Retained Earnings have been inflated on purpose to show a positive profit for each year, whereas in reality this company should have entered negative figures in Profit/Loss.
3. Maxi Clean further contends that the bid submitted by Norba Nettoyage Ltee is non-responsive and is non-compliant because the figures quoted in Norba's bid are abnormally low.
4. By proposing to work at such low figures as quoted, the Successful Bidder has already shown that it does not intend to comply with the employment laws of Mauritius, namely the Employment Rights Act, the Employment Relations Act (as amended) and the cleaning Enterprises (remuneration) Regulations 2013 and Cleaning Enterprises (Remuneration) (Amendment) Regulations 2016, since the quoted figures of Rs16,470,000 for Lot No. 1 and Rs20,791,673.26cs for Lot No. 3.
5. The quoted figures will not be sufficient to pay the salaries and wages of the employees in compliance with the aforesaid laws.
6. It is Maxi Clean's contention that the sole undertaking on the part of the selected bidder to comply with the remuneration orders is not

sufficient to allow the Bid Evaluation Committee of the CPB to conclude that it is a compliant bid.

7. *Maxi Clean contends that Norba Nettoyage Ltee does not have the required experience required for this tender.*
8. *Maxi Clean further contends that in a previous bid launched on 4 October 2016 through invitation to bids for the same project (OAB/DCP/02/2016; CPB/35/2016) Norba Nettoyage Ltee entered into a private agreement with another bidder in an attempt to hoodwink the Public Body and the Central Procurement Board. Maxi Clean relies on IRP Decision No. 04/17 at Annex D to establish this.*
 - a. *Norba Nettoyage Ltee had bid abnormally low figures and had been sanctioned by IRP Decision No. 04/17. The IRP had also called the Public Body and the Bid Evaluation Committee of the Central Procurement Board to its responsibilities.*
 - b. *Despite that sanctioning decision from the IRP Norba Nettoyage Ltee has again bid abnormally low figures.*
9. *For all the above reasons the bid of Norba Nettoyage Ltee should be rejected.”*

D. The Hearing

Hearings were held on 18 and 26 July 2017. Statement of Reply was received on 21 July 2017 by the Respondent and Applicant's response to Respondent's reply was received 24 July 2017.

The Applicant was represented by Mr Y. Mohamed, Senior Counsel together with Mrs A. Jeewa, Attorney whereas the Respondent was represented by Mr S. Sauhoboa, Counsel.

E. Findings

It has been mutually agreed by the Applicant and the Respondent that the matter be referred to the Procurement Policy Office to ascertain as to whether the Norba Nettoyage Ltd is currently on the list of Debarment or Suspension.

On 27 July 2017, the Panel wrote to the Director of the Procurement Policy Office to inquire as to whether Norba Nettoyage Ltd has been debarred from participation in any previous or present tender exercise. (Annex 1)

On 02 August 2017 the Director of Procurement Policy Office informed the Panel that Norba Nettoyage Ltd is presently not on the list of Debarment or Suspension.

In the light of the reply from the Director of Procurement Policy Office above, the application is therefore set aside.



(Arassen Kallee)
Vice-Chairperson



(Virjanan Mulloo)
Member



(Rajsingh Ragnuth)
Member

Dated¹⁸ August 2017

