



Independent Review Panel

Decision No. 24/17

In the matter of:

I. M. Bawamia & Co. Ltd

(Applicant)

v/s

Central Electricity Board

(Respondent)

(Cause No. 23/17/IRP)

Decision

A. History of the case

A.1 Project Identification

- ❖ Name of Project: **Procurement of Single Phase Smart Meters**
- ❖ Procurement reference number: **OAB No. TD/4071**
- ❖ Date of Submission: **27 February 2017**
- ❖ This Invitation for Bids has been issued through an **Open International Bidding Procedure**.

A.2 Bidding Data

Date advertised	16 11 2016
Initial Closing date	11 01 2017
Extended closing date	18 01 2017
Opening date	18 01 2017
Validity date	18 05 2017

A.3 Background

OAB No. TD/4071 – Procurement of Single Phase Smart Meters

Item	Quantity	Quantity Description
LOT 1		
(a)	20,000	Single-Phase Electronic Energy Meter rated 230V, 50 Hz, up to 100 A (Single Rate), Accuracy class 2 or better with Time of Use (TOU) and connect/disconnect relay
(b)	1	Programming Software for item (a)
(c)	20,000	Plug-in GSM/GPRS/3G modem for remote meter reading of item (a)
LOT 2		
(a)	1	Advanced Metering Infrastructure (AMI) system including both Meter Data Collector for remote reading and Meter Data Management for analysis of data with licenses to read 20,000 meters
(b)	1	Supply of all required hardware and software components of the Advanced Metering Infrastructure (AMI) system
Services		
(a)	1	Installation and commissioning of all hardware and software components of Advanced Metering Infrastructure (AMI) system
(b)	1	Training of Purchaser's Technicians
(c)	1	Post Commissioning Maintenance for 3 years

A.4 Scope of Procurement

The above items will be used for replenishment of stock for meters required for single phase customers. For this tender, CEB would like to procure Smart meters with Meter Management software (MMS) and support/maintenance for three years.

Bidders are required to submit EC-type examination certificate as well as samples of the proposed meters complete with instructions for connections, description of register being displayed, list of OBIS code for the proposed meter, drawings, including all dimensions and error curves along with their offer. Technical Specifications of these items are as indicated in Section V Part 2 attached herewith.

One prime requirement of this specific tender is the submission of Certificate from Notified bodies issuing EC type certificate under MID (MI-003)-Measuring Instruments Directive of European Union or certificate issued by the Office of Gas and Electricity Markets (OFGEM) of United Kingdom and /or NWML of UK. This requirement appears in Part 2 Section V under Technical Specification and in the Guaranteed Particulars Sheets to be filled by the bidders. Consequently, the non-submission of this Certificate renders the bid non-responsive.

Furthermore, as per ITB 12.1 (h) as per section II- Bidding data Sheet, non-submission of samples along with the bids disqualify the bids from evaluation.

The performance and productivity of the equipment offered will be assessed as follows:

Meters which offer some or all features indicated under Technical Specifications Part 2 section (B) Guaranteed Particulars for the single phase Smart Meters shall be awarded a preference while evaluating the bids. Merit points would be awarded based on the extent to which these desirable features are available. For the purpose of evaluation of the bids the following formula will apply:

Actual DAT price quoted converted in MUR X Maximum Merit Point/Merit Point for proposed meter = Price A to be used for evaluation purposes in MUR



Price A is then multiplied by the deviation in mode of payment to obtain the evaluated price of meters.

As the items in Lots are associated with the items in lot 1, for evaluation purposes, the price of associated software and hardware (if applicable) in Lot 2 and associated services are included in the evaluated price of meters with modem to obtain the final evaluated price for the whole lot.

A.5 Clarifications

Eight Clarifications were sought by bidders and replies were sent as follows: Clarification 1- 29/11/16, 2- 07/12/2016, 3- 08/12/2016, 4- 19/12/2016, 5- 22/12/2016, 6- 26/12/2016, 7- 28/12/2016, and 8- 03/01/2017

One-week extension was granted following request from one bidder. The clarifications were mainly on meters terminals, type of modems (3G), Meter Management Software.

A.6 Bid Opening

Opening date: 18 01 2017@ CEB Head Office

Number of bids received by closing date: 10

Offers were received from the following ten Bidders /Manufacturers: -

Ref No.	Bidder	Manufacturer / Country of Origin
1	Iskraemeco Energy Measurement/ Egypt	Iskraemeco/Egypt
2	PowerCom Ltd/Israel	Shenzhen Clou Electronics Co Ltd / China
3	Holley Technology Ltd/China	Holley/China
4	Huawei International Co Ltd	Shenzhen Clou Electronics Co Ltd / China
5	I.M. Bawamia Co Ltd	Hexing Electrical Co. Ltd /China
6	PEC & RLB Joint Venture	Kamstrup/Denmark
7	Jiangsu Powersync Co Ltd	Itechene / China
8	EDMI Limited	EDMI Limited/Malaysia
9	Rousant International Ltd	Shenzhen Inhemeter Co Ltd/China
10	Ningbo Sanxing Smart Electric Co Ltd	Ningbo/China

B. Evaluation

B.1 Bid Evaluation Committee

This tender has been evaluated by the Bid Evaluation Committee which was composed of the following members:-

1. J. Seetohul (Principal Engineer) -Chairman
2. B. Radha (Ag Senior Engineer) -Member
3. Anousha Luchooman-Ramguttee (Acting Treasury Officer) - Member

The Chairman of BEC has requested to have the expertise of IT officer as the tender also involved items on the IT infrastructure and software. The following members were included in the evaluation panel.

1. Malini Patny (Ass IS Analyst) -Member
2. V.Soorjonowa (ICT Analyst) -Member

B.2 Bid Responsiveness

Applicant's bid was found non-responsive for the following reasons:

- ❖ *Guaranteed particular sheet for AMI system not submitted.*
- ❖ *For Hardware requirement, the number of core should have been at least 6 core and bidder is proposing 4 core; the number of processor is 1 instead of 2; the rotation of storage is 10 Krpm instead of 15 Krpm*
- ❖ *Two copies of the bids were received but no mention was made regarding which one was original. It is difficult to identify which one is original as the signature is stamped rather than a handwritten one.*
- ❖ *The price for Services has not been included in the bid submission form. As bidder is not responsive, no clarification was sought.*

It is to be noted that Option 2 of the Selected Bidder's bid was also found non-responsive, for the following reasons:

- ❖ *The meter has integrated modem instead of plug in modem.*



- ❖ *The SIM card will have to be integrated in the meter and not physically changeable.*
- ❖ *As per the lender specification, the SIM card shall be hot-swapped.*

Only the following Bids were found responsive:

Ref. No.	Bidder	Remarks/minor deviations
2	PowerCom Ltd/Israel	<p>Lot 1:- Sample meter submitted: Poor contrast of the display for the sample meter. The decimal point not clearly visible. Meter seal can easily be opened and affixed again.</p> <p>The bidder has filled and signed the departures to specification sheet but has omitted the first paragraph.</p> <p>Lot 2:- A fully virtualised system has been proposed, existing hardware will be used</p>
8	EDMI Limited Option 1	<p>Lot 2 System will be fully virtualised; hence, existing hardware will be used</p>

B.3 Merit Points

Based on the above technical evaluation, the following merit points were obtained for responsive bids

Ref. No.	Bidder	Merit Points (Max. 22)
2	PowerCom Ltd/Israel	18
8	EDMI Limited option 1 (a)	20
	EDMI Limited option 1 (b)	21

B.4 Comparison of bids and determination of lowest evaluated bid

Lowest evaluated bid for lot 1

The substantially responsive bid having the lowest evaluated price for smart meters is from EDM I Ltd for a Total DAT Price of US\$ 1,863,200 -Excl. VAT.

Lowest evaluated bid for services

The substantially responsive bid having the lowest evaluated price for related services is from PowerCom Ltd for a Total DAT Price of USO 40,000 -Excl. VAT 9.4

Lowest evaluated bid for lot 1, lot 2 and services.

As all the lots are associated, the lowest evaluated prices for the whole lots is used to determine the lowest substantially responsive bid.

The substantially responsive bid having the lowest evaluated price for meters, software and related services is from PowerCom Ltd for a Total DAT Price of USO 1,807,000 - Excl. VAT as detailed below:

Lot 1: Smart meter with 3G modem and Internal antenna: USD 1,669,000

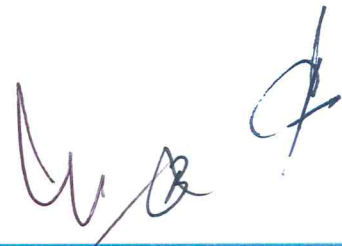
Lot 2: AMI system including MDC and MDM excluding hardware: USD 98,000

Services: USD 40,000*

**The price of services was not included in the bid submission form. Following clarification, PowerCom Ltd has confirmed that the total bid price is USD 1,807,000 instead of USO 1,767,000.*

Post Qualification Requirement

After analysis, the Bid Evaluation Committee failed PowerCom Ltd both in term of financial and past experience, and carried out post qualification for the second substantially responsive bidder namely EDM I Ltd.



Proposed award of contract

The substantially responsive bid having the lowest evaluated price for meters, software and related services is from EDM I Ltd for a Total DAT Price of USD 2,208,200 (equivalent to MUR 80,869,142) -Excl. VAT as detailed below:

<i>Lot 1: Smart meter with 3G modem and Internal antenna:</i>	<i>USD 1,853,200</i>
<i>Lot 2: AMI system including MDC and MDM excluding hardware:</i>	<i>USD 270,000</i>
<i>Services:</i>	<i>USD 85,000</i>

Other Adjustments

Hardware for AMI system is not opted as system will be installed in a virtual environment. Hence the price for hardware has not been considered.

C. Notification of Award

The Central Electricity Board through a letter dated 09 August 2017, informed the Applicant of the particulars of the successful bidder as follows:

<i>Name & Address of Selected Bidder</i>	<i>Total Discounted Price USD/DAT</i>
<i>EDMI Limited 47 Yushin Industrial Park A Singapore 768724</i>	<i>1,886,990.00</i>

D. The Challenge

On 15 August 2017, the Applicant challenged the procurement on the following grounds:

“(a) The selection exercise was faulty in as much as it did not comply with section 1F (Award of Contract), Clause 41.1 (Award Criteria) of Instruction to Bidders.

“(b) The lowest evaluated substantially responsive bid, that is our bid, ought to have been selected for award.”

E. The Reply to Challenge

On 15 August 2017, the Public Body made the following reply to the challenge:

“We wish to inform you that your bid was not retained for award for the following reasons:

- ***Guaranteed Particular sheet AMI system was not submitted.***
- ***You proposed 1 processor of 4 cores instead of 2 processors of at least 6 cores as per Technical Hardware Requirements of the bidding document.***
- ***Your proposal for rotation storage is 10K rpm instead of 15K rpm.***
- ***The price for services was not included in the Bid Submission Form.”***

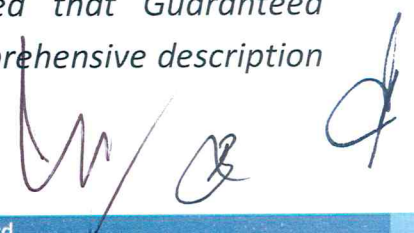
F. Grounds for Review

On 21 August 2017, the Applicant seized the Independent Review Panel for review on the following grounds:

“1. The Respondent was wrong to have selected EDM I Limited for award inasmuch as the latter was not substantially responsive since the meters it has proposed are not equipped with Neutral Current Measurement, which is an essential specification of the Bid;

2. The Respondent could not have evaluated EDM I Limited’s bid in Mauritian Rupees inasmuch as it, the Respondent, was not in compliance with ITB Clause 35 since it had not specified a date in the BDS for the determination of the applicable rate of exchange;

3. The Respondent was wrong to have concluded that Guaranteed Particular Sheet AMI was not submitted inasmuch a comprehensive description



of the features of the device is found at item 19.4 (Hardware Requirement Compliance Sheet) of the Applicant's Bid Document;

4. *The Respondent was wrong to have considered the Applicant's proposal for 1 processor of 4 cores and for rotation storage of 10k rpm reasons for not retaining the Applicant's bid inasmuch as the Applicant was unjustifiably penalised for exercising an option offered to it by the Bid Document issued by the Respondent;*

5. *The Respondent was wrong to have considered that the price for services was not included in the Bid Submission Form;*

6. *Any other grounds that may arise."*

G. The Hearing

Hearings were held on 29 August, 07, 14 and 18 September 2017. Statement of Reply from Respondent was received on 01 September 2017 and Applicant's Reply to the Statement of Reply was received on 06 September 2017. Further submissions were received from Respondent on 11 September 2017 and from Applicant on 13 and 16 September 2017.

The Applicant was represented by Mr N. Bheekun, Counsel whereas the Respondent was represented by Mr K. Colunday and Ms L. Padiachy, both of Counsel.

H. Issues

H.1

The Applicant contests the conclusion of the Bid Evaluation Committee to find his bid non-responsive, and believes that *"if the Respondent had doubts, which it could perfectly be entitled to have, about the proposal, it could, as per Clause 30 of ITB, have requested clarifications from the Applicant regarding the proposed devices;"*

H.2

The Applicant also alleges that the bid of the Selected Bidder was non-responsive.

H.3

The Applicant alleges that the *“Respondent could not have evaluated EDM I Limited's bid in Mauritian Rupees inasmuch as it, the Respondent, was not in compliance with ITB Clause 35 since it had not specified a date in the BDS for the determination of the applicable rate of exchange.”*

H.4

Moreover, the Applicant contests the Bid Evaluation Committee's findings that his bid was incomplete because he had not submitted a price for services, as the price for services is deemed to be included in the prices of other items, as per Clause ITB 37.3(d)

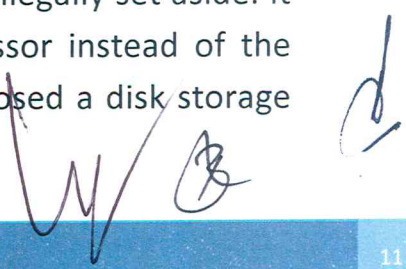
H.5

The Applicant has also repeatedly requested the Panel for information in regard to the details of the intended award, about which he has expressed suspicion. The Panel could not share information given in confidence, but has promised to look into those allegations. Moreover, the Respondent has reported that the Applicant has tried to obtain information illegally from the Respondent's staff. It was agreed that the matter should, as a separate exercise, be reported to the appropriate authorities, who are in a position to investigate and take proper action.

I. Findings

I.1 Applicant's Bid

It was evident at the outset that the Applicant could not provide evidence that his bid was responsive in all respects, and that it had been illegally set aside. It is a fact that Applicant had proposed one 4- Core processor instead of the requested two 6-Core processors, and had moreover proposed a disk storage with a *rotation of 10 Krpm instead of 15 Krpm.*



Furthermore, the Applicant's contention that he should have been allowed to amend his bid to conform to required specifications, is ill-advised, to say the least. The Panel wishes to state most emphatically that a proposal is a tender, and the substance thereof cannot be altered, through clarification or otherwise. The Respondent did state his intention to accept equipment of equivalent or superior specifications, but had no obligation to seek clarification from a bidder proposing equipment of inferior specifications.

1.2 The Bid of the Selected Bidder

The Selected Bidder had in fact proposed 3 bids, which have been identified as:

- ❖ EDM I Ltd (option 1(a), with internal antenna),
- ❖ EDM I Ltd (option 1(b), with external antenna),
- ❖ EDM I Ltd (option 2)

In spite of the nomenclature proposed, Options 1(a) and 1(b) represent two different alternatives, and differ from each other in more than the antenna aspect, as is evident from the prices submitted for the various lots.

The Panel is satisfied with the evaluation of the Bid Evaluation Committee, whereby bids from EDM I Ltd, labelled Option 1(a), and Option 1(b) respectively were found responsive.

1.3 Foreign Exchange Conversion Rates

Conversion rates are important for the purposes of bid comparison only. Contract values and actual payments to contractors are not affected by whatever conversion rates are adopted at the time of evaluation.

Different bidders having quoted in different currencies, all bids have to be converted to Mauritian rupees for evaluation purposes. It is obvious that all conversion has to be done from rates applicable on the same day. However, the comparison of bids is not affected whether the conversion is carried out on rates applicable on one day or another, except in countries with 4-digit inflation, or in cases where bid prices are so close as to differ only in decimals. Neither condition applies here, and the conversion of foreign exchange at the

rates applicable on the date of tender, for the purposes of evaluation, is not unlawful and does not jeopardise the interests of any bidder.

1.4 Other Issues

The Panel shall not comment on other issues raised by the Applicant, such as the price for services, or non-submission of the Form of Guaranteed Particulars, as the rejection of the bid of the Applicant for material non-conformity was fully justified.

1.5 Proposed Award

The Applicant has repeatedly raised the issue of “details of the notification”, which, after investigation, the Panel has understood to mean the ventilation of prices for the different lots leading to the proposed contract price. The Applicant specifically stated his apprehension that items have been picked from different alternative bids to make up the intended contract award.

On query, the Respondent denied that this had been done and pointed emphatically to ITB 37.6 that “***Splitting is NOT allowed.***”

The Panel has scrutinized the following recommendation for award, and has been unable to reconcile figures with those in a single tender:

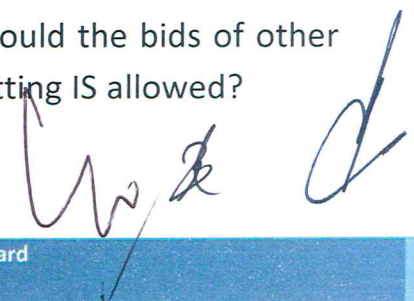
Lot 1: Smart meter with 3G modem and Internal antenna: USD 1,853,200

Lot 2: AMI system including MDC and MDM excluding hardware: USD 270,000

Services: USD 85,000

Other correspondence, submitted to the Panel in confidence, does tend to show that the Respondent has effectively split the tenders of the Selected Bidder to effect the award.

The Panel would not ordinarily find anything amiss in negotiating the best conditions with the bidder whose bid has already been identified as the best evaluated. However, in this case, the question arises: would the bids of other bidders have been different, had they been told that splitting IS allowed?



It is to be noted that all other bidders were found non-responsive, except for PowerCom, which was found ineligible for reasons of lack of experience and financial stability.

Any negotiation, therefore, would have to be totally transparent, after a decision to award on the basis of one of the tendered alternatives.

I.6 The Bidding Documents

The evaluation process, carried out as per criteria contained in the Bidding Documents resulted in the elimination for reasons of non-conformity, or otherwise, of all bidders except for the Selected Bidder. In respect of the latter, it was found necessary to make a blend of items from different alternative bids to make up the package.

Such a high rate of attrition is usually indicative of too highly customized criteria. In the case under consideration, the high number of criteria for evaluation contrasts with the vagueness of certain specifications, for example for the modem with or without external antenna:

NO	REQUIREMENT NAME	REQUIREMENT DESCRIPTION	REQUIREMENT CODE
(c)	GSM/GPRS/3G modem with external antenna	<i>The modem shall be used for remote reading of the meters and same shall be delivered with its external antenna for installations where there is insufficient GSM signal.</i>	E

The only possible reading from the above requirement is that ALL meters should be delivered with a modem and external antenna, but the requirement description specifies “*external antenna for installations where there is insufficient GSM signal.*” There is no indication of where there would be insufficient GSM signal, or in how many cases would a necessity for a 3G modem with external antenna arise.

The objectives of the Respondent would have been best served by specifying only the most desired type of modem (3G), with internal or short antennas,

with a number of 2-m long cables with external antennas, which could be fit to the modems as and when required.

It is also obvious from the above that in all cases, a modem should be supplied along with the meter, and in no case could an award be made for any number of meters without modems.

Most importantly, there arise certain questions to which the Panel cannot find satisfactory answers:

- ❖ When did the Respondent decide on the exact number of each type of meter as per the intended award?
- ❖ What new information became available to enable the Public Body to decide on these numbers?
- ❖ Could not the tender have been based on these numbers (in other words, could not the above information be obtained before the tender)?

There is also a contradiction with other sections of the schedule of requirements:

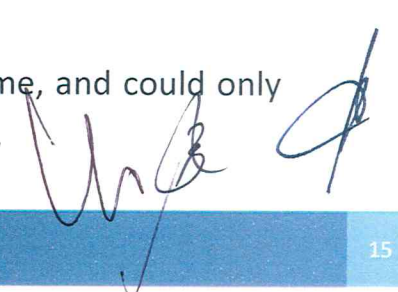
- (c) *Meter Sample* *Bidders shall submit one sample for each proposed meter complete with 3G modem, instructions for connections, description of register being displayed,* E

Here, only a 3G modem is specified. In fact, the Respondent has shown his preference for the 3G modem in various places, and has even mentioned in certain places in the Bid Evaluation Report that one of the reasons for rejection of certain bids was that the “*The proposed modem is not 3G*”.

Analysis of the Bidding Documents has also brought out the following:

- (l) *Summer/ Wintertime* *The meter shall have the daylight-saving time feature that can be programmed for a specified period.* D

This is obviously not applicable to local conditions at this time, and could only mean that these specifications have been copied and pasted.



The Panel does not believe that the above inconsistencies necessarily vitiate the tender process, but does believe that further investigations are necessary, for which it is neither equipped nor empowered. In the context of a re-evaluation exercise, however, the effect, if any, of the above inconsistencies can be evaluated, and the Public Body Management may then decide on the appropriate course of action.

J. Decision

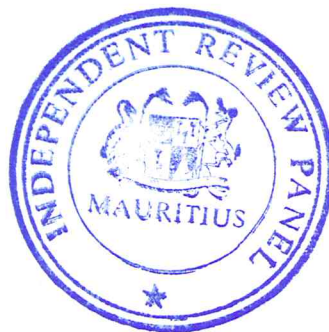
In the light of the above, and for the reasons stated, the Panel hereby finds merit in this Application for Review and orders a re-evaluation exercise.



(Reshad Laulloo)
Chairperson



(Virjanan Mulloo)
Member



(Rajsingh Ragnuth)
Member

Dated 26 September 2017