



Independent Review Panel

Decision No. 10/18

In the matter of:

State Informatics Ltd

(Applicant)

v/s

Mauritius Housing Company Ltd

(Respondent)

(Cause No. 08/18/IRP)

Decision

A. History of the case

This is a case where State Informatics Ltd hereinafter referred to as "The Applicant" is challenging the decision of the Mauritius Housing Company Ltd hereinafter referred to as "The Respondent" to award a contract for the Supply, Installation, Commissioning of a Production Environment for the Centralised Banking Information System (CBIS) pursuant to an open advertised national bidding exercise bearing reference ICT/NOV 17/OAB/CBIS/Production Env/354.

The Applicant was notified of the award by the Respondent on 09 May 2018 and subsequently challenged the latter's decision on 14 May 2018. Feeling aggrieved of the Respondent's reply to its challenge, the Applicant applied for review of the Respondent's decision before the Independent Review Panel pursuant to section 45 of the Public Procurement Act on 23 May 2018.

B. Notification of Award

The Mauritius Housing Company Ltd through a letter dated 09 May 2018, informed the Applicant of the particulars of the successful bidder as follows:

Name of Bidder	Address	Contract Price (Rs) Exclusive of VAT
<i>Infosystems AA Ltd</i>	<i>Royal Road Coromandel</i>	<i>Supply, Installation and Commissioning of a Production Environment for the Centralised Banking Information System (CBIS) (including hardware, servers and software licenses) for Rs15,948,519.01 (excluding VAT). The renewal of Maintenance and Support Services for Year 2 and Year 3 for the amounts of Rs2,035,823.10 and Rs2,080,744.64, respectively (excluding VAT)</i>

C. The Challenge

On 14 May 2018, the Applicant challenged the procurement on the following grounds:

- "(a) *The Public Body, in breach of natural justice and principles of fairness, awarded the Contract to Infosystems AA Ltd for Year 1, together with Year 2 and Year 3 (for Maintenance and Support Services) whilst having*



previously informed the State Informatics Ltd, during the clarification process, that the Contract would be awarded for Year 1 only;

- (b) The Public Body, in breach of natural justice and principles of fairness, misled the State Informatics Ltd, during the clarification process, by expressly stating that the Contract would be awarded for Year 1 only and yet proceeded to award the Contract to Infosystems AA Ltd for Year 1 together with Year 2 and Year 3 (for Maintenance and Support Services);*
- (c) The Public Body, in breach of its own clarification process, awarded the Contract to Infosystems AA Ltd for Year 1, together with Year 2 and Year 3 ((for Maintenance and Support Services) in the absence of any satisfactory performance whatsoever from Infosystems AA Ltd;*
- (d) The Public Body failed to take consideration the fact that the State Informatics Ltd was the lowest evaluated bidder as compared to Infosystems AA Ltd;*
- (e) The Public Body failed to appreciate that the State Informatics Ltd was more substantially responsive to the bidding documents as compared to Infosystems AA Ltd.”*

D. The Reply to Challenge

On 18 May 2018, the Public Body made the following reply to the challenge:

“You are hereby informed that your Challenge has not been considered inasmuch as:

- (a) The GCC 15.1 of the Bidding Document states that the prices charged for the goods supplied and related services performed shall not be adjustable;*
- (b) ITB 15.7 states that any price quoted by any bidder which is subjected to fluctuation or any variation whatsoever shall be treated as non-responsive and shall be rejected;*
- (c) Also as per the GCC 16.4(b) you were made aware that payment will be made in Mauritian Rupees only and that the prices shall not be adjustable to fluctuation in the exchange rate;*
- (d) Since you had quoted prices subjected to fluctuation in the exchange rate, your bid was considered as non-responsive.*

The purported breach of natural justice cannot find its application in view of the above i.e. that your bid was considered as non-responsive.

You are further informed that the information provided to you by way of letter dated 14 December 2017, should be read as a whole. You were clearly explained that the “financial evaluation will be based on total cost of ownership of the overall system (Hardware and software) over a period of three years, and the maintenance and support services for Year 2 and Year 3 will be awarded subject to satisfactory performance of supplier after Year 1.” It is clear therefore, that the Company has retained the right to conduct a performance review of the supplier after Year 1.

Hence, the Company at no material time misled or caused your office to be misled by such clarifications nor breached the rules of natural justice in any manner whatsoever.

E. Grounds for Review

On 23 May 2018, the Applicant seized the Independent Review Panel for review on the following grounds:

- (a) The Public Body, in breach of natural justice and principles of fairness, awarded the Contract to Infosystems AA Ltd for Year 1, together with Year 2 and Year 3 (for Maintenance and Support Services) whilst having previously informed the State Informatics Ltd, during the clarification process, that the Contract would be awarded for Year 1 only;*
- (b) The Public Body, in breach of natural justice and principles of fairness, misled the State Informatics Ltd, during the clarification process, by expressly stating that the Contract would be awarded for Year 1 only and yet proceeded to award the Contract to Infosystems AA Ltd for Year 1 together with Year 2 and Year 3 (for Maintenance and Support Services);*
- (c) The Public Body, in breach of its own clarification process, awarded the Contract to Infosystems AA Ltd for Year 1, together with Year 2 and Year 3 (for Maintenance and Support Services) in the absence of any satisfactory performance whatsoever from Infosystems AA Ltd;*
- (d) The Public Body failed to take into consideration the fact that the State Informatics Ltd was the lowest evaluated bidder as compared to Infosystems AA Ltd;*
- (e) The public Body failed to appreciate that the State Informatics Ltd was more substantially responsive to the bidding documents as compared to Infosystems AA Ltd.*
- (f) The Public Body failed to appreciate that the State Informatics Ltd’s bid pricing was fixed and firm for the performance of the Contract and made in the relevant currency in compliance with (including but not limited to):*



- (i) Clause 15.1 of the General Conditions of Contract;
- (ii) Clause 15.7 of the Instructions to Bidders;
- (iii) Clause 16.4(b) of the General Conditions of Contract.”

F. The Hearing

Hearings were held on 21 and 31 August 2018. Written submissions were made on 03 September 2018 by both Applicant and Respondent respectively.

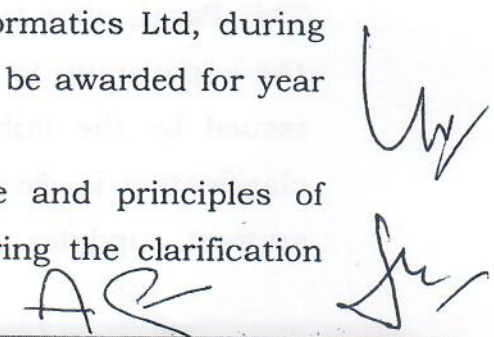
The Applicant was represented by Mr A. H. Sookhoo, Counsel whereas the Respondent was represented by Mr N. S. Hussene, Counsel.

G. Findings

The Respondent launched a bid for the service of Supply, Installation and Commissioning of a Production Environment for the Centralized Banking Information System. The Applicant tendered its bid but was not retained on the ground that it did not quote a fixed price for the maintenance and support service.

The Applicant being dissatisfied with the decision for not being retained despite its bid was the lowest applied to the Independent Review Panel on the following grounds, viz:

- a) The Public Body, in breach of natural justice and principles of fairness, awarded the Contract of Infosystems AA Ltd for year 1, together with year 2 and year 3 for maintenance and support services whilst having previously informed the State Informatics Ltd, during the clarification process, that the contract would be awarded for year 1 only;
- b) The Public Body, in breach of natural justice and principles of fairness, misled the State Informatics Ltd, during the clarification



process, by expressly stating that the contract would be awarded for year 1 only and yet proceeded to award the contract to Infosystems AA Ltd for year 1 together with year 2 and year 3 for maintenance and support services;

- c) The Public Body, in breach of its own clarification process, awarded the contract to Infosystems AA Ltd for year 1 together with year 2 and year 3 (for maintenance and Support Services) in the absence of any satisfactory performance whatsoever from Infosystems AS Ltd;
- d) The Public Body failed to take into consideration the fact that the State Informatics Ltd was the lowest evaluated bidder as compared to Infosystems AA Ltd;
- e) The Public Body failed to appreciate that the State Informatics Ltd was more substantially responsive to the bidding documents as compared to Infosystems AA Ltd;
- f) The Public Body failed to appreciate that the State Informatics Ltd's bid pricing was fixed and firm for the performance of the contract and made in the relevant currency in compliance with (including but not limited to):
 - (i) Clause 15.1 of the General Conditions of contract;
 - (ii) Clause 15.7 of the Instructions to bidders;
 - (iii) Clause 16.4 of the General Conditions of contract.

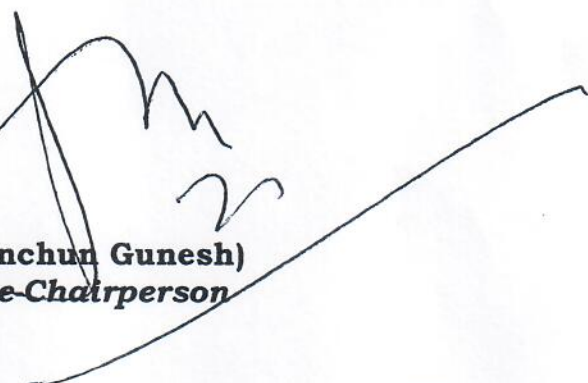
In addition to the Statement of case, the applicant filed written submissions.


The Respondent also filed a Statement of Defence and a written submission. This Panel has gone through the submissions of both parties.

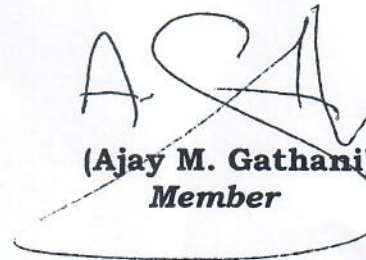
This Panel, after taking into consideration the bidding documents has had the opportunity to consider the addendum/clarification dated 14/12/2017 issued by the Public Body to all potential bidders. Under item 1 the clarification is that the maintenance shall include full labour and onsite support, updates and upgrades to new software version for all listed

software (Oracle, Microsoft, VMware, Backup solution) for three (3) years. Therefore to the mind of the Panel it is clear that the tender bid is for 3 years and the other clarification follows that the contract will be awarded for a fixed sum. The year one shall comprise of supply, installation and commissioning of a production environment for centralized banking information system including maintenance and support services. Thereafter supply, installation and commissioning shall no longer be in issue save and except maintenance and support services and the requirement is that if the Public Body is satisfied with year one then year 2 and 3 will be awarded.

For reasons set out above, the Panel concludes that the application has no merits and therefore the application is set aside.


(Hunchun Gunesh)
Vice-Chairperson


(Virjanan Mulloo)
Member


(Ajay M. Gathani)
Member

Dated 21 September 2018

