



# Independent Review Panel

**Decision No. 11/18**

**In the matter of:**

**State Informatics Ltd**

**(Applicant)**

**v/s**

**National Housing Development Company Limited**

**(Respondent)**

**(Cause No. 04/18/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 National Housing Development Company Limited hereinafter referred to as “The Respondent” to award a contract for the Supply, Installation, Configuration and Migration of Information Systems pursuant to an open advertised national bidding exercise bearing reference NHDC/IT/1017.

The Applicant was notified of the award by the Respondent on 11 April 2018 and subsequently challenged the latter’s decision on 17 April 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 25 April 2018.

## B. Notification of Award

The National Housing Development Company Limited through a letter dated 11 April 2018, informed the Applicant of the particulars of the successful bidder as follows:

<b>Item No.</b>	<b>Description</b>	<b>Bid No.</b>	<b>Contract Price (MUR)</b>
1	Supply, Installation, Configuration and Migration of Information Systems	OAB NHDC/IT/1017	26,924,389.73

## C. The Challenge

On 17 April 2018, the Applicant challenged the procurement on the following grounds:

- (a) *The Public Body failed to take into consideration the fact that the State Informatics Ltd was the lowest evaluated bidder at the Opening Stage as compared to the successful bidder as per letter dated 11 April 2018 with reference GL/SA/FG/0787/2018;*
- (b) *The Public Body failed to appreciate that the State Informatics Ltd was more substantially responsive to the bidding documents as compared to the successful bidder as per letter dated 11 April 2018 with reference GL/SA/FG/0787/2018 for the following reasons:*
- (i) *SIL has provided a better anti-spam solution as set out in Section 16.5.3.9 of its Proposal;*




- (ii) *SIL has provided a more cost-effective solution on the UNIX Platform;*
- (iii) *SIL has provided an optimized solution based on Oracle Standard Edition license which have also been quoted as an option;*
- (iv) *SIL has provided a less risky proposed Migration Approach, as per Oracle best practice: Form 6i is not certified with the Oracle Database 12C and there is a serious risk factor in carry on the application of Form6i with the Oracle database 12c as Oracle shall not support any issue arising due to unsupported compatibility; Hence SIL has proposed to use Oracle database 9i and Form 6i, which was the same approach adopted at the reference site;*
- (v) *SIL has also provided the necessary references for the implementation of similar software upgrade and migration projects.”*

#### **D. The Reply to Challenge**

On 19 April 2018, the Public Body made the following reply to the challenge:

*“All bids received, by the closing date and time, have been evaluated by the Bid Evaluation Committee (BEC) in accordance with the terms and conditions stipulated in the bidding documents, and only those bids which are substantially responsive have been retained for detailed evaluation.*

*During the Preliminary Examination exercise which is to confirm whether the bids received were complete and substantially responsive as required by the Bidding Documents before conducting further detailed evaluation, the BEC noted several deviations in the bid of State Informatics Ltd.*

*The deviation concerning variation in price as detailed below is considered as major and cannot be rectified as it would unfairly affect the competitive position of other bidders presenting substantially responsive bids.*

*The BEC concluded that the bid from State Informatics Ltd is **not substantially responsive** to the bidding documents and was therefore rejected.*

*Consequently, your grounds for challenge do not stand, since your bid is not the most substantially responsive bid.”*

#### **E. Grounds for Review**

On 25 April 2018, the Applicant seized the Independent Review Panel for review on the following grounds:





- “1. *Because the Public Body failed to appreciate that the Applicant’s Bid was the lowest evaluated substantially responsive bid, in breach of provisions of the Public Procurement Act and the bidding documents;*
2. *Because the Public Body erred in finding that the Applicant’s bid was not compliant with the requirements of the Bidding document, to wit:*
  - (i) *The pricing proposed by the Applicant, during the contractual period, shall indeed not be adjustable as per the requirements of the Bidding Documents;*
  - (ii) *The element of adjustment is only in reference to pricing for renewal of support during the maintenance period which renewal, as per the bidding documents, is in any case, at the discretion of the Public Body.*

*The Applicant states that it has suffered, or is likely to suffer, loss or injury due to a breach of duties imposed on the Public Body in lite, by the Public Procurement Act and relevant provisions of the Bidding Documents, as set out in the grounds of Review.”*

#### **F. The Hearing**

Hearings were held on 21 and 27 August 2018. Written submissions were made on 29 August 2018 by the Respondent.

The Applicant was represented by Mr A. Sookhoo of Counsel whereas the Respondent was represented by Mrs G. Topsy-Sonoo, Assistant Solicitor General together with Miss K. Domah, State Counsel.

#### **G. Findings**

Applicant was not retained by the Bid Evaluation Committee (BEC) because it noted several deviations in the bid of the Applicant. The deviation concerned the variation in price and this was considered as something that cannot be cured otherwise it would unfairly affect the competitive position of other bidders. The requirements that was found in the bidding document regarding the prices, the Applicant’s proposal and the comment made by the Bid Evaluation Committee. On the grounds for review, the Applicant ground 2(ii) that the element of adjustment is only in reference to pricing for renewal

of support during the maintenance period which renewal as per bidding document is in any case at the discretion of the Public Body. The Applicant prays that the decision of the Public Body (a) be annulled and (b) the Panel makes such orders as it deem fit in the circumstances.

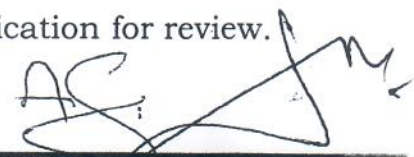
There is on record the Statement of Case, Statement of Defence and Written Submissions of both parties which the Panel has considered.

The Respondent in its Statement of Defence by way of plea in limine litis raised the point that this Panel has no jurisdiction to entertain prayer be that is to make such orders as it deem fit in the circumstances. We do agree with this point in view of the provisions of Section 45(10) where the powers of the Panel is set out.

The Panel is alive to the clauses providing instructions to Bidders and we have taken note of clause 15(c).

There is also one point which the applicant has raised is that the name and address of the successful bidder has not specified while notification was issued to the unsuccessful bidder as provided by section 40(3) of the Public Procurement Act and in reply the Respondent was amongst others this to say the very fact that Applicant, it has come before the IRP shows that the Applicant has not suffered any prejudice. Applicant had the option of raising that issue in its challenge to the NHDC which it failed to do so. So, we take it that it has waived its right to rely on same as on that grounds. Applicant had the option of raising this issue when it first lodged its Application for Review before the IRP and still on lodging its application, it failed to raise that point. So, we are stating that any procedural deficiency has been cured by the present proceedings where Applicant now, is fully aware of the identity of the successful bidder.

The Panel is agreeable that despite the Public Body has failed to communicate the name and address of the successful bidder, the Applicant did not take the point as the challenge time and in its application for review.




We subscribe to the views of the Assistant Solicitor General appearing for the Public Body that this point has been raised at a very late stage. We are, therefore, not ready to entertain it at this stage.

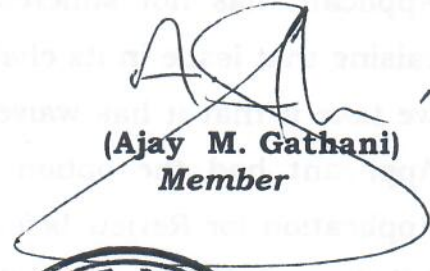
However, we do impress upon Public Bodies to abide by the provisions of the Act and of the regulations in respect of notification to unsuccessful bidders.

The Panel is of the view that the Applicant should have provided a fix price for all prices submitted as part of the bid, including the services for the maintenance and for renewal purposes.

For the reasons given above, the application for review is devoid of merit.

  
**(Hunchun Gunesh)**  
**Vice-Chairperson**

  
**(A. Karrim Namdarkhan)**  
**Member**

  
**(Ajay M. Gathani)**  
**Member**

**Dated 25 September 2018**

