



## Independent Review Panel

**Decision No. 07/19**

**In the matter of:**

**Unified Messaging Systems AS**

**(Applicant)**

**v/s**

**Ministry of Social Security, National Solidarity, and  
Environment and Sustainable Development (Environment  
and Sustainable Development Division)**

**(Respondent)**

**(Cause No. 06/19/IRP)**

**Decision**

**A. History of the case**

This Ministry of Social Security, National Solidarity and Environment and Sustainable Development, (Environment and Sustainable Development Division) invited bids on 16 October 2018, for the Implementation of a National Multi Hazard Emergency Alert Systems (EAS) for the Republic of Mauritius (procurement reference: **OAB/04/2018**). Five bids were received on the closing dated of 20 December 2018.

**B. Evaluation**

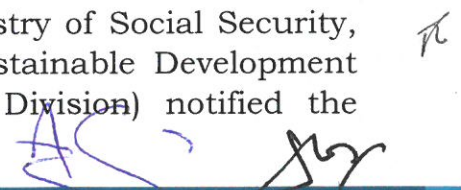
The Bid Evaluation Committee carried out evaluation of the bids in the following four phases:-

- (i) Preliminary examination of bids (completeness of bids, bid letters and whether other documents were correctly submitted);
- (ii) Technical evaluation (verification of solution submitted by bidders as to whether they are technically responsive);
- (iii) Financial evaluation (the overall costs of the proposal will be the sum of the costs of equipment, software, installation & commissioning, training and the insurance and maintenance charges for the first five years (inclusive of warranty) and any other costs involved); and
- (iv) Recommendation of the BEC (recommend the lowest, technically responsive bid after financial capability as per ITB 39.2 of the bidding documents);

Out of the 5 bids received, only 2 were found to be technically responsive to the requirements of the bidding documents, namely, Applicant and One2Many BV. These two bidders were then subject to financial evaluation. One2Many BV was found to be the lowest technically responsive bidder.

**C. Notification of Award**

Through a letter dated 08 April 2019 the Ministry of Social Security, National Solidarity, and Environment and Sustainable Development (Environment and Sustainable Development Division) notified the



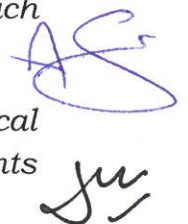
Applicant that an evaluation of the bids received has been carried out and its bid has not been retained for award. The particulars of the successful bidder are given hereunder:

<b>Name of Bidder</b>	<b>Address</b>	<b>Contract Price</b>
<b>ONE2MANY BV</b>	<b>Beergpoortstraat 63 7411 cl Deventer The Netherlands</b>	<b><u>(EUR 514,376.00) + VAT</u> <u>(EUR 77,156.40)</u></b>

#### **D. The Challenge**

On 15 April 2019, the Applicant challenged the procurement on the following grounds:

- (a) *The Public body failed to take into consideration the fact that Unified Messaging Systems AS was the lowest evaluated bidder as compared to One2Many BV;*
- (b) *The Public Body failed to appreciate that Unified Messaging Systems AS was more substantially responsive to the bidding documents as compared to One2Many BV;*
- (c) *The Public Body failed to appreciate that, in application of ITB 37, Unified Messaging Systems AS's bid satisfied the applicable evaluation criteria set out in the Bidding Documents;*
- (d) *The Public Body failed to take into consideration, the technical advantages of Unified Messaging Systems AS' bid, to wit:*
  - (i) *UMS Alert is designed as a multi-channel sending engine compared One2Many BV which only uses standardized protocols in parallel;*
  - (ii) *UMS Alert APIs for sending alerts are more feature-rich and provide sending and delivery feedback to alert senders unlike One2Many BV's solution;*
  - (iii) *UMS Alert is designed for scalability and future-readiness;*
  - (iv) *UMS Alert solution has out-of-the-box integration available with all CBC vendors, compared to the One2Many BV solution which only integrates with One2Many CBC off the shelf;*
  - (v) *UMS EAS solution proposal not only met the technical requirements and compliance criteria of the Bidding documents*



*but further surpassed same, resulting in a significantly technically responsive solution to the benefit of the Public body.*

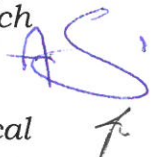
### **E. The Reply to Challenge**

The Respondent failed to issue a written reply within 7 days of lodging of Challenge.

### **F. Grounds for Review**

On 26 April 2019, the Applicant seized the Independent Review Panel for review on the following grounds:

- (a) The Public body failed to take into consideration the fact that Unified Messaging Systems AS (“UMS”) was the lowest evaluated bidder as compared to One2Many BV;*
- (b) The Public Body failed to appreciate that Unified Messaging Systems AS was more substantially responsive to the bidding documents as compared to One2Many BV;*
- (c) The Public Body failed to appreciate that, in application of ITB 37, Unified Messaging Systems AS’s bid satisfied the applicable evaluation criteria set out in the Bidding Documents;*
- (d) The Public Body failed to take into consideration, the technical advantages of Unified Messaging Systems AS’ bid, to wit:*
  - (i) UMS Alert is designed as a multi-channel sending engine compared to One2Many BV which only uses standardized protocols in parallel;*
  - (ii) UMS Alert APIs for sending alerts are more feature-rich and provide sending and delivery feedback to alert senders unlike One2Many BV’s solution;*
  - (iii) UMS Alert is designed for scalability and future-readiness;*
  - (iv) UMS Alert solution has out-of-the-box integration available with all CBC vendors, compared to the One2Many BV solution which only integrates with One2Many CBC off the shelf;*
  - (v) UMS EAS solution proposal not only met the technical requirements and compliance criteria of the Bidding documents*



*but further surpassed same, resulting in a significantly technically responsive solution to the benefit of the Public body.*

- (e) The Public Body has failed to provide any written reasons supporting its decision to select One2Many BV as the alleged successful bidder in lieu and instead of Unified Messaging Systems AS and/or supporting its decision not to retain Unified Messaging Systems AS's Bid.*
- (f) The Public Body has failed to achieve the highest standards of transparency and equity, taking into account, the need for fairness of treatment to all parties and transparency of process and decisions.*
- (g) The Public Body manifestly erred in selecting One2Many BV at a contract price of EUR 591,532.40 (Inclusive of Vat), when in fact the 'published bid value' of One2Many BV's bid was represented as EUR 576,250 (Inclusive of Vat), the more-so that no negotiation and/or change in the Bid Submission Price is permitted.*
- (h) For all the reasons given above, the Public Body should have awarded the bid to Unified Messaging System*

## **G. The Hearing**

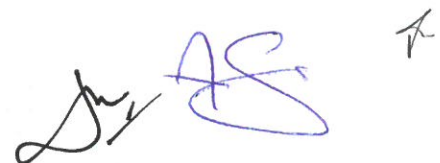
The Applicant submitted a Statement of Case on 26 April 2019. The Respondent on its part filed Statement of Defence dated 13 May 2019. Written submissions dated 17 May 2019 and 19 May 2019, by Respondent and Applicant respectively were filed.

The case was heard on 20 May 2019.

The Applicant was represented by Mr A. Sookhoo, Barrister, whereas the Respondent was represented by Miss O. Ombrasine, Principal State Attorney.

## **H. Findings**

The Panel after examining the Bidding Documents, the Bids and the report of the Bid Evaluation Committee and considered the Statements of Case and Submissions and makes the following observations:



## (1) Price of Servers

The applicant's Counsel has stated that the price of USD 109,918 was for the supply of 3 servers and consequently the arithmetical corrections made by the Bid Evaluation Committee was not warranted.

The Respondent in its Statement of Defence at paragraph 9 mentioned that Applicant and Successful bidder were both technically responsive however, at paragraph 9(c) of the Statement of Defence, the Respondent has stated as follows:-

ITB 32.3 of the bidding documents provides, inter alia, that in case there is a discrepancy between the unit price and the line item total that is obtained by multiplying the unit price by the quantity, the unit price shall prevail and the line item total shall be corrected, unless in the opinion of the purchaser there is an obvious misplacement of the decimal point in the unit price, in which case the line item total as quoted shall govern and the unit price shall be corrected. Applicant submitted a price schedule that contained arithmetic errors, namely, unit price of one server (Section A of price schedule form) was \$109,918 (excluding VAT). It submitted the same price (\$109,918 excluding VAT in total) for three servers. This was considered as an arithmetic error, and as per ITB 32.3(a) of the bidding documents, the unit price prevailed and the total price was adjusted accordingly. This is in line with applicable procurement directive(s);

The Panel after examining all relevant documents and ITB 32.3(a) agrees that the price of USD 109,918 refers to one server as quoted and is therefore of the view that the arithmetical corrections made by the Bid Evaluation Committee in respect of the servers, as per ITB 32.3(a), are correct.

## (2) VAT issue

The applicant in its submission has contended that its offer should be deemed to be inclusive of VAT whereas the Bid Evaluation Committee compared the two technically responsive bids after addition of VAT on the proposed amounts of both bidders. The Panel has noted that in the Price Schedule Form and in the Bid submission form as well the applicant has stated that his offer is exclusive of VAT. Furthermore at page 26 of the applicant's bid, it is stated that 'our pricing are exclusive of VAT since Unified Messaging Systems AS is not VAT registered in Mauritius'



Section 9(1) of the Value Added Tax 1988 and as amended provides that 'VAT shall be charged on any supply of goods or services made in Mauritius, where it is a taxable supply made by a taxable person in the course or furtherance of any business carried on by him.

### (3) Notification of Arithmetical Errors

Counsel appearing for the Applicant has laid much stress on the issue of arithmetic correction and referred the Panel to section 37(5) of the Public Procurement Act which stipulates that *where a bid discloses an arithmetical error, the error shall be corrected and the bidder notified*'

The Panel will examine in the first instance whether failing to notify was mandatory or not and if it comes to the conclusion that it is fatal, then it will not look at the other issues but will recommend for a re-evaluation.

Counsel also stressed that the word **shall** in section 37(5) of the Act is imperative and therefore the applicant should have been notified. In support of his submission he referred the Panel to the case of NG KUET LEONG A.P.M (DR) v THE MEDICAL COUNCIL OF MAURITIUS 2019 SCJ 1.

This Panel agrees with the submission of Counsel on this issue and finds there has indeed been a breach of Section 37(5) of the Public Procurement Act during the Bid Evaluation Process.

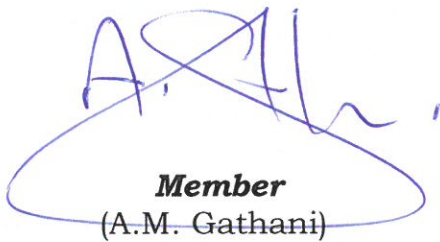
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**I. Conclusion**

This Panel therefore determines that there is merit in this application and recommends a re-evaluation of the bids taking into account the observations made above by this panel.



**Vice-Chairperson**  
(H. Gunesh)



**Member**  
(A.M. Gathani)



**Member**  
(R. Mungra)

**Date: 27 May 2019**