



Independent Review Panel

Decision No. 10/19

In the matter of:

SITA Advanced Travel Solutions Limited

(Applicant)

v/s

Office of the Commissioner of Police

(Respondent)

(Cause No. 10/19/IRP)

Decision

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A. History of the case

On 22 October 2018 the Central Procurement Board (CPB) issued an Invitation for Bids through open International Bidding for the Supply, Installation, Testing, Commissioning and Maintenance of an Advance Passenger Information and Passenger Name Record System (**CPB/46/2018**), for the Mauritius Police Force (The Purchaser). The API and PNR system will ease the identification of potentially high risk passengers based on their pattern of travel, activities, profiles, watch lists and other similar information. The closing date for the submission of the bids was fixed for 23 January 2019.

The following Bidders submitted their bids for this project:

- 1) SITA Advanced Travel Solutions Limited (UK)
- 2) IDEMIA (France) in association with Harel Mallac Technologies
- 3) PTL Limited (MALTA) in association with IBM (Mauritius) and State Informatics Limited (SIL)
- 4) CRAINS Technologies Limited

B. Evaluation

The Bids were evaluated by the Bid Evaluation Committee (BEC) according to the following procedures:

- (a) Eligibility of bidders
- (b) Preliminary Examination - Evaluation for completeness of Bids – only Bidders having passed this stage were retained for further evaluation;
- (c) Technical Evaluation based on the Qualifying and Evaluation Criteria to assess the technical responsiveness of Bids; and
- (d) Financial Evaluation of Bids short-listed after the Technical Evaluation.

The Bid Evaluation Report and Recommendation of the BEC were subsequently considered and approved by the Central Procurement Board.

C. Notification of Award

Through a letter dated 18 June 2019 the Office of the Commissioner of Police notified the three unsuccessful bidders including the Applicant (SITA Advanced Travel Solutions Limited (UK)) 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:

Name of Bidder	Address	Contract Price
PTL Limited (MALTA) in association with IBM (Mauritius) Limited And STATE Informatics Limited (SIL)	Nineteen Twenty Three Valleta Road Marsa MRS3000 Malta	USD 10,780,105 (VAT Excl) but inclusive of four (4) years of maintenance costs (year 2 to year 5) year 1 being the warranty period.

D. The Challenge

On 24 June 2019, the Applicant challenged the procurement on the following grounds:

*“The decision to consider **PTL Limited (MALTA) in association with IBM (Mauritius)” Limited and STATE Informatics Limited (SIL)** as the successful bidder, and to award the tender to the latter is manifestly wrong, unfair, unreasonable, irrational and untenable inasmuch as:*

1. *The Public Body failed and/or neglected to comply with Sections 37(9), 40(1), 11(2) of the Public Procurement Act 2006. Based on the limited and conflicting information provided, SITA believes its bid has not been considered equally and in accordance with the process set out in the RFP document.*
2. *There has been a lack of transparency in the bidding process and methodology:*
 - a. *The fact that the technical evaluation for the bid was ongoing, when the public opening of the Financial Bids had already taken place is an example of same.*
 - b. *SITA has not been informed by the Purchaser of the technical score for its bid*
 - c. *It is also clear that the technical bids for all the vendors have not been considered at the same time, as prescribed in the RFP.*
 - d. *SITA was not notified in advance as to when the Public Opening of Financial bids would take place;*
 - e. *The process of simultaneous notification to vendors did not take place.*




3. *The decision-making process of the Board did not comply with the principles and procedures provided under the Public Procurement Act 2006 and the directives issued by the Public Procurement Office”*

E. The Reply to Challenge

On 28 June 2019, the Public Body made the following reply to the challenge and stated that:

“This is to inform you that your offer was not retained for the following reasons:-

As per the Bidding document the proposal team shall have 5 IT related technical staff out of which at least three (3) should be degree holders in an IT related field and the remaining in other fields of aviation.

The above was part of the qualification requirements of the bidding document at ITB 6.1

The proposed Functional Expert has a Higher National Certificate (HNC) in Computer Studies. This qualification is not equivalent to a bachelor degree. The Functional Expert qualification is therefore not compliant.

The proposed Software Development Expert has a TEC/HTEC in Electronics. The TEC/HTEC Electronics is not equivalent to a degree. Based on the above, it is noted that you do not meet the criteria for the Proposed Staff and is thus not compliant.

This is major deviation and your proposal was not retained for further evaluation and thus the marking of the technical proposal was not carried out.

The bid was rejected due to not meeting the above requirement. Consequently, the bid was not evaluated further and therefore no marks was allocated to the Technical proposal. Therefore, you were not invited for the Financial opening which is the current procedure.”

F. Grounds for Review

On 04 July 2019, the Applicant seized the Independent Review Panel for review on the following grounds:

*“The decision of the Commissioner of Police and/or the Central Tender Board (“the Board”) to award the tender for the Supply, Installation, Testing, Commissioning and Maintenance of an Advance Passenger Information and Passenger Name Record System to **PTL Limited***

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(MALTA) in association with IBM (Mauritius) Limited and STATE Informatics Limited (SIL) (“the Successful Bidder”), is manifestly wrong, unlawful, unfair, unreasonable and untenable inasmuch as:-

- a. The Office of the Commissioner of Police and/or the Central Tender Board failed to abide by the due process of the RFP as prescribed by the law and accordingly they did not comply with the Public Procurement Act 2006, in particular Sections 37(9), 40(1), 11(2),
- b. The requirement of a Bachelor Degree is not an essential prerequisite and thus cannot constitute a material breach leading to SITA being disqualified,
- c. There is no reason for SITA not having been informed by the Purchaser of the technical score for its bid as well as not having been notified in advance of the Public Opening of Financial Bids took place on Tuesday 28 May 2019,
- d. SITA’s bid was to all intents and purposes technically responsive,”

G. The Hearing

The Hearing of the case was held on 18 July 2019. The Statement of Case of Applicant, the Statement of Defence of the Respondent and the Applicant’s Reply to Statement of Defence of Respondent were received at the IRP prior to the Hearing. This was followed by written submissions on 22 July 2019 and 26 July 2019 by Applicant and Respondent respectively.

The Applicant was represented by Mrs P. Balgobin-Bhojrul, Barrister at Law, together with Mrs J. Murugan Crepin, Counsel, whereas the Respondent was represented by Miss B. Sawock, Senior State Counsel.

H. Findings

1. Applicant’s Case

The essence of Applicant’s case is that :

- (a) The Respondent has failed to comply with the Public Procurement Act 2006 (PPA), in particular Sections 37(9), 40(1), 11(2).

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- (b) The requirement of a Bachelor Degree is not an essential prerequisite for the award of the bid and therefore this cannot constitute a material breach leading to the Applicant being disqualified.

2. Provisions of the Public Procurement Act (PPA)

Section 37(9) of the PPA provides that: *“Every bid shall be evaluated according to the criteria and methodology set out in the bidding documents...”*

Section 40(1) of the PPA provides that: *“a procurement contract shall ... be awarded to the bidder ... which meets the qualification criteria specified in the prequalification or bidding documents...”*

Section 11(2) of the PPA provides that: *“the Board shall strive to achieve the highest standards of transparency and equity in the execution of its duties, taking into account...”*

Provisions of the Bidding Document

Clause 6.1 of the Instructions to Bidders (ITB) deals with the different criteria, including the Personnel Qualification criteria which the Bidder must satisfy to qualify for award.

Those requirements as regards qualification of the proposed personnel are specified at Section 6.1 of the Bid Data Sheet (BDS) and are quoted hereunder:

“The team shall have 5 IT related technical staff out of which at least three (3) should be degree holders in an IT related field and the remaining in other fields of aviation with at least 10 years of experience for the Project Manager and at least five (5) years of experience for other consultants in their respective fields. The profiles are as follows: 1. Project manager, 2. Functional Expert, 3. Integration Expert, 4. Software Development Expert, 5. Database Administrator Expert. ”

The underlining regarding the word “shall” is ours.

3. The qualifications of the personnel proposed by Applicant

The Project Manager is a degree holder in Surveying, the Integration Expert holds a degree in Electronics and Telecommunications whilst the Database Administrator Expert holds a degree in Computer Application.





As regards the Functional Expert, he holds a Higher National Certificate (HNC) in Computer Studies. The Software Development Expert has a TEC/HTEC in Electronics.

The CPB sought the equivalence of qualifications from the Mauritius Qualifications Authority (MQA) as regards those held by the Functional Expert and the Software Development Expert. It is here pointed out that MQA is set up under the Mauritius Qualifications Authority Act 2001 and is the only competent authority in Mauritius to recognize and evaluate qualifications for the purpose of establishing their equivalence.

MQA found that the qualifications of the proposed Functional Expert and the proposed Software Development Expert are respectively at level 3 and 5 of the National Qualifications Framework (NQF) whereas a Bachelor (Ordinary Degree) and a Bachelor (Degree with Honours) is at level 7 and 8. These two Experts therefore are not Degree Holders.

The Panel considers that the qualifications of the proposed personnel are an important consideration for the award of the bid. Moreover, this has been stressed in the provision of Section 6.1 of the BDS through use of the word **shall**. Failure to have the required qualifications is a major deviation which will automatically lead to the rejection of the bid.

It is clear that these two proposed staffs are not degree holders as per the NQF and therefore the Respondent was right to find that the Applicant was not compliant with Clause 6.1 of the (BDS).

The Panel therefore agrees that the Applicant was non-compliant with the qualification requirements set out in Section 6.1 of the BDS thus entailing rejection of the Bid at the Bid Qualification stage.

The Panel also concludes that by rejecting the bid of the Applicant, the Respondent has only followed the requirement contained in Clause 6.1 of the bidding documents and consequently has acted in compliance with Sections 37(9), 40(1) and 11(2) of the PPA which all basically provide that every bid shall be evaluated in accordance with the bidding documents. *H*

4. The Press Article

During the Hearing, Counsel for Applicant also raised an issue regarding a press article which appeared in L'Express newspaper on the 06 of June 2019. On the basis of the press article, the Applicant considered that it sheds doubt on the process of contract allocation and confidentiality of the process.

The Panel believes that it should avoid delving into the merits and demerits of what is published or into the considerations journalists give when deciding to publish and report material for the public's consumption.

Based on the evidence on record, it has come out that the article followed the opening of the sealed Financial Proposals after the Technical Proposals had been evaluated by the BEC. At that stage, only the successful bidder had been selected for financial evaluation and, by definition, was the only one attending this 'second opening' which would precede final evaluation by the BEC, the decision of the CPB, the communication of that decision to the Commissioner of Police and finally, the notification of the award. This is an established practice of the CPB, in some cases, to open the 'bids' in stages and press reports are, to us, a consequence beyond the control of the Public Body and of the CPB.

We do not find that, in this case, there was any breach of paragraph 68 of the Regulations attributable to the Public Body or the CPB. In fact, similar press reports are likely to have been made in relation to the 'first' opening of bids that took place on 23rd January 2019 which, we suspect, mentioned all the bidders that had submitted bids.

We must add that we also have no reason, at all, to doubt the integrity of the CPB and of the Public Bodies (which are the Respondents before us) and of the independently appointed and independently-operating BECs which would not be influenced by any premature press report. Nor would they breach the procurement laws by disclosing preliminary information while completing their examination and evaluation duties when it is the notification of award which stands as their decision.

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I. Conclusion

In view of the above, the Panel finds no merit in the Applicant’s case and therefore dismisses the Application for Review.



Chairperson
(H. Lassemillante)



Member
(A.K Namdarkhan)



Member
(R. Mungra)

Dated: 02 August 2019

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