Independent Review Panel

Decision No. 13/19

In the matter of:

I.M. Bawamia CO. Ltd

(Applicant)

v/s

Central Water Authority

(Respondent)

(Cause No. 14/19/IRP)

Decision

A. History of the case

On 02 October 2018, the Applicant submitted a bid in relation to a tender from the Public Body for the procurement of 50,000 Nos Cold Water Meter (Dia 15 mm) bearing reference ONB/CWA/C2018/90 for a total amount of Thirty-Three Million Six Hundred and Ninety-Four Thousand Rupees only (Rs. 33,694,000.). The Applicant's bid was not retained on the ground that it was not the lowest responsive price bidder. The Applicant applied for a challenge and same was not retained by the Public Body thus being dissatisfied with the Reply to Challenge has applied to this Panel for review.

B. Evaluation

The Applicant was not retained as it was not the lowest price bidder.

C. Notification of Award

On 09 July 2019, the Public Body informed the Applicant that an evaluation of the bids received has been carried out for the Procurement of 50,000 Nos. Cold Potable Water Meter (Dia. 15mm) Ref. No. **ONB/CWA/C2018/90** and its bid has not been retained for award.

The particulars of the successful bidder are given hereunder:-

S.N.	*DESCRIPTION*	*NAME OF BIDDER*	*ADDRESS*	*CONTRACT PRICE (Excl. VAT) Rs*
1.	*Procurement of 50,000 Nos. Cold Potable Water Meter (Dia. 15 mm)*	*K.C. Mechanical Engineering Workshop Ltd.*	*325, John Kennedy Avenue, Vacoas*	*31,125, 000.-*

D. The Challenge

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

"Our grounds are based on information communicated to us by the selected bidder's principals, namely Wenling Younio Water Meter Co Ltd, of Zhejiang, China, who forwarded to us certain documents when

they approached us not so long ago before or after the launching of the present bid, via one of our Chinese agents to represent them in Mauritius. After having examined the said documents and carried out appropriate research, we found out that the information contained therein were, at best inexact and at worst misleading. In the circumstances, we unhesitatingly decided that, to stand by the principles which have always governed our business culture and to avoid facing any sanctions, we could not enter into any dealing with this kind of manufacturer. The questioned documents are as follows:

(1) The Certificate of Conformity to Standards (Doc. 1) as mandatorily requested under item no 2 of Essential Features Section V was not only untraceable from the link http://certchina.org but, even worse, the standards relied upon in this certificate refers to electrical and electronic equipment and not specifically to water meters, as required by the bid document.

(2) The second document, covering letter addressed to our agent, (Doc. 2) is even more deceiving. It is to the effect that:

(a) Wenling Younio Meters Co. Ltd is accredited to ISO 17025:2005, may be in an attempt to comply with Item No. 16 of the Essential compliance sheet features regarding the markings which shall be indelibly marked as per Pattern Approvals. A simple search on the CNAS website has proved that this information is wrong. Relying on such a deceiving information would mean that the CWA would be trusting, in relation to the requirement of accuracy which is of prime importance for both the consumers and the CWA itself, the former regarding payment and the latter regarding revenue collection, a manufacturer who will have had only 6 meters successfully tested and who would subsequently be submitting 1 test report for each 10,000 meters, that is a total of 11 meters.

*(b) **Zhejiang Institute of Metrology** is the Accreditation Body of China and is affiliated to ILAC (International Laboratory Accreditation Cooperation). Such a ridiculous declaration denotes, at best, sheer ignorance and, at worst, a devious mind bent on misleading initially its importers and ultimately clients like the CWA. The Accreditation Body of China is CNAS (China National Accreditation Services) which is a member of ILAC, contrary to **Zhejiang Institute of Metrology**. This can be verified by the following web-site (https://ilac.org/ilac-membership/members-by-category/)*

(3) *Additionally, this manufacturer has proposed to us, may be due to competitiveness, their plastic model LXH15 which, to all intents and purposes, is not responsive to clause no 8 of the Essential features (Compliance Sheet) as this type of meter is factory fused and cannot be closed after opening, thereby preventing interchangeability of the internal parts.*

Unless there has been a drastic change in the manufacturer's approach both in terms of quality of its products and in terms of genuine certification, accompanied by proper and exact information, there is a real likelihood that this manufacturer would have supplied the same wrong and misleading documents to your selected bidder who must have been aware of same. This would in turn mean that the CWA would itself be badly misled and would be heading for a very scandalous contract involving the use of public funds.

We would therefore urge you to re verify all the above and let this bidding exercise come to its logical fruition, that is awarding the contract to the substantially responsive least evaluated bidder, that is our company."

E. The Reply to Challenge

On 19 July 2019, the Public Body made the following reply to the challenge and stated that:

"We wish to reply to your grounds of challenge as follows:-

Ground 1

The Certificate of Conformity to Standards (Doc. 1) as mandatorily requested under item no 2 of Essential Features Section V was not only untraceable from the link http://certchina.org but, even worse, the standards relied upon in this certificate refers to electrical and electronic equipment and not specifically to water meters, as required by the bid document.

Reply 1

The Bid Evaluation Committee has evaluated all the bids including that of K.C Mechanical Engineering Workshop Ltd (hereafter referred as the selected bidder) in line with ITB 12.1 (i)(a) under Bidding Data Sheet as follows:

S/N	Requirement in the bid document as per ITB 12.1 (i) (a)	Submissions of the Selected Bidder
1.0	*An authentic valid certificate of Accreditation for the testing laboratory issued by the National Accreditation Body, i.e the country of origin where the meters have been manufactured, in compliance with* ***ISO/IEC 17025:2005 Standard.***	*Selected Bidder has submitted a valid certificate of accreditation for Zhejiang Institute of Metrology which has been issued by China National Accreditation Services (CNAS) in compliance with ISO/IEC 17025:2005*
2.0	*A scope/schedule of Accreditation, which should clearly indicate that the testing laboratory is accredited for carrying out the following tests:* ***(i) Accuracy*** ***(ii) Pressure tightness*** ***(iii) Pressure loss*** *On cold potable water meter (diameter 15 mm) in line with procedures laid down in compliance with* ***ISO 4064:2014/Standard.***	*Selected Bidder has submitted a Scope of Accreditation which clearly indicates that Zhejiang Institute of Metrology is accredited to carry out Accuracy, Pressure tightness and Pressure Loss tests in compliance with ISO 4064:2014 Standard.*

The offer of the selected bidder fully complies with ITB 12.1 (i)(a) and both the Certificate of Accreditation and the Scope of Accreditation are traceable on the official website of the Accredited Body i.e. China National Accreditation Services (CNAS).

Ground 2

Wenling Younio Meters Co. Ltd is accredited to ISO 17025:2005, may be in an attempt to comply with Item No. 16 of the Essential compliance sheet features regarding the markings which shall be indelibly marked as per Pattern Approvals. A simple search on the CNAS website has proved that this information is wrong. Relying on such a deceiving information would mean that the CWA would be trusting, in relation to the requirement of accuracy which is of prime importance for both the consumers and the CWA itself, the former regarding payment and the latter regarding revenue collection, a manufacturer who will have had only 6 meters successfully tested and who would subsequently be submitting 1 test report for each 10,000 meters, that is a total of 11 meters.

Reply 2

Clause 17 under Sub-section B – Essential Features of Section V – Technical Specifications indicates that the water meter shall be clearly and inedibly marked with several information including a Pattern Approval sign according to National Regulations.

The three (3) meter samples submitted, by the selected bidder, at bidding stage were examined against the requirement as listed under Clause 17 – Descriptive Markings, i.e. all three (3) meter samples were clearly and inedibly marked with all information listed thereunder including Pattern Approval sign.

One of the main requirements – ITB 12.1 (i)(e) – in the bid document is that bidders have to carry out tests for accuracy, pressure loss and pressure tightness at an Independent Internationally Recognised Accredited Testing Laboratory.

The very essence of ITB 12.1 (i)(e) is to ascertain that meters proposed by the bidder fully comply with the essential requirements of ISO 4064:2014 especially with respect to accuracy, pressure tightness and pressure loss tests.

Coincidentally, the three (3) meter samples of make Younio as submitted by the selected bidder were tested in the same Independent Testing Laboratory where your meter samples were tested i.e. Fluid Control Research Institute (FCRI) of India and the test results were conclusive as all three (3) samples of make Younio passed their accuracy, pressure tightness and pressure loss tests in compliance to the requirements of ISO 4064:2014 Standard.

As you have preferred to have your meter samples tested by an Accredited Testing Laboratory of international repute such as FCRI (India), you would surely agree that their methodology and test results are trustworthy, genuine and undisputed. Therefore, it can be safely said that the flow of water passing through the meter of make Younio can be measured for revenue collection as it complies with the requirements of ISO 4064:2014 especially with regard to accuracy.

Ground 3

Zhejiang Institute of Metrology is Accreditation Body of China and is affiliated to ILAC (International Laboratory Accreditation Cooperation). Such a ridiculous declaration denotes, at best, sheer ignorance and, at worst, a devious mind bent on misleading initially its importers and ultimately clients like the CWA. The Accreditation Body of China is CNAS (China National

Accreditation Services) which is a member of ILAC, contrary to Zhejiang Institute of Metrology. This can be verified by the following web-site (https://ilac.org/ilac-member/members-by-category/)

Reply 3

Based on traceable information available from the official website of China National Accreditation Services (CNAS), it is an undeniable fact that the Zhejiang Institute of Metrology is an accredited testing laboratory and that CNAS is a member of the International Laboratory Accreditation Cooperation (ILAC) irrespective of what has been stated in Doc 2.

Ground 4

Additionally, this manufacturer has proposed to us, may be due to competitiveness, their plastic model LXH15 which, to all intents and purposes, is not responsive to clause no 8 of the Essential features (Compliance Sheet) as this type of meter is factory fused and cannot be closed after opening, thereby preventing interchangeability of the internal parts.

Reply 4

It is clearly stated at Clause 8 under sub-section B-Essential Features that ***all "parts" rather than "internal parts"*** *of the meters shall be furnished in order to ensure their interchangeability. Moreover, the selected bidder has submitted a meter sample which cannot be termed as "****factory fused****" as it can be easily handled (open/close after repairs) although it has a tamper proof lock.*

It must be pointed out that meters of construction similar to those provided by the selected bidder are currently in use at the CWA and repairs such as renewal of cover, register or other internal parts are regularly carried out at the CWA Meter Workshop."

F. Grounds for Review

On 30 July 2019, the Applicant seized the Independent Review Panel for review on the following grounds:

"1. The Respondent was wrong to have selected K.C. Mechanical Engineering Workshop Ltd inasmuch as the latter ought in fact to have been from the outset disqualified on the basis of

information contained in the BRN as displayed on the CBRD (Corporate and Business Registration Integrated System) website which clearly and unequivocally shows that the bidder is in reality a works contractor and does not hold a valid trading licence for the items under this present bidding exercise as is required under the ELIGIBILITY CRITERIA;

2. *The Respondent was wrong to have found K.C. Mechanical Engineering Workshop Ltd substantially responsive inasmuch as the latter has not been properly evaluated on the mandatory technical criteria required under Item no 2 of SECT V (B) Essential Features Accreditation Certificate and Conformity to Standards.*

3. *The Respondent was wrong to have found K.C. Mechanical Engineering Workshop Ltd substantially responsive on the mere fact that 3 meters, having been positively tested, albeit at a laboratory of international repute as FCRI, was sufficient to assume that the proposed meters fully complied with the essential requirements of ISO 4064:2014 in the absence of a Genuine and Authentic Conformity to Standards Certificate.*

4. *The Respondent was wrong to have selected K.C. Mechanical Engineering Workshop Ltd inasmuch as, from what can be gathered from the latter's financial statements for 2015, 2016 and 2017 as obtained from the Registrar of Associations, the selected bidder does not have the financial capacity to fulfill the contract in line with ITB 39.2.*

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

G. The Hearing

Hearings were held on Tuesday 13 August and Friday 16 August, 2019. There was on record, a Statement of Case, a Statement of Defence and a Reply to Statement of Defence.

The Applicant was represented by Mr N. Bheekhun, Counsel whereas the Respondent was represented by K. Colunday, Counsel.

H. Findings

The Applicant has filed four grounds for review which read as follows:

1. *The Respondent was wrong to have selected K.C. Mechanical Engineering Workshop Ltd inasmuch as the latter ought in fact to have been from the outset disqualified on the basis of information contained in the BRN as displayed on the CBRD (Corporate and Business Registration Integrated System) website which clearly and unequivocally shows that the bidder is in reality a works contractor and does not hold a valid trading licence for the items under this present bidding exercise as is required under the ELIGIBILITY CRITERIA;*

3. *The Respondent was wrong to have found K.C. Mechanical Engineering Workshop Ltd substantially responsive inasmuch as the latter has not been properly evaluated on the mandatory technical criteria required under Item no 2 of SECT V (B) Essential Features Accreditation Certificate and Conformity to Standards.*

4. *The Respondent was wrong to have found K.C. Mechanical Engineering Workshop Ltd substantially responsive on the mere fact that 3 meters, having been positively tested, albeit at a laboratory of international repute as FCRI, was sufficient to assume that the proposed meters fully complied with the essential requirements of ISO 4064:2014 in the absence of a Genuine and Authentic Conformity to Standards Certificate.*

5. *The Respondent was wrong to have selected K.C. Mechanical Engineering Workshop Ltd inasmuch as, from what can be gathered from the latter's financial statements for 2015, 2016 and 2017 as obtained from the Registrar of Associations, the selected bidder does not have the financial capacity to fulfill the contract in line with ITB 39.2.*

The Respondent in reply filed a Statement of Defence with supporting Documents.

The Applicant in reply to the Statement of Defence has filed a reply to the Respondent's Statement of Defence.

The Panel has considered all the materials on record including the submissions of Counsel on both sides.

We shall at the very outset point out that according to the Evaluation Report of Bid Evaluation Committee, the latter has come to the conclusions that the Applicant has complied with all the requirements

of the bidding documents. The Committee also found that the Applicant was technically and financially responsive save and except that it was not the lowest responsive bidder in terms of price.

The Applicant's bidding price was Rs.33,694,000 whereas that of the successful bidder was Rs.31,125,000. The difference is of Rs.2,569,000.00 which represents around 8%.

From the evidence available on record, it is clear that the Applicant has in the past been supplying water meters to the Respondent and has a proven track record.

The Panel has further noted that the Applicant has in the past supplied as at June 2018 some 200,000 Cold Portable Water Meters and this fact has not been denied by the Public Body. We have noted that this has not been taken into account by the Bid Evaluation Committee when under subtitle Section III of Evaluation Criteria (ITB39.2) Section 3 (b) (ii) clearly mentions as follows: Where the bidder is a trader proposing goods duly authorised by the manufacturer and for which there is no requirement for local after sale service, the bidder should have experience in handling orders of similar value and providing support back-up from manufacturers of the goods.

Out of the four grounds of appeal, the Applicant has questioned the selection of the successful bidder on the Trade Licence which relates to activities in Aluminium/ metal works. In reply to this point, the Public Body has referred this Panel to the Business Registration Card of the successful bidder and a valid trading licence. Unfortunately, a valid trading licence could not be found on record in relation to subject matter on appeal before this Panel.

ITB 12.1 (k) Under a subtitle- (II) Test Non-responsive bid provides that a list of clients of the manufacturer to whom the proposed make of meter were sold, together with the number the number of meters purchased by them should be submitted for the last five years. The Panel has noted from the Bid document of the successful bidder that a client list of the manufacturer has been submitted but it does not mention anywhere the quantity supplied as per Section V – Schedule of Requirements. Furthermore, it is also noted that no evidence by relative letters of awards and delivery completion certificates have been submitted to substantiate the experience and technical capacity of the manufacturer.

We read from Section III Evaluation Criteria of the Bidding Documents, more precisely, Section 4 (1.4) Technical Compliance.

1. Mandatory Criteria- A list of important Orders executed for the item under reference for Public Utilities or organizations of comparable size, profile and requirements, during the last five

years which documentary evidence via Letter of award for a qualifying minimum of five years' experience in the supply and delivery of the proposed Cold Potable Water Meters.

From the records available before this Panel, is concluded that the successful bidder has not complied with the above Mandatory Criteria and has also failed to comply with ITB 12(i) (II)(k). Consequently, the bid should have been considered non-responsive.

I. Conclusion

Based on the grounds specified above, the Panel has come to the conclusion that there is merit in this application and therefore recommends a re-evaluation of the bids by a differently constituted Bid Evaluation Committee.

INDEPENDENT REVIEW PANEL MAURITIUS

Vice-Chairperson
(H. Gunesh)

Member
(A. Gathani)

Member
(V. Mulloo)

Dated: 22 August 2019