



Independent Review Panel

Decision No 14/19

In the matter of:

METEX Trading CO. Limited

(Applicant)

v/s

Central Water Authority

(Respondent)

(Cause No. 12/19/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 Million, Seven Hundred and Ninety-Nine Thousand Rupees only (Rs. 30,799,000.). The Applicant's bid was rejected at the initial stage as it did not satisfy the "Qualification Criteria". The Applicant applied for a challenge and same was not retained by the Public Body thus this present review is before this Panel.

B. Evaluation

After an evaluation exercise carried out, K.C. Mechanical Engineering Workshop Ltd was retained for the sum of Rs. 31,125,000 (Exclu VAT).

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 and its bid has not been retained.

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 12 July 2019, the Applicant challenged the procurement on the following grounds:

"GROUND 1

'K.C. Mechanical Engineering Workshop Ltd' is a loss-making company, which has incurred a net loss of Rs 778,335 out of a turnover of Rs 945,077 for year ended 30 June 2017 and thus cannot reasonably be

expected to financially sustain the delivery of a contract with a price of Rs 31,125,000.

GROUND 2

'K.C. Mechanical Engineering Workshop Ltd' is a company with **NO** fixed asset or non-current asset and does not own any property, equipment or even motor vehicle, as disclosed in its balance sheet as at 30 June 2017.

GROUND 3

'K.C. Mechanical Engineering Workshop Ltd' has non-current liabilities of Rs 684,696 as 'long-term borrowings' and with no fixed asset to support, the company is highly geared and represents a high risk in terms of its going concern status.

GROUND 4

'K.C. Mechanical Engineering Workshop Ltd' is a company which has depleted its 'Retained Earnings', from Rs 803,403 (as at 30 June 2016) to Rs 25,408 (as at 30 June 2017), which represents a major risk in terms of low reserves to fulfil a contract of over Rs 30 million.

GROUND 5

It is apparent that 'K.C. Mechanical Engineering Workshop Ltd' does not have the cash requirements to deliver a contract for over 30 million, as its 'cash and cash equivalents' was Rs 389,318 as at its balance sheet date of 30 June 2017. It will therefore rely on the contract from the CWA to seek finance, but with no asset to be provided as security for these additional borrowings.

FOUNDATIONS 6

'K.C. Mechanical Engineering Workshop Ltd' appears not to have filed audited accounts with the Registrar of Companies for the last three years, which makes its bid non-responsive according to Clause ITB 12.1 (i) (ii).

GROUND 7

'Metex Trading Co. Ltd' far outweighs 'K.C. Mechanical Engineering Workshop Ltd', in terms of financial stability.





GROUND 8

The bid of 'Metex Trading Co. Ltd' was **LOWER THAN** the bid of 'K.C. Mechanical Engineering Workshop Ltd', i.e unit price of Rs 615.98 compared to Rs 622.50 for the latter, which was more expensive by Rs 326,000 in terms of total price.

GROUND 9

The bid of 'Metex Trading Co. Ltd' ought to have been retained in the light of its proven track-record and experience with regard to supplying water meters to the CWA, as compared to 'K.C. Mechanical Engineering Workshop Ltd', which has no such proven track-record and experience.

GROUND 10

No reason has been provided to 'Metex Trading Co. Ltd' as to why its bid has not been retained, despite having provided all relevant information and documents sought by the CWA, at all material times."

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

'K.C. Mechanical Engineering Workshop Ltd' is a loss-making company, which has incurred a net loss of Rs 778,335 out of a turnover of Rs 945,077 for year ended 30 June 2017 and thus cannot reasonably be expected to financially sustain the delivery of a contract with a price of Rs 31,125,000.

Reply 1

Observation was made from information extracted from the Financial Statements submitted by the selected bidder. It is to be noted that the company incurred a loss of Rs 778,335 out of turnover of Rs 954,077 instead of turnover amount of 945,077 as stated above. However, it should be pointed out that the said company has generated profit for the year ended 2015 and 2016. As per the terms of the contract, delivery of the first batch will be made in November 2019, if the contract is awarded now. Therefore, returns for Year ended December 2017

cannot be the only basis to declare that the company cannot supply the meters if they are awarded the contract.

Ground 2

'K.C. Mechanical Engineering Workshop Ltd' is a company with NO fixed asset or non-current asset and does not own any property, equipment or even motor vehicle, as disclosed in its balance sheet as at 30 June 2017.

The above statement is irrelevant in the sense that the bidder is required, in line with GCC 18.1 of the bid document, to furnish a Performance Security representing 10% of the awarded amount in order to honour the contract.

Ground 3

'K.C. Mechanical Engineering Workshop Ltd' has non-current liabilities of Rs 684,696 as 'long-term borrowings' and with no fixed asset to support the company is highly geared and represents a high risk in terms of its going concern status.

Reply 3

The company has shown healthy working capital for the last three years (2015/2016/2017) that is able to meet its short-term payables out of its current assets.

Ground 4

'K.C. Mechanical Engineering Workshop Ltd' is a company which has depleted its 'Retained Earnings', from Rs 803,403 (as at 30 June 2016 to Rs 25,408 (as at 30 June 2017), which represents a major risk in terms of low reserves to fulfil a contract of over Rs 30 Million.

Reply 4

The CWA has no information with regards to the cost to be incurred by the supplier for honouring the contract. Furthermore, a performance security of 10% of the contract value need to be furnished by the selected bidder. Same shall be enforced in case of default in contract.

Ground 5

It is apparent that 'K.C. Mechanical Engineering Workshop Ltd' does not have the cash requirements to deliver a contract for



over 30 Million, as its 'cash equivalents' was Rs 389,318 as at its balance sheet date of 30 June 2017. It will therefore rely on the contract from the CWA to seek finance, but with no asset to be provided as security for these additional borrowings.

Reply 5

Please refer to Reply 4.

Ground 6

'K.C. Mechanical Engineering Workshop Ltd' appears not to have filed audited accounts with the Registrar of Companies for the last three years, which makes its bid non-responsive according to Clause ITB 12.1 (i) (ii).

Reply 6

As per Companies Act, companies whose turnover is below Rs 50M are not required to file Audited Accounts.

Ground 7

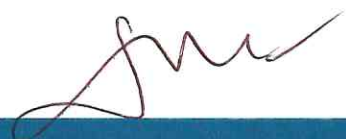
'Metex Trading Co. Ltd' far outweighs 'K.C. Mechanical Engineering Workshop Ltd', in terms of financial stability.

Reply 7

The above statement is an opinion.

Ground 8

The bid of 'Metex Trading Co. Ltd' was LOWER THAN the bid of 'K.C. Mechanical Engineering Workshop Ltd', i.e unit price of Rs 615.98 compared to Rs 622.50 for the latter, which was more expensive by Rs 326,000 in terms of total price.

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Reply 8

The bid of Metex Trading Co. Ltd was rejected based on criterias other than the quoted price.

Ground 9

The bid of ‘Metex Trading Co. Ltd’ ought to have been retained in the light of its proven track-record and experience with regard to supplying water meters to the CWA, as compared to ‘K.C. Mechanical Engineering Workshop Ltd’, which has no such proven track-record and experience.

Reply 9

The selected bidder has submitted a letter to certify that it has experience in the field of water meters and flow measurement equipment and is a trusted supplier to numerous local authorities having completed a variety of works for authorities such as Road Development Authority, Municipality of Vacoas Phoenix amongst others.

The selected bidder is also a regular supplier and service provider to the Central Water Authority.

Metex Trading CO. Ltd also is a regular supplier for spare parts to the Central Water Authority. However, based on available records, it is observed that too often, deliveries are made beyond the prescribed delivery period thus causing prejudice to the Authority.

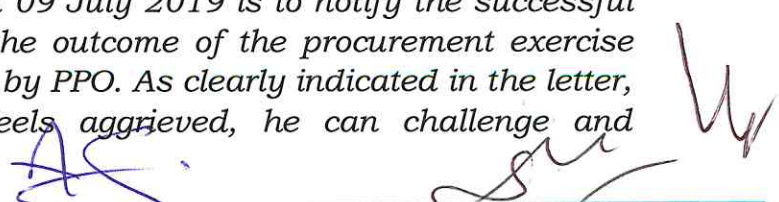
The delivery of meters under the previous contract for the supply of meters (15mm) – C 2017/178, which was awarded to Metex Trading Co. Ltd was delayed for which penalty charges was applied.

Ground 10

No reason has been provided to ‘Metex Trading Co. Ltd’ as to why its bid has not been retained, despite having provided all relevant information and documents sought by the CWA, at all material times.

Reply 10

The purpose of the letter dated 09 July 2019 is to notify the successful and unsuccessful bidders of the outcome of the procurement exercise based on a format as provided by PPO. As clearly indicated in the letter, if the unsuccessful bidder feels aggrieved, he can challenge and



requests for a debriefing in order to take cognizance of the reasons which has led to the rejection of his bid.

Hereunder are the reasons why the bid of Metex Trading Co. Ltd was rejected:

- *At bidding stage, a Certificate of Accreditation bearing Ref L1807 was submitted, in line with ITB 12.1 (h)(a), to confirm that Ningbo Institute of Measurement and Testing (Ningbo Institute of Weighing Instruments Management) having its address at Building E, No. 1588, Jiangnan Road, National High-Tech Zone, Ningbo Zhejiang, China.*
 - *As per ITB 12.1 (h)(a), a scope of accreditation was also submitted as an annex to the Certificate of Accreditation. However, it was observed that the name and address as stated in the scope is not the same as the one stated in the Certificate of Accreditation submitted at bidding stage.*
 - *Clarifications were sought from CNAS and in light of the reply, the BEC analysed the pre-released structured scope and the following was noted:*
- (i) *Two distinct testing laboratories are accredited by CNAS under the same Registration Number i.e. L1807 as follows:*

1. *Name of Laboratory – Ningbo Institute of Measurement and Testing (Ningbo Institute of Weighing Instruments Management/Ningbo Inspection and Testing Center for New Materials)*

Address – No.177, Haichuan Road, Jiangbei District, Ningbo, Zhejiang, China

(hereafter referred as Location A)

2. *Name of Laboratory – Ningbo Institute of Measurement and Testing (Ningbo Institute of Weighing Instruments Management)*

Address – Building E, No. 1588, Jiangnan Road, National High-Tech Zone, Ningbo Zhejiang, China (hereafter referred as Location B)

- (ii) *A Certificate of Accreditation was submitted which states that Location B is accredited in accordance with ISO/IEC 17025:2005 whereas on the website of CNAS it is clearly indicated that the same Location B is **not** accredited to carry out tests on water meters.*

- (iii) A scope of accreditation was submitted at bidding stage, which is issued in the name of Location A as annex to the Certificate of Accreditation of Location B, and same is not line with the requirement of ITB 12.1 (h) (a).
- (iv) A test report from Location B was submitted to confirm that the tests carried out on the meter samples are as per ISO 4064:2014. Whereas Location B is **not** accredited to carry out the tests. As such the BEC considered the test report as invalid.
- In order to have a second opinion on the whole issue, the advice of MAURITAS, the Accreditation Body for Mauritius and member of MRA/ILAC, was sought. In their reply, MAURITAS concurred with the views expressed by the Bid Evaluation Committee. An extract of the letter from MAURITAS is given hereunder:

“The Test Report cannot be considered as an accredited Test Report as Location A (Building E, No. 1588, Jiangnan Road, National High-Tech One, Ningbo) is not accredited to perform tests on water meters despite the fact that Location A (No. 177 Haichuan, Jianbei, Ningbo, Zhejiang) is accredited for performing these tests and that both Locations A and B are covered by the same Certificate and Schedule of Accreditation”

F. Grounds for Review

On 24 July 2019, the Applicant seized the Independent Review Panel for review on the following grounds:

GROUND 1

“K.C. Mechanical Engineering Workshop Ltd”s bid is non-responsive, as it has not filed audited accounts with the Registrar of Companies for the last three years, which is a clear breach of clause ITB 12.1 (i) (ii).

GROUND 2

‘K.C. Mechanical Engineering Workshop Ltd’ is a loss-making company, which has incurred a net loss of Rs 778,335 out of a turnover of Rs 954,077 for year ended 30 June 2017 and thus cannot reasonably be expected to financially sustain the delivery of a contract with a price for Rs 31,125,000.

GROUND 3

*'K.C. Mechanical Engineering Workshop Ltd' is a company with **NO** fixed asset or non-current asset and does not own any property, equipment or even motor vehicle, as disclosed in its balance sheet as at 30 June 2017 and the company has no adequate resources to furnish a 'Performance Security' representing 10% of the awarded amount to honour the contract.*

GROUND 4

'K.C. Mechanical Engineering Workshop Ltd' has non-current liabilities of Rs 684,696 as 'long-term borrowings' and with no fixed asset to support, the company is highly geared and represents a high risk in terms of its going concern status.

GROUND 5

'K.C. Mechanical Engineering Workshop Ltd' is a company which has depleted its 'Retained Earnings', from Rs 803,403 (as at 30 June 2016) to Rs 25,408 (as at 30 June 2017), which represents a major risk in terms of low reserves to fulfil a contract of over Rs 30 million.

GROUND 6

It is apparent that 'K.C. Mechanical Engineering Workshop Ltd' does not have the cash requirements to deliver a contract for over Rs 30 million, as its 'cash and cash equivalents' was Rs 389,318 as at its balance sheet date of 30 June 2017. It will therefore rely on the contract from the CWA to seek finance, but with no asset to be provided as security for these additional borrowings.

GROUND 7

'Metex Trading Co. Ltd' far outweighs 'K.C. Mechanical Engineering Workshop Ltd', in terms of financial stability, as clearly shown by the figures disclosed in the financial statements of both companies.

GROUND 8

*The bid of 'Metex Trading Co. Ltd' was **LOWER THAN** the bid of 'K.C. Mechanical Engineering Workshop Ltd' i.e. unit price of Rs 615.98 compared to Rs 622.50 for the latter, which was more expensive by Rs 326,000 in terms of total price.*

GROUND 9

'K.C. Mechanical Engineering Workshop Ltd' has no proven track-record and experience to supply water meters to the CWA for such tenders, as compared to 'Metex Trading Co. Ltd', which has such proven track-record and experience with regard to supplying water meters to CWA.

GROUND 10

The bid of 'Metex Trading Co. Ltd' was responsive and the company has been supplying the same type of water meters to CWA from the same accredited supplier.

G. The Hearing

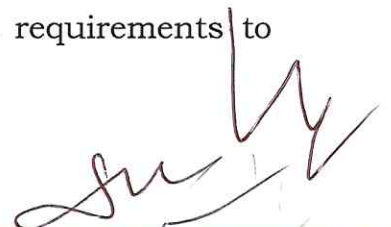
Hearing was held on Tuesday 13 August, 2019. There was on record, a Statement of Case and a Statement of Defence filed by the Applicant and Respondent, respectively.

The Applicant was represented by Messr. R. Bhadain, G.C.S.K, together with Y. Bhadain, Barristers, whereas the Respondent was represented by Mr K. Colunday, Barrister.

H. Findings

This is an application for review against the decision of the Public Body for not having retained the applicant despite a challenge filed with 10 grounds. The Applicant has filed a statement of case dated 23/07/2019 with the following observations, amongst others, viz:

- (a) The successful bidder ought to have been considered as non-responsive as it failed to provide audited accounts for the last three years;
- (b) The successful bidder was a loss making company:
- (c) The successful bidder did not have the cash requirements to deliver a contract of over Rs.30 million:



- (d) No reason was given to the Applicant as to why its bid was not retained, despite having provided all relevant information and documents.

Before looking at the grounds for review and the defence filed, we have gone through the report of the Bid Evaluation Committee and noted the following, viz:

- (a) The Applicant submitted an Accreditation Certificate delivered by China National Accreditation Service in line with ITB 12.1(h)(a) to confirm that Ningbo Institute of Measurement and Testing having its address at Building E No.1588 Jiangnan Road, National High-Tech Zone, Ningbo Zhejiang, China.
- (b) The Applicant also submitted a scope of accreditation to the Certificate of Accreditation.
- (c) However, it was observed that the name and address as stated in the scope was not the same as the one stated in the Certificate of Accreditation;
- (d) The committee noted that the Certificate of Accreditation which stated LAB 1 was accredited in accordance with ISO/IEC 1025 2005 whereas Annex 13 download from the website of CNAS indicated that the same LAB 1 was not accredited to carry out tests on water meters;
- (e) The applicant submitted a scope of accreditation issued in the name of LAB 2 as annex to the Certificate of Accreditation of LAB 1 which was against the requirements of ITB 12.1 (h) (a).
- (f) The Bid Evaluation Committee therefore decided to reject the offer of the Applicant as it did not comply with ITB 12.1(h).

The Panel is satisfied that the BEC carried out a thorough and extensive investigation before coming to the conclusion to find the Applicant non responsive to the qualifications criteria. The Panel also agrees that the non-compliance of mandatory requirements shall disqualify a bidder at the very initial stage and so is the case of the Applicant.

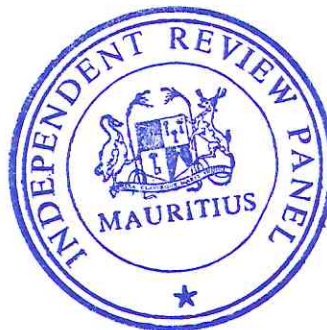
As the Accredited certificates filed were not in line with the ITB we shall not venture to look at the other grounds of application for review.

I. Conclusion

- (a) The Panel is therefore of the view that the application has no merits and dismisses same.
- (b) This Panel has had the opportunity to review several applications and it is true to say that the Public Body simply writes to the bidder to inform that it has not been retained and gives all the particulars regarding the successful bidder. We are of the opinion that this is not correct. It is suggested that henceforth, Public Bodies while issuing letters of award should inform the unsuccessful bidders the reasons for which they have not been retained. This will also help from having frivolous applications as Challenge and Review.

Vice-Chairperson
(H. Gunesh)

Member
(A. Gathani)



Member
(V. Mulloo)

Dated: 22 August 2019

