



Independent Review Panel

Decision No. 17/19

In the matter of:

EPS ELVI ENERGY S.R.L.

(Applicant)

v/s

CENTRAL ELECTRICITY BOARD

(Respondent)

(Cause No. 17/19/IRP)

Decision

A. History of the case

On 10 January 2019, the Central Procurement Board (CPB) issued Bidding Documents by the way of Open International Bidding for the Design, Manufacture, Supply, Installation, Testing and Commissioning of 14 MW Battery Energy Storage Systems for the Republic of Mauritius bearing reference: CPB/G/CEB/BATRY/12/18. The Public Body concerned is the Central Electricity Board. The extended closing date for submission of bids was 09 April 2019.

At the Public Opening carried out on 09 April 2019 at the CPB, the following eight bids were received.

Table 4: Bidders Name and Number Assigned

| Bidder No. | Bidders Name |
|-------------------|---|
| 1 | EPS Elvi Energy S.r.l (Italy) |
| 2 | Siemens SAS (France) |
| 3 | BYD-DEC JV (Joint Venture of BYD Auto Industry Company Limited and Dongfang Electric International Corporation (P.R. China) |
| 4 | Kokam Co. Ltd (South Korea) |
| 5 | ABB South Africa (Pty) Limited (South Africa) |
| 6 | Akuo Energy Solutions (Mauritius) Ltd |
| 7 | Nidec ASI S. A. (France) |
| 8 | Consortium Sungrow – Samsung SDI Energy/Joonas & Co. Ltd/GreenYellow SAS (Mauritius) |

B. Evaluation

The evaluation of bids was carried out at the Central Procurement Board by a Bid Evaluation Committee (BEC) set up by the CPB.

C. Notification of Award

On 24 September 2019, the Public Body informed the Applicant that an evaluation of the bids received had been carried out for the Procurement Reference: **CPB-58-2018 – Design, Manufacture, Supply, Installation, Testing and Commissioning of 14 MW**

Battery Energy Storage Systems for the Republic of Mauritius and its bid has **not** been retained for award.

The particulars of the selected bidder are given hereunder:-

| Description | Name & Address of Selected Bidder | BESS | Total Negotiated Foreign Price (EUR) | Total Negotiated Local Price Excl. VAT (MUR) |
|--|---|-------------|---|---|
| Jin Fei | Siemens SAS (France) Batiment 2 Rue de la Neva 38004 Grenoble Cedex 1 France | 4 MW | 2,826,970.00 | 7,807,393.00 |
| La Tour Koenig | | 2 MW | 1,384,806.00 | 6,751,463.00 |
| Anahita | | 4 MW | 2,401,519.00 | 7,807,704.00 |
| Wooton | | 4 MW | 2,389,069.00 | 7,806,462.00 |
| Training | | - | | 3,929,825.00 |
| Mandatory Spare Parts and Tools | | - | 181,263.00 | |
| Grand Total exclusive of VAT | | | 9,183,627.00 | 34,102,847.00 |

D. The Challenge

On 27 September 2019, the Applicant challenged the procurement on the following grounds:

“In the Bidder’s opinion, the offer was compliant with the tender requirements, as detailed in the form attached hereto and already attached to the original bid submission”

The above attachment mentioned by the Applicant refers to a one page self marking of the different sub-criteria.

E. The Reply to Challenge

On 03 October 2019, the Public Body made the following reply to the challenge and stated that:

“We have been informed by the Central Procurement Board that your bid was not retained for award since your bid was found to be technically

non-responsive by the Bid Evaluation Committee on the following grounds:

1. *As per Evaluation and Qualification Criteria, sub-criteria Item 1.6 – “the bidder or its Subcontractor has supplied, installed, tested and commissioned at least five 2 MVA or higher step-up transformers with secondary voltage of 11KV or higher.”*

| Project No. | Project Name | BEC Remarks |
|--------------------|---------------------|--|
| 1 | Litoral | Passed |
| 2 | Lifou | Passed |
| 3 | Garowe | Failed – the rating of the transformer has not been specified. Since, the installed BESS capacity is 1.3MW, the transformer will normally not be greater than 1.3MVA which is less than 2 MVA criterion. |

*However, only **two** projects out of three you mentioned as per table above meet the criteria set up in the marking scheme sub-criteria 1.6.*

Moreover, none of the other projects provided in Form EXP-6 in your offer meet the required criteria.

*Hence, you have scored 0 marks for sub-criteria 1.6 and your bid is considered as non-responsive, as per the bidding document, Section 1A – sub section 3.0 for **“Assessment of Adequacy of Technical Proposal as per Requirements.”***

“Bids with a score of 0 in any one of the above technical sub-criteria will not be considered for financial evaluation. The bid will be considered as non-responsive.

2. *Furthermore, other deviations have been noted namely:*

(i) *Layouts of the installation have been provided. However, dimensions have not been specified.*

(ii) *You have stated in the Schedule of Manufacturer and Country of Origin that all major equipment (transformers, switchgears, batteries and converters) will be of make ELVI energy. However, Type Test Reports of different makes of equipment have been provided except for make ELVI energy.*




In the light of the above, your bid was found to be technically not responsive to the requirements of the bidding document.”

F. Grounds for Review

On 09 October 2019, the Applicant seized the Independent Review Panel for review on the following grounds:

“Exclusion based on arbitrary, counterintuitive and unreasonable interpretation of a misleading qualification requisite

*In point 1. of their reply to challenge, CEB considers that we did not fulfil Evaluation and Qualification Criteria, sub-criteria Item 1.6 – “the bidder or its Subcontractor has supplied, installed, tested and commissioned **at least five 2 MVA or higher step-up transformers** with secondary voltage of 11kV or higher”.*

*However, as clearly stated in Form EXP-4 annexed, which was part of our proposal, even considering just one of our projects we installed **8 transformers** of 2.7 MVA with secondary voltage of 20kV, and thus we consider that we fulfil sub-criteria Item 1.6.*

The second part of sub-criteria Item 1.6 was poorly written, as it referred to the number of projects instead of the number of transformers, as it should have (why would it make a difference in terms of contractor’s experience whether the transformers are installed at a single site or different sites?). But this is exactly the reason of our exclusion.

Indeed, if for whatever reason the criteria had clearly specified in the first part that it referred to transformers installed in different projects (as opposed to just transformers), we would have added to EPS Elvi Energy S.r.l’s reference list the ones of our subcontractors Manser Saxon Facilities Ltd (Manser Saxon Group) and Manser Saxon Contracting (Manser Saxon Group) (as mentioned in Section 6.3 of Form TECH-1), that have also performed more than 5 projects with such transformers.

With reference to the other remarks in the CEB’s letter:

Regarding point 2. (i), we did not find the requirement of providing dimensions in the layouts and accordingly consider this not to be a deviation.

Regarding point 2. (ii), we considered the different types of containers (HybridHouse Containers, ComHouse Container, PowerHouse Container,

EnergyHouse Container, Containerized transformers) as main equipment of the Energy Storage System. The manufacturer is ENGIE Eps, even if the components in these containers can be outsourced. Thus, we consider this not to be a deviation.”

G. The Hearing


The Hearing was held on 22 October, 2019. There was on record, a Statement of Case and a Statement of Defence.

Mr Burty François, Barrister appeared for the Applicant whereas Mr Ravindra Chetty, Senior Counsel appeared for the Respondent.

H. Findings

(a) General

Further to the hearing, the Panel has also consulted other documents related to the case, namely the Bidding Documents, the Bids of the Applicant and that of the Selected Bidder and the Bid Evaluation Report. The Panel has noted that Bidding Documents were for a Single-Stage, Two-Envelopes process for a Quality-Price based bid. Determination of the best evaluated bid involves the combined marking of the Technical and Financial Proposals with a weightage of Technical (70%) and Financial (30%). The heavy reliance on Technical Capability is also reflected in the related marking system, whereby *“The minimum technical score St required to pass is **50** marks. **Bids with a score of zero in any one of the above technical sub-criteria will not be considered for Financial Evaluation. The Bid will be considered as non-responsive.”***



(b) Point 1 – Sub-criteria 1.6 of Section 1A – Evaluation and Qualification Criteria

Sub-criteria 1.6 is reproduced hereunder:

| Items | Description | Marks | |
|-------|--|-------|-----|
| | | Min | Max |
| 1.0 | Bidder Experience | | |
| ... | | | |
| 1.6 | <p><i>Bidder or its Subcontractor has supplied installed, tested and commissioned at least five 2MVA or higher step up transformers with secondary voltage of 11 kV or higher</i></p> <p><i>i.) Bidder with less than 5 projects will score zero marks</i></p> <p><i>ii.) Bidder with only 5 projects will score minimum mark</i></p> <p><i>iii.) Bidder with more than 5 project will score one mark per additional project up to the maximum point</i></p> | 1 | 4 |

According to the Bid Evaluation carried out by the BEC, the Applicant scored zero under this sub-criteria, because they did not reckon minimum 5 Nos related Projects to attract marking under this sub-criteria. They scored zero, as only 2 Projects met the required characteristics under sub-criteria 1.6.

The Applicant disagrees with that interpretation and claims that the second part of sub-criteria 1.6 was ‘poorly written’ and that it has interpreted ‘number of projects’ as meaning ‘number of Transformers’ and that accordingly even if one of its Projects is considered they meet the minimum requirements under that sub-criteria.

In this regard the Panel notes that:

- (i) At the time of bidding, the Applicant did not consider the wordings as ‘poorly written’ and did not seek clarification as purposely allowed for the bidding document at sub-section 16.1 (k) of the Instruction to Bidders:

“Bidders shall examine the Bidding documents carefully and make written request to the Employer for interpretation, clarifications or correction of any ambiguity, inconsistency or error therein, which he may discover upon examination of the Bidding documents, prior to the latest date for clarification as defined in Clause 11 here above (the base date) and they are without any restriction accepted by it.

16.1(l) No claim resulting from omissions or discrepancies in the Bidding documents, after the Base Date, will be accepted by the Employer.

- (ii) The Central Electricity Board, which prepared the Bid Document, has agreed with the interpretation of the BEC and the latter's evaluation under that sub-criteria.
- (iii) Moreover, it can be inferred that other bidders did not find the wording problematic as there was no clarification sought on this issue from any other Bidder, at bidding stage.
- (iv) It is further noted that during the evaluation of Technical Bids, four out of the eight bids qualified for detailed technical evaluation and marking. Three of them including the selected bidder passed the requirement under sub-criteria 1.6.

Consequently the Panel does not share the views expressed by the Applicant as regards Point 1.

(c) Point 2(i) - Layouts of the BESS installations

The Panel observed that the Applicant submitted layouts of BESS installation for each site. However, neither dimensions nor scale have been provided in the drawings submitted. In the absence of this information the BEC has not been in a position to ascertain that the proposed layout was within the required area as provided in the Technical Specification – Section 2.5 of the bidding document. The drawings submitted by the bidder do not provide evidence that the BESS is within the required footprint of each site.

The Applicant has claimed that there was no mandatory requirement as regards submission of dimensions.

The Panel notes that as per ITB 14.2 of the Bidding Document, bidders were required to submit layout of the BESS installations per site.

- Query/Reply 27 and 42 of Clarification No. 1, issued on 19 February 2019, provided for PDF versions of the sites layouts.
- As per Query/Reply 56 of Clarifications NO. 1, issued on 19 February 2019, it was clearly mentioned that “the footprint of each of the 4 BESS shall fit within the area earmarked for them at their respective substations. It is important to note that a BESS with a footprint bigger than the earmarked surface area will be considered as technical non-responsive.”

- As per the bidding document, Section 1A – sub section 3.0: Assessment of Adequacy of Technical Proposal as per Requirements- Criteria 3.2, the footprint of the proposed BESS for each site is a marking criterion.

In the light of the above the Panel considers that it was important that dimensions should have been given by the Bidder and therefore agrees with the zero marking given by the BEC at sub-criteria 3.2 of Section 1A – Evaluation and Qualification Criteria.

(d) Point 2(ii)- Manufacturer Authorization Form

The BEC initially contended that the Applicant has stated that in the Schedule of Manufacturer and Country of Origin that all major equipment (transformers, switchgears, batteries and converters) will be of make ELVI energy. However, Type Test Reports of different makes of equipment have been provided except for make ELVI energy.

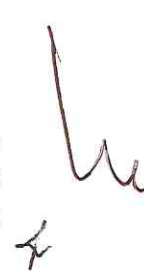
The Applicant has subsequently explained that it is the manufacturer of the containers and the components of the container can be outsourced. The BEC does not dispute this statement but then claims the manufacturer's authorization of these outsourced components (Batteries complete with Rack, BMS, RBMS and BBMS; Power Converters; 22kV Switchgear and Step Up Transformers amongst others) should have been submitted as per Query/Reply 9 of Clarification NO. 2 issued on 19 February 2019.

The Applicant has further explained that it did not hide any sourcings of equipments and has submitted the pamphlets/catalogues/drawings and type test reports for the other equipment manufacturers.

The Panel considers that this is not a major deviation and which could have been sorted out at clarification stage, if any.

(e) Other Shortcomings

The Panel has also noted the following shortcomings in the Applicant's Technical Proposal which are mentioned in the Technical Evaluation Report of the BEC but which were not drawn to the attention of the Applicant in the reply to the challenge.



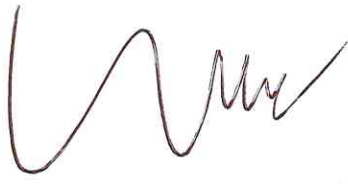
- (a) The Applicant has also scored zero, under sub-criteria 1.5.
Note: Three qualified bidders have passed the requirement
- (b) There are several major deviations in the Guaranteed Particulars for the 4MW BESS and for the 2MW BESS.

I. Conclusion

In the light of our findings, the Panel decides that the present application for review be dismissed.



Vice-Chairperson
(H. Gunesh)



Member
(V. Mulloo)



Member
(R. Mungra)

Dated: 30 October 2019