Independent Review Panel

Decision No. 18/19

In the matter of:

RSL Security Services Ltd

(Applicant)

v/s

Ministry of Education and Human Resources, Tertiary Education and Scientific Research

(Respondent)

(Cause No. 18/19/IRP)

Decision

A. History of the case

On the 30th May 2019, the Central Procurement Board (CPB) launched bids for the Procurement of Watch & Security Services in Schools/Institutions for the period 2019/2020/2021. It bore the reference MOEHRTESR/SERV/OIB 080 /2018-19. At the closing date on the 17th July 2019, seven bids were received at the CPB. By a letter dated 25th September 2019, the Ministry of Education and Human Resources, Tertiary Education and Scientific Research, hereafter termed the Public Body or the Respondent informed the RSL Security Services Ltd, hereafter termed the Applicant that an evaluation of bids had been carried out and its bid had not been retained for award. The letter informed the Applicant that the name of the Selected Bidder was Rapid Security Services Ltd of Port Louis for a contract price of Rs 184, 644,000 exclusive of VAT for the twenty-two Lots for three years.

The Public Body through its Senior Chief Executive informed the Applicant that an unsatisfied bidder could Challenge the award within seven days from the date of the present notification. The procedure for applying for review to the Independent Review Panel in the prescribed format was spelt out. Feeling aggrieved by the decision of the Respondent and seeking redress, the Applicant challenged the said decision on the 30th September 2019 under Section 43 of the Public Procurement Act 2006. By a letter dated 4th October 2019, the Public Body informed the Managing Director of the Applicant that the Bid Evaluation Committee had not considered the bid of the selected bidder as being abnormally low, which if in the affirmative could have warranted the rejection of its bid. Further, the Ministry informed the Applicant that the selected bidder had undertaken to comply with the minimum wage requirement as per section (d) of the Bid Submission Form. The issues in dispute and the arguments related thereto are:

"7. TheGrounds for Review of the Applicant are as follows:

(a) The bid of the selected bidder Rapid Security Services Ltd ought to have been rejected as its respective financial offer is abnormally low and does not satisfy the minimum qualifying criteria (a) Section 1 – Instructions to Bidders, Clause 5.2(d), (b) ITB – Section IV – Activity Schedule (p. 42 of the bidding documents), (c) ITB – Section V - General Conditions of Contract – sub Clause 4.6 (Labour Clause) which specifically provides for compliance with existing laws and Remuneration Orders (p.73/74 of the bidding documents) and (d) Section VI – Schedules – Check list for Bid Submission, paragraph (b)(v);

(b) The contract price of Rapid Security Services Ltd would not allow it to meet its contractual obligations as the labour costs estimates based on the applicable remuneration order exceed the contract price of the selected bidder – see the annexed data

sheet provided by the Ministry of Labour and Industrial Relations wherein the salary of security officers are set out in line with the Remuneration Order (GN. 126 of 1986) as amended by a subsequent decision of the Employment Relations Tribunal;

(c) *The Public Body failed to carry out a proper evaluation and assessment of the bid of Rapid Security Services Ltd, in line with the ITBs, whose bid for all 22 Lots should not have been selected for award as it is not the lowest evaluated substantially responsive bidder in view of the arguments propounded above; and*

(d) *The Applicant is not satisfied with the response of the Public Body in its letter dated 4th October 2019, in reply to the Applicant's challenge dated 30th September 2019, wherein the Public Body maintains that the selected bidder has complied with all requirement of the bidding document and is lowest evaluated substantially responsive bidder for all 22 lots. The Applicant avers that:*

(i) *Firstly, it is to be noted that the Public Body in its reply referred to 'minimum wage requirement' as per Section (d) of the Bid Submission Form whilst the said Section (d) provided "compliance with the relevant Laws, Remuneration Order Award and also to PPO Directive No.37 where applicable and that we shall abide with the provisions of sub clause 4.6 of the General Conditions of Contract', therefore it demonstrates that the selected bidder could not have complied with the remuneration order applicable for Security Guards. The Applicant invites the Independent Review Panel to look at Section (d) of the Bid Submission Form of the selected bidder.*

(ii) *Secondly, even if the selected bidder has undertaken to comply with the 'minimum wage requirement' (which ought to be the Remuneration Order for Security Guards GN No. 126 of 1986) as per Section (d) of the Bid Submission Form, the Applicant states that this does not in itself establish that the selected bidder is compliant. The Public Body must ensure that the selected bidder would indeed be compliant and meet its contractual obligations as to labour costs. In view of the Public Body's reply that 'Your contention with respect to payment of salaries is a matter concerning the strategy of each bidder in its submission', the Applicant's case is that this clearly shows that the Public Body has failed to carry out a proper evaluation and assessment of the bid of the Applicant because if it had done so it would have*

come to the inescapable conclusion that the bid failed on that score.

8. *The Applicant contends that the price of the successful bidder is abnormally low. From the attached working* ***DOCUMENT D,*** *the Applicant states that the minimum bid amount to be legally compliant for all 22 lots will be around Rs. 295,479,451.80 (exclusive of VAT) whilst the total contract price for the said 22 lots awarded to Rapid Security Services Ltd is in the sum of Rs.184,644,000.- (exclusive of VAT).*

9. *From the above figures, clearly it would not be possible for the selected bidder, namely Rapid Security Services Ltd to perform its obligations under the contract.*

10. *The Applicant submits that the mere statement by the selected bidder that it complies with the Technical Criteria in the bidding document is not sufficient but the Respondent ought to ensure strict compliance to the labour clauses in Works and Non-Consultancy Services Contracts (vide* ***Directive 37 issued by the Procurement Policy office on 12th April 2018****).A copy of the Directive 37 is herewith annexed and marked as* ***DOCUMENT E.***

11. *The abnormally low price of the selected bidder createsserious doubts as to its compliance with the Technical Criteria of the bidding documents and given the unrealistically low price, it appears that the selected bidder has deliberately given low figures to bolster its chance to obtain the contract knowing full well of the physical impossibility to perform the contract according to the required standard and in compliance with the bidding documents at this price.*

12. *Furthermore, in light of the abnormally low price of the selected bidder, the ability and capacity of the selected bidder to perform its obligations under the contract for all 22 lots awarded to itis very doubtful if not downright impossible.*

13. *In the light of the above, the Applicant submits the selected bidder, Rapid Security Services Ltd is not the lowest substantially evaluated bidders as it does not meet the requirements of the bidding documents and itscontract price which isabnormally low, ought to have been declared non-responsive and be rejected.*

D. RELIEF REQUESTS

14. The Applicant therefore prays from the Independent Review Panel for an order:

(i) To review the decision of the Public Body anddeclare that the bid of Rapid Security Services Ltd for all 22 lots is non-responsive and ought to have been rejected;

(ii) To review the decision of the Public Body and declare the intention to award the bid to Rapid Security Services Ltd for all 22 lots is wrong and annul the award thereof; and

(iii) Thus, to recommend a re-evaluation of the bids, including that of the Applicant but such revaluation to be done in strict compliance with the ITBs."

B. Notification of Award

On 25 September 2019, the Public Body informed the Applicant that an evaluation of the bids received has been carried out for the Procurement of **Watch & Security Services in Schools/Institutions –Period 2019/2020/2021 (Reference no: MOEHRTESR/SERV/OIB 080/2018-2019) (CPB Ref: CPB/03/2019)** and its bid has not been retained for award.

The particulars of the selected bidder are given hereunder:-

Description	***Name of Selected Bidder***	***Address***	***Contract Price***
Watch & Security Services in Schools/Instruction – Period 2019/2020/2021	*Rapid Security Services Ltd*	*5, Boucherville Street Port Louis*	*Rs 184,644,000 exclusive of VAT for the 22 lots for three years as detailed at Annex 1*

C. The Challenge

On 30 September 2019, the Applicant challenged the procurement on the following grounds:

"(a) The bid of the selected bidder Rapid Security Services Ltd ought to have been rejected as its respective financial offer is abnormally low and does not satisfy the minimum qualifying criteria (a) Section I – Instruction to Bidders, Clause 5.2(b), (b) ITB – Section IV – Activity Schedule (p.42 of the bidding documents), (c) ITB – Section V – General Conditions of Contract – sub Clause 4.6 (Labour Clause) which specifically provides for compliance with existing laws and Remuneration Orders (p.73/74 of the bidding documents) and (d) Section VI – Schedules – Check list for Bid Submission, paragraph (b)(v);

(b) The contract price of Rapid Security Services Ltd would not allow it to meet its contractual obligations as the labour costs estimates based on the applicable remuneration order exceed the contract price of the selected bidder – see the annexed data sheet provided by the Ministry of Labour and Industrial Relations wherein the salary of security officers are set out in line with the Remuneration Order (GN. 126 of 1986) as amended by a subsequent decision of the Employment Relations Tribunal ***[Document A];*** *and*

(c) The Public Body failed to carry out a proper evaluation and assessment of the bid of Rapid Security Services Ltd, whose bid for the 22 Lots should not have been selected for award for the 22 Lots as it is not the lowest evaluated substantially responsive bidder in view of the arguments propounded above."

D. The Reply to Challenge

On 04 October 2019, the Public Body made the following reply to the challenge and stated that:

"(a) Rapid Security Services Ltd, the selected bidder, has complied with all requirements of the bidding document and is the lowest evaluated substantially responsive bidder for all 22 lots. The selected bidder has undertaken to comply with the minimum wage requirement as per Section (d) of the Bid Submission Form.

(b) Your contention with respect to payment of salaries is a matter concerning the strategy of each bidder in its submission. The Bid Evaluation Committee has not considered the bid of the selected

bidder to be abnormally low, which, if in the affirmative, could have warranted rejection of its bid.

Lot No.	LABOUR COST ESTIMATE AS PER REMUNERATION ORDER (36 Months)	LABOUR COST ESTIMATE AS PER REMUNERATION ORDER INCLUSIVE OF BONUS, NPF,NSF AND LEVY (36 Months)	Rapid Security Sevices Ltd Rate (Rs) for 36 Months Excluding VAT	RSL Security Services Ltd Proposed Rate (Rs) for 36 Months Excluding VAT
1	11,178,498.24	12,935,598.48	7,963,200.00	13,682,491.20
2	11,178,498.24	12,935,598.48	7,963,200.00	13,682,491.20
3	12,775,426.56	14,783,541.12	9,100,800.00	15,637,132.80
4	11,976,962.40	13,859,569.80	8,532,000.00	14,659,812.00
5	11,178,498.24	12,935,598.48	7,963,200.00	13,682,491.20
6	15,969,283.20	18,479,426.40	11,376,000.00	19,546,416.00
7	12,229,869.60	14,154,351.48	9,597,600.00	15,149,616.48
8	10,380,034.08	12,011,627.16	7,394,400.00	12,705,170.40
9	10,380,034.08	12,011,627.16	7,394,400.00	12,705,170.40
10	16,272,771.84	18,845,726.76	12,974,400.00	20,331,122.72
11	11,178,498.24	12,935,598.48	7,963,200.00	13,682,491.20
12	13,573,890.72	15,707,512.44	9,669,600.00	16,614,453.60
13	11,178,498.24	12,935,598.48	7,963,200.00	13,682,491.20
14	11,178,498.24	12,935,598.48	7,963,200.00	13,682,491.20
15	9,581,569.92	11,087,655.84	6,825,600.00	11,727,849.60
16	9,581,569.92	11,087,655.84	6,825,600.00	11,727,849.60
17	13,573,890.72	15,707,512.44	9,669,600.00	16,614,453.60
18	8,783,105.76	10,163,684.52	6,256,800.00	10,750,528.80
19	11,178,498.24	12,935,598.48	7,963,200.00	13,682,491.20
20	11,178,498.24	12,935,598.48	7,963,200.00	13,682,491.20
21	15,969,283.20	18,479,426.40	11,376,000.00	19,546,416.00
22	4,841,366.40	5,615,346.60	3,945,600.00	6,108,827.04
Total	**255,317,044.32**	**295,479,451.80**	**184,644,000.00**	**313,284,748.64**

E. Grounds for Review

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

"(a) The bid of the selected bidder Rapid Security Services Ltd ought to have been rejected as its respective financial offer is abnormally low and does not satisfy the minimum qualifying criteria (a) Section I – Instructions to Bidders, Clause 5.2(d), (b) ITB – Section IV – Activity Schedule (p. 42 of the bidding documents), (c) ITB –Section V – General Conditions of Contract – sub Clause 4.6 (Labour Clause) which specifically provides for compliance with existing laws and Remuneration Orders (p.73/74 of the bidding documents) and (d) Section VI – Schedules – Check list for Bid Submission, paragraph (b)(v);

(b) The contract price of Rapid Security Services Ltd would not allow it to meet its contractual obligations as the labour costs estimates based on the applicable remuneration order exceed the contract price of the selected bidder – see the annexed data sheet provided by the Ministry of Labour and Industrial Relations wherein the salary of security officers are set out in line with the Remuneration Order (GN. 126 of 1986) as amended by a subsequent decision of the Employment Relations Tribunal;

(c) The Public Body failed to carry out a proper evaluation and assessment of the bid of Rapid Security Services Ltd, in line with the ITBs, whose bid for all 22 Lots should not have been selected for award as it is not the lowest evaluated substantially responsive bidder in view of the arguments propounded above; and

(d) The Applicant is not satisfied with the response of the Public Body in its letter dated 4th October 2019, in reply to the Applicant's challenge dated 30th September 2019, wherein the Public Body maintains that the selected bidder has complied with all requirements of the bidding document and is lowest evaluated substantially responsive bidder for all 22 lots. The Applicant avers that:

(i) Firstly, it is to be noted that the Public Body in its reply referred to 'minimum wage requirement' as per Section (d) of the Bid Submission Form whilst the said Section (d) provided "compliance with the relevant Laws, Remuneration Order Award and also to PPO Directive No. 37 where applicable and that we shall abide with the provisions of sub clause 4.6 of the General Conditions of Contract", therefore it demonstrates that the selected bidder could not have complied with the remuneration order applicable for Security Guards. The Applicant invites the Independent Review

Panel to look at Section (d) of the Bid Submission Form of the selected bidder.

(ii) Secondly, even if the selected bidder has undertaken to comply with the 'minimum wage requirement' (which ought to be the Remuneration Order for Security Guards GN No. 126 of 1986) as per Section (d) of the Bid Submission Form, the Applicant states that this does not in itself establish that the selected bidder is compliant. The Public Body must ensure that the selected bidder would indeed becompliant and meet its contractual obligations as to labour costs. In view of the Public Body's reply that 'Your contention with respect to payment of salaries is a matter concerning the strategy of each bidder in its submission', the Applicant's case is that this clearly showsthat the Public Body has failed to carry out a proper evaluation and assessment of the bid of the Applicant because if it had done so it would have come to the inescapable conclusion that the bid failed on that score."

F. The Hearing

Hearing was held on 28 October, 2019. There was on record, a Statement of Case and a Statement of Defence.

The Applicant was represented by Mr Gavin Glover, Senior Counsel whereas the Respondent was represented by Mrs Essop, Barrister.

G. Conclusion

Directive No. 37 of the Procurement Policy Office issued pursuant to the Public Procurement Act 2006 ensures that the general conditions of contents for works and non-consultancy services under the Public Procurement Act 2006 requires the suppliers to comply with the provisions regarding remuneration. Thus, the rates of remuneration shall not be less favourable than those established for work of the same character in the trade concerned by Remuneration Regulations made under the Employment Relation Act 2008.

On cross examination by Counsel for Applicant, Mr Appadu, Team Leader of the Bid Evaluation Committee said that the written undertaking that the selected bidder would abide with the Labour Laws and Directives was enough. The purport of the undertaking was such that there was no need to see whether Directive 37 had been complied with. This Panel views with concern that no exercise has been carried out by the BEC to check whether the figures given by the selected bidder were realistic. A breakdown of the quoted price would

have been of much assistance. On the other hand, the Applicant has filed an explicit breakdown of figures quoted in their offer.

At this stage we must state that it is the duty of the Public Body to ensure that the Bidder has the means of respecting all Tender and Contractual conditions whether explicit or inexplicit before awarding a contract. The mere undertaking that a Bidder will respect any legislation is not enough if there are serious doubts that he will be able to do so.

In the present case the Labour cost estimate as per remuneration order for 36 month applicable to 22 lots amount to Rs 255,317,044.32 while the Labour cost estimates inclusive of Bonus, NPF, NSF and Levy for 36 months amount to Rs 295,479,451.80. the Applicant's proposed rate for 36 months excluding VAT amount to Rs 313,284,748.64 while the selected bidder's proposed rate are Rs 184,644,000.00 The latter represents around 63% of the estimated labour costs to 36 months inclusive of bonus and others.

So with regards to only the remuneration payable, the selected bidder's quoted prices and rates are 37% below the labour estimates calculated as per remuneration order. Further, the Selected Bidder produces a Financial Statement for the last three years 2016, 2017 and 2018.

The sum indicates that the selected bidder is a loss making company.

Period	Profit/Loss (After Tax)
Ending 30 June 2016	Rs 1,056,372 (Profit)
Ending 30 June 2017	Rs 1,259,869 (Loss)
Ending 30 June 2018	Rs 3,161,923 (Loss)

Furthermore, we wonder how the selected bidder will meet its contractual financial obligations during the next three years. According to its statement of financial position as at 30 June 2018 signed by Mr Annavey and Paupiah Director, the selected bidder has current assets of Rs 6,000,000 approximately while its current liabilities amount to Rs 13,836,603. With such a negative working capital one wonders how they will abide by the contractual obligation and quoted estimates for the next three years. The same negative working capital was the feature in the financial year ending 2017.

The Panel notes that the Bid Evaluation Committee failed to review the financial soundness and capability of the bidders. Thus, the said Committee did not fulfil its responsibilities under Directive No. 31 issued pursuant to Section 7(B) of the Public Procurement Act. Had they done so, we would have a different picture of the financial situation of the bidders.

The Standard Bidding Documents require the bidders to demonstrate access to or availability of financial resources such as liquid assets. The purpose of ensuring the production of these documents is to allow a proper financial assessment by the BEC.

The Panel is minded to consider the bid of the selected bidder as flawed by its abnormally low character. Abnormally low bids do not favour the Public Body and by extension the tax payer. It is the duty of the Public Body to ensure that the Selected Bidder shall be able to perform all its contractual obligations as per the Law. A mere undertaking to do so is insufficient. It is up to the bidder to plan and demonstrate its financial capability to perform adequately throughout the contractual period. An abnormally low quote falls foul of that requirement.

Any decision to favour such a bid must result in a re-evaluation exercise by a differently constituted BEC.

Therefore this Panel recommends the re-evaluation of the decision of the Public Body in accordance with its powers under Section 45 of the Public Procurement Act 2006, taking into consideration our observations in this Decision.

Chairperson
(H. Lassemillante)

INDEPENDENT REVIEW PANEL MAURITIUS

Member
(A. Gathani)

Member
(A. K. Namdarkhan)

Dated: 05 November 2019