



Independent Review Panel

Decision No. 02/20

In the matter of:

K.C Mechanical Engineering Workshop Ltd.

(Applicant)

v/s

Central Water Authority

(Respondent)

(Cause No. 02/20/IRP)

Decision



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A. History of the case

Ten Bidders submitted bids for the supply of 50,000 Nos. Cold Water meters to the CWA (**CWA procurement ref No: CWA/C2019/90**). Following an evaluation of the Bids received, the CWA issued a Notification of Award dated 06 July 2019, whereby Bidders were informed that K.C. Mechanical Engineering Workshop Ltd had been selected for award of the contract for the sum of Rs 31,125,000.

I.M. Bawamia Co Ltd., an aggrieved bidder applied for review of the decision before the Independent Review Panel (IRP) on 30 July 2019, (**Cause No: 14/19/IRP**).

On the 22nd August 2019, the Independent Review Panel delivered its decision (**Decision No. 13/19/IRP**) whereby it came to the conclusion that there was merit in the application and it further recommended a re-evaluation of the bids by a differently constituted Bid Evaluation Committee.

B. Evaluation

In line with the earlier **IRP Decision No. 13/19/IRP** of 22 August 2019, the CWA carried out a re-evaluation of all Bids received by a differently constituted Bid Evaluation Committee (BEC). The BEC came to the conclusion that the bid of K.C. Mechanical Engineering Workshop Ltd was non-responsive and that I.M. Bawamia Co. Ltd was the successful bidder.

C. Notification of Award

Subsequently, through a letter dated 17 December 2019, the Central Water Authority notified K.C. Mechanical Engineering Workshop Ltd. 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:

S.N.	DESCRIPTION	NAME OF BIDDER	ADDRESS	CONTRACT PRICE (Excl. VAT) Rs
1.	Procurement of 50,000 Nos. Cold Potable Water Meter (Dia. 15mm)	Ismael M. Bawamia Co. Ltd	Frère Felix de Valois St, Port Louis	33,694,000.-



D. The Challenge

Feeling dissatisfied with the above decision of the CWA, K.C. Mechanical Engineering Workshop Ltd., now the Applicant challenged the procurement on 20 December 2019 on the following grounds:

“I. The Public Body ought to have disqualified and/or rejected outright the bid of the successful bidder, Ismael M Bawamia Co Ltd whose bid was not responsive as:

Mandatory Eligibility Criteria

- (a) The successful bidder does not have the required Business Registration Card and/or Trade Licence which allow it to provide the items under the procurement exercise, namely 50,000 NOS. C OLD POTABLE WATER METER (DIA. 15MM) as its nature of business is ‘Sale of motor vehicle parts, tyres and accessories’ and ‘Retail sale of hardware, plants and glass specialized stores (not having the right to sell cement, iron and steel bars)’. The procurement of the required items is clearly outside the scope of business of the successful bidder. (vide **Clause 4, 1.2 – Eligibility Criteria, S No. 1, Section III. Evaluation Criteria of the Bidding Documents** – ‘Business Registration Card & Valid Trade Licence’); and

Mandatory Qualification requirements

- (b) The successful bidder could not or does not have at least five years of experience in manufacturing a similar type of good for which the Invitation of Bids is issued and could not or does not have experience in handling orders of similar value and providing support back-up from manufacturers of the goods given that the successful bidder’s nature of business is not related to the procurement of the items under the present bidding exercise (vide **Clause 3(b)(i) and (ii) of Section III. Evaluation Criteria of the Bidding Documents – page 41 and Clause 4, 1.3 Qualification and Experience, S No.1, Section III. Evaluation Criteria of the Bidding Documents**)

- II. The Bid Evaluation Committee, which carried out the re-evaluation of the bids has been wrongly constituted. Therefore, the decision of the Public Body dated 17th December 2019 of its intention to award the contract to the successful bidder is flawed and cannot stand to all intents and purposes inasmuch as two members who sat on the Procurement Committee were the very same members who sat on the Bid Evaluation Committee which



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*re-evaluated the bids. The Public Body failed to comply with the decision of the Independent Review Panel (IRP) dated 22nd August 2019, in respect of the same procurement exercise, bearing **Decision No. 13/19, Cause No. 14/19/IRP – I.M/ Bawamia Co. Ltd v/s Central Water Authority**, wherein the IRP recommended that a re-evaluation of the bids by a differently constituted Bid Evaluation Committee.*

III. *The Public Body ought to have awarded the contract to the Applicant whose bid was the lowest evaluated substantially responsive bid.*”

E. The Reply to Challenge

On 27 December 2019, the Public Body made the following reply to the challenge and stated that:

*“Following the **Independent Review Panel’s ruling (Decision 13/19) – Cause No 14/19/IRP**, a differently constituted Bid Evaluation Committee was set up for the **re-evaluation of the Contract C2018/90 – Procurement of 50,000 Nos Cold Potable Water Meters** in line with the Directive No 39 of the Procurement Policy Office.*

*An evaluation of the bids received has been carried out accordingly and it is the bid submitted by **I M Bawamia Co Ltd** which is the lowest substantially responsive bid and has been retained for an award.*

The successful bidder has complied

- (i) *with the mandatory Eligibility Criteria (vide Clause 4, 1.2, S No 1, Section III – Evaluation Criteria of the bidding documents in as much as the successful bidder has submitted its Business Registration Card and a Valid Trading License;*
- (ii) *with the mandatory qualification requirements (vide Clause 3(b)(i) and (ii) of Section III – Evaluation Criteria inasmuch as the manufacturer has the necessary experience in manufacturing water meters and the successful bidder has the necessary experience in handling orders of similar value and providing support back-up from the manufacturer for having supplied the CWA with Cold Water Meters over the past five (5) years; and*
- (iii) *with the mandatory qualification requirements (vide Clause 4, 1.3, S No 1, Section III – Evaluation Criteria) – same as at (ii) above.*

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Your bid has not been retained for an award for the following reasons as you have:

- (a) submitted misrepresented Test Reports and misleading information on the meters;
- (b) failed to comply with Clause 4 (1.4) Technical Compliance of Section III – Evaluation Criteria;
- (c) failed to comply with ITB 12.1 (i) – II (k) of Section II – Instruction to Bidders;
- (d) failed to comply with the experience criteria (vide Clause 3(b)(ii) of Section III – Evaluation Criteria).”

F. Grounds for Review

On 03 January 2020, the Applicant seized the Independent Review Panel for review on the following grounds:

“I. The Public Body ought to have disqualified and/or rejected outright the bid of the successful bidder, Ismael M Bawamia Co Ltd whose bid was not responsive in as much as:

Mandatory Eligibility Criteria



- (a) The successful bidder does not have the required Business Registration Card and/or Trade Licence which would allow it to provide the items under the procurement exercise, namely 50,000 NOS. COLD POTABLE WATER METER (DIA. 15MM) as the nature of its business is stated as ‘Sale of motor vehicle parts, tyres and accessories’ and ‘Retail sale of hardware, plants and glass specialized stores (not having the right to sell cement, iron and steel bars)’. The procurement of the required items is clearly outside the scope of business of the successful bidder. (vide **Clause 4, 1.2 – Eligibility Criteria, S No. 1, Section III. Evaluation Criteria of the Bidding Documents** – ‘Business Registration Card & Valid Trade Licence’); and

Mandatory Qualification requirements

- (b) The successful bidder could not or does not have at least five years of experience in manufacturing a similar type of good for which the Invitation of Bids is issued and could not or does not have the experience in handling orders of similar value and providing support




*back-up from manufacturers of the goods given that the successful bidder's nature of business is not related to the procurement of the items under the present bidding exercise (vide **Clause 3(b)(i) and (ii) of Section III. Evaluation Criteria of the Bidding Documents – page 41 and Clause 4, 1.3 Qualification and Experience, S No.1, Section III. Evaluation Criteria of the Bidding Documents**)*

- II. *The Bid Evaluation Committee, which carried out the re-evaluation of the bids was wrongly constituted as it was not in line with the recommendation of the IRP. The decision of the Public Body dated 17th December 2019 of its intention to award the contract to the successful bidder is flawed and cannot stand to all intents and purposes inasmuch as two members who sat on the Procurement Committee were the very two same members who sat on the three person Bid Evaluation Committee which reevaluated the bids. The Public Body failed to comply with the decision of the Independent Review Panel (IRP) dated 22nd August 2019, in respect of the same procurement exercise, bearing **Decision No. 13/19, Cause No. 14/19/IRP – I.M. Bawamia Co. Ltd v/s Central Water Authority**, wherein the IRP recommended that a re-evaluation of the bids by a differently constituted Bid Evaluation Committee.*
- III. *The Public Body ought to have awarded the contract to the Applicant whose bid was the lowest evaluated substantially responsive bid.*
- IV. *The Applicant has taken cognizance of the reply of the Public Body to its Challenge dated 27th December 2019 and maintains that the bid of the successful bidder failed to comply with all the requirements of the bidding documents. The Applicant also maintains that its bid was fully compliant with all the requirements of the bidding documents in that:*
- (a) it has submitted Test Reports and information on the meters in compliance with the bidding documents;*
 - (b) its bid complied with Clause 4 (1.4) Technical Compliance of Section III – Evaluation Criteria;*
 - (c) its bid complied with ITB 12.1(i) – II(k) of Section II – Instruction to Bidders; and*
 - (d) its bid complied with the experience criteria (vide Clause 3(b)(ii) of Section III – Evaluation Criteria).”*




G. The Hearing

The case was called for hearing on 28 January 2020 before an IRP Panel constituted of:

Mr H. Gunesh - Vice-Chairperson

Mr A. Gathani - Member

Mr V. Mulloo - Member

On the day of the hearing, Counsel for Applicant invited the Panel to consider whether it would be possible for another constituted Panel to hear the case, as the above-mentioned Panel had already heard the earlier related **Case No: 14/19/IRP** and given a decision thereon (**Decision 13/19/IRP**).

At the request of Counsel for Applicant and Counsel for Respondent, it was agreed to fix the hearing by a differently constituted IRP Panel on 31 January 2020. We are given to understand that this is an exceptional request made in very particular circumstances and this Panel, as now constituted, has proceeded to hear the matter.

Hearing by the present differently constituted Panel was held on 31 January 2020. The IRP had earlier received the Statement of Case of the Applicant on 03 January 2020 whilst that of the Respondent had been received on 17 January 2020.

Mr. Gavin Glover, Senior Counsel and Ms Sandy Chuong, Counsel appeared for the Applicant, whereas Mr. K. Colunday, Counsel, appeared for the Respondent.

H. Findings

The Grounds for Review are at Section F of this Report. To arrive at its findings and conclusion, the Panel had at its disposal the Case of the Applicant, the Case in Defence from the Respondent as well as the Bid Document, the first and second Bid Evaluation Reports and the Bids of Applicant and the Successful Bidder as well as related documentation from the CWA.

(i) Business Registration Card and Trade Licence

Under the Eligibility Criteria spelt out of Subsection 4.1.2 of Section III Evaluation Criteria bidders must amongst others have a Business Registration Card and a Valid Trade Licence.

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The Successful Bidder has submitted its Business Registration Card and a Valid Trading Licence.

The nature of business mentioned in the Business Registration Card is 'Hardware shop not having the right to sell cement and iron and steel bars' and 'Dealer in motor vehicles and spare parts and tyres'. The Panel considers that the sale of water meters, similarly to sale of measuring equipment like electricity meters and other measuring equipment, qualifies for trading by a hardware shop. Moreover, there is no separate classified trade category listed for the sale of water meters in the Trade Schedule of the Local Government Act.

The Panel therefore, does not agree with the contention of Applicant that the procurement of water meters falls outside the ambit of the Business Card and Trade Licence of the successful bidder.

(ii) Experience of the Successful Bidder

The Bid Document requires, amongst others, that:

- (i) The manufacturer must have at least 5 years in manufacturing a similar type of good for which the Invitation of Bids is issued.
- (ii) Where the bidder is a trader proposing goods duly authorized 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.

The Applicant contends that the successful bidder could not or does not have at least five years of experience in manufacturing a similar type of good for which the Invitation of Bids is issued and could not or does not have experience in handling orders of similar value and providing support back-up from manufacturers of the goods given that the successful bidder's nature of business is not related to the procurement of the items under the present bidding exercise.

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The Panel finds that the successful bidder has been supplying cold water meters to the CWA over the last five years and the manufacturer has the capability and experience in manufacturing of water meters, including cold water meters. It is further considered that the Successful Bidder has the necessary experience and capability to handle this order and provide support back-up from the manufacturer.

(iii) Constitution of the Bid Evaluation Committee.

The Panel has verified from CWA documents related to the first and second bid evaluation exercises and has found as follows.

The first Bid Evaluation Committee was constituted of four CWA officers, none of whom formed part of the reconstituted Bid Evaluation Committee.

New personnel constituted the fresh 3 person Bid Evaluation Committee, chaired by a Legal Metrologist from the Ministry of Commerce and Consumer Protection and assisted by two CWA officers, who were not part of the first Bid Evaluation Committee. The two CWA officers normally form part of the CWA Procurement Committee, which amongst others examines bid evaluation reports and makes recommendation to the CWA Board for approval of award of contract; the Procurement Committee does not evaluate bids.

However, in any event, the two CWA officers declared their interest and did not participate in the consideration/discussion of the Bid Evaluation Report for the procurement of 50,000 cold water meters. This is clearly recorded in the Minutes of Meeting of the Procurement Committee.

This Panel therefore concludes that the constitution of the fresh Bid Evaluation Committee and the processing of the Bid Evaluation Report are not flawed.

(iv) Compliance with requirements of Bids Documents.

The Applicant has taken cognizance of the reply of the Public Body to its Challenge dated 27th December 2019 and maintains that the bid of the successful bidder failed to comply with all the requirements of the bidding documents. The Applicant also



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maintains that its bid was fully compliant with all the requirements of the bidding documents in that:

- (a) it has submitted Test Reports and information on the meters in compliance with the bidding documents;
- (b) its bid complied with Clause 4 (1.4) Technical Compliance of Section III – Evaluation Criteria;
- (c) its bid complied with ITB 12.1(i) – II(k) of Section II – Instruction to Bidders; and
- (d) its bid complied with the experience criteria (vide Clause 3(b)(ii) of Section III – Evaluation Criteria).

It is to be noted that in its Statement of Defence, the Respondent has detailed, with evidence, the shortcomings in the Applicant's Bid which led to that bid being declared non-responsive. Apart from maintaining that its Bid is fully compliant, the Applicant does not bring any factual evidence or argument to support the same and refute the points raised by the Respondent.

Moreover the Respondent has refuted the points raised by the Applicant in support of his case that the successful bidder was non-responsive.

After considering all the facts in hard, the Panel accepts the version of the Respondent with regard to compliance with the requirements of the Bid Document.

(v) The Lowest Evaluated Substantially Responsive Bid.

The Applicant contends that the Public Body ought to have awarded the contract to him as he considers that he is the lowest evaluated substantially responsive bidder. The Applicant is not the lowest evaluated substantially responsive bidder. The Bid from the Applicant has been considered as non-responsive in view of major deviations and shortcomings which were communicated to the Applicant in December 2019.

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I. Conclusion

In view of the above, the Panel does not find merit in this Application for Review and it hereby dismisses the same.



Chairperson
(H. Lassemillante)



Member
(R. Mungra)



Member
(A.K. Namdarkhan)

Dated: 06 February 2020



