

Independent Review Panel

Decision No. 01/25

In the matter of:

Leal Communications & Informatics Ltd

(Applicant)

v/s

**Ministry of Blue Economy, Marine Resources,
Fisheries and Shipping (Shipping Division)**

(Respondent)

(Cause No. 19/24/IRP)



Decision

A. History of the case

On 1st April 2024, the Respondent Ministry (also “Public Body”) invited bids through Open Advertisement Bidding (OAB) Method whereby bidders were invited to submit their bids on the e-Procurement system Reference: **MOBE/Q67/2023-24/OAB3V2-Procurement of Computerised Information System for Shipping Division.**

The closing date for submission of bids was scheduled for 18th July 2024.

Six (6) bids were received. The Applicant was one of the bidders.

B. Evaluation

A Bid Evaluation Committee (BEC) was set up to evaluate the bids received and to identify the lowest evaluated substantially responsive bid and the Report of the BEC was issued in early November 2024.

C. Notification of Award

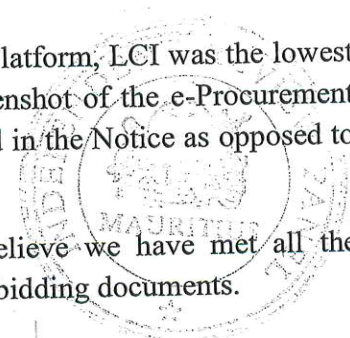
On 27th November 2024, the Respondent informed Leal Communications & Informatics Ltd that an evaluation of the bids received had been carried out and the particulars of the Successful Bidder are as given hereunder:

Services	Name of Bidder	Address	Amount (Rs.) Contract Price (VAT Excl)
Procurement of Computerised Information System for Shipping Division	Mauritius Network Services Ltd	Silicon Avenue, Cybercity, Ebene 72201	19,795,853.00

D. Challenge

On 29th November 2024, the Applicant challenged the procurement proceedings on the following grounds:

- As per the bid opening results published on e-Procurement Platform, LCI was the lowest bidder. We also note as per the annexed document, a screenshot of the e-Procurement Platform, that there is a sizeable error in the price mentioned in the Notice as opposed to the e-Procurement Platform.
- LCI's bid was also substantially responsive since we believe we have met all the qualifications criteria and technical specifications as per the bidding documents.



E. Reply to Challenge

On 6th December 2024, the Respondent, in reply to the Challenge by the Applicant, stated that:

(a) As per the bid opening results published on the e-Procurement Platform, LCI was the lowest bidder. We also note as per the annexed document, a screenshot of the e-Procurement Platform, that there is a sizeable error in the price mentioned in the Notice as opposed to the e-Procurement Platform.

Response:

As at closing date, six (6) bids were received as follows:

Bidder	Total Price Quoted (Rs) Excl. VAT
Leal Communications & Informatics Ltd	10,682,500.00
State Informatics Ltd	24,816,506.10
Zapproach Ltd	12,001,120.00
Mauritius Network Services Ltd	34,239,597.00*
Professional Data Management Services Limited	15,941,545.00
B-Hub Consulting Co. Ltd	16,400,000.00

*Note: In a letter dated 17 July 2024 attached to the tender submitted, Mauritius Network Services Ltd has informed that the price quoted, that is, Rs 34,239,597.00, comprises implementation cost of Rs 19,795,853.00 and maintenance cost of Rs 14,443,744.00

Therefore, the Ministry has awarded the contract to Mauritius Network Services Ltd for the implementation cost only, amounting to Rs 19,795,853.00 (Excl. VAT)

(b) LCI's bid was also substantially responsive since we believe we have met all the qualifications criteria and technical specifications as per the bidding documents.

As per bidding document, all bidders were required to adhere to the requirements as outlined in the various "Instructions to Bidders". An evaluation of the bids revealed that Leal Communications & Informatics Ltd fulfilled all the requirements outlined in Instructions to Bidders 6.5, except for the condition requiring the bidder to have implemented or provided software maintenance services for an information system used by a government authority responsible for maritime administration within the past five years. Leal Communications & Informatics Ltd was requested to provide a detailed testimonial regarding the project it has listed in its proposal: Commission de l'Océan Indien. The testimonial, submitted on 30 August 2024, did not demonstrate that Leal Communications & Informatics Ltd had implemented or provided any software maintenance services of a government-managed information system related to maritime administration. The scope of works is more related to the delivery of related to maritime administration. The scope of works is more related to the delivery of hardware rather than

implementation/maintenance of an Information System in the maritime sector. As a result, it was noted that Leal Communications & Informatics Ltd did not satisfy the criteria.

F. Grounds for Review

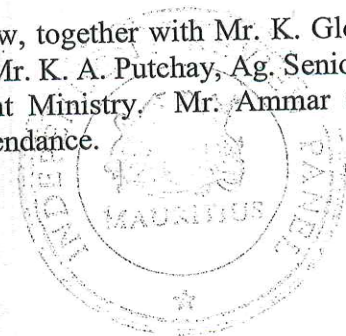
On 11th December 2024, the Applicant seized the Independent Review Panel for review on the following grounds:

1. The Public Body has failed to carry out a proper evaluation and assessment of the bids when it selected the bid of Mauritius Network Services Ltd whose bid price is Rs.19,975,853.00 (Excluding Vat) and which is Rs.9,293,353.00 more expensive than the bid of Leal Communications & Informatics Ltd.
2. The bid of Leal Communications & Informatics Ltd, whose bid price is Rs.10,682,500.00 (Excluding Vat) and being the lowest substantially evaluated responsive bid, should have been selected for award.
3. The bid of Leal Communications & Informatics Ltd meets all the qualifications criteria and technical specifications as required by the bidding documents, inasmuch as following the request from the Public Body by an email dated 29th August 2024 and replied on 30th August 2024, the Applicant submitted the requested testimonial, including the scope of work, with regards to the maritime related work performed for its client Commission de L'Océan Indien. The said testimonial demonstrated that the Applicant had indeed provided and implemented software systems for maritime administration, being the Maritime Awareness System at the Regional Maritime Information Fusion Centre and Maritime Collaboration Software Platform at the Regional Coordination of Operation Centre. Therefore, its bid was substantially responsive.
4. As regards to the reply of the Public Body to the Applicant's challenge contained in the letter dated 6th December 2024, the Applicant maintains that its bid was the lowest substantially evaluated responsive one and that it should have been awarded the contract.

G. The Hearing

The Hearing was held on Monday 30th December, 2024. There is on record a Statement of Case and a Statement of Defence filed by the Applicant and Respondent respectively.

The Applicant was represented by Mr Brian Glover, Barrister-at-Law, together with Mr. K. Glover of Counsel instructed by Mr. Jaykar Gujadhur, Senior Attorney, whilst Mr. K. A. Putchay, Ag. Senior State Counsel, instructed by State Attorney, represented the Respondent Ministry. Mr. Ammar Oozeer appeared for the successful bidder, whose representatives were in attendance.



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H. Findings

This matter comes to us after an unusually protracted procurement process. The tender was launched on 1st April 2024, the evaluation completed in early November 2024, and the notification of award to the proposed selected bidder was issued by the Ministry on 27th November 2024.

Leal Communications & Informatics Ltd (“LCI” for short) promptly challenged on 29th November 2024, with the chief executive of the Ministry, the proposed award to Mauritius Network Services Ltd (“MNS”).

The Ministry replied to the challenge one day late but LCI has lodged the present Application for Review within the statutory time-frame, that is, within 7 days from the date on which the public body’s chief executive should have replied.

The Reply to Challenge by the Ministry, issued on 6th December 2024, centres on the fact that LCI’s bid and documents submitted afterwards, at the request of the Ministry, were not in absolute compliance with one aspect of the ITB 6.5 (thus, ostensibly, its accompanying BDS). In the words of the Ministry, LCI’s bid *‘fulfilled all the requirements outlined in Instructions to Bidders 6.5, except for the condition requiring the bidder to have implemented or provided software maintenance services for an Information system used by a government authority responsible for maritime administration within the past five years.’*

That official response, expressed in the Reply to Challenge, is in full accord with, or is as near as can be, to the findings-comments of the Bid Evaluation Committee (“BEC”). However, we must remark that the Statement of Defence dated 23rd December 2024 attempts to go beyond what had been expressed in the said Reply.

We must observe at this juncture that, although it is to be assessed on a case-to-case basis and especially in favour of Applicants, it is not expected that public bodies - which have with them all the material in the procurement proceedings or have adequate access thereto from the Central Procurement Board in the case of major contracts - are to alter their position regarding matters, or revisit their decisions or otherwise lend support *ex post facto* by raising new matters which had not formed the basis of their decision being challenged before the Panel. It would, we feel, be tantamount to act while being *functus officio* (that is, when a function has been performed, a decision reached, and the task completed).

The Panel is tasked with reviewing a decision taken by the public body (usually one bound to the report of bid evaluation committees) and is not a forum to introduce new defences so to speak.

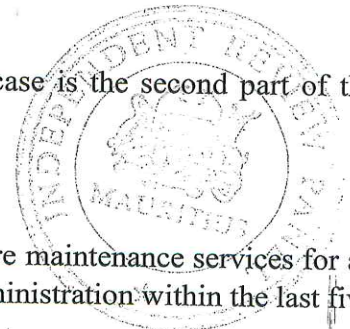
We will, therefore, confine our review to what had been expressed in the Bid Evaluation Report.

The BDS

The relevant entry in the Bidding Documents which is central to this case is the second part of the Bidding(*sic*) Data Sheet (BDS) to ITB 6.5(b) which reads:

(2) Reference Sites:

No. reference sites where the bidder has implemented or provided software maintenance services for an Information system used by a government body in charge of maritime administration within the last five years.



- f) On the whole, the impugned findings by the BEC were unreasonable and fell foul of the long-established principles of public and administrative law.

We find *in fine* that LCI's bid did not deviate from BDS 6.5 on the grounds advanced by the BEC, and there is, accordingly, no issue as to whether any deviation would be major or minor in nature. We also consider that there had been no need to seek the clarifications as was done on 29th August 2024 by the secretary of the Departmental Bid Committee.

I. Conclusion

That the factual assessment of the 2020 Testimonial was unreasonable in law is sufficient to make this Application for Review one which is fit for this Panel to exercise its powers and recommend a re-evaluation of the bids by a differently-constituted bid evaluation committee.

It is to be expected that all members of the bid evaluation committee in the upcoming exercise will read, ponder, assess and evaluate all documents submitted by the bidders, and resist any inclination to practise a 'division of labour' of sorts; a committee sits as one body responsible for a concerted, collective and collegial decision arrived at by one and all.

We order accordingly.

J. Observations

Customarily when ordering a re-evaluation of bids, this Panel avoids making observations that might impact a subsequent evaluation exercise. However, this is a fitting case for us to make known our views, in anticipation as it were, given the tenor of the Ministry's pleaded case (Statement of Defence dated 23rd December 2024).

We will restrict ourselves to one particular matter the Ministry sought to make a live issue before us: that the Indian Ocean Commission does not qualify as a government body for the purposes of BDS 6.5.

This case has been yet another iteration of public bodies tendency to get stranded because of overly complicated and convoluted wordings which too often results in an erratic play on those words to justify a decision after the event. As regards 'maritime administration, exchanges were held between Counsel during the hearing as to whether the testimonials submitted on behalf of MNS were sound, and even whether our Ports Authority is an agency dealing in maritime administration.

We remind public bodies that the approach they take regarding such essential bid requirements must always possess characteristics nurturing consistency of interpretation. Bidders can legitimately expect that the wordings used by the client public body they hope to supply reflect an understanding that is sensible and appropriate for the field or industry, and not subject to open-ended or obscure interpretations.

In this particular case, one may ask whether, say, a contractor that devised a naval information system for the British Royal Navy or the French Marine national or the US Navy, tracking warships would not qualify because the word 'naval' is now exclusively used for military purposes and not 'maritime' in nature. We firmly believe that public bodies should always adopt a purposive approach in their devising of the bid requirements and in the interpretation, by the bid evaluation committees on their behalf, of the public bodies' own requirements during evaluation.

In that vein, we view that the purpose of the present bid can include works carried for a 'maritime related' arm of the Indian Ocean Commission.

One may consider the implications or repercussions of giving too restrictive a meaning to the phrase “government body” (presumably to be equated with “government authority” in the 29th August 2024 e-mail, and to “government-managed” in the Reply to Challenge dated 6th December 2024). For instance, we think of a major global port such as Tokyo in Japan. It could be managed by a municipal authority, a provincial one, or a national one, that is, the central government.

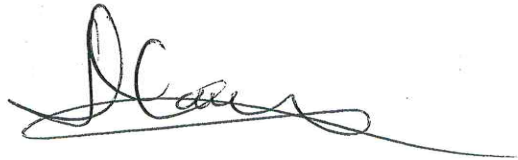
Taken even further, one may consider a major hub in a ‘federation-style’ country in which ‘nations’ or states have come together to join a commonwealth of states, a union or federation. We take the example of the Port of Los Angeles. It can be governed at the municipal or county level, or state (California) level, or federal (equivalent to the United States’ central government) level.

If “sub-central government” ‘authorities’ would be acceptable in the above examples, there is no good cause to exclude multi-government/supra-national/international entities formed through treaties or other forms of international law instruments entered into by countries (Member States) – the examples of those are countless and include the European Union, the SADC, the UN, and the Indian Ocean Commission.

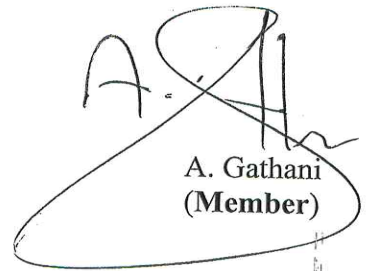
We consider that the purposive meaning to be given in the present exercise is simply that BDS 6.5(b) requires a testimonial about works carried out for a public entity as opposed to a private client.



A. K. Namdarkhan
(Member)



J. Ramano
(Chairperson)



A. Gathani
(Member)

Dated: 9th January 2025



