

SICPA Securities Solutions SA Switzerland - **Complainant**

Vs.

Ministry of Finance & Economic Planning (MOFEP) - **Respondent**

Tender:

Tender No. MOFEP/TSS/05/2010 (Tender for the supply of Tax Stamps Systems)

Petition by Complainant – SICPA Securities Solutions SA Switzerland (SICPA) dated 4th July, 2011 for administrative review against the Ministry of Finance and Economic Planning (MOFEP) for wrongful elimination at technical evaluation stage of the tender process for the procurement of Tax Stamp Systems.

BACKGROUND

It is the case of the Complainant (SICPA), that it participated in a tender by the Respondent, Ministry of Finance & Economic Planning (MOFEP) for the procurement of Tax Stamp Systems, a complete systems solution using Tax Stamps to address illicit trade in cigarettes, alcoholic and non-alcoholic beverages.

In May, 2011, Complainant received a letter from the Respondent eliminating it at the technical evaluation stage of the tender process with the reason that its proposal failed to meet the requirements of MOFEP.

Complainant contended that prior to the request and approval of the Public Procurement Authority to the Respondent to use restricted tendering for this project; it had proposed a project to MOFEP for governmental tax collection and volume control system with a fully integrated authentication functionality to resolve illicit trade in cigarettes, alcoholic and non-alcoholic beverages. Subsequent to this, a Memorandum of Understanding (MOU) and a Tax Stamp Systems Agreement had been signed between Complainant and the then Revenue Agencies Governing Board, which documents were pending the signature of the Minister of Finance.

In view of the specialized nature of the assignment and in compliance with the Public Procurement Act, 2003 (Act 663), Respondent (two (2) years later in January 2010) identified three major service providers in the industry - Messrs. De La Rue Ltd., Authentix Ltd. and SICPA Product Security SA for a restricted tender.

The Complainant recognizing that though this turn of events put it at a disadvantage, having already exposed its technical and financial proposal, all the same, complied and participated in the restricted tender for the supply of a Tax Stamp System (a complete system solution using Tax Stamps to address the illicit trade in cigarettes, alcoholic and non-alcoholic beverages). Complainant contends that it did so, confident that its earlier submissions had met all technical and legal requirements to the point of drawing up an agreement for execution. Complainant was surprised therefore when a year later in May 2011, it received a letter from the Respondent announcing its elimination it at the technical evaluation stage of the bidding process, with the reason that its proposal had failed to meet the Ministry's requirements.

By letter dated 6th June 2011, the Complainant expressed its grievance to the Respondent, requesting for a meeting for clarification per Clause 23 of the Instructions to Bidders (ITB). Complainant contended that its disqualification at the technical evaluation stage (first stage)

of the two-stage tender process was unwarranted in view of its track record as the world's leader of integrated security solutions for comprehensive control production, importation, distribution and tax status of excise and other products. Complainant further contended that it was a unique provider of governmental tax remediation platform on an international scale. To further corroborate its technical competence and expertise, Complainant further indicated that its SICPATRACE® solution was operational and had been implemented in a number of States in the US and other countries worldwide (Brazil, Malaysia, Turkey, Canada and Morocco). With this much expertise, Complainant believed there could not be divergences of such magnitude to render its bid so unresponsive as to be disqualified at the technical (first stage) of the two-stage tender process. Complainant insisted on further and better particulars from MOFEP regarding the basis on which its proposal 'failed' to meet the tender requirements, requesting permission to demonstrate its proposed platform since in its opinion, there was clearly a misunderstanding of its system if it was being eliminated at the technical stage. The Complainant therefore requested MOFEP to review the Tender Evaluation results.

The Respondent on its part contended that though Complainant had in the past promoted the project, by accepting to participate in the restricted tender, it had waived any rights purported to have accrued under its previous negotiations with Government. Secondly, that convening a clarification meeting was discretionary under the Standard Bidding Documents. Moreover, that criteria listed for the first stage bidding required a minimum of 70 points to qualify a bidder to the 2nd stage. The evaluation procedure involved a scoring of points for each technical category. That Complainant had failed to attain the minimum score in order to qualify to the 2nd stage.

From the foregoing, the Respondent declined to conduct the clarification meeting requested. By a letter dated 4th July, 2011, to the PPA, the Complainant sought administrative review to resolve this matter.

ISSUES

Issues considered by the Appeals & Complaints Panel were as follows:-

- i. Whether the Complainant was duly disqualified at the first stage evaluation process;
- ii. Whether the Respondent was justified in adopting the restricted tendering method;
- iii. Whether the Respondent was obliged to review the bid evaluation results and invite Complainant for a clarification meeting.

CASE DELIBERATION/FINDINGS

1. To assist in its determination of whether the Complainant was duly disqualified at the technical evaluation stage, the Panel studied the Standard Bidding Document and the Tender Evaluation Report. Members considered the weighting criteria used for the technical evaluation, and some were of the opinion that the weighting scores adopted were not properly aligned to the kind of technical expertise or competence sought. That too much weighting had been allocated to the Adequacy of Methodology and Work (60%) compared with 15% allocated to General & Specific Experience of the Firm. In view of the fact that it was at the Respondent's discretion to determine, set and pre-disclose the most suitable criteria in the tender documents that would draw out the best possible solution, the Panel did not explore this line of argument further.

2. The Complainant scored low on the Terms of Reference (TOR) component, having failed to propose a tax stamp with the multiple overt and covert security features required i.e. MICROPRINT, Guilloche Pattern and Serialized code, which the other two bidders duly provided. These features were considered critical by the Respondent, considering the nature and sources of excisable goods imported, smuggled or diverted. Failure to incorporate these features in the design of SICPA Secure Track and Trace Stamp was a deviation from the technical requirements (ref. Summary of Technical Evaluation on page 17 of the Technical Evaluation Report dated August 2010).
3. Further to that, by submitting to the restricted tendering procedure, Complainant had waived any rights purported to have accrued under any previous negotiations with Government.
4. Consequently, Respondent had not breached any rules to warrant setting the Evaluation Report aside and ordering a re-evaluation.

DECISION

1. The Complainant's product failed to incorporate particular overt and covert security features required by the Respondent, which were duly provided for by the other two competing tenderers.
2. Having submitted to the restricted tender procedure, the Complainant waived any rights purported to have accrued under any previous negotiations with Government on the Project.
3. On a close study of the tender documents, the Respondent had not breached any rules to warrant setting the Evaluation Report aside and ordering a re-evaluation.
4. Case decided in favour of the Respondent.