



**Millennium
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Economic Growth and Poverty Reduction



Our ref: 5130200-06/ICB/01/18

6th April 2018

Karsten Schroder
Senior Sales Manager
MTE Meter Test Equipment AG
Dammstrasse 16
CH-6300 Zug
Switzerland.

Dear Sir,

RE: SUPPLY OF 6 UNITS PORTABLE TEST SYSTEMS

We refer to your Protest Letter dated 20th March, 2018 on the above subject matter.

We received your earlier Letter dated 15th March 2018, requesting for a debriefing. MiDA responded to the Letter on 19th March 2018.

The independent Bid Review Panel found that "Messrs MTE Meter Test Equipment AG Bid Security did not include a corresponding local Financial Institution as required by ITB 22.1 (b)."

ITB Clause 22.1 (b) states:

The Bid Security shall be in the amount specified in the **BDS** and denominated only in US\$ or in local currency of the Purchaser's country, and shall:

- (b) be issued by a reputable institution selected by the Bidder and located in any eligible country (as determined in accordance with ITB Clause 4); if the institution issuing the bank guarantee is located outside Purchaser's country, it shall have a correspondent financial institution located within Purchaser's country to make it enforceable;

The Bid Security provided by MTE Meter Test Equipment was issued directly by Credit Suisse (Switzerland) Limited. There was no evidence of a correspondent financial institution in the Purchaser's country (Ghana) to make it enforceable.

Holistic Review of All Documentation

MiDA contends that when submitting a Bid in response to a Bidding Document, it is imperative that the Bidding Document is read in its entirety in order to comprehensively understand the requirements for Bid Submission.

BSF 6, Bidder Information Form, states the documents which are used for the purposes of Post-Qualification. BSF 6 states in pertinent part the following:

“The information filled in above by Bidders shall be used for purposes of post-qualification”.

Therefore by clearly specifying information which will be used for post-qualification, it is clear that any other documentation which is required must be provided as part of the pre-qualification. In this regard, the bank guarantee from the corresponding financial institution ought to have been provided in order for MiDA to duly assess compliance with the requirements. MiDA could not have adequately assessed compliance with ITB Clause 22.1 (b) without this information.

When reviewing the Bidding Document as a whole it is clear that MiDA's interpretation of the requirement is the only one which ought to be applied. In order to attain a reasonable interpretation and therefore a valid interpretation, Clause 22.1(b) must be understood within the context of the entire Bidding Document and also be buttressed by international practice.

It is noteworthy to mention that all other Bidders supplied the requisite information. Therefore, it appears that based on the international practice in this area, it is understood that the information pertaining to the local financial institution ought to be presented as part of the Bid and at the time of Bid Submission.

In summation, interpretation of the provisions of the Bidding Document must be consistent with the entire document and read together as a whole and in a reasonable manner in order to fully comprehend the requirements.

Information Deficiency

It is also important to note that where a Bid has a significant information deficiency, it may be found to be unacceptable and excluded from further consideration. In this instance, the provision of information that the bank guarantee was available in a correspondent financial institution in Ghana was significant as it went to the foundation of the matter as to whether the guarantee could be called or not.

The solicitation did not contemplate a situation in which a Bidder could only provide information on the institution providing the Bank guarantee without a correspondent financial institution in Ghana. This information was critical in order for MiDA to make a determination as to the validity of the Bank guarantee. This is a material term of the Bidding Document and if a Bid fails to comply with such a material term, then it may be deemed to be unacceptable and disqualified from an award.

In addition we would also refer you to the following clauses in the IFB, Instructions to Bidders:

- 6.4 The Bidder is expected to examine all instructions, forms, terms, and specifications, inclusive of environmental, social and health and safety requirements, in the Bidding Document. Failure to furnish all information or documentation required by the Bidding Document may result in the rejection of the Bid.
- 7.1 A prospective Bidder requiring any clarification of the Bidding Document shall contact the Purchaser as specified in the BDS. The Purchaser shall forward copies of its response to all those who have acquired the Bidding Document directly from it, including a description of the inquiry but without identifying its source.

You will see from ITB clause 6.4 that it is the responsibility of the Bidder to examine all instructions in the Bidding Document. It is also the Bidder's responsibility to ensure the completeness of the Bid and in the event that any issue is not clear, the Bidder should ask a clarification question in accordance with ITB clause 7.1. No such clarification question was received from MTE Test Equipment.

ITB Clause 22.2 provides the following:

"Any Bid not accompanied by a substantially responsive Bid Security (if required) in accordance with ITB Clause 22, shall be rejected by the Purchaser as nonresponsive"

Since it is a Bidder's duty to submit an adequately compliant and substantially responsive proposal, it risks that its Bid will be evaluated unfavorably when it fails to do so. In such instance, there is no basis for questioning the Bid Review Panel's decision to exclude MTE Test Equipment from the Bidding process. Therefore, the Review Panel acted in accordance with ITB Clause 22.2, by rejecting MTE Meter Test Equipment AG's Bid.

Based on the foregoing, it may be concluded that MTE Meter Test Equipment AG's Bid was not a substantially responsive Bid in accordance with ITB 31.1 and did not conform to all the terms, conditions, and specifications of the Bidding Document.

Barclays Bank Letter

We do acknowledge the receipt on 22nd March, of a Letter from Barclays Bank Ghana, without any liability on their part, with regard the Bid Security issued by Credit Suisse, but this was delivered almost three (3) weeks after the submission date of 2nd March, 2018 and so cannot be accepted as part of your submission of the Bid for evaluation.

Bid Submission Form 1

In Bid Submission Form1, the following is clearly stated and MTE Test Equipment duly completed this form:

"We understand that you are not bound to accept the lowest evaluated Bid or any other Bid that you may receive".

Therefore, MTE Test Equipment ought not to raise the argument that their bid is substantially lower than the bid of Messrs T&D Power Solutions Ltd., for which reason MTE Test Equipment ought to be selected.

Conclusion

In the circumstances MiDA maintains the position that the Bid Review Panel acted correctly and rejected your Bid in accordance with the Instructions to Bidders in the IFB. MTE Test Equipment has failed to show that MiDA violated the procurement rules, acted in bad faith or that their determination was unreasonable in the light of the overall Bidding Document. The decision of the Bid Review Panel was reasonable in the circumstances and consistent with the requirements, international practice and the applicable procurement rules.

We thank you for your interest in the Ghana Power Compact and trust that you will continue to compete for procurements in the future.

In accordance with Rule 2, of the BCS, you may file a Protest on or before Friday, April 13th, 2018.

Yours faithfully,



Martin Eson-Benjamin
Chief Executive Officer

Cc: General Counsel – MiDA
Procurement Director – MiDA
Procurement Agent Manager