Independent Review Panel

Decision No.06/19

In the matter of:

A.E Patel & Co Ltd

(Applicant)

v/s

Ministry of Health and Quality of Life

(Respondent)

(Cause No. 04/19/IRP)

Decision
A. **History of the case**

The Ministry of Health and Quality of Life ("Ministry" or "Respondent") opened an invitation for bids for the procurement of project of the "annual supply of cardiovascular Injectables."

The Respondent issued an addendum letter dated the 29th October 2018 informing the bidders that “for security of supply..., will be split between the two bidders with the lowest evaluated substantially responsive offers.” The Applicant submitted its list on the 14 November 2018.

By way of a letter dated 21 February 2019 the Respondent informed the Applicant, A.E. patel & Co Ltd, that his bid had not been retained. Thus, the Respondent annexed the particulars of the successful bidder as being PNL (Pharmacie Nouvelle Ltd) whose bid item no, CV1 – A22 Tenecteplase for the amount of Rs 33,746,835.00 had been retained.

Further, the Respondent informed the Applicant that as unsatisfied bidder, he could the challenge the award within 7 days from the date of notification.

On the 26 February 2019, the Applicant challenged the decision of the Respondent. The Respondent replied to the Applicant in a letter dated the 1st March 2019. The letter specified that the Ministry had launched a tender for cardiovascular injectables that is, item CV1 – A22 Tenecteplase or CVI – A22A Reteplase.

The Ministry then chose item CV1 – A22 Tenecteplase. On the other hand, the Applicant had bided the lowest quote for CV1 – A22A (Reteplase) only. He had not bid for item CV1 – A22A despite the fact that, to it, the Respondent has clearly spelt out that it would procure items CV1 – A22 and item CV1 – A22A.

The Applicant, being unsatisfied by the decision of the Respondent made an application for review to the IRP praying that the Panel would

(a) Prohibit the Public Body – Respondent from acting or deciding in an unauthorised manner.

(b) Recommend the annulment of the unauthorised action and the unauthorised decision of the Respondent,

(c) Recommend the payment of reasonable cost incurred in participating in the bidding process whereby a legally binding contract had been awarded which in the Panel’s opinion ought to have been awarded to the Applicant.
On the 19th March 2019, the Respondent replied to the Applicant’s statement of case. It admitted that bids were received on the 14th November 2018, closing date. These bids were considered for evaluation by the Bid Evaluation Committee set up by the Respondent. The Respondent relied of the issue of the Addendum of the 29th October 2018:

“For security of supply, award or contract with regard to item CVI-A22* - Tenectaplace Inj 40-50 mg (10,000 units/vial) powder for reconstitution, etc. or CVI – A22*(A) – Reteplase Inj 10 units per vial with prefilled syringe or diluents, etc - will be split between two bidders with the lowest evaluated substantially responsive offers."

So the Respondent averred that the procurement was required for either item CV1 – A22 or CV1 – A22(A). The Respondent averred that the Applicant could not be considered for the award of the contract since it had not quoted for item CV1 – A22. Indeed, to the Ministry, nothing precluded the Applicant from bidding for both items CV1 – A22 or CV1 – A22(A) according to the Respondent reply.

The Applicant averred in his application for review dated the 7th March 2019 that the Applicant was in a position to bid for both items. However, the mention of the word “OR” was made in the Addendum. So “OR” was construed disjunctively and not as implying similarity. Thus Applicant bided for 1 item only, the one it thought it had the best quote to make.

Later, in his reply to the Ministry, the Applicant averred that the Respondent could have informed all bidders about its ‘preference’ for item CV1 – A22 (Tenecteplace) before the bid closing date. This would have allowed the Applicant to bid for the said preferred item as well. So, Applicant concluded that the decision of the Respondent was very unfair especially considering the substantial difference in price quoted by the Applicant of some Rs 7 million.

B. Notification of Award

Through a letter dated 21 February 2019, the Public Body informed the Applicant that an evaluation of the bids received has been carried out and its bid has not been retained for award for Item CVI-A22 and the particulars of the successful bidder are given in the annex.
C. The Challenge

On 26 February 2019, the Applicant challenged the procurement on the following grounds:

(a) The Applicant has submitted the lowest bids as per the criteria required.

(b) The Addendum dated 29th October 2018 has not been respected.

D. The Reply to Challenge

On 01 March 2019, the Public Body made the following reply to the challenge:

"Please refer to your challenge dated 26 February 2019 regarding the abovementioned project.

2. The Ministry launched a tender for Cardiovascular Injectables among others:

Item CVI-A22* - Tenecteplase Inj 40-50 mg (10,000 units/vial) powder for reconstitution + prefilled syringe containing 10 ml water for injection;

OR

Item CVI-A22*A – Reteplase Inj 10 units per vial (with prefilled syringe or diluents and transfer devise)

3. The Ministry has made its choice on item CVI-A22* - Tenecteplase Inj 40-50 mg. Your challenge as per your observation is based on your bids having the lowest quote whereas in fact you have not submitted any quote for item CVI-A22* - Tenecteplase Inj 40-50 mg. It is clearly spelt out that the Ministry would procure either item CVI-A22* OR CVI-A22*A."
E. Grounds for Review

On 07 March 2019, the Applicant seized the Independent Review Panel for review on the following grounds:

1. "All bidders received an addendum letter which is dated 29th October 2018 from the Employer whereby stating that "..item CVI-A22* - Tenecteplase Inj 40-50 mg (10,000 units/vial) powder for reconstitution,... - will be split between two bidders with the lowest evaluated substantially responsive offers.

1.1 The very purpose of issuing an addendum letter is no doubt to inform all the bidders about a change in the conditions of the bid that will take place. In fact at Page 12 of the bidding documents read as follows:-

"12.2 Any addendum thus issued shall be part of the Bidding Documents pursuant to ITB Sub-Clause 10.1 and shall be communicated in writing to all who have obtained Bidding Documents directly from the Purchaser and will be binding on them. Bidders are required to immediately acknowledge receipt of any such amendment, and it will be assumed that the information contained in the amendment will have been taken into account by the Bidder in its bid.

12.3 To give prospective Bidders reasonable time in which to take the amendment into account in preparing their bids, the Purchaser shall extend, at its discretion, the deadline for submission of bids, in which case, the Purchaser will notify all Bidders by electronic mail or facsimile confirmed in writing of the extended deadline."

1.2 The Applicant was notified by way of a letter dated 21st February 2019 that its bid has not been retained. In addition to that, the Applicant is also being informed that only one successful bidder, namely "PNL" has been retained for the award.

1.3 This is in contradiction as to what has been clearly stipulated in the addendum letter which is dated the 29th October 2018.

2. The Employer replied to the challenge made by the Applicant on the 1st March 2019 whereby stating that:- "The Ministry has made its choice on item CVI-A22* - Tenecteplase Inj 40-50mg. Your challenge as per your observation is based on your bids having the lowest quote whereas in you have not submitted any quote for item CVI-A22* - Tenecteplase Inj 40-50. It is clearly spelt out that the Ministry would procure either item CVI-A22* OR CV-A22*A"
2.1 Section 5(5) of the Interpretation and General Clauses Act reads as follows:-

(5) “Or”, “other” and “otherwise” shall be construed disjunctively, and not as implying similarity unless the word “similar” or other word of like meaning is added.

2.2 The Applicant was in a position to bid for both items but since mention of the word ‘OR’ was made, thus only one item was bided."

F. Findings

This has been a very atypical Application lodged before us. We say so because it did not rest on interpretation given by a public body of the clear terms in the bidding documents or on a review of the evaluation exercise but it was about the interpretation of the very terms of the bidding documents and it will be clear to all that the thinking of the Ministry’s staff was hardly reflected in the terms they have used in the documents and in the addendum.

For convenience, we again reproduce the relevant extract from the addendum, with our emphasis:

“For security of supply, award or contract with regard to item CVI-A22* - Tenectaplace Inj 40-50 mg (10,000 units/vial) powder for reconstitution, etc. or CVI – A22*(A) – Replease Inj 10 units per vial with prefilled syringe or diluents, etc - will be split between two bidders with the lowest evaluated substantially responsive offers.”

Now, the Applicant understood this to mean that those two items, Tenectaplace and Replease, will be split between two bidders. The Respondent, on the other hand, states that it meant that it will first choose between the two products and then choose the two responsive bidders for that bidders. It goes without saying that both sides saw their conclusion and understanding to be clear.

However, after due consideration, this is not, to us, the English meaning of that infelicitously drafted long sentence. Taken on its own, it means that Ministry would be buying both products and for either of the two items, the Ministry will split the bid for that chosen item between two suppliers making a total of three suppliers for the two products. This interpretation is closer to that of the Applicant and, presumably, that of the successful bidder which also bid for one the two items – luckily for it, the chosen item.

Such ambiguity in the addendum could easily have been resolved by having separate sentences to clearly express the thought process of the Ministry, or as suggested by the Applicant to use the word ‘either’ as commonly accompanies the word ‘or’. 
Mr Beeharry, Principal State Counsel, appearing for the Respondent in his able submission on that point argued that it was always open to the Applicant to seek clarification from the Ministry. However, we believe that one can hardly tax the Applicant for failing to do so when the addendum in itself does not, on the face of it, give rise to any ambiguity and such ambiguity only came to light when the Ministry rejected Applicant’s bid and responded to the challenge under section 43 of the Public Procurement Act 2006 (the “Act”). One needs to be in doubt to seek clarifications.

Be that as it may, upon queries from the Panel, the Ministry guided us to the Bidding Documents Part V Schedule of Requirements (the “Schedule”). In the table of requirements, under the column ‘ITEM NO.’ no less, without any particular emphasis in bold text or italics, we can read ‘Or’ before items CVI – A22*(A) and CVI-A23*. We include below a small extract of the Schedule for illustration purposes; the bold text is from the Schedule as drafted.

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>DESCRIPTION OF ITEMS</th>
<th>QUANTITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>CVI-A22*</td>
<td>Tenectaplas... (In 2-3 instalments)</td>
<td>1,700</td>
</tr>
<tr>
<td>Or CVI-A22*(A)</td>
<td>Reteplase... (In 2-3 instalments)</td>
<td>1,700</td>
</tr>
<tr>
<td>Or CVI-A23*</td>
<td>Tranexamic Acid... (In 2-3 instalments)</td>
<td>17,000</td>
</tr>
</tbody>
</table>

Further below, we can read, in bold, ‘Non Compliance (sic) with the above shall lead to rejection of bids’. Clearly, this means that a bidder can bid for either CVI-A22* OR CVI-A22*(A) OR CVI-A23* which speaks volumes about the argument of the Ministry that the Applicant could have bid for both and thereby risk an outright rejection of its bid. Rather, it seems to us that it invited bidders to, effectively, play Russian roulette and then the Bid Evaluation Committee would decide which items it prefers as per the bids received. We will address the Schedule further below since further issues have arisen from our reading.

Notwithstanding this further conundrum which has been presented as the explanation of the context of the whole set of bidding documents and of the addendum, the saving grace for the Ministry, on this one issue of ability to choose between items, might come from the fact that Tenectaplasle and Reteplase are substitutes – a fact hardly challenged by the parties. The Ministry cannot be taken to have intended to buy surplus to its requirements, say, 3,400 units when it needed 1,700 units of Tenectaplasle or 1,700 units of Reteplase. When read together with the addendum - one that is not aimed at overriding or modifying the bidding document but to inform bidders of a new decision of the Ministry in the context of the bidding.
document – the Panel agrees with the Ministry that it would have to choose between Tenectaplas and Reteplose.

Yet, the same conclusion must necessarily be made in respect of the other (and last) ‘Or’ item in the Schedule- CVI-A23* Tranexamic Acid. Could the Ministry, having indicated ‘Or’ in the Schedule and relying on that word to justify its ability to choose between Tenectaplas and Reteplose, then go on and buy Tranexamic Acid as well? The answer is a resounding no but this is precisely what it did.

Indeed, there were two bidders for Tenectaplas, one bidder for Reteplose (Applicant) and four bidders for Tranexamic Acid. We need not concern ourselves, in this Application, with the fact that the Ministry’s staff seemingly breached its own Schedule by selecting two of the three ‘Or’ items and buying Tranexamic Acid as well, but a troubling fact was that PNL had bid for more than one of those three items. A compelling argument could then be made for its bid not being compliant which we will discuss after having provided an overview of the bidding documents.

**The Bidding Documents**

It is not often that we are called upon to resolve blatant conflicts in the various sections of bidding documents and we will, for convenience, attach the relevant extracts as an Appendix to this Decision.

(i) Instructions to Bidders (‘ITB’) 29.2 – Allows the Ministry to waive any minor ‘informality’, nonconformity or irregularity in a bidder’s bid so long as it is not prejudicial to other bidders

(ii) ITB 29.3 – defines material deviation (again, a focus is on the need to not affect competition between substantially responsive bidders).

(iii) ITB 32.3 – mentions other factors, to be defined in Bid Data Sheet (‘BDS’), apart from quoted price that will be used for evaluation.

(iv) ITB 32.4 – If the BDS relating to ITB 32.3 includes factors, then ‘quantification methods’ will then apply to those factors. A list in two parts (a) and (b) is then provided with ‘Or’ sometimes in bold large font, sometimes not.

(v) BDS 32.3 – provides a list of 17 factors to be used in the evaluation exercise but no marking scheme or score sheet or any indication at all of how those factors will be used in the evaluation process - which ones are crucial and which ones are less impactful.

There is no defined maximum marks available and weightage of each factor in the total marks available and not even the weight to be given to the crucial financial v/s technical specifications.
comparison to help bidders prepare for their bids according to the items they intend to supply.

This, in itself should raise concerns about the transparency (and validity) of the process by the Ministry and falls short when compared with the relative clarity we have consistently witnessed in Central Procurement Board bidding documents when the latter appears before us.

As such, the Panel is of the considered opinion that only price should thus be the determining factor between compliant bidders in the peculiar circumstances of this case.

(vi) BDS 32.4 – effectively **disapplies** BDS 32.3 (and ITB 32.3) by stating that the factors retained(sic) pursuant to ITB Sub-Clause 32.3 **and the quantification methods** are not applicable.

Surprisingly, this did not prevent the Ministry’s staff to then include a BDS 32.4 (a)(i)(ii) & (iii) to provide for quantification methods that BDS 32.4 has made ‘not applicable’. It provides for quantification methods for various delivery schedules.

(vii) BDS 32.4 (c) – allows bidders to bid for one or more items

This, even though the Schedule includes three ‘Or’ items. Let alone the fact that BDS 32.4(c) is in direct conflict with BDS 32.4 itself, again, we must now attempt to reconcile the thinking of the Ministry’s staff and the terms used in the Bidding Documents. The Ministry’s staff would perhaps wish that they be able to randomly include the word ‘Or’ here and there and then make convenient use of it to say that by using that word, they meant that they could buy Item A or Item B or Item C, or any two of those or all three.

To the reasonable man, which is the legal standard to be applied, even though, BDS 32.4(c) would imply that a bidder may bid for any one or more of the 24 items listed in the Schedule of Requirement, the latter itself would clearly and unequivocally invite bidders to bid for only one of CVI- A22* or CVI- A22* (A) or CVI – A23*.

To find otherwise would be so unreasonable that no reasonable authority would have reached this conclusion, the often-cited principle from the *Wednesbury* case handed down by the English Court of Appeal in 1948, subsequently rearticulated by Lord Diplock in the 1983 *CCSU v Minister for the Civil Service* House of Lords judgment, ‘So outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.’

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From a reading of the Bid Evaluation Report (the 'Report'), it seems that most bidders had properly understood this choice to be made between the three 'Or' items and only PNL, out of the total of six bidders for the three 'Or' items, had bid for more than one.

**Bid Evaluation Report**

a) Tenectaplas or Reteplase

We are most thankful for the documentation provided by both Applicant and Respondent and for the helpful and expert testimony of Mr Patel representing the Applicant, of the Principal Pharmacist of the Ministry and that of the representative of PNL, Mrs Yasmin Abdoula on the intricacies of CVIs and distinguishing features between Tenectaplas and Reteplase. We also take note of the preference of the Ministry for Tenectaplas by virtue of its ease of administration and that it has been openly stated that 'Reteplase is a fallback'.

Nevertheless, we do not find anything to that effect in the Bidding Documents and we cannot subscribe to the views expressed by the Ministry that Mr Patel and his company are known to deal with the Ministry and should therefore have known these facts and should have known that the Ministry floats tenders for different items and chooses between them and has done so for years. A breach of the rules and of the law done over a number years cannot render it proper, and each set of Bidding Documents should always be clear and complete and independent from their predecessors so that, amongst other things, new entrants can compete.

In the present matter, BDS 32.4 having effectively killed off any transparent or, in fact, any express evaluation criteria that could have derived from ITB and BDS 32.3, it is with no surprise that section 14 of the Report states that Technical and Financial Qualifications are not applicable.

How did the Bid Evaluation Committee choose between Tenectaplas and Reteplase? There is no visibility whatsoever from the Report save that next to item Reteplase, it is written in bold (as a remark): ‘**Action taken on CVI-A22 on the basis of suitability of Tenectaplas**’ and nothing else. This one-liner is what we will describe as the 12 million-rupee question- which is the price differential between 1,700 units of Tenectaplas sold by PNL for a quoted Rs 38 million and 1,700 units of Reteplase sold by Applicant for a quoted price of Rs 26 million. The Ministry in fact opted to buy only 1,500 (within the 25% margin of increase/decrease) units for the reduced price of Rs 33 million as published.

The other pressing concern that we have with the Report is the fact that PNL submitted a bid to provide Tenectaplas in four instalments and not the '2-3 instalments' as clearly stated in the Schedule. Again, we cannot see how this...
did not raise compliance issues as per the note found just below in the Schedule itself or any assessment of whether this amounted to a material deviation (defined above) or not. Added to this, we must emphasise that even the General Conditions of Contract Clause 11.1 reads that Delivery of the Goods must be done according to the Schedule, let alone the paradox of BDS 32.4 and 32.4 (a)(ii) & (iii) we have described above about delivery schedules. Once again, no explanation at all can be gathered from the Bid Evaluation Committee’s Report, not even addressing the issue by using the 0.5 % per week the Ministry included in BDS 32.4 (a)(ii) & (iii). What we find is simply that as a remark as to why PNL was chosen above the other bidder for Tenectaplaste, the word ‘three’ has been crossed by pen and the word ‘four’ has been written above it. Seemingly, the Report had been drafted with the wording ‘three instalments’ and later corrected and initialled.

**Conclusion**

On the whole, we cannot escape the conclusion that the whole evaluation process was clumsy at best and in normal circumstances, we would have recommended a re-evaluation of the two bids to reconsider whether the ‘preference’ of the Bid Evaluation Committee would justify a nearly Rs 12 million rupee additional expense from the Ministry’s public funds.

However, we can hardly see on what evaluation criteria (made known to bidders, as per usual practice and fairness) apart from quoted price such re-evaluation could take place. This opacity goes to the very core of these public procurement proceedings and must be combined with the various inconsistencies in the Bidding Documents as a whole that we have identified and the others we have not addressed in this Decision. As such, we are of the considered opinion and recommend that the whole of the procurement process for CVIs should purely and simply be annulled and reviewed by the Ministry and started afresh.

We most certainly do not take this decision lightly and are fully alive to the importance of keeping a stock of Cardiovascular Injections which is now running very thin as per the Report and we invite the Ministry to undertake any necessary temporary measures.

**Observations**

To us, what we have witnessed in this case has been a matter of regret and since this is supposed to be an annual tender for life-saving items, we make a humble plea to the Supervising Officer of the Ministry of Health and Quality of Life and to the Procurement Policy Office to ensure that future Bidding Documents for these goods are properly settled and allow the public officers to properly abide by their duties under section 51 of the Act and to be able to observe the rule of law and of fairness to the level expected of them.
Public officers sitting in Bid Evaluation Committee should do well to remember the inherently confidential nature of the bid evaluation process as required by law and the corresponding lack of access to it by both successful and unsatisfied bidders when preparing their case or response. Their reports should therefore be of the highest standards so that no injustice is caused to all bidders.

Bidding Documents should not be the subject of interpretation akin to the interpretation of contracts and of laws that Courts have to embark on- the Interpretation and General Clauses Act 1974 was even cited before us. They should be as clear as can be to allow as many bidders to compete for the Ministry to be supplied with the best product for the best price.

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Chairperson  
(H. Lassemillante)

Member  
A. Gathani

Member  
A.K. Namdarkhan

Date: 03 April 2019
29.2 The Purchaser may waive any minor informality, nonconformity, or irregularity in a bid that does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any Bidder.

29.3 Prior to the detailed evaluation, pursuant to ITB Clause 32, the Purchaser will determine whether each bid is of acceptable quality, is complete, and is substantially responsive to the Bidding Documents. For purposes of this determination, a substantially responsive bid is one that conforms to all the terms, conditions, and specifications of the Bidding Documents without material deviations, exceptions, objections, conditionality, or reservations. A material deviation, exception, objection, conditionality, or reservation is one that:

(i) limits in a substantial way the scope, quality, or performance of the Goods and related Services;

(ii) limits in a substantial way that is inconsistent with the Bidding Documents, the Purchaser’s rights or the successful Bidder’s obligations under the Contract; and

(iii) the acceptance of which would unfairly affect the competitive position of other Bidders who have submitted substantially responsive bids.

29.4 If a bid is not substantially responsive, it will be rejected by the Purchaser and may not subsequently be made responsive by the Bidder by correction of the nonconformity. The Purchaser’s determination of a bid’s responsiveness is to be based on the contents of the bid itself.

30. Correction of Errors

30.1 Arithmetical errors will be rectified as follows. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit or subtotal price shall prevail. If there is a discrepancy between subtotals and the total price, the total price shall be corrected. If there is a discrepancy between words and figures, the amount in words will prevail. If a Bidder does not accept the correction of errors, its bid will be rejected.

31. Conversion to Single Currency

31.1 To facilitate evaluation and comparison, the Purchaser will convert all bid prices expressed in the various currencies in which they are payable to Mauritian Rupees at the selling exchange rate established for similar transactions by the Bank of Mauritius on the closing date for submission of bids.
32. Evaluation and Comparison of Bids

32.1 The Purchaser will evaluate and compare the bids that have been determined to be substantially responsive, pursuant to ITB Clause 29.

32.2 (a) The Purchaser’s evaluation of a bid shall include custom duties and other charges, local transportation and bank charges where applicable on the basis of delivery of goods to warehouse in Mauritius, excluding VAT payable.

(b) It will however exclude and not take into account any allowance for price adjustment during the period of execution of the contract, if provided in the bid.

32.3 The Purchaser’s evaluation of a bid will take into account, in addition to the bid price quoted in accordance with ITB Sub-Clause 16.2, one or more of the following factors as specified in the BDS, and quantified in ITB Sub-Clause 32.4:

(a) delivery schedule offered in the bid;

(b) deviations in payment schedule from that specified in the Special Conditions of Contract;

(c) other specific criteria indicated in the Bid Data Sheet and/or in the Technical Specifications.

32.4 For factors retained in the Bid Data Sheet pursuant to ITB Sub-Clause 32.3, one or more of the following quantification methods will be applied, as detailed in the Bid Data Sheet:

(a) Delivery schedule.

(i) The Purchaser requires that the Health Sector Goods under these Bidding Documents shall be delivered (shipped) at the time specified in the Schedule of Requirements. The estimated time of arrival of the Health Sector Goods at the site will be calculated for each bid after allowing for reasonable international and inland transportation time. A delivery “adjustment” will be calculated for and added to each bid by applying a percentage, specified in the Bid Data Sheet, of the EXW/CIF/CIP price for each week of delay beyond the expected time of arrival specified in the Bidding Documents for evaluation purposes. No credit shall be given to early delivery.
(ii) The Health Sector Goods covered under these Bidding Documents are required to be delivered (shipped) within an acceptable range of weeks specified in the Schedule of Requirements. No credit will be given to earlier deliveries, and bids offering delivery beyond this range will be treated as nonresponsive. Within this acceptable range, an adjustment per week, as specified in the Bid Data Sheet, will be added for evaluation to the bid price of bids offering deliveries later than the earliest delivery period specified in the Schedule of Requirements.

Or

(iii) The Health Sector Goods covered under this invitation are required to be delivered (shipped) in partial shipments, as specified in the Schedule of Requirements. Bids offering deliveries earlier or later than the specified deliveries will be adjusted in the evaluation by adding to the bid price a factor equal to a percentage, specified in the Bid Data Sheet, of EXW/CIF/CIP price per week of variation from the specified delivery schedule.

(b) Deviation in payment schedule.

(i) Bidders shall state their bid price for the payment schedule outlined in the SCC. Bids will be evaluated on the basis of this base price. Bidders are, however, permitted to state an alternative payment schedule and indicate the reduction in bid price they wish to offer for such alternative payment schedule. The Purchaser may consider the alternative payment schedule offered by the selected Bidder.

or

(ii) The SCC stipulate the payment schedule offered by the Purchaser. If a bid deviates from the schedule and if such deviation is permitted in the Bid Data Sheet, the bid will be evaluated by calculating interest earned for any earlier payments involved in the terms outlined in the bid as compared with those stipulated in this invitation, at the rate per annum specified in the Bid Data Sheet.
(c) Other specific additional criteria to be considered in the evaluation and the evaluation method shall be detailed in the Bid Data Sheet and/or in the Technical Specifications.

33. **Margin of Preference**

33.1 For international bidding, domestic enterprises shall receive a margin of preference in the Bid Evaluation, as indicated in the Bid Data Sheet (BDS).

For national bidding, domestic small and medium enterprises having an annual turnover not exceeding Rs 50 million shall receive a margin of preference as indicated in the Bid Data Sheet (BDS).

33.2 Bidders from the Republic of Mauritius shall provide the necessary evidence to prove that they meet the criteria set out in the BDS, to be eligible for the preference.

33.3 The following procedure shall be used to apply the margin of preference:

(a) responsive bids shall be classified into the following groups:

- Group A: bids offered by domestic enterprises and joint ventures meeting the eligibility criteria for international bidding or bids offered by eligible domestic small and medium enterprises for national bidding, and

- Group B: all other bids, and

(b) for the purpose of further evaluation and comparison of bids only, all bids classified in Group B shall be increased by the percentage of preference allocated to those in group A.
### ITB 32.3

The following to be considered while carrying out evaluation:

1. Compliance with technical specifications
2. Soundness of documents produced (COPP, WHO-GMP)
3. Standard offered
4. Package Insert/Product Information Leaflet
5. Catalogue of product
6. Samples
7. Schedule of delivery offered
8. Shelf life offered
9. The level of stringency of pharmaceuticals laws in country of origin
10. Number of years of marketing in country of origin and in other countries
11. Reputability and experience of the manufacturer on the market for the production of the particular item and in the particular product range
12. Extra weightage will be given to reputability of suppliers.
13. The supplier's past performance near Ministry of Health & Quality of Life
14. Path of traceability to the manufacturer for wholesalers only [see ITB 7.1 (b & c)]
15. Presence of manufacturing site of the manufacturer on the EUDRA GMP or WHOPIR database or USFDA database
16. Registration with the EMEA and/or USFDA and/or SAHPRA and/or AUSTRALIAN TGA and/or HEALTH CANADA for drugs marked with an asterisk (*).
17. Registration with the Pharmacy Board of Mauritius or the DRA of a PIC country or a GCC country for drugs without an asterisk.

### ITB 32.4

The factors retained pursuant to ITB Sub-Clause 32.3 and the quantification methods are: *Not applicable.*
| ITB 32.4 (a) (i) (ii) & (iii) | Delivery schedule *[specify: relevant parameters in accordance with option selected]*.

The adjustment per week for delivery delays beyond the time specified in the Schedule of Requirements is None

Or

The adjustment per week for delivery delays beyond the range of weeks specified in the Schedule of Requirements is None

Or

The adjustment for partial shipments is None

For evaluation purposes, a rate of one-half (0.5) percent per week is a reasonable figure.

| ITB 32.4 (b)(i)& (ii) | The Purchaser *will not* accept deviations in the payment schedule in the SCC.

The percentage adjustment for payment schedule deviations is:

*zero* % per week.

| ITB 32.4 (c) | Evaluation criteria for items.

*If bids have been invited for items only, the BDS should state the following:*

Bidders may bid for any one or more items. Bids will be evaluated for each item and the Contract will comprise of parcel(s) of items awarded to the successful Bidder. A parcel is defined as a group of items as determined by the Purchaser.

<p>| ITB 33 | A margin of domestic preference <em>will not</em> apply. |</p>
<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>DESCRIPTION OF ITEMS</th>
<th>QUANTITY</th>
<th>CIP PRICE AIR</th>
<th>DELIVERY DATE</th>
<th>OFFICIAL STANDARD (BP, USP, EP)</th>
<th>MANUFACTURER, COUNTRY OF ORIGIN, MANUFACTURING SITE AND ADDRESS</th>
</tr>
</thead>
<tbody>
<tr>
<td>CVI-A16*</td>
<td>Isosorbide Dinitrate Inj. 10 mg/amp IV (In 2 Instalments)</td>
<td>15,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CVI-A17*</td>
<td>Lignocaine HCL Inj 2% x 5 ml IV (In 2-3 Instalments)</td>
<td>20,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CVI-A18*</td>
<td>Nicardipine HCL Inj 10 mg/amp IV (In 2-3 Instalments)</td>
<td>16,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CVI-A19*</td>
<td>Noradrenaline Inj 8 mg/amp IV (In 2 Instalments)</td>
<td>36,500</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CVI-A20*</td>
<td>Propranolol HCL Inj. 1 mg/amp.</td>
<td>800</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CVI-A21*</td>
<td>Sodium Tetradecyl Sulphate Inj 3% x 1 ml - 2 ml IV (to specify offer)</td>
<td>3,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CVI-A22*</td>
<td>Tenecteplase Inj 40-50 mg (10,000 units/vial) powder for reconstitution + prefilled syringe containing 10 ml water for injection (In 2-3 Instalments)</td>
<td>1,700</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Or CVI-A22*(A)</td>
<td>Reteplase Inj 10 units per vial (with prefilled syringe or diluents and transfer device (In 2-3 Instalments)</td>
<td>1,700</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Or CVI-A23*</td>
<td>Tranexamic Acid Inj. 500 mg/amp (In 2-3 Instalments)</td>
<td>17,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Refer to ITB 6.3c page 39

- Bidders are requested to submit their offers from not more than 3 sources for any product.
- Non Compliance with the above shall lead to rejection of bids.
- Samples to be produced for evaluation should be of the same specification as on tender.
- Any change in sourcing after award of contract shall not be entertained, only and unless their different sources are already included in their offer(s).
- FOR ITEMS MARKED WITH AN ASTERISK (*) ONLY MANUFACTURERS REGISTERED WITH THE EMEA or any country of the EU zone and/or USFDA and/or SAHPRA and/or AUSTRALIAN TGA and/or HEALTH CANADA SHALL BE CONSIDERED.
- Suppliers will be required to submit a Tax clearance certificate for contract values of Rs 5 million and above.