

INDEPENDENT REVIEW PANEL

In the matter of:

Estee Co. Ltd

(Applicant)

v/s

Ministry of Education & Human Resources

(Respondent)

(Cause No. 03/08/IRP)

Decision

A. Background

Around 25 January 2008 the Ministry of Education & H.R. floated a tender for the purchase of computer tables and plastic stools for School Information Technology project in primary schools. The estimated cost of the project at Rs1.3M exceeded the then prescribed limit of Rs1M for the public body. The closing date was fixed on 19 February 2008 at 13.30 hrs.

The Central Procurement Board, which has replaced the Central Tender Board in the meantime, set up a Bid Evaluation Committee in accordance with Section 11(1)d of the Public Procurement Act 2006. Mr H. Aubeeluck, Assistant Secretary was designated by the Ministry to act as Secretary of the Committee.

On 16 April 2008 the Central Procurement Board informed the Ministry that it had considered the evaluation report of its Bid Evaluation Committee and agreed to their recommendation for a fresh tender exercise as none of the bidders has fully complied with the criteria exacted for that tender exercise. On 24 April 2008 the Ministry opted for the restricted bidding procurement method for the supply and fixing of

396 each of small table and large table. Twelve furniture manufacturers were invited to bid and by the closing date of 13 May 2008, six bidders submitted their quotes. Based on the previous procurement exercise, a separate tender exercise was carried out for the supply of plastic stools. 13 suppliers were invited to quote only 6 bidders submitted their quotes by the closing date of 13 May 2008.

B. Grounds for Review

The Applicant has applied for a review of the award on the following grounds:

“From this point, it is clear that the first exercise was apparently being cancelled, and with deliberate attempt to avoid the monetary threshold laid down in the procurement act the second exercise was launched.

Accordingly we strongly feel that there has been breach of the following:

1. *Regulation 37 of the Public Procurement Act 2006 which stipulates:
A notice of the rejection of all bids or cancellation of the procurement proceedings shall state the grounds for the rejection of all bids, or for the cancellation of the procurement proceedings, as the case may be.*
2. *Section 49 Part III – Procurement Integrity:
No public body may artificially divide the modalities of procurement in such a way as to avoid any monetary thresholds laid down in this Act or in an instrument drawn up pursuant to this Act.*
3. *Section 39 Part V – Cancellation of Bidding process*
4. *Section 24(12) or 40(4)*

Furthermore, according to our information, the tender has already been awarded but to date we have not been informed not complying to Section 40(3).

According to the notice of procurement award, it is clear that the successful bidder did not comply with a bid security as specified in the tender document but submitted a bank cheque instead.

We consider that the second exercise must be annulled in toto with the immediate effect.”

C. The Evaluation Process

- (a) On 16 May 2008 a Bid Evaluation Committee examined the three bids that had submitted samples for evaluation and recommended G. Mohall Ltd for the award as it was the lowest evaluated responsive bid. The Departmental Tender Committee then approved the awards for the supply and fixing of 396 each of small table and large table to G. Mohall Ltd at a unit rate of Rs3800 and Rs4700 (VAT inclusive) respectively. On 23 May 2008, G. Mohall Ltd entered an agreement with the Ministry as per conditions specified in tender documents. Delivery in progress.
- (b) On 20 May 2008 the Bid Evaluation Committee of the Ministry recommended Young Bros Co. Ltd for the supply and delivery of plastic stools as it was the lowest responsive bidder. The Departmental Tender Committee of the Ministry approved the award of 3960 plastic stools to Young Bros Ltd at a unit rate of Rs115 (inclusive of all charges). However, the Ministry has stayed action following a complaint received from Estee Co. Ltd.

D. Submissions and Findings

According to the Applicant, the first tender exercise was apparently being cancelled with deliberate attempt to avoid the monetary threshold laid down in the Public Procurement Act 2006 and afterwards the second exercise was launched. This assertion is not correct. The first tender exercise was cancelled on the recommendations of the Central Procurement Board after an Independent Bid Evaluation Committee had concluded that none of the bidders has fully complied with the criteria required for this tender exercise. (Central Procurement Board letter dated 16.04.08 – Doc C). It was also noted from the Bid Evaluation Report that only two bidders had quoted for the tables and stools. Two quoted for the tables only and the remaining two for the stools only. Miss K. F. Kong Win Chang of the Ministry of Education & H. R. explained in a cogent and plausible manner the circumstances leading to

the cancellation of the first tender. The Ministry was therefore justified in launching separate invitation for bids for the two items. It is to be noted that the two items taken together amount to a contract value of Rs3,821,400 (Rs3,366,000 + Rs455,400) inclusive of VAT and is lower than the prescribed amount of Rs5M for the Ministry. Since Estee Co. Ltd did not bid for the plastic stools, it cannot claim that there has been any breach of Procurement Integrity. (Section 49 part VIII).

2. Notice of rejection of all bids

It is the contention of the applicant that it was not notified of the rejection of all bids. On that score we have evidence from representative of the Ministry to the effect that by letter dated 30 April 2008 and dispatched by registered post Estee Co. Ltd was informed of the decision to cancel bidding exercise QN137/2007-2008. Documentary evidence provided in the form of a photocopy of a page of dispatch book at Ministry of Education & H.R.

3. Notification of Award

Section 40(3) of the Public Procurement Act 2006 refers to the award of a major contract. But the present one is a minor contract. It is significant to note that the contract with G. Mohall Ltd was signed on 23 May 2008 while the letter from Estee Ltd to Independent Review panel dated 21 May 2008.

4. Bid Security

In the Standard Bidding Documents used section 1 refers to “The instruction to Bidders”. Paragraph 10 refers to “Bid Security”

“10.1 Bid security is required

In case a Bid Security is required, the Bidder shall furnish as part of his Bid, a Bid Security amounting to Rs20,000 in the form of a banker’s cheque issued by a commercial bank operating in Mauritius and drawn as per the format contained in Part 4, Schedule 1 of this document.”

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However, it is provided in Part 4 schedule 1, the format of a bid security. It is obvious that a banker's cheque issued by a Commercial Bank can only be drawn by the requirements laid down in the Bill of Exchange Act whereas a Bank guarantee can be drawn up in a specific format as specified in the schedule. In our view the successful bidder having produced a banker's cheque for the appropriate amount has complied fully with the financial requirements.

For all these reasons, we find that there is no merit in the applicant's case and dismiss the application.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs E. Hanoomanjee)
Member

Dated this 30th of July 2008