

INDEPENDENT REVIEW PANEL

In the matter of:

Worldwide Marketing & Services Ltd

(Applicant)

v/s

Ministry of Health & Quality of Life

(Respondent)

(Cause No. 14/08/IRP)

Decision

A. Background

The Ministry of Health & Quality of Life invited tenders from local suppliers for the supply of Full Cream Milk Powder to all Hospitals through open Advertised Bidding in local newspapers. The closing date for the submission of bids at the Central Procurement Board was Tuesday 15 July 2008 up to 13.30 hrs (local time) and Public opening was held on the same day at 14.00 hrs. Details of the Bidding Procedures (part 1), Supply Requirements (Part 2) and Contract Conditions (Part 3) were contained in the Standard Bidding Documents issued by the Public Procurement Office. On 19 August 2008, the Secretary of the Central Procurement Board informed the Senior Chief Executive of the Ministry of Health & Quality of Life that following an evaluation of the three bids received the Central Procurement Board has approved the award of the contract for the supply of 4044 bags of 25 kg of full cream milk powder to all hospitals to A.A.R. Oosman & Co. at the rate of Rs3690 per bag of 25 kg.

Pursuant to Section 40(3) of the Public Procurement Act 2006 the Senior Chief Executive of the Ministry of Health & Quality of Life notified the Director of Worldwide Marketing & Services Ltd on 22 August 2008 that his bid had not been retained and that the successful bidder was A.A.R. Oosman & Co. for a contract sum of Rs14,922,360. On 23 August 2008, the Director of Worldwide Marketing & Services Ltd dissatisfied with the decision of the Ministry of Health & Quality of Life challenged the procurement proceedings. On 28 August 2008, the Senior Chief Executive of the Ministry of Health & Quality of Life informed the Chairman of the Central Procurement Board of the challenge and requested him to advise on the reply to be made. The Secretary of the Central Procurement Board informed the Senior Chief Executive of the Ministry of Health & Quality of Life on 05 September 2008 that the bid of Worldwide Marketing & Services Ltd was non-responsive at its bid security was valid for 90 days instead of 120 days. The Director of Worldwide Marketing & Services Ltd was informed accordingly by letter dated 12 September 2008. However, it is noted that the reply was actually issued on 15 September 2008.

The Director of Worldwide Marketing & Services Ltd still not satisfied with the reasons given by the Senior Chief Executive of the Ministry of Health & Quality of Life made an application for review on 23 August to the Independent Review Panel under Section 45 of the Public Procurement Act 2006.

B. Grounds for Review

“Breach of Section 40(1) 43(4) of the Public Procurement Act 2006 and in breach of Section III of the Bidding Documents which states that the best evaluated bid shall be the lowest priced quotation.”

C. The Evaluation Process

Three bids were received by the closing date of 15 July 2008 and were opened in Public on the same day at the Central Procurement Board. A Bid Evaluation Committee was set up in accordance with Section 11 of the Public Procurement Act 2006 to examine the bids received and to make recommendations to the Board. Prior to undertaking an in-depth evaluation of the bids received the Bid Evaluation Committee checked whether all mandatory requirements were satisfied. Following this preliminary check two of the bidders were considered to be non-responsive. The validity of the Bid Security of

Worldwide Marketing & Services Ltd was for 90 days instead of the 120 days required. As the bid of Worldwide Marketing & Services Ltd was not accompanied by a substantially responsive Bid Security it was rejected as non-responsive.

D. Submissions and Findings

During the hearing, the Applicant stated that the bidding documents did not call for a Bid Security having a validity period extending for a period of 30 days beyond the expiry of the validity periods of bids. This information is in fact contained in Section I (Instruction to Bidders) of Part I (Bidding Procedures) of the Standard Bidding Documents issued by the Procurement Policy Office.

In the Instruction to Bidders, Section C deals with the “Preparation of bids” and paragraph 20.2(e) addresses the validity period of a Bid Security. However, the Ministry of Health & Quality of Life did not issue a complete set of the Standard Bidding Documents to the bidders. At page 4 of the Bidding Documents, it is indicated that “the Instruction to Bidders is available on the following web site: <http://mof.gov.mu/portal/site/mof> site. It is noted that Section B, the contents of Bidding Documents and Instruction to Bidders (ITB) forms an integrated part of the Bidding Documents. We have examined the contents of the format for Bid Security (Bank Guarantee) at Section IV (Bidding Forms) of Part I (Bidding Procedures) of the bidding documents and the Bid Security provided by all three bidders. In the form for Bid Security, it is clearly stated that the bid security will expire “30 days after the expiration of the Bidder’s Bid”. A.A.R. Oosman & Co. submitted a tender bid from the Mauritius Commercial Bank Ltd and the bid was to remain valid up to 15 November 2008. Worldwide Marketing & Services Ltd also submitted a Bid Security from the Mauritius Commercial Bank Ltd and the security was to remain valid for a period of 90 days from the date set for the opening of the said bid. The bid security of the third bidder was valid up to 11 November 2008. ITB 20 of Section II (Bidding Data Sheet) refers to the need for a Bid Security (issued by a bank) included in Section IV of the Bidding Documents and ITB 20.2 defines the amount. Thus, though no mention is made in the Bidding Data Sheet about the validity period of the bid security there is clear reference to the bidding forms in Section IV of the requirement to have a validity period of 120 days.

The Applicant has submitted to the Independent Review Panel a series of bidding documents from the same Ministry to show that ITB 20.2 of the Bidding Data Sheet has been amended and now stipulates that the

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Bid Security shall remain valid for a period of 120 days i.e. 30 days beyond the validity period of the bids. They all refer to bidding documents issued after the one in dispute. However, it is observed that the bidding period for the supply of milk powder was still valid when the amended Bidding Data Sheet for other tenders were issued. The Independent Review Panel does not consider that there has been any prejudice caused to the Applicant.

For reasons highlighted above, the Panel finds that the bid of Worldwide Marketing & Services Ltd is non-responsive and considers that the Central Procurement Board was right to award the contract to A.A.R. Oosman & Co. We therefore dismiss the application.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs E. Hanoomanjee)
Member

Dated this 10th of October 2008

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs E. Hanoomanjee)
Member

Dated this of October 2008