Decision No. 12/08

INDEPENDENT REVIEW PANEL

In the matter of:

Pharmacie Nouvelle Ltd

(Applicant)

v/s

Ministry of Health & Quality of Life

(Respondent)

(Cause No. 19/08/IRP)

Decision

A. Background

1. The Ministry of Health and Quality of Life invited bids from both local and overseas tenderers for the supply of Glucometers and Test Strips for the determination of glucose in blood. 800 glucometers and 27000 boxes of 50 test strips each for determination of glucose in blood for use in the glucometers were required. The specifications for the glucometers and test strips were given at pg 10 of the bidding documents. The invitation for bids was through open advertised bidding. The closing date for submission of bids was Tuesday 17 June 2008 at 13.30 hrs (local time) at latest at the Central Procurement Board. Public opening of bids was scheduled on the same day at 14.00 hrs.

2. On 05 June 2008, the Ministry of Health & Quality of Life issued an addendum with respect to the specifications for the glucometers and test strips.

3. On 07 June 2008, a bidder complained to the Chief Executive of the Ministry of Health & Quality of Life about the change in specifications. The bidder proposed alternative specifications with respect to some parameters. The bidder was informed on 13 June 2008 that the specifications mentioned in the addendum were maintained.

4. The Central Procurement Board appointed a Bid Evaluation Committee to evaluate the 17 bids and 29 offers that had been received by the closing date.

5. The Bid Evaluation Committee submitted its report on 06 August 2008. Paragraph 13 of the report reads "The Bid Evaluation Committee recommends that the contract be awarded to the lowest and complying bidder 2 for the sum of Rs4,191,750."

6. On 12 August 2008, the Central Procurement Board wrote to the Chairperson of the Bid Evaluation Committee and informed him that "the Board has decided that a field test be carried out at the Central Laboratory, Victoria Hospital, on the sample submitted by the recommended bidder, Bikspharma Ltee". The sample was handed over to the Chairperson on the same day and in the presence of two members of the Bid Evaluation Committee.

7. The field testing was carried out by the Chief Clinical Scientist with the assistance of an Acting Charge Nurse. The report was submitted on 20 August 2008 and was considered at a meeting of the Bid Evaluation Committee held on 22 August 2008. The Bid Evaluation Committee accepted the field testing report and confirmed the recommendations as at paragraph 13 of the evaluation report submitted on 06 August 2008.

8. The Central Procurement Board informed the Ministry of Health & Quality of Life that it had approved the award of the contract to Bikspharma Ltee for the sum of Rs4,191,750. The Ministry of Health & Quality of Life was requested to proceed in accordance with Section 40 of the Public Procurement Act 2006.

9. A notification of award was issued to the selected bidder on 03 September 2008 and the unsuccessful bidders were informed accordingly. The letters dated 03 September 2008 were issued on 05 September 2008.

10. On 08 September 2008, Pharmacie Nouvelle Ltd dissatisfied with the decision of the Ministry of Health & Quality of Life challenged the procurement proceedings on the grounds that the

specifications of the glucometer to be supplied by the successful bidder fail to comply with the specifications 1(i)(b), (f) and (l) of the addendum dated 05 June 2008.

11. On 15 September 2008, the Ministry of Health & Quality of Life informed the Central Procurement Board of the challenge filed by Pharmacie Nouvelle Ltd and sought its advice for a reply. The unsuccessful bidder was informed accordingly.

12. On 03 October 2008, the Central Procurement Board informed the Ministry of Health & Quality of Life that the offer of Bikspharma Ltee satisfies the mandatory technical specifications stipulated in the tender documents and had also satisfied the field test carried out. The Manager of Pharmacie Nouvelle Ltd was informed accordingly on 06 October 2008.

13. On 02 October 2008, Pharmacie Nouvelle Ltd, having failed to hear from the Ministry of Health & Quality of Life, made an application to the Independent Review Panel to review the decision of the Ministry of Health & Quality of Life.

B. Grounds for Review

"*The Ministry of Health & Quality of Life failed to respond within the prescribed delay and the applicant's challenge was to the effect that the successful bidder's product failed to comply with the specifications stipulated in the addendum dated 05 June 2008 – MHPQ/MDIS/07-08/Q35.*"

C. The Evaluation Process

The Central Procurement Board appointed a Bid Evaluation Committee to carryout the technical evaluation of the 17 bids and 29 offers received by the closing date of 17 June 2008. The Bid Evaluation Committee submitted its report on 06 August 2008 and on 12 August 2008, it agreed to carry out a field testing on the sample of the recommended bidder. The field testing was carried out on 20 August 2008 by the Chief Clinical Scientist of the Ministry of Health & Quality of Life who was also a member of the Bid Evaluation Committee. The report of the field testing was submitted to the Bid Evaluation Committee on the same day and was approved at a meeting on 22 August 2008. The decision to "recommend that the contract be awarded to the lowest and complying bidder 2 for the sum of Rs4,191,750" was also confirmed by the Bid Evaluation Committee.

D. Submissions and Findings

1. The addendum to MHPQ/M DIS/07-08/Q35 for the supply of glucometers and tests strips for determination of glucose in blood, issued on 05 June 2008, gives the specifications for the items, as follows:

*"**1(i) Glucometers must be:***

(a) Robust (reliable and able to perform around 100 test consistently and at a go) and user friendly
(b) Compatible for use in all units of the health institutions (Health Centres, Hospital Wards, Intensive Care Units, Neonatal Intensive Care Units)
(c) Have a life span of 3-5 years.
(d) Equipment must have been evaluated and cleared by FDA (USA) or MHRA (UK) or any other recognised body (CE marked). Certificate of FDA Clearance acceptable.
(e) Capillary filled test strip system
(f) Sample type to be capillary, venous, neonatal, arterial
(g) Calibration using calibrator chip
(h) Result type: Plasma calibrated (Plasma calibration done at manufactures)
(i) Sample volume: preferably less than 5 ul.
(j) Measurement time: less than 15 secs
(k) Measurement range: 1 to 30 mmol
(l) Haematocrit range 10-70% operating temperature 10-35°C
(m) Interferences and limitations must be provided in user manual
(n) System must provide Quality control samples.

1(ii) Test strips:

(a) Appropriate test strips must have a shelf life of 12 months at time of delivery
(b) Test strips must be stable under our local weather condition temperature (10-35°C) – humidity up to 85%."

These specifications are the mandatory technical specifications against which the bids must be evaluated. There has been no additional addendum after the one issued on 05 June 2008. Thus,

there are 14 mandatory requirements for the glucometers and 2 for the test strips.

2. Paragraph 10(pg 7) of the report of the Bid Evaluation Committee gives details of the methodology adopted for the technical appraisal. The Bid Evaluation Committee decided to select seven technical requirements for the glucometer and to consider them as mandatory technical requirements. These requirements are listed on page 10 of the report. The two requirements for the test strips were retained. No justification is given in the report for the choice of parameters to be considered as mandatory parameters.

3. The Independent Review Panel observes that seven specifications that were stipulated as being mandatory by the addendum of 06 June 2008 were not been retained by the Bid Evaluation Committee. Three of the specifications not retained are:

"(b) Compatible for use in all units of the health institutions (Health Centres, Hospital Wards, Intensive Care Units, Neonatal Intensive Care Units)

(f) Sample type to be capillary, venous, neonatal, arterial

(l) Haematocrit range 10-70% operating temperature 10-35°C"

4. The bidding document of the selected bidder reveals the following:

1(i)(b) No evidence is submitted for the statement that: Meter has been designed for use in all health institutions and special care units as well as for self monitoring purposes;

1(i)(f) The answer is "yes" without any comments or documentary evidence;

1(i)(l) The bidder challenges the choice of specification for haematocrit

5. Counsel for Pharmacie Nouvelle Ltd has submitted to the Panel a User's Manual for the "On Call Plus" blood glucose monitoring system selected for award of the contract on 15 October 2008. Pg 23 of the Manual has a Section on precautions and limitations. Two of the limitations listed are of importance to this present contract:

(i) Do not use for testing newborns

(ii) Very high (above 55%) and very low (below 30%) hematocrit can cause false results. Talk to your healthcare professional to find our your hematocrit level.

The Central Procurement Board has submitted a similar manual to the Independent Review Panel on 21 October 2008.

6. The Independent Review Panel considers that in the absence of any additional addendum from the Ministry of Health & Quality of Life, the addendum of 06 June 2008 gives the mandatory specifications for the glucometers. Thus, the Panel fails to understand how on its own accord the Bid Evaluation Committee modified the specifications to make only 7 of them mandatory. This is not in line with established procurement procedures.

7. The Independent Review Panel has been provided with the notes of meeting no. 8, held on 06 August 2008 of the Bid Evaluation Committee and it is not clear when stating the new specifications subsequently submitted, it refers to these of the addendum of 06 June 2008. If it is so, it would mean that the Bid Evaluation Committee was fully aware of the mandatory specifications.

8. In the absence of details from the recommended bidder and based on the User's Manual submitted, the Independent Review Panel concludes that the glucometer selected:

(i) will not be compatible for use in all units of the health institutions
(ii) cannot be used for neonatal sample type
(iii) cannot be used for Haematocrit range 10-70%

All these factors lead the Panel to conclude that the bid of Bikspharma Ltee should be considered as non-responsive.

The Panel, for these reasons, considers that there is merit in the application and recommends a review of the decision of the Ministry of Health & Quality of Life intending to award the contract for the supply of glucometers and test strips for determination of glucose in blood to Bikspharma Ltee.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs E. Hanoomanjee)
Member

Dated this 27th of October 2008