

INDEPENDENT REVIEW PANEL

In the matter of:

Shoppers Express Ltd

(Applicant)

v/s

Ministry of Health & Quality of Life

(Respondent)

(Cause No. 15/08/IRP)

Decision

A. Background

On 27 May 2008 the Ministry of Health & Quality of Life addressed a request for quotation to five potential bidders for the supply of Margarine to all hospitals. The procurement reference no. MHPQ/NMED/08-09/Q16 and is for the period of 01 July 2008 to 30 June 2009. The quantity to be supplied are 94,8000 tubs/cups of 500gm each and are to be delivered on an "as and when required basis" or delivery will be stipulated by the respective hospitals. The technical specifications were detailed in a "Statement of Requirements" included in the quotation document. In part 3 of the document under the heading "Special Conditions" with respect to the subject of sample it is stated that: "Tenderers should forward samples (two tubs/cups) to the Ministry along with their tenders. Tender received without samples may not be considered".

At the closing date of 11 June 2008, three quotations were received. Two quotations were from Margarine Industries Ltd and one was from Shoppers Express Ltd. The quotations were opened in public in

the conference room of the Ministry of Health & Quality of Life on 11 June 2008 at 13.30 hrs.

B. Grounds for Review

The grounds for review submitted by Shoppers Express Ltd are as follows:

“Our price quotation is the lowest where as the Ministry of Health & Quality of Life has awarded the contract to the highest bidder which is against the quotation documents and against 37(2), 37(9) and 37(11) of the Public Procurement Act.”

C. The Evaluation Process

1. As all the bids were below the prescribed limit of Rs5M the Public Body could carry out the evaluation. A ten member Bid Evaluation Committee was set up to evaluate the quotations received. The Committee met on 12 June and 13 June 2008. The evaluation report was submitted on 13 June 2008.
2. On 17 June 2008 the three member Non Medical Product Committee of the Ministry of Health & Quality of Life recommended option 1 of the Margarine Industries Ltd to the Departmental Tender Committee.
3. The three member Departmental Committee on 18 June 2008 approved the recommendation that an award be made for the supply of Tara Margarine to all hospitals for the year 2008/2009 to Margarine Industries Ltd for a contract sum of Rs4,005,300 (inclusive of VAT).
4. On 19 June 2008, Shoppers Express Ltd wrote to the Permanent Secretary of the Ministry of Health & Quality of Life to state that they have been given to understand that their offer had been rejected because of lack of labelling and expiry date on the sample submitted. They thus informed that they are now submitting “sample with label and expiry date for your consideration” and from the footnote on the letter it would appear that only one tub of Margarine was submitted.
5. The matter was reported to the Senior Chief Executive of the Public Body and she approved the decision of the Departmental Tender Committee to award the contract to Margarine Industries Ltd.

6. An award was made to Margarine Industries Ltd on 08 July 2008 and it submitted the required performance security on 11 July 2008. Delivery of Margarine to hospitals has already started.
7. Shoppers Express Ltd wrote to the Senior Chief Executive of the Ministry of Health & Quality of Life on 25 August 2008 to enquire about the outcome of the bidding exercise for the supply of Margarine to all hospitals. On 29 August 2008, the Senior Chief Executive of the Public Body informed the Applicant that an award had been made to Margarine Industries Ltd for a contract value of Rs4, 005,300.
8. Shoppers Express Ltd wrote to the Senior Chief Executive of the Public Body on 03 September 2008 seeking information as to why its bid was unsuccessful and the reasons for the retaining the bid of the successful bidder. On the same day it also challenged the decision of the Public Body.
9. On 25 September 2008, the Applicant submitted an application for review to the Independent Review Panel.

D. Submissions and Findings

1. On pg 11 of the document inviting quotations it is clearly specified that tenderers should forward samples (two tubs/cups) to the Ministry along with their tenders. In the statements of requirements pg 7 of the same document it is specified that the Margarine should be in tubs/cups of 500gm. Thus, it is obvious that the sample to be provided with the quotations should be a truly representative one.
2. The Evaluation Committee set up by the Ministry of Health & Quality of Life to examine the quotations received makes the following observation with respect to the samples submitted by Shoppers Express Ltd, in its report of 13 June 2008. “The two samples have been submitted in an inappropriate container which has not been properly sealed (sealed with cello tape) and with no labelling of manufacturing and expiry date. There is no mention of ingredients and no information on the nutritive value (fat content and breakdown specifically) is available”.

The Committee, thus, considered the bid to be non responsive and rejected it.

3. These facts are not disputed by Shoppers Express Ltd, which submitted a conforming sample on 19 June 2008 when it became aware of confidential information with respect to the bid evaluation.
4. The Independent Review Panel considers that the bidder had failed to submit an appropriate sample with its bid and concurs with the decision of the Public Body to consider the bid of Shoppers Express Ltd to be non responsive. Thus, the Panel does not find any merit in the case. The attention of the Public Body is drawn to the serious breach of confidentiality that occurred during the evaluation process.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs E. Hanoomanjee)
Member

Dated this 05th of December 2008