

INDEPENDENT REVIEW PANEL

In the matter of:

Worldwide Marketing & Services Ltd

(Applicant)

v/s

Police Department

(Respondent)

(Cause No. 18/08/IRP)

Decision

A. Background

1. The Police Department on 06 May 2008 issued a tender notice by public advertisement for the supply of frozen food (Beef and Mutton meat) for the period 01 July 2008 to 30 June 2009. Five companies collected the tender documents which had to be submitted at latest by 04 June 2008 at 13.30 hrs and were opened on the same day at 14.00 hrs. Two of the five companies submitted bids by the closing date.
2. On 18 June 2008 the Ag. Commissioner of Police wrote to the Chairman of the Central Procurement Board to inform him that:
 - (i) The bid received from one of the two bidders, Worldwide Marketing & Services Ltd was not considered as the supplier had been reported to be unreliable and defaulting.

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- (ii) The remaining bid from Messrs Ibrahim Edoo & Sons Ltd was assessed and recommended for award by an Evaluation Committee. The Departmental Tender Committee concurred with the findings of the Evaluation Committee.
- (iii) As the contract value of Rs6,935,000 exceeded the then prescribed limit of Rs5M the approval of the Central Procurement Board was sought on 18 June 2008 to make an award to Messrs Ibrahim Edoo & Sons Ltd for the sum of Rs6,935,000. The original bids, evaluation report and a complaint letter from the Police Catering Unit were forwarded to the Central Procurement Board.
- (iv) The Central Procurement Board wrote to the Commissioner of Police on 09 July 2008 to request copies of letters where complaints were made about the poor performance of Worldwide Marketing & Services Ltd. The documents were submitted to the Central Procurement Board on 14 August 2008.
- (v) The Central Procurement Board informed the Commissioner of Police on 27 August 2008 that it had approved the award of the contract for the supply of frozen food (Beef, Mutton and others) to Messrs Ibrahim Edoo & Sons Ltd for the sum of Rs6,935,000.
- (vi) The Commissioner of Police informed Messrs Ibrahim Edoo & Sons Ltd on 02 September 2008 that its bid had been approved for the supply and delivery of frozen food (beef, mutton and other). The company was informed that contract formalities will be finalised upon production of the performance security and signature of the contract agreement.
- (vii) Worldwide Marketing & Services Ltd wrote to the Commissioner of Police on 25 August 2008 to enquire about the outcome of its bid and by a letter dated 02 September 2008 it was informed accordingly.
- (viii) On 08 September 2008, Worldwide Marketing & Services Ltd challenged the decision of the public body as it considered that its bid was lower than that of the selected bidder.
- (ix) The Public Body informed the Central Procurement Board of the challenge of Worldwide Marketing & Services Ltd on 24

September 2008 and confirmed that the contract had not been awarded.

- (x) Worldwide Marketing & Services Ltd made an application for review to the Independent Review Panel on 29 September 2008 and the Public Body informed the Independent Review Panel on 10 October 2008 that a letter of award had been issued to Messrs Ibrahim Edoo & Sons Ltd and that it had already started delivering the items of the tender.
- (xi) By letter dated 23 October 2008, it was confirmed to the Independent Review Panel that although the contractual formality with Messrs Ibrahim Edoo & Sons Ltd had not been completed the company had already started delivery of the items in the tender as from the date of the letter of award.

B. Grounds for Review

The grounds for review submitted by Worldwide Marketing & Services Ltd are as follows:

“Breach of Section 14(4)(a), 37(2), 37(9), 37(11), 37(12), 40(1), 40(3), 40(4), 40(7) of the Public Procurement Act 2006 and Breach of Section 1(11) of the bidding documents.”

C. The Evaluation Process

The bid evaluation committee of the Police Department examined the two bids received by the closing date of 04 June 2008 and submitted its report to the Chairman of the Police Tender Committee on 10 June 2008. Messrs Ibrahim Edoo & Sons Ltd was cheaper for two items (1 and 4) while Worldwide Marketing & Services Ltd was cheaper for the other five items of the tender (2, 3, 5, 6 and 7). The report states that “all his offers have been rejected as he has been disqualified in the past for his poor performance and unreliability. He is a defaulting contractor and has already been blacklisted as such”. Messrs Ibrahim Edoo & Sons Ltd was as such recommended for an award for all seven items of the tender. As the contract value exceeded the prescribed limit of Rs5M all relevant documents were sent to the Central Procurement Board for its approval on 18 June 2008. The approval of the Central Procurement Board was subsequently obtained on 27 August 2008.

D. Submission and Findings

1. At the public opening bids by the Police Department at the Police Tender Unit on 04 June 2008 it was obvious that both two bids received exceeded the prescribed amount of Rs5M. The bid from Messrs Ibrahim Edoo & Sons Ltd was for Rs6,935,000 and that from Worldwide Marketing & Services Ltd was Rs6,151,520. Thus, in accordance with Section 12(3)(b) of the Public Procurement Act 2006 “the matter together with all the bidding documents and the contract documents if any, shall be referred to the Board for approval”. The Panel considers that the Police Department should have referred the matter to the Central Procurement Board immediately and not after having carried out an in house evaluation.
2. The Panel understands the predicament of the Police Department and the problems it was having with Mr Ramraccheya trading under different commercial entity. The letter of 15 May 2007 from the Chief Catering Administrator to the Commissioner of Police speaks for itself. The Chief Catering Administrator expressed his serious apprehension “I have no doubt that the supplier will seek an opportunity to re-tender under a new identity to trade with us for the next financial year 2007-2008 and onwards despite being recognised as an unreliable and defaulting contractor..... I am appealing to you to give instructions to blacklist the supplier”.
3. It would appear that this request of the Chief Catering Administrator had been acceded to and explains why in its report of 10 June 2008, the Evaluation Committee set up by the Police Department refers to Worldwide Marketing & Services Ltd as a blacklisted contractor. However, under Section 53 of the Public Procurement Act 2006 the powers to suspend and debar bidders and suppliers are vested with the Procurement Policy Office. The Police Department should have reported the matter to the Procurement Policy Office before taking any decision against the bidder.
4. The Central Procurement Board acted in good faith and assumed that the bidder had in fact been debarred. This explains the request they made to the Commissioner of Police on 09 July 2008 “to confirm whether Worldwide Marketing & Services Ltd, the bidder are one and the same company”. The Registrar of Companies was contacted on 21 July 2008 and confirmed on 29 July 2008 that only Worldwide Marketing & Services Ltd is registered under the companies Act 2001. The Public Body informed the Central Procurement Board accordingly on 14 August

2008 and the latter gave its approval for an award to Messrs Ibrahim Edoo & Sons Ltd on 27 August 2008.

5. Following the approval of the Central Procurement Board the public body should have acted in accordance with Section 40(3) of the Public Procurement Act 2006. The successful bidder should have been notified in writing of the selection of its bid for an award and a notice given to the other bidder, specifying the name and address of the proposed successful bidder and the price of the contract. Then, in the absence of a challenge within 7 days the contract is to be awarded to the successful bidder, according to Section 40(4) of the Public Procurement Act 2006. The Public Body ignored these provisions of the Act and issued a letter of award to the successful bidder on 02 September 2008. On the very same day and without completing the necessary formalities the selected bidder started supplying the items to the Police Department.
6. Based on the documentary evidence provided by the Public Body it is clear that Mr Ramrachheya trading under different commercial entity has been a major source of problem to them. The apprehensions expressed by the Chief Catering Administrator in his letter of 15 May 2007 to the Commissioner of Police might be material. But the Police Department should have acted within the provisions of the Public Procurement Act 2006 and sought the debarment of the supplier and the different commercial entity under which he trades.
7. The Panel considers that a legally binding contract has been awarded to Messrs Ibrahim Edoo & Sons Ltd. However, as the Applicant had not been debarred according to Law and as financially he was the lowest responsive bidder for five of the items in the tender and for the tender as a whole, then the contract or part of it should have been awarded to him.
8. The Panel considers that there is merit in this application. In Virtue of Section 45 (10)(d), the Panel may recommend payment of reasonable costs incurred in participating in the bidding process. The bidding documents were provided free of charge by the Public body and the cost of the bid security at 1% of the value of the bid security of Rs50,000 was Rs500. Taking into consideration the costs involved in bid preparation, challenge and appeal, the Panel accordingly recommends the payment of Rs5000 to the Applicant.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs E. Hanoomanjee)
Member

Dated this 12th of December 2008