

INDEPENDENT REVIEW PANEL

In the matter of:

Shoppers Express Ltd

(Applicant)

v/s

Ministry of Health & Quality of Life

(Respondent)

(Cause No. 24/08/IRP)

Decision

A. Background

1. The Ministry of Health & Quality of Life advertised in local newspapers an invitation for bids for the supply of foodstuffs, groceries and general stores to all hospitals for a period of one year as from award of contract. The closing date for the supply of bids was 15 July 2008 up to 13.30 hrs at latest and the public opening of bids was on the same day at 14.00 hrs.
2. The Central Procurement Board informed the Ministry of Health & Quality of Life on 29 August that six bids had been received for the supply of food stuffs to all hospitals and that after evaluation the Central procurement Board had approved the award of contract to AAR Oosman & Co. for a period of one year for four items. For two other items the approval was subject to the pack sizes and approved prices being acceptable to the Public Body. The bid for one item was rejected due to a major deviation.
It is noted that the invitation for bids was for 34 items and that the selected bidder quoted for seven items only

3. Shoppers Express Ltd wrote to both the Central Procurement Board and the Ministry of Health & Quality of Life on 05 September 2008 to enquire about the outcome of the bidding exercise. The Central Procurement Board wrote to the Ministry of Health & Quality of Life on 29 September 2008 to inform that the bid of Shoppers Express Ltd was non-responsive as the bid security submitted was valid for 90 days only instead of the required 120 days.
4. The selected bidder was notified on 04 November 2008 and the unsuccessful bidders were informed about the outcome of the bidding exercise on the same day. The name and address of the proposed successful bidder and also the price of the contract was given to them. Shoppers Express Ltd was not satisfied with the decision of the Public Body and challenged the procurement process on 06 November 2008. The Public Body informed the aggrieved bidder on 12 November 2008 that its bid was non-responsive because its bid security was valid for 90 days only instead of the required 120 days. The bidder still dissatisfied with the decision of the Public Body submitted an application for review to the Independent Review Panel on 24 November 2008. The Independent Review Panel informed the public Body on 25 November 2008 that the procurement process had been suspended until the appeal is heard and determined by the Panel.

B. Grounds for Review

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

“Breach of Section 40(1) and 41 of the Public Procurement Act 2006 and breach of Regulation under Section 61 Regulation breach 4(1), 4(5), 29 and 34.”

C. The Evaluation Process

The Bid evaluation Committee appointed by the Central Procurement Board to carry out the evaluation of the bids received, submitted its report on 14 August 2008. Five of the six bids were considered to be non-responsive as they failed to satisfy the mandatory requirement of 120 days validity for bid security. The only responsive bidder AAR Oosman & Co. quoted for only seven items out of the thirty-

four items on the list. The Central Procurement Board recommended an award for four of the items. For the other two items no. 29 and no. 33, as smaller pack sizes have been offered the approval was subject to the pack sizes and the approved prices being acceptable to the Public Body.

D. Submission and Findings

1. The Independent Review Panel has examined the bid of AAR Oosman & Co. and noted that for item no. 29 the bidder has clearly indicated that it can supply whole corn in tins of about 230 gm instead of the 425 gm required and for a price of Rs19.32 per tin. However, the letter of 04 November 2008, from the Public Body to all bidders, indicates an award for tins of 425 gm at Rs19.32 per tin. The approved price has not changed at Rs19.32 per tin but the weight of the tins has been increased from 230 gm to 425 gm. The Panel has not been provided with any evidence to indicate that the bidder had agreed to increase the tin size from 230 gm to 425 gm.
2. During the hearing Mr Ramrachheya representing Shoppers Express Ltd stated that the bid security he had submitted was in strict accordance with what was requested. However, when the bid security provided by the bidder and issued by the MCB Ltd is compared to the format of bid security (bank guarantee) provided on pg22, Section IV, Bidding Forms, it is observed that there are obvious differences. The document submitted by the bidder clearly states that the bank on or before 12 December 2008 must receive any demand for payment. After that date the bid security will be considered automatically cancelled without necessity for any notice. The Panel concurs with the decision of the Central Procurement Board that the bid of Shoppers Express Ltd is not responsive as its bid security was valid for 90 days only instead of the mandatory 120 days.
3. The Panel would like to point out that Mr Ramrachheya trading under the entity of Worldwide Marketing Services Ltd made an application for review, to the Independent Review Panel, of a decision of the Ministry of Health & Quality of Life on the procurement of full cream milk powder (cause no. 14/08/IRP). The Panel in its determination (Decision no. 09/08 dated 10 October 2008) considered that the bid of Worldwide Marketing Services Ltd was non responsive as its bid security was valid for 90 days instead of the mandatory 120 days. Thus, Mr Ramrachheya trading under the entity of Shoppers Express Ltd was fully aware

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of the decision of the Independent Review Panel when he applied for a review of the decision of the Public Body in this present case on similar grounds. The application is devoid of merit and is accordingly set aside.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs E. Hanoomanjee)
Member

Dated this 12th of December 2008