

INDEPENDENT REVIEW PANEL

In the matter of:

Hindustan Syringes & Medical Devices Ltd
(Applicant)

v/s

Ministry of Health & Quality of Life
(Respondent)

(Cause No. 28/08/IRP)

Decision

A. Background

The Ministry of Health & Quality of Life through open advertised bidding invited bids for the supply of IV Cannula, etc. The Tender Notice was according to the Public Body, sent to the Government Information Services Department on 12 June 2008 for publication. The Tender Notice was published on 20, 23 and 25 June 2008 in “Le Matinal” and “Le Mauricien” newspaper respectively. The Panel was provided with a copy of the Tender Notice as it appeared in one newspaper and it was dated 13 June 2008. The deadline for the submission of bids was 24 July 2008 up to 13.30 hrs (local time) at latest and the bids were opened on the same day at 14.00 hrs. Twelve bidders submitted bids by the closing date and as the bids received did not exceed the prescribed amount, the Central Procurement Board forwarded the bids to the Public Body for evaluation purposes. Messrs Hindustan Syringes and Medical Devices Ltd was not a bidder for this tender exercise.

B. The Evaluation Process

The Public Body appointed a technical Bid Evaluation Committee to evaluate the bids received as from 25 September 2008. Following the evaluation report, letters of award were issued by the Public Body to the successful bidders on 27 October 2008.

C. Grounds for Review

On 19 December 2008 Messrs Hindustan Syringes and Medical Devices Ltd as a potential participant in the procurement proceedings submitted an application for review to the Panel on the following grounds:

“Leakage of Tender Documents to competitor prior to the official release of such tender documents:- Malpractice in the Procurement Exercise although the Officers of the MOH did agree in June last to put to a halt the exercise Q92 in view of the decision of the MOH to allow the final 458,000 units of IV Cannula pertaining to DO365 to be forwarded to it.”

D. Submissions and Findings

1. A first meeting was held on 27 January 2009 and following discussions, it was agreed that the Public Body would seek legal advice on the admissibility of the request for review as it appeared to be outside the delay provided for by Regulation 48(2) of the Public Procurement Regulation 2008.
2. The Public Body wrote to the State Law Office on 30 January 2009 and advice was sought on the challenge of Messrs Aquachem Ltd. However, the request for review submitted to the Panel was from Messrs Hindustan Syringes and Medical Devices Ltd and the advice of the State Law Office was not sought on this request. In its reply dated 12 July 2009, the State Law Office draws the attention of the Public Body on this shortcoming and advised that “the Public Procurement Act imposes a duty of fairness on the Ministry of Health & Quality of Life and as such the Review Panel should entertain the application made by Hindustan Syringes and Medical Devices Ltd”.
3. However, in a letter dated 18 February 2008, the Public Body informed the Panel that the State Law Office has advised that he challenge should not be entertained. There appears to be some confusion between the challenge of Aquachem Ltd and the request

for review to the Panel by the Hindustan Syringes and Medical Devices Ltd on the part of the Public Body.

4. Documentary evidence submitted to the Panel indicates clearly that:
 - (i) 5 bidders collected/obtained the bidding documents during the period 13 June 2008 to 19 June 2008, and
 - (ii) 13 bidders collected the documents during the period 20 June 2008, following the press advertisement
5. In a letter dated 12 December 2008, it is confirmed that 13 of the 16 items that bids were invited for had been awarded to three of the bidders who had received/obtained/collected advanced copies of the bidding documents – Y & S Trading Co. Ltd, Worldwide Marketing & Services Ltd and VNS Diagnostics Ltd. Two items were awarded to bidders who had obtained documents after the public advertisement and one item was to be retendered.
6. The aggrieved potential bidder explained that some of the items requested were controlled items and the appropriate permits had to be obtained for their importation. Additionally, in cases where samples were to be supplied, a bidder having the documents some seven days before, will have a definite competitive edge. These explanations appear to be very rational when viewed in conjunction with the awards made.
7. The bulk of the contract is associated with five items. A bidder who obtained the bidding document on 13 June 2008 put in a bid for the five items only and was awarded the contract for the sum of US\$69,370.
8. The Panel considers that the appropriate procedures have not been followed by the Public Body with respect to this procurement exercise. As per the provisions of the Public Procurement Act 2006, the Panel cannot recommend any remedy. However the attention of the competent authority is drawn to all the issues raised in this determination.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated this 18th of March 2009