

INDEPENDENT REVIEW PANEL

In the matter of:

MSJ LTD (UNICORN)

(Applicant)

v/s

Ministry of Health & Quality of Life

(CN 04/09/IRP)

(Respondent)

Decision

A. Background

The Independent Review Panel in its Decision No. 14/08 dated 26 November 2008 recommended a re-evaluation of the bids of MSJ Ltd (Unicorn) for 26 items of pharmaceutical products. The Central Procurement Board communicated the results of the re-evaluation exercise to the Ministry of Health & Quality of Life on 11 December 2008. MSJ Ltd (Unicorn) was recommended for the award of 23 of the items disputed and the public body notified all bidders accordingly on 19 December 2008. IBL Ltd challenged the decision of the Public Body to award item AA138, Mycophenolate Mofetil Caps/Tabs 500mg to MSJ Ltd (Unicorn) on 22 December 2008. The Central Procurement Board reviewed its decision and approved the award of Item AA138 to IBL Ltd on 08 January 2009. The Public Body notified all bidders accordingly on 21 January 2009. However, MSJ Ltd (Unicorn) dissatisfied with the decision challenged it on 27 January 2009. The Public Body replied to the challenge on 10 February 2009 following advice by the Central Procurement Board. The aggrieved bidder still dissatisfied with the decision of the Public Body made an application for review to the Independent Review Panel on 24 February 2009. Notwithstanding the

challenge and appeal procedure the Public Body made an award to IBL Ltd on 20 February 2009.

B. Grounds for Review

The Applicant's grounds for are as follows:

“Item AA138 quoted by us is therapeutically equivalent with a superior GI safety profile and will represent a cost saving to MOH.”

C. The Evaluation Process

The Central Procurement Board appointed a Bid Evaluation Committee to re-evaluate the bids received for the 26 items disputed by MSJ Ltd (Unicorn). The Committee reviewed its decision following the challenge of IBL Ltd and as a result recommended the bidder for Item AA138 on 24 December 2008. The public body was informed of the decision on 08 January 2009.

D. Submissions and Findings

1. The Public Body certified, stating the grounds, on 25 March 2009 that urgent public interest considerations require the procurement proceedings to proceed. The award was made to IBL Ltd on 20 February 2009 whilst the challenge of the aggrieved bidder was still a live issue. The Panel understands the reasons raised by the Public Body in its letter of 25 March 2009 but considers that in situation warranting urgency, the Public Body should have acted in accordance with the relevant sections of the Public Procurement Act 2006.
2. The application for review by the aggrieved bidder must be considered in the light of two clauses of the bidding documents:

- (i) Clause 6.4 (pg15) of Section 1, Instruction to bidders states:

“For purposes of the commentary to be furnished pursuant to ITB Clause 6.3 (b) above, the Bidder shall note that standards as well as references to brand names designated by the Public Body in its Technical Specifications are intended to be descriptive only and not restrictive. The Bidder may substitute alternative standards, brand names, and/or catalog numbers in its bid, provided that it demonstrates to

the Public Body’s satisfaction that the substitution ensure substantial equivalence to those designated in the Technical Specifications.”

- (ii) ITB 20.1 (pg45) of Section 11 Bid Data Sheet indicates that *“Alternative bids will not be accepted”*. From these two clauses it is clear that if the Public Body will accept an alternative brand name it will however not accept an alternative pharmaceutical product.

- 3. Section VI of the bidding documents refers to the “Schedule of Requirements” and under Lot 3 (pg102) the following is recorded:

Item No.	Description	Quantity Required
AA138	Mycophenolate Mofetil Caps/Tabs 500mg	130,000

From the bid submitted by MSJ Ltd (Unicorn) the following is observed:

Item No.	Description	Quantity Required
AA138	Myfortic EC Tabs equivalent to mycophenolic acid 360mg	130,000

- 4. Mr S. Vawda, representative of the aggrieved bidder explained that the letter issued to him by the Ministry of Health & Quality of Life on 10 February 2009 indicated that its bid for the item AA138 had been rejected because he had offered 360mg tabs in lieu of the 500mg caps/tabs required. Hence, his efforts to demonstrate with supporting literature, the therapeutic equivalence of the 360mg Myfortic EC tabs to the 500mg Mycophenolate Mofetil tabs. Mrs S. Boolell, representative of the Ministry of Health & Quality of Life in her reply submitted that both products are not similar and produced some literature in support of her contention.
- 5. The Panel observes that both parties agreed that Myfortic EC tabs was not a generic of Mycophenolate Mofetil tabs. At best, though strongly disputed by the Ministry of Health & Quality of Life, Myfortic EC tabs may be considered as an alternative to Mycophenolate Mofetil tabs. As correctly pointed out by the Public Body in its letter of 10 march 2009 alternative bids cannot be considered under the ambit of this present exercise. The Public Body is acting in strict accordance with ITB 20.1, which states that alternative bids will not be accepted.

For all these reasons, the Panel finds that there is no merit in the application, which is accordingly dismissed.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated this 23rd of April 2009