

INDEPENDENT REVIEW PANEL

In the matter of:

Techno Scientific Ltd

(Applicant)

v/s

Ministry of Health & Quality of Life

(Respondent)

(Cause No. 05/09/IRP)

Decision

A. Background

In June 2008, the Ministry of Health & Quality of Life invited through open advertised bidding tenders from both local and overseas firms for the supply of Medical Disposables, Instruments for Trust Fund for Specialised Medical Care – Cardiac Centre (Annual Requirements 2008-2009). The deadline for the submission of bids was Friday 25 July 2008 up to 13.30 hours. The eighteen bids received were opened in public on the same day at 14.00 hours.

B. The Evaluation Process

1. The Central Procurement Board appointed a Bid Evaluation Committee to evaluate the bids received and it submitted its evaluation report on 19 September 2008. The Committee considered that only eleven of the bidders satisfied the mandatory requirements and qualified for technical appraisal. It then

proceeded to the technical evaluation of the bids, which comprised 28 Lots grouped as follows:

“Project Description and estimated cost

The project consists of the purchase of medical disposables, instruments for specialised medical care-cardiac centre comprising 28 lots as follows:

- Lot 1-3 - Invasive paediatric cardiology
- Lot 4-5 - Angiography
- Lot 6-7 - Angiography
- Lot 8-12 - Perfusion (with scheme for adult and paediatric Heat long pack)
- Lot 13 - Peripheral Angioplasty
- Lot 14 - Heat Valves Replacement
- Lot 15 - Vascular Surgery (prosthesis)
- Lot 17-23 - Surgery
- Lot 24-28 - Anaesthesia”

2. The Central Procurement Board informed the Public body about the outcome of the evaluation process on 04 December 2008. The details of the selected bidders and the approved contract to be awarded to each of them were contained in a 46- page annex. The Public Body accordingly notified all the bidders on 15 January 2009.

3. Techno Scientific Ltd had submitted a bid for the item specified under 1(a) for Lot 27 – Anaesthesia as:
Consumables for I-Stat portable blood gas analyser (Abbott) model I-Stat 1 and I-Stat 200.
EG 6 + cartridges (for blood gas analysis) – 7000 units

However, the Public body informed it on 15 January 2009 that it had been recommended for an award for 3500 units. Another bidder Medsell had been recommended for an award of the remaining 3500 units.

4. On 22 February 2009, Techno Scientific dissatisfied with the decision of the Public Body filed a challenge. Following information received from the Central Procurement Board, the Public Body informed the aggrieved bidder on 13 February 2009 that the consumable proposed by Medsell was cheaper and has

been assessed as satisfying the tender requirements. Hence, the decision to award half of the quantity to Medsell.

5. Techno Scientific Ltd still dissatisfied with the decision of the Public Body made an application for review to the Independent Review Panel on 27 February 2009. The Public Body was informed accordingly and the procurement proceedings were suspended until the appeal was heard and determined by the Panel. A hearing was held on 17 March 2009 following receipt of all relevant documents from the Public Body and the Central Procurement Board.

C. Grounds for Review

The grounds for review are as follows:

Ground 1

The Bidder must comply with the tender document (MHPQ/MDSP/07-08/Q5) specifications and good descriptions as stipulated in Lot 27, Item 1(a).

As per S 38(2) of the Public Procurement Act 2006, non-compliance to the criteria specified in the bidding documents shall lead to the said Bid to be rejected.

Since the tender document specifies for I-Stat EG 6 + Cartridges to be used on existing I-Stat analysers at the TFSSMC-Cardiac Centre. The Cartridges supplied by Medsell is not in compliance with the tender specifications.

Ground 2

A substitute to the tender specifications and good descriptions defeats the purpose of the tender exercise, with regards to the supply of I-Stat Cartridges, as per S 38(2) of the Public Procurement Act 2006.

Ground 3

A substitute to the supply of a completely different make implies the supply of new equipments. However the said tender documents provided for the supply of a specific consumables for a specific equipment, namely EG 6 + Cartridges for I-Stat Analyser make Abbott.

Ground 4

In case Medsell is offering the specified product, i.e EG 6 + Cartridges and being that the contract is split as per the Notice of Award dated 15 January 2009 (Reference No. MHPQ/MDSP/07-08/Q65) who takes the responsibility for the upgrading of the existing analysers, which need to be done twice a year as specified in Paragraph 1(b) of Lot 27.”

D. Submissions and Findings

1. The Item EG 6 + Cartridges (for blood gas analysis) was in lot 27 - Anaesthesia and details on the evaluation is given on pg 5, under that Lot number in the Bid Evaluation Report. The Committee reports that:

“(a) EG 6 + cartridges (for blood gas analysis)”

Two responsive bidders have submitted their offers namely Medsell Ltd and Techno Scientific Ltd and they all meet specifications.

The lower offer is from Medsell Ltd (OSMOTECH USA) and is offering 3-blood analyser free of charge complete with all accessories.

The second lowest offer from Techno Scientific Ltd (ABBOTT USA/CANADA).

It is recommended to purchase 3500 units from Medsell Ltd (OSMOTECH USA) for the sum of Rs822,500 and 3500 units from Techno Scientific Ltd (ABBOTT USA/CANADA) for the sum of Rs1,330,000.”

2. During the hearing, it was explained to the Panel that the cartridges are equipment specific. The cartridge from OSMOTECH cannot be used with the ABBOTT Blood Gas Analyser. This explains why Medsell Ltd was offering three-blood analyser complete with accessories free of charge.
3. The Panel understands the rationale of the Bid Evaluation Committee in recommending a split of the tender between the two bidders. The Bid Evaluation Committee considered the cartridges to be appropriate for the intended use and their procurement would provide the Public Body with some flexibility. In addition, the cartridges, some 38% cheaper, would be used on an equipment obtained free of charge.

4. However, the recommendation of the Bid Evaluation Committee must be considered in the context of Clause ITB 12, pg 6 of the Bidding Documents.

ITB 12 states: Alternative Bids shall be considered

“A Bidder may submit an alternative bid only with a bid for the base case. The Purchaser shall only consider the alternative bids offered by the Bidder whose bid for the base case was determined to be the lowest-evaluated bid.”

The cartridges specified in the bidding documents were those appropriate for use on an ABBOTT equipment and this in the opinion of the Panel must be considered as the base offer. As Medsell Ltd did not submit a bid for the base case, then its bid must be considered to be non responsive and its alternative bid cannot be considered under the ambit of this tender exercise. The Panel considers that Techno Scientific Ltd is the only responsive bidder.

For the reasons given above, the Panel considers that there is merit in the application and recommends the annulment of the decision of the Public Body to award the contract for 3500 cartridges for blood gas analysis to Medsell Ltd.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated this 2nd of April 2009