

INDEPENDENT REVIEW PANEL

In the matter of:

Robert Le Maire Ltd

(Applicant)

v/s

Ministry of Health & Quality of Life

(Respondent)

(Cause No. 06/09/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 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:

“Projects 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 - Invasine 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 - Anaesthessia”*
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. On 23 January 2009, Robert Le Maire Ltd dissatisfied with the decision of the Public Body filed a challenge with respect to the award of items under five lots: Lot 2, Lot 13, Lot 14, Lot 15 and Lot 24. Following information received from the Central Procurement Board, the Public Body replied to the aggrieved bidder, on 13 February 2009, giving the reasons as to why its bid had not been retained.
 4. Robert Le Maire 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:

Following challenge made against the Ministry of Health and Quality of Life to allocate a few items when our bids were cheapest and supported with all documents, then having an IRP on below was the only route to have full justification.

1. *Lot 2 – Item 3 (a-k) All requested brochures were submitted while the Ministry of Health and Quality of Life claims not submitted.*

2. *Lot 14 – Item 1b, d-I:*

The mechanical valves proposed are FDA approved and widely used around the world. It is unfair to reject the bid on the claims that there is no past experience. All certificates and clinical papers were submitted to prove the quality of the products.

Else, the Ministry of Health and Quality of Life should have had recourse to restricted bidding process in order to procure the already in-use valves instead of launching an open tender.

3. *Lot 14 – Item b-g: Identification numbers were given in our offer and correspondingly underlined in the brochures whereas the Ministry of Health and Quality of Life claims that no indication of item number was given and no clarifications was provided.*
4. *Lot 15 – Item 6 (a & e): The reference and brochures were provided, while the Ministry of Health and Quality of Life claims no reference was provided.*

D. Submissions and Findings

1. The comments of the Public Body on the reasons for the rejection of the bids of Robert Le Maire Ltd can be summarised as follows: -

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- (a) Lot 2 – Item 3 (a-k) : Catalogues and samples for items not submitted – No past experience of products proposed.
 - (b) Lot 14 – Item 1b, d-I : No past experience of proposed products
 - (b) Lot 14 – Item 2 (b – g) and Lot 15 – Item 6 (a - e) : No indication of item number provided. Clarification cannot be sought and evaluation cannot be carried out.
2. During the hearing Mr. S. Ramjatan representative of the aggrieved bidder asserted that he had submitted all the necessary information, in terms of catalogues and samples, as required in the bidding documents. For some items only catalogues/leaflets/technical documents were required. He also conceded that his bid was not the lowest for all items that he had made an application for review. (In these cases he was not satisfied with the answers given by the Public Body to his challenge).
3. The Panel has examined the evaluation report prepared by the Bid Evaluation Committee of the Central Procurement Board and observes that:
- (i) Lot 14.1 Item 1 (b-h), Robert Le Maire Ltd was not the lowest bidder and as such the bidder has not been aggrieved by the decision to award the contract for the supply of these items to another bidder. Item (i) was not awarded because of the stock available.
 - (ii) Lot 2 – Item 3(a-k) Robert Le Maire Ltd was the lowest bidder. However, the report indicates “no sample, no catalogue submitted and no past experience with Orbus Neich Medica B. V Germany”. In its application for review the aggrieved bidder asserts, “All requested brochures were submitted while the Ministry of Health and Quality of Life claims not submitted”.
 - (iii) Lot 15 – Item 6 (a-e) – Robert Le Maire Ltd was the lowest bidder but the report indicates that “no reference provided, so cannot be evaluated”. Again, the bidder asserts “that

reference and brochures were provided, while the Ministry of Health and Quality of Life claims no reference was provided”.

The Panel wrote to the Central Procurement Board on that issue on 23 March 2009 and the latter replied on 01 April 2009. It referred the Panel to the information contained in the evaluation report and also informed that no document was available at the Board for further verification as the original bid of Robert Le Maire Ltd had been forwarded to the Public Body. The Panel wrote to the Chief Executive Officer of the Public Body on 06 April 2009 for its stand in the light of the submission by the applicant. The Ministry of Health and Quality of Life confirmed that no catalogues had been received from Robert Le Maire Ltd. In the light of the two different versions, the Panel cannot safely conclude that the brochures were in fact submitted.

The Panel considers that this is a very unfortunate situation and recommends that a quality assurance system be put into place for the proper recording of documents submitted by bidders.

As far as past experience is concerned, we can understand the difficulty of practitioners to work with new products. However, we feel that the Ministry should take appropriate steps before the launching of bid, to allow, practitioners to test new proposed product, so that bids containing these new products could be duly considered and not rejected because of the simple fact that they are new products.

For all these reasons, we find no merit in this application, which is accordingly dismissed.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated this 19th of May 2009