

INDEPENDENT REVIEW PANEL

In the matter of:

Medsell Ltd

(Applicant)

v/s

Ministry of Health & Quality of Life

(Respondent)

(Cause No. 14/09/IRP)

Decision

A. Background

1. The Ministry of Health & Quality of Life on 20 March 2009 invited bids from eight companies for the supply of “Implants for Scoliosis Surgery – Dr Bhaskar” using the restricted bidding process. The quotations received were opened in public on 01 April 2009, the closing date for the submission of bids.
2. Four companies responded to the invitation for bids with a total of eight offers, as per the following details:
 - (i) VNS Diagnostic - 2 offers
 - (ii) Robert Le Maire Ltd - 2 offers
 - (iii) Chem Tech Ltd - 1 offer
 - (iv) Medsell Ltd - 3 offers

The Public Body appointed a Technical Evaluation Committee to carryout an evaluation of the bids received.

B. The Evaluation Process

1. The Bid Evaluation Committee submitted a first report on 13 April 2009. The report indicates that only the offer from Chem Tech Ltd is considered to be responsive and the section general remarks reads: “To confirm with Suppliers whether Implants are of Titanium or Stainless Steel. Titanium is recommended for MRI.

Instrumentation to be provided free of charge, complete new set and non-defective.”

2. Chem Tech Ltd replied to a request from clarification from the Public Body on 27 April 2009 and confirmed that:

- “(a) Our company will supply MONOAXIAL and POLYAXIAL screws of both size 4.5 and 5.5 mm.*
- (b) Implants provided will be made of TITANIUM*
- (c) 2 complete new non defective sets of instrumentations will be provided.”*

In the light of the above clarifications, the Bid Evaluation Committee in its second report dated 11 May 2009 considered that the offer of the bidder met all the specifications required and recommended it for an award.

3. The Public Body issued a letter of award to the selected bidder on 14 May 2009 and annex: MHPDO/MDIS/08-09/D097 to that letter details the items to be supplied. It is also specified in the letter of award that the items should be supplied within seven days as from date of letter of award. This delivery period was specified by the bidder itself in its offer.
4. Medsell Ltd informed the Public Body on 18 May 2009 that it strongly objected to the short listing of the offer from Chem Tech Ltd on the grounds that it did not meet the requirements of the tender. The aggrieved bidder contended that the system proposed by Chem Tech ltd does not use multi-directional and slotted multi-directional couplers. As such, it was of opinion that the system proposed was an alternative and bidding documents did not make provisions for acceptable alternatives.
5. The Bid Evaluation Committee examined the complaint of Medsell Ltd on 05 June 2009 and in its report concluded that: “Chem Tech Ltd is supplying couplers free of charge. The Evaluation Committee maintained that the product evaluated is according to

specifications”. The information was conveyed to Medsell Ltd on 09 June 2009.

6. The aggrieved bidder still dissatisfied with the decision of the Public Body informed the latter by letter dated 10 June 2009. A request for review was subsequently submitted to the Independent Review Panel on 16 June 2009.
7. The request for review was heard by the Independent Review Panel on 30 June 2009 and 10 July 2009 respectively.

C. Grounds for Review

The Grounds for review are as follows:

“The system provided by Chem Tech Ltd does not have multi directional couplers and slotted multidirectional couplers as requested by the tender. They may have an alternative but the system does not have couplers as stated therein.”

D. Submissions and Findings

1. Nine items are listed in “Section III – List of Goods and Delivery Schedule” of Part 2: STATEMENT OF REQUIREMENTS” (pg10) of the bidding documents. It was confirmed during the hearing that all the nine line items have to be considered together for a complete system.
2. The offer of Chem Tech Ltd, as was confirmed during the hearing, does not make use of line item no. 8: Multi-directional couplers and line item no. 9: slotted multi-directional couplers. The system proposed by Chem Tech Ltd make use of Mono-axial and Poly-axial pedicle screws and as such there was no need for the couplers. However, Chem Tech Ltd proposes to supply them to Public Body free of charge.
3. It is obvious from the discussions held at the hearing, the literature provided and the bidding documents that the offer of Chem Tech Ltd is an alternative offer excluding items no. 8 and no. 9 of the original offer. The bidding document does not provide for the consideration of alternative offer.

4. The Panel has examined in details the offers made by Medsell Ltd as well as the report dated 13 April 2009 of the Tender Evaluation Committee and observes the following:

Offer A: Has been considered non-responsive by the Bid Evaluation Committee as the implants are meant for trauma only.

Offer B: Meets the specification according to the Bid Evaluation Committee but has not been retained as there was no past experience in the use of those implants in Mauritius.

Offer C: Has been considered non-responsive as catalogue submitted not relevant to specification.

5. The Offer B (Biomet/Array System) of Medsell Ltd was considered to be responsive by the Tender Evaluation Committee. However, in the “Specification and Compliance Sheet” of Section VI of the bidding documents, the bidder clearly indicates that the line items 8 and 9 are not required in the system. The bidder, however quoted for these items and both their price and catalogue numbers were similar to Offer A (Biomet/Omega System). The details are as follows:

Line Item	Tech. Spec. Req.	Catalogue	Make	Unit Price (Rs)
8	Multi-directional couplers	128-07	Biomet	3,100
9	Slotted multi-directional couplers	128-09	Biomet	6,820

Thus, if it had opted for this offer B, the Public Body would have spent some Rs1,091,200 on unnecessary items of equipment.

6. The Panel considers that though the Technical Evaluation Committee has not strictly adhered to the technical specifications, it had been very fair in its evaluation. The absence of a provision for an alternative offer has not prevented the aggrieved bidder from submitting an alternative bid that was also considered. It has however, quoted for the line items 8 and 9 while the selected bidder were offering them free of charge.

7. The Panel considers that the offer of Chem Tech Ltd and offer B from Medsell Ltd are equivalent and that the offer from Chem Tech Ltd can be considered as the best option when the following are compared:
- | | |
|----------------|---|
| Price: | Rs2,724,000 against Rs4,465,200 |
| Delivery date: | 7 days against 6/12 weeks, and |
| Experience: | In current use against no past experience |
8. The Panel fully agrees with the Evaluation Committee that the system proposed by Chem Tech Ltd is appropriate, if no the most appropriate for the time being for surgical operations.

The submission of an alternative offer from Medsell excluding the requirements of items no. 8 and 9, which has been duly considered by the Evaluation Committee, does not render responsive the offer of the preferred bidder, which is also exclusive of items no. 8 and 9.

In these circumstances, the Panel holds that there is merit in the application but declines to recommend payment of reasonable costs to the Applicant pursuant to Section 45(10)(d) of the Public Procurement Act because:

- (a) the Applicant's alternative proposal similar to that of Chem Tech Ltd, component wise has been duly considered by the Bid Evaluation Committee
- (b) the Panel is not of the opinion that the contract should have awarded to the Applicant.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated this 20th of July 2009