

INDEPENDENT REVIEW PANEL

In the matter of:

Worldwide Marketing & Services Ltd.

(Applicant)

v/s

Police Department

(Respondent)

(Cause No. 19/09/IRP)

Decision

A. Background

1. The Police Department, through open advertised bidding, invited bids from local firms for the supply of various food items on 23 April 2009. The following details appeared in the press advertisement:

Procurement Reference No.	Item
Qno 226 – 2008/2009	Vegetables
Qno 227 – 2008/2009	Frozen Foods
Qno 232 – 2008/2009	Eggs

Other details of the requirements and conditions were contained in the bidding documents. The deadline for the submission of bids was Wednesday 27 May 2009 up to 13.30 hours and bids received were opened publicly on the same day at 14.00 hours.

Independent Review Panel – Decision No. 19/09

2. Under the item “Frozen Foods” there were nine line items number and after evaluation the offer of four line items (2, 6, 8 and 9) of Worldwide Marketing & Services Ltd. were retained. The offer of another bidder was retained for four other line items (1, 3, 4 & 5). The bidders were informed accordingly on 17 June 2009. All bidders were also informed that a further correspondence will be addressed to them in due course regarding item 7 – Headless gutted white frozen fish.
3. The Public Body informed the Procurement Policy Office, on 11 June 2009, that the cheapest offer obtained for item 7 was Rs 163.88 per kg compared to the present rate of Rs 117.90. In view of the substantial price difference and in the light of a request from the present supplier the Public Body sought the views of the Public Procurement Office on the option to extend the existing contract up to 31st December 2009 on the same items and conditions.
4. The Public Procurement Office informed the Public Body, on 19 June 2009, that it could either negotiate with the lowest evaluated bidder as per Regulation 8(a) or cancel the bidding exercise as per section 39 of the Public Procurement Act 2006 and invite fresh bids. The bidders were informed on 01 July 2009 that the Public Body will not procure Item 7, Headless Guttled White Frozen Fish, because there is a large difference between the cheapest offer in the tender and the price being paid in the current contract and that a fresh tender exercise will be initiated for the said item.
5. Worldwide Marketing & Services Ltd. challenged the decision of the Public Body on 07 July 2009 on the ground that the tender must be awarded to the lowest bidder. The Public Body replied to the challenge on 10 July 2009. The aggrieved bidder not satisfied with the reply of the Public Body sought additional information on the cheapest offer in the tender and the price paid in the current contract. The Public Body provided the requested information on 20 July 2009.
6. The aggrieved bidder still dissatisfied with the decision of the Public Body made an application for review to the Independent Review Panel on 22 July 2009.

B. Grounds for Review

The applicant’s ground for review are as follows:-

Breach of section 37(9) 37 (11) our bid price is less than the up date market price. 41, 51 (i) (a) 43 (i) 45 (10) (a) and not replying to our letter dated 10th July 2009.

C. The Evaluation Process

The Senior Procurement and Supply officer of the Public Body carried out a comparative price statement of the three bids received at the closing date of 27 May 2009 and submitted his report to the Chairman of the Police Tender Committee for a decision on 09 June 2009. The Police Tender Committee approved on 10 June 2009 the award of contract for items 2, 6, 8 and 9 to Worldwide Marketing & Services Ltd. and items 1, 3, 4 and 5 to I. Edoos and Sons. As regards item 7 the committee approved the extension of the present contract, as the price is cheaper than the lowest after proposed by Rs 45.98 per kg. The advice of the Public Procurement Office was sought on this proposed course of action on 11 June 2009. The bidders were informed about the awards on 17 June 2009. They were informed about the cancellation of the procurement proceeding for item 7 on 01 July 2009.

D. FINDINGS

1. The Panel feels that this application can be disposed of on documentary evidence adduced and there is no need to call for a hearing. The Public Body considered that the price quoted by the lowest evaluated substantially responsive bid was substantially above their updated estimated costs by some Rs 45.98 per kg. As correctly pointed out by the Public Procurement office the Public Body could negotiate with the lowest bidder but provided it considered a re-bid exercise not practical. Alternatively, it could cancel the procurement proceedings. The Public Body opted for the second alternative and in strict accordance with clause 39(2) of the Public Procurement Act gave written notice of the cancellation of the public procurement proceedings to all bidders that submitted bids on 01 July 2009.

2. On the basis of all the documentary evidence provided the Panel finds that the Public Body has acted within the provisions of the Public Procurement Act 2006 and that there is not merit in this application, which is accordingly set aside.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated this 21 August of 2009