

INDEPENDENT REVIEW PANEL

In the matter of:

Worldwide Marketing and Services Ltd

(Applicant)

v/s

Ministry of Health & Quality of Life

(Respondent)

(Cause No. 02/10/IRP)

Decision

A. Background

1. The Ministry of Health and Quality of Life using the open Advertised Bidding Method invited tenders on 08 October 2009 for the supply of Frozen Chicken Breast and Frozen Chicken Thigh for all hospitals for the period 01 January 2010 to 31 December 2010. The deadline for the submission of bids was 11 November 2009 at 13.30 hours and bids were opened 13.35 hours on the same day. Three bids were received by the closing date.
2. The Bid evaluation committee considered the bids for the two Line Items separately and concluded that:
 - (i) Lowest bid for the supply of frozen chicken breast was from Worldwide Marketing and Services Ltd. at Rs 123.70 per kg and for a total cost of Rs 11,582,154.70 for 93,631 kg.

- (ii) Lowest bid for the supply of frozen chicken thigh was from Poulet Arc En Ciel Ltee at Rs 103.00 per kg and a total cost of Rs 9,700,025 for 94,175 kg.
3. The Public Body considered that as each Line Item was below the prescribed limit of Rs 15 M it was not necessary to issue a notification of award. It, therefore, went on to issue a letter of award to the two selected bidders on 10 December 2009.
 4. On 10 December 2009 the selected bidder for the supply of the Frozen Chicken Thigh, Poulet Arc En Ciel Ltee, declined the offer. Whereas on 18 December 2009 Worldwide Marketing and Services Ltd. accepted the offer for the supply of Frozen Chicken Breast.
 5. Upon refusal of the Poulet Arc En Ciel Ltee to accept the offer, on 28 December 2009 the Public Body made an offer for the supply of the Frozen Chicken Thigh to Worldwide Marketing and Services Ltd. at Rs 106.70 per kg and a total cost of Rs 10,048,472.50 for 94,175 kg which was accepted by the latter on 31 December 2009.
 6. Worldwide Marketing and Services Ltd. started supplying the Frozen Chicken Breast and Frozen Chicken Thigh to the hospitals as per the agreed schedule.
 7. The Public Body decided to terminate the two contracts awarded to Worldwide Marketing and Services Ltd on 05 February 2010 due to what was considered to be poor performance.
 8. The Public Body then decided to award the contracts for Line Items 1 and 2 to Poulet Arc En Ciel Ltee, which it considered to be the next compliant and responsive bidder. The Public Body considered that this decision was in accordance to section 40 of the PPA 2006. The Public Body issued notifications of award on 10 February 2010 as the total costs of the two contracts exceeded the prescribed limit of Rs 15M.
 9. Worldwide Marketing and Services Ltd as a dissatisfied bidder challenged the decision of the Public Body on 14 February 2010 on the grounds that the validity of the bids had lapsed and that the selected bidder had already refused a previous award for one of the Line Items.

10. The Public Body in its reply to the challenge on 19 February 2010 explained to the aggrieved bidder the reasons as to why its contract had been cancelled.
11. The aggrieved bidder dissatisfied with the decision of the Public Body submitted an application for review to the Independent Review Panel 01 March 2010.
12. The Independent Review Panel held hearings on 17 March and 23 March respectively.

B. Grounds for Review

The Grounds for Review are as follows:

Bid validity period expired. Poulet Arc En Ciel Ltee already refused the award. Our bid is cheaper. False declaration on letter of notification. False allegation on reply to challenge. Breach of Section 40(1), 40(2), 40(3), 40(6), 37(2), 37(9), 37(11) of Public PPA.

C. The Evaluation Process

The Bids Evaluation Committee appointed by the Ministry of Health and Quality of Life submitted its report on 23 November 2009 and indicated the following:

Bids received from:-

- (a) Worldwide Marketing & Services Ltd.*
- (b) Ibrahim Edoo & Sons Ltd.*
- (c) Poulet Arc En Ciel Ltee*

- A. Lowest bid for Breast is from Worldwide Marketing and is recommended. However the performance of the supplies is to be closely monitored because he is supplying for the first time.*
- b. Lowest bid for thigh is from Arc En Ciel Ltd and is recommended.*

D. Submission and Findings

1. The Panel considers that the Public Body should have issued notification of awards prior to making the awards to the two

successful bidders on 10 December 2009. The total costs of the procurement exercise at Rs 21,282,179.70 were well above the prescribed limit of Rs 15 M. The fact that the procurement was split into two separate contracts of Rs 11,582,154.70 and Rs 9,700,025 respectively does not render the need for the issue of notification of award unnecessary and unwarranted. The Panel considers that the overall value of the procurement exercise is the factor that determines the need or otherwise for the issue notification of awards.

2. The Bidding Data Sheet (BDS) clearly indicates at ITB 21.1 that: Bid shall include “ Bid Security Declaration” using the form included in section IV, “Bidding Forms”. The bid of Poulet Arc En Ciel Ltee included the required document duly signed. ITB 21.5 (pg 17) clearly indicates that the Bid Security declaration should be executed if the successful bidder fails to sign the contract in accordance with ITB 43. Poulet Arc En Ciel Ltee, the successful bidder for the supply of Frozen Chicken Thigh, declined the award made to it on 10 December 2009. However, the Public Body did not take any appropriate measure to execute the Bid Security Declaration.
3. Following the awards made to Worldwide Marketing and Services Ltd and the supply of the goods by the selected bidder the procurement exercise for the “supply of Frozen Chicken Breast and Thigh for all hospitals for the period 01 January 2010 to 31 December 2010” was for all intents and purposes complete.
4. The decision of the Public Body on 05 February 2010 to cancel the awards made to Worldwide Marketing and Services Ltd due to what it considered to be poor performance is not an issue for the Independent Review Panel. However, the representatives of the Public Body at the hearing of 23 March 2010 could not indicate to the Panel the relevant provisions in section 40 of the PPA 2006 that allowed them to consider Poulet Arc En Ciel Ltee anew, after its decline to accept the offer for an award. The representatives also confirmed that they did not contact either the Public Procurement Office or the State Law Office for advice prior to making the award to Poulet Arc En Ciel Ltee.

5. The Panel fails to understand why:
- (i) No action was taken by the Public Body to execute the Bid Security Declaration when Poulet Arc En Ciel Ltee refused the award made to it.
 - (ii) The Public Body considered all the bids to be still valid when an award had already been made and the contract executed.
 - (iii) A fresh award was made to the successful bidder, which initially had refused to accept an offer for one of the two Line Items.

For the reasons highlighted above the Panel considers that there is merit in the application and in accordance with paragraph (10)(b) of section 45 of the PPA 2006 recommends the annulment of the decision of the Public Body to award the procurement contract to Poulet Arc En Ciel Ltee.

The Panel wishes also to draw the attention of the competent Authorities to what it considers to be very serious breaches noted in this procurement exercise.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated this 31st March 2010

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