

## **INDEPENDENT REVIEW PANEL**

**In the matter of:**

**Worldwide Marketing & Services Ltd**

**(Applicant)**

**v/s**

**Police Department**

**(Respondent)**

**(Cause No. 11/10/IRP)**

### **Decision**

#### **A. Background**

1. On 15 October 2009, the Mauritius Police Force using the request for sealed quotations method, invited sealed quotations for the supply of refined edible soya bean oil as from 01 January 2010 to 31 December 2010. The Public Body specified that the oil must be delivered in drums of 200 to 210 litres (approximately 190 kg/drum net of weight). It was further specified that “the edible oil (100 % soyabean oil) shall comply with the relevant requirements of the Mauritian Standard MS 27 of 1981. The relevant compliance certificate should be submitted”.
2. The deadline for the submission of quotation was 04 November 2009 at 13.30 hrs. Quotations were received from two bidders out of the eight which were invited to quote. An Evaluation Committee set up by the Public Body submitted its evaluation report to the Police Tender Committee on 01 December 2009. An award was made to the selected bidder Tires Specialist Tiremaster Ltd on 04 December 2009.

3. The aggrieved bidder, Worldwide Marketing & Services Ltd, queried the Public Body on 03 April 2010 about the outcome of the bidding exercise. The Public body on 11 May 2010 informed the aggrieved bidder of the reasons as to why its bid had not been retained. The aggrieved bidder challenged the decision of the Public Body on 15 May 2010. As no reply was made to the challenge the aggrieved bidder submitted a request for review to the Panel on 01 June 2010.
4. The Panel wrote to the Public Body on 04 June 2010 to request all relevant information and documentation in respect to this particular procurement contract. The Public Body provided the requested information on 11 June 2010 together with its comments on the Applicant's grounds for review. A copy of the comments was also sent to the aggrieved bidder by the Public Body.

## **B. Grounds for Review**

The Grounds for Review are as follows:

*“Breach of Section 37 of the Public Procurement Act and breach of Section 6 of the quotation procedures.”*

## **C. The Evaluation Process**

1. A Bid Evaluation Committee was set up by the Public Body to evaluate the two quotations received by the closing date of 04 November 2009. The committee submitted its report to the Chairman of the Police Tender Committee on 01 December 2009. The Committee considered that though Worldwide Marketing & Services Ltd had submitted the lowest offer at Rs46.85 per litre the offer had to be considered as being non responsive. As per part 2 of the statement of requirements, the bidder had failed to indicate the following:
  - (a) brand name of the product
  - (b) country of origin, and
  - (c) warranty/shelf life period

2. The Committee recommended Tires Specialist Tiremaster Ltd for an award as it satisfied all requirements and specifications of the Public Body. An award was made to the selected bidder on 04 December 2009 for supply of the oil at Rs54.00 per litre.

#### **D. Submissions and Findings**

1. The Panel notes that the aggrieved bidder became officially aware of the decision of the Public Body to award the contract to Tires Specialist Tiremaster Ltd on 11 May 2010. It challenged the decision of the Public Body on 15 May 2010. The Public Procurement Act 2006 at 43(3)(b) specifies that *“a challenge shall not be entertained unless it is submitted in any other case within such time as may be prescribed”*. The Public Procurement Regulation 2008 at 48(2) specifies *“for the purpose of Section 43(3)(b) a challenge shall not be entertained unless it is submitted within 5 days from the invitation to bid or from the opening of bids”*. On the basis of these provisions of the Public Procurement Act 2006 and Public Procurement Regulation 2008 the Panel considers that the Public Body was not bound to entertain the challenge.
2. Section 45(i)(c) of the Public Procurement Act 2006 provides that *“An unsatisfied bidder shall be entitled to ask the Review Panel to review the procurement proceedings where before or after the entry into force of a procurement contract the value of which is above the prescribed threshold, he is not satisfied with the procurement proceedings on a ground specified in section 43(1)”*.

Regulation at 48(7) made under the Public Procurement Act 2006 provides that *“an application for review under section 45(1)(c) of the Act, from an unsatisfied bidder after the entry into force of a procurement contract the value of which is above the prescribed threshold, as specified in paragraph (6), stating that he is not satisfied with the proceedings on a ground specified in section 43(1), shall be made within 5 days of the date the applicant becomes aware of alleged breach.”*

The Panel based on the above, considers that the request for review should have been submitted to Panel on the 15 May 2010 at latest. Thus, the application for review submitted on 01 June 2010 must be considered to have been submitted outside delay.

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For these reasons, the application for review is dismissed as it has been filed in an untimely manner with respect to the deadlines for filing an application for review by the Independent Review Panel.

**(Dr. M. Allybokus)**  
*Chairperson*

**(H. D. Vellien)**  
*Member*

**(Mrs. E. Hanoomanjee)**  
*Member*

**Dated 10<sup>th</sup> August 2010**