Decision No. 20/10

INDEPENDENT REVIEW PANEL

In the matter of:

MSJ Ltd (Unicorn) (CN 20/10/IRP)

Chem-Tech Ltd (CN 21/10/IRP)

(Applicant)

v/s

Ministry of Health & Quality of Life

(Respondent)

Decision

A. Background

1. The Ministry of Health and Quality of Life using the open advertising bidding method invited bids, on 04 March 2010 from local and overseas firms for the supply of medical disposables for the Trust Fund for Specialised Medical Care, Cardiac Centre. The reference of the invitation for bids was OAB No.: MHPQ/MDSP/2010/Q8. The deadline for the submission of bids was 28 April 2010 at 13.30 hrs and it was scheduled that bids received would be opened on the same day at 14.00 hrs in presence of bidders/representatives who choose to attend.

2. The bidding documents indicate that Lot 6 was for the Department of Invasive Cardiology and the consumables were for Angioplasty. There were five line items (no. 3-7) and item 6 was for the supply of twenty two different sizes of "coronary stents chromium cobalt".

3. The Bid Evaluation Committee set up to evaluate the bids received submitted its technical evaluation report on 22 July 2010 and on 12 August 2010 the Ministry of Health & Quality of Life informed all bidders of the outcome of the biding exercise. Two bidders aggrieved by the decision of the Public body with respect to the award of item 6 – coronary stents chromium cobalt – submitted a challenge to the Public Body on 18 August 2010. The Public Body replied to the challenge on 25 August 2010 explaining to the bidders the reasons as to why their bids had not been retained.

4(i) The aggrieved bidder MSJ Ltd (Unicorn) still dissatisfied with the decision of the Public Body made an application for review to the Panel on 01 September 2010.

(ii) The second aggrieved bidder Chem-Tech Ltd submitted an application for review on 06 September 2010.

5. The Independent Review Panel informed all parties concerned on 06 September 2010 that the procurement of lot 6 item 6(a-x) had been suspended until the appeal was heard and determined by the Review Panel. Hearings were held at the Independent Review Panel on 22 September and 30 September 2010 respectively.

B. Grounds for Review

The Grounds for Review are as follows:

MSJ Ltd (Unicorn)

"Products fit specifications, has previous been supplied under same specifications and will represent a cost saving to Ministry of Health & Quality of Life."

Chem-Tech Ltd

"(i) The Ministry erred in holding that the products supplied by our company caused an unexpected high rate of restenosis in patients;

(ii) The Ministry failed to take into consideration the fact that out of 144 Presillion Cobalt Chromium Stents of the Applicant implanted at the Cardiac Unit of the Victoria Hospital for the

period August 2009 to August 2010, there was no case of restenosis;

(iii) The Ministry failed to take into consideration the rate of restenosis caused by stents supplied by other bidders;

(iv) The ministry failed to take into consideration that the price quoted by the Applicant for Lot 6 item 6 is lower than that quoted by IBL Healthcare; and

(v) The Ministry failed to take into consideration the lack of clinical trials of stents supplied by Trident Healthcare."

C. The Evaluation Process

1. The evaluation of the bids received were carried out by four cardiologists of the Cardiac Centre. From the Technical Evaluation Report dated 22 July 2010 the following is noted with respect to the bids received:

Supplier	Item No.	Views and Recommendation
FTM Ltd	6(a-x)	This is new product. We have no experience with this product and no samples have been provided.
Unicorn Ltd		Our specification reads cobalt chromium. The offer from unicorn is cobalt alloy which does not meet our specifications.
Chem-Tech Ltd	6(a-x)	We have utilised this product and found that the restenosis rate is unexpectedly high in our patients.
IBL Ltd Offer 1 and 2	6(a-x)	The offer 1 and 2 are recommended and is currently utilised in our unit.
Trident Health Care	6(a-x)	The offer from Trident Health Care meets specifications. This product is not suitable for complex tortuous vessels. It can be used for simple lesions (Type A). We recommend to purchase 20% from this supplier.

2. The information was communicated to the aggrieved bidders in reply to their challenge on 25 August 2010.

D. Submissions and Findings

Request for Review of MSJ Ltd (Unicorn)

1. The specifications for item 6 was specified at page 73 of the bidding documents as follows "coronary stents chromium cobalt".

2. The bidder MSJ Ltd (Unicorn) proposed stents of the made Driver/Micro Driver and does not dispute the fact that it is a cobalt based alloy (i.e. cobalt-nickel-chromium-molybdenum alloy). However, the bidder argues that on 09 April 2010 it was awarded a contract for the supply of stents on a similar specification i.e. "coronary stents chromium cobalt". The documentary evidence submitted by the bidder confirms that the bidding documents specified "coronary stents chromium cobalt" and the proposal of the bidder for stents of the made Driver were accepted and an award made accordingly. At the hearing the aggrieved bidder explained that on the basis of these facts it did not consider it necessary to seek clarifications from the Public Body on the acceptability of cobalt based alloy stents.

   The Panel considers that though the bids have been evaluated on the basis of the specifications the aggrieved bidder has an arguable case as for the last procurement exercise the specifications were similar and its bid for the same made of product was accepted.

3. The Cardiologists from the Cardiac Centre explained in a letter dated 13 September 2010 to their Executive Director that they had abided by the specifications in the bidding document which was for cobalt chromium stent. The Panel concurs that the Bid Evaluation Committee has adhered strictly to the specifications.

4. However, it is not clear whether the last evaluation exercise and the present one in dispute had been carried out by the same Bid Evaluation Committee. The Panel considers that the events surrounding the two bidding exercises, though they are independent of each other, could easily mislead any reasonable bidder.

Request for Review by Chem-Tech Ltd

1. The bid from Chem-Tech Ltd is fully responsive and is presently being utilised at the Cardiac centre. However, the bid evaluation

Committee did not recommend the procurement of the proposed stent of made Presillion as the rate of restenosis was unexpectedly high in patients at the Centre when the product was used.

2. Dr. D. Reebye explained to the Panel that the cause of restenosis cannot be ascertained as it can be due to several factors. These include among others the condition of the artery where the stent is being implanted, the proper use of medication by the patient and the surgeon. He explained that he has up to now never experienced a case of restenosis with the use of a Presillion stent. He went on to add that only two of the cardiologists who signed the evaluation report have experienced the cases of restenosis reported at the Centre when the Presillion stent were used.

3. The Market Access Director of Johnson & Johnson, the supplier of the stent Presillion, wrote to four cardiologists working at the Cardiac Unit, Victoria Hospital on 27 August 2010 to seek information on the rate of restenosis involving the use of their device over the last 12 months. The cardiologists replied to the request for information on 03 September 2010 and indicated that 144 Presillion cobalt chromium stent had been implanted at the hospital during the period 01 August 2009 to 30 August 2010. There were no reported cases of either stent thrombosis or restenosis.

4. Dr. A. Yearoo, Consultant Cardiologist in a private clinic, indicated to Johnson & Johnson that during the period January 2009 to August 2010, he had implanted 18 Presillion stents on patients. He has one reported case of stent restenosis in one diabetic patient.

5. The four cardiologists working at the Cardiac Centre did not respond to the request for information. The Panel appreciates that it was difficult for them to comment on an evaluation which they had carried out and which was the subject of challenge at the level of the Public Body.

6. The Panel was provided with detailed information on the number of coronary stents used at the Centre and the number of instant restenosis recorded on 28 September 2010. It is observed that 284 Presillion stents were implanted on patients and there were 12 recorded cases of instant restenosis. This indicates a restenosis rate of 4.2% when Presillion stents were used compared to 2.3% and 2.8% respectively when Driver stent and Vision stent were

used. At the hearing Dr. D. Reebye explained that the restenosis cases had occurred during a relatively short period of time.

7. Based on all evidence available on records and the explanation provided by Dr. D. Reebye at the hearing, it is observed that out of eight cardiologists in the public sector six of them have no recorded cases of restenosis during the period 01 July 2010 to 30August 2010, when using the Presillion stent. The two cardiologists who had reported cases of restenosis with these stents were members of the Bid Evaluation Committee. The Panel considers that it was their responsibility to draw attention to a particular problem that they had observed.

8. The Panel considers that with respect for review of:

   (i) MSJ Ltd (Unicorn) - the Bid Evaluation Committee was right to recommend a bid which was fully compliant with the specifications. If the bid of the aggrieved bidder had been retained it may have exposed the Public Body to a challenge from a fully compliant bidder. However, the Panel notes the observations made by the aggrieved bidder and urges the Public Body to be more precise and consistent in the drafting of specifications and the evaluation of bids. The Panel sets aside the application for review.

   (ii) Chem-Tech Ltd – the Bid Evaluation Committee should have given more consideration to the data available and the matter referred to the parent Ministry for a policy decision. The stents of made Presillion are still available in the stores of both the ministry of Health & Quality of Life and the Cardiac Centre. Dr. D. Reebye confirmed that they were still in use at the Centre. Being given that the conclusion reached by the Evaluation Committee is to the effect that *"the restenosis rate is unexpectedly high in our patients"* is not supported by the evidence adduced, the Panel feels that it was most unsafe to rely on such conclusion to recommend the award to the selected bidder.

This constitutes a serious shortcoming in the evaluation exercise, which needs to be remedied. In these circumstances, the Panel finds merits in the application of Chem-Tech Ltd and in accordance with Section 45(10)(c) of the Public Procurement Act 2006 recommends a review of the decision.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated 26 October 2010