

INDEPENDENT REVIEW PANEL

In the matter of:

Iframac ltd

(Applicant)

v/s

Ministry of Health & Quality of Life

(Respondent)

(Cause No. 25/10/IRP)

Decision

A. Background

1. The Ministry of Health & Quality of Life using the Open Advertising Bidding Method invited bids for the procurement of vehicles for the transport division (MHPQ/NMED/2010/Q92) on 27 August 2010. The deadline for the submission of bids was 29 September 2010 at 13.30hrs. The public opening of the bids received was scheduled for the same day at 13.35 hrs. Two bids were received by the Public Body as per the following details:
 1. Iframac Ltd (three items)
 2. ABC Motors Co. Ltd (four items).
2. Following the public opening of the bids a Bid Evaluation Committee was appointed to evaluate the two bids received. The Committee submitted its report on 15 October 2010 and the Public Body informed the bidders of the outcome of the bidding exercise on 29 October 2010.

3. Iframac Ltd aggrieved by the decision of the Public Body with respect of the three items, submitted a challenge on 03 November 2010. On 04 November 2010, the Public Body answered the aggrieved bidder and gave the reasons for the rejection of the latter's bid. The aggrieved bidder still dissatisfied with the decision of the Public Body submitted a request for review to the Panel on 16 November 2010.
4. The Panel informed all parties concerned accordingly on 19 November and on the same day suspended the Procurement proceedings for three items (1, 3 and 4) until the appeal was heard and determined. A hearing was held on 09 December 2010.

B. Grounds for Review

The Grounds for Review are as follows:

“Decision of Ministry of Health & Quality of Life is wrong in law, Erroneous and invalid, in as much as the Ministry has acted in breach of Section 40(1) of the Public Procurement Act. Although the bid of Iframac Limited was cheaper by Rs6,601,050 compared to ABC Motors Co. Ltd, the contract was awarded by the Ministry to ABC Motors Co. Ltd.

The Ministry of Health & Quality of life has wrongly stated that High Roof Vans are not proposed by Iframac Limited in its letter dated 04 November 2010 in as much as, the Bid submission form, specification, compliance sheet and price schedule submitted by Iframac Limited are compliant to the Ministry of Health & Quality of Life tender requirements and Iframac Limited has consistently stated in the bidding document that the bid relates to high roof van.

The Ministry of Health & Quality of Life has failed to adhere to requirements of Section 37(1) of the Public Procurement Act, in as much as, it has not sought clarification from Iframac Limited during the examination of bids.”

C. The Evaluation Process

1. The details of the vehicles to be procured under this procurement exercise are as follows:
 - (i) 10 Window Vans With Rear Tail Gates (15 Seater Type Body)

Body Type: High Roof Type

- (ii) Five cars
 - (iii) Five Window Vans With Rear Tail Gates (15 Seater Type Body) – one bench 3 seater at rear
Body Type: High Roof Type
 - (iv) Five Mini Bus (Seating capacity around 15)
Body Type: High Roof Type
2. ABC Motors Co. Ltd submitted a bid for all four items while Iframac Ltd quoted only for three items (i, iii and iv). The details of the two bids with respect to the three items were as follows:

ITEM NO.	DESCRIPTION AND QUANTITY	PRICE INCLUSIVE OF VAT (RS)	
		<i>IFRAMAC LTD</i>	<i>ABC MOTORS CO. LTD</i>
(i)	10 units - Window vans with rear tail gates (15 seater type body)	6,283,350	9,717,500
(iii)	5 units - Window vans with rear tail gates (15 seater type body)	3,199,175	4,899,000
(iv)	5 units - Minibus	3,457,125	4,925,000
	TOTAL	12,940,450	19,541,500

3. The Bid Evaluation Committee at page 7 of its report dated 15 October 2010 indicates that both bids had satisfied the mandatory requirements and were thus retained for Technical appraisal. The bid from Iframac Ltd was considered to be technically non-responsive as the models quoted were not of the “High Roof Type”. The bid from ABC Motors Ltd was considered to be technically responsive and as such was retained for financial evaluation.
4. The Bid Evaluation Committee recommended ABC Motors Ltd for an award for the three items for a contract price of Rs19,541,500 (inclusive of VAT) with delivery to be effected as per offer of bidder i.e. Ex-stock subject to unsold.

D. Submissions and Findings

1. Iframac Ltd indicated on its specification and compliance sheet that it was proposing the following Make and Model of vehicles for its bid:

ITEM NO.	DESCRIPTION	MADE AND MODEL OF VEHICLES
(i)	Window vans with rear tail gates (15 seater type body)	FOTON Window van BJ6536B1DDA-3R
(iii)	Window vans with rear tail gates (15 seater type body)	BJ6536B1DDA-3R Window Van BJ6536B1DDA-3R
(iv)	Minibus	FOTON 15 – seater BJ6536B1DDA-3R

2. At ITB 11.1(h) (page 27) of the bidding documents it is indicated clearly that bidders shall submit the following additional documents in its bid:

“Original catalogues and leaflets should be submitted along with the bid and the Make/Model proposed to be highlighted”.

The aggrieved bidder did not submit any catalogue but did submit two leaflets. One leaflet showed a picture of the Minibus and the second leaflet was a technical data sheet. The vehicle model is given as BJ6536B1DDA-3R and the cabin type is described as Middle-roof. The Panel can only assume that the technical data sheet is for the Foton View Minibus and if this is actually the case then the bid of Iframac Ltd for the Minibus would be clearly non-responsive. The bidder has not submitted any other documentation with its bid as per the requirements of ITB 11.1(h).

3. At some point in time the aggrieved bidder submitted a coloured leaflet of a vehicle and its specifications. The vehicle brand is referred to as being a Foton of Model BJ6536B1DDA-3R. The cabin type is described as “High roof” in the document. The document is unsigned, undated and is most definitely not an original. The Panel considers that this document is unacceptable.
4. Iframac Ltd has indicated on both the specification and compliance sheet and the quotation forms accompanying its bid that both the

“Foton Window Van” and the “Foton 15 Seater” are high roof Model BJ6536B1DDA-3R. However the bidder has failed to submit original catalogues and leaflets highlighting the Make/Model proposed along with its bid.

5. The Panel is of the view that there is an obvious inconsistency arising on one part from the information provided by the aggrieved bidder on both specification and compliance sheets and quotation forms to the effect that both the “Foton Window Van” and the “Foton 15 Seater” are high roof Model BJ6536B1DDA-3R and on the other part the information gathered on one specification leaflet where the cabin is described as middle roof. The Panel feels that such inconsistency should be considered to be a non material omission as contemplated by the provisions of Directive No. 3 of the Procurement Policy Office issued on 30 April 2010, and in such cases the Public Body should have asked the aggrieved bidder to fully comply with ITB 11.1(h) and to submit appropriate original catalogues and leaflets of the Make/Model being proposed i.e. FOTON BJ6536B1DDA-3R for both the Window Vans and Minibus. These documents which cannot be tampered with are considered to be factual information which ought to have been available at the time of the submission of the bids.

As bids for this procurement were submitted on 29 September 2010, the Panel considers that the aggrieved bidder should be able to submit the required documentation within the shortest possible delay.

The Panel finds that there is merit in the application. In accordance with Section 45(10)(c) of the Public Procurement Act 2006 and for reasons given above the Panel recommends a review of the decision reached by the Public Body in order to allow the Evaluation Committee to take into account the appropriate documentation requested from the aggrieved bidder.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated