

INDEPENDENT REVIEW PANEL

In the matter of:

Worldwide Marketing & Services Ltd

(Applicant)

v/s

Police Department

(Respondent)

(Cause No. 02/11/IRP)

Decision

A. Background

1. The Police Department using the open advertised bidding method invited bids on 29 October 2010 for the supply of frozen foods (Q. No. 246 of 2010) for the period 01 January 2011 to 31 December 2011. The deadline for the submission of bids was 01 December 2010 at 13.30 hrs and bids opening was scheduled for the same day at 14.00 hrs.
2. The list of goods and delivery schedule are given in “Section V – Schedule and Requirements”, pg 54 of the bidding documents. The distribution list for delivery is specific at pg 64 of the same Section of the bidding documents. The ten items to be procured were as follows:

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Description	Quantity
<i>Frozen Beef Meat (Topside)</i>	<i>5,300 kg</i>
<i>Frozen Boneless Mutton Leg</i>	<i>13,500 kg</i>
<i>Frozen Beef Meat (Fores) for Police</i>	<i>3,900 kg</i>
<i>Frozen Beef Heart for Police Dog</i>	<i>4,000 kg</i>
<i>Frozen Beef Liver</i>	<i>4,200 kg</i>
<i>Frozen Cauliflower Florets</i>	<i>530 packets of 400 – 450 gm</i>
<i>Frozen Broccoli Florets</i>	<i>500 packets of 400 – 450 gm</i>
<i>Frozen Chicken Breast</i>	<i>38,800 kg</i>
<i>Frozen Chicken Thigh</i>	<i>40,300 kg</i>
<i>Frozen Headless Guttled White Fish</i>	<i>45,700 kg</i>

3. A three-member Bid Evaluation Committee was appointed by the Public Body to evaluate the four bids received by the closing date of 01 December 2010. The Committee submitted its evaluation report on 10 December 2010. The recommendations of the Bid Evaluation Committee at paragraph 7 pg 5 of the evaluation report are as follows:

- Items 1, 2, 3, 4, 5, 6, 7 and 10 to be supplied by Ibrahim Edoe & Sons Ltd as it meets our technical requirements and is the cheapest offer.
- Items 8 and 9 to be supplied by Worldwide Marketing & Sons Ltd as it meets our technical requirements and is the cheapest offer.

4. The Police Department informed all bidders of the outcome of the bidding exercise on 20 December 2010.

Worldwide Marketing & Services Ltd as an aggrieved bidder challenged the decision of the Public Body on 25 December 2010 regarding the award for Items 1, 2, 3, 4, 5, 6, 7 and 10.

The Police Department informed the aggrieved bidder on 04 January 2011 that it had taken note of the challenge. In the absence of any further information from the Police Department the aggrieved bidder made an application for review to the Panel on 17 January 2011.

5. On 18 January 2011 the Panel, pursuant to Section 45(4) of the Public Procurement Act 2006, suspended the procurement proceedings for the award of the disputed items until the appeal was heard and determined. All parties were informed accordingly.

On 19 January 2011 the Panel requested the Public Body for:

- (i) its comments on the application for review and
- (ii) all relevant information and documentation in respect of the procurement contract.

The Panel requested the Police Department on 25 January 2011 to provide it with a copy of the bids of successful and aggrieved bidders and the evaluation report.

6. The Police Department provided its comments on the application for review on 07 February 2011 together with other documents requested.
7. A hearing was scheduled for 09 February 2011 but had to be postponed on two occasions for circumstances beyond the control of the Panel. A hearing was held on 23 February 2011.

B. Grounds for Review

The Grounds for Review are as follows:

“Bid of Messrs. I. Edoo & Sons Ltd is non responsive for item 1, 2, 3, 4, 5, 6, 7 and 10. No cold room permit and account submitted.”

C. The Evaluation Process

1. The four bids received by the deadline for the submission of bids of 01 December 2010 were evaluated by a three-member Bid Evaluation Committee of the Public Body. The list of bidders and the read out prices are given at paragraph 4, pg 4 of the evaluation report as follows:

Description	Worldwide Marketing & services Ltd	H. K & D. Nandee Co. Ltd	Ibrahim Edoo & Sons Ltd	Poulet Arc En Ciel Ltee
Supply of Frozen Foods	Rs26,008,010 (quoted items 1 to 10)	Rs5,525,130 (quoted item 10 only)	Rs24,742,955.40 (quoted items 1 to 10)	Rs9,826,200 (quoted items 8 and 9 only)

For the Bid Evaluation Committee two of the bidders H. K & D Nandee Co. Ltd and Poulet Arc En Ciel Ltee were considered to be non-responsive whereas the remaining two bidders Worldwide Marketing & Services Ltd and Ibrahim Edoo & Sons Ltd were found to be substantially responsive.

2. On the basis of the price quoted Ibrahim Edoo & Sons Ltd was recommended for an award for items 1, 2, 3, 4, 5, 6, 7 and 10 while Worldwide Marketing & Services Ltd was recommended for items 8 and 9. Notification of awards were accordingly issued by the Public Body on 20 December 2010.

D. Submissions and Findings

1. The Bid Data Sheet provides at Section 11.1(h) (Section C: Preparation of Bids, pg 27) the list of additional documents that the bidder should submit in its bid.

Section 11.1(h) 1 and 2, state without any ambiguity that: *“Bidder should state his source of supply. A certificate from source supplier should be submitted”,* and

“Bidder should be in possession of its own cold room facilities. The capacity and location of cold room(s) should be stated. A copy of valid cold room permits(s) should be submitted.”

2. The Panel has examined the bid submitted by Ibrahim Edoo & Sons Ltd and notes that Innodis Ltd provided it with a letter dated 11 November 2010 confirming that it will supply the bidder with the frozen products. This letter shows compliance with the mandatory requirement at 11.1(h) 1. However, Ibrahim Edoo & Sons Ltd did not provide any document to show compliance with the mandatory requirements of cold room facilities as stipulated at ITB Section 11.1(h) 2.

3. In its comments to the Panel received on 07 February 2011 on the application for review by Worldwide Marketing & Services Ltd the Public body observes that:

“Although it has not been explicitly mentioned in the tender document, the Police Department is of the view that compliance with either ITB 11.1(h) 1 or ITB 11.1(h) 2 is sufficient for a bidder to be compliant as it is considered that a selected bidder procuring from an established importer of frozen foods with cold room facilities may

not necessarily have its own cold room. The conditions were meant for either whole sale distributors or importers of frozen foods.”

4. The Panel fails to understand the rationale of the Public Body in considering that a letter from a supplier albeit with cold room facilities will dispense a bidder from having its own cold room facilities as clearly specified in its own bidding documents.
5. The letter from Innodis Ltd dated 11 November 2010 merely states that it will supply the bidder with the frozen foods. There is no undertaking from the supplier that it will effect delivery on behalf of the selected bidder according to the delivery schedule given at pg 64 of the bidding documents.
6. The Panel finds that Ibrahim Edoo & Sons Ltd has failed to comply with a mandatory condition namely the availability of cold room facilities and as such it should have been considered to be non-responsive. It is noted that on 25 December 2010 Worldwide Marketing & Services Ltd challenged the decision of the Public Body on this specific ground. On 04 January 2011 the Public Body only took note of the challenge did not reply specifically to the grounds raised therein by the aggrieved bidder.
7. At the hearing the Police Department confirmed that it was aware that Ibrahim Edoo & Sons Ltd had failed to submit a mandatory document. Yet the evaluation report does not make mention of this fact nor is there any explanation as to why the bidder was considered to be substantially responsive.
8. The Panel finds that on the basis of all the above, there is merit in the application and Ibrahim Edoo & Sons Ltd was a non-responsive bidder. Pursuant to Section 45 the Panel recommends an annulment of the awards made to Ibrahim Edoo & Sons Ltd and a re-evaluation of the bids of Worldwide Marketing & Services Ltd taking into account the compliance or otherwise of the aggrieved bidder to specification in respect of cold room facilities as laid down in ITB 11.1(h) 2.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated 10 March 2011