

INDEPENDENT REVIEW PANEL

In the matter of:

A.A.R. Oosman & Co.

(Applicant)

v/s

Police Department

(Respondent)

(Cause No. 06/11/IRP)

Majority Decision

A. Background

1. The Police Department using the open advertised bidding method invited bids on 29 October 2010 for the supply of five items of foodstuffs and groceries for the period 01 January 2011 to 31 December 2011 (procurement reference number was Qno. 244 of 2010). The deadline for the submission of bids was scheduled for the same day at 14.00 hrs.
2. A three-member Bid Evaluation Committee was appointed by the Police Department to evaluate the ten bids received by the closing date and it submitted its evaluation report on 18 February 2011.

The Public Body informed all bidders of the outcome of the bidding exercise on 03 March 2011.

3. AAR Oosman & Co. challenged the decision of the Public Body with respect to two of the items on 04 March 2011:

Item No. 18: Cheese in pack of 250 gms (24,000 units)

Item No. 51: White long grain rice

The Public body replied to the challenge on 14 March 2011 and explained to the bidder why its bids for the two items were not retained though its prices were lower than the prices at which the tenders have been awarded.

4. AAR Oosman & Co. still dissatisfied with the decision of the Public body with respect to the procurement for white long grain rice made an application for review to the Panel on 16 March 2011. The Panel informed all parties concerned accordingly on 17 March 2011 and pursuant to Section 45(4) of the Public Procurement Act 2006 suspended the proceedings for this item until the appeal was heard and determined.

A hearing was held by the Panel on 08 April 2011.

B. Grounds for Review

The Grounds for Review are as follows:

“Not satisfied with reply of Public Body of 14.03.11 to our challenge.”

C. The Evaluation Process

1. The Public Body appointed a three-member Bid Evaluation Committee to evaluate the ten bids received by the closing date of 01 December 2010. The Bid Evaluation Committee submitted its evaluation report on 18 March 2011 and the report indicates at paragraph 5 that bids were first examined to check compliance with the mandatory requirements. Two of the bidders were considered to be non-responsive for the whole bidding exercise. One bidder did not submit the “Specification and Compliance Sheet” while the second one did not sign the “Bid Submission Sheet”. A third bidder was considered to be non-responsive for those items that it had quoted on a price fluctuation basis.
2. For item no. 51, white long grain rice, Worldwide Marketing & Services Ltd was recommended for an award though it was not the lowest bidder for this item.
3. The Public body approved the recommendations of the Bid Evaluation Committee and notified all bidders of the outcome of

the bidding exercise, pursuant to Section 40(3) of the Public Procurement Act 2006, on 03 March 2011.

D. Submissions and Findings

1. The report of the Bid Evaluation Committee indicates the following with respect to Item No. 51 – white long grain rice.

“AAR Oosman is the cheapest bidder and 2 samples of rice were provided, namely:

- *Maxo Brand: 1st cheapest offer &*
- *Solana Brand: 2nd cheapest offer.*

The rice were cooked and tasted. Both rice were sticky, light brown in colour and the particles of grain clung together instead of being separate and it was fluffy and therefore cannot be recommended.

3rd cheapest offer from Worldwide Marketing Services Ltd is recommended as it meets all the requirements.”

2. In Section V “Schedule of Requirements” of the bidding documents the technical specifications for the white long grain rice are as follows:

*“- Cleaned white long grain rice **1st Grade***

- *Should be clean, sound and free from infestation and dust*
- ***To be in conformity with the followings:***
- *Broken rice – 10% maximum*
- *Foreign matter (Grains or paddy) – 1%*
- *Chalky grains – 7 to 8 %*
- *Crops not more than one year*

Important Note: Exporter should submit a certificate in that respect”

3. The Public Body provided the Panel on 28 March 2011 with its comments on the application for review made by AAR Oosman & Co. with respect to the procurement of the white long grain rice. The Public Body rightly points out that “the bidders were given the opportunity to submit a certificate of compliance with respect to the laid down specifications with their respective offers”. In fact the Panel considers that this was a mandatory requirement as per the schedule of requirements. AAR Oosman & Co. submitted certificates from its supplier United Traders of Karachi, indicating that both the Maxo Brand and the Solana Brand white rice proposed comply to the technical specifications.

The other bidders, including the selected one Worldwide Marketing & Services Ltd failed to submit the required certificate.

4. The Panel considers that the submission of the test certificate was a mandatory requirement and as such the bid from Worldwide Marketing & Services Ltd should have been considered to be non-responsive. At the hearing the Public Body conceded that this was a fair interpretation of the provision of the bidding documents.
5. The bid documents indicate that “Exporter should submit a certificate in that respect” in reference to the technical specifications for the rice. However, the Public Body rejected the compliance certificates submitted by AAR Oosman & Co. because it emanated from the exporter itself and not from an independent body. The Panel does not agree with the interpretation given by the Public Body with respect to the issues of the test certificate. The bidding documents should clearly indicate whether the test certificate should emanate from an independent body and not from the exporter itself.
6. On that issue it is significant to refer to the following:

In column Item No.50 of the bidding documents *“Full cream Milk Powder:*

The milk powder supplied shall be of good quality, wholesome and free adulteration. The milk shall comply with the relevant requirements of Mauritius Standard MS20 of 1986 or the National Standard of the Country of Production. Evidence to that effect shall be submitted from an internationally recognized organization such as National Standard bureau of the country of origin or the Mauritius Standard Bureau, as appropriate.”

In column Item No.51 of the bidding documents *“The white long grain rice must be in conformity with the followings:*

- *Broken rice 10% Maximum*
- *Foreign matter (grains or paddy) –1%*
- *Chalky grains –7 to 8%*
- *Crops not more than one year*

Exporter should submit a Certificate in that respect.”

It is therefore not clear whether the certificate should emanate from an independent body. If that was the wish of the Public Body as it was for milk as highlighted above, it could have stated so. An interpretation à contrario leads us to conclude that the certificate might be issued by the exporter itself.

7. The Public Body explains that in the absence of the compliance certificate with respect to the specifications for the rice it “opted to proceed with an evaluation by test cooking the rice samples submitted by the different bidders”. The Panel understands the Public Body in adopting such approach, which was probably prompted by the urgent need of rice to feed the Police Department. However, it is the view of the Panel that the cooking test cannot cure the deficiency caused by the non production of appropriate certificate by the selected bidder.

For these reasons, the Panel finds that there is merit in this application and pursuant to Section 45(10)(b) and (c) of the Public Procurement Act 2006 recommends the annulment of the award for the supply of white long grain rice to Worldwide Marketing & Services Ltd and a re-evaluation of the bid of AAR Oosman & Co.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

Dated 10 May 2011