

INDEPENDENT REVIEW PANEL

In the matter of:

A.A.R Oosman & Co. (Applicant)

v/s

Police Department

(Respondent)

(Cause No. 06/11/IRP)

Dissenting Decision

A. Background

1. Bids were invited by the Police Department on 29 October 2011 for the supply of Foodstuffs & Groceries for the period 01 January to 31 December 2011. An Open Advertised Bidding exercise was carried out and the deadline for submission of bids was Wednesday 01 December 2010 up to 13.30 hours at the latest. The ten bids that were received were opened on the same day - 01 December 2010.
2. The three member Bid Evaluation Committee submitted its report on 18 February 2011 and recommended that the offer of World Wide Marketing be retained for a total amount of Rs1,820, 000.00.
3. The bidders were notified of the decision of the Bid Evaluation Committee on 3 rd March and on 04 March 2011 AAR Oosman & Co. challenged the decision of not being awarded the contract to supply long grain rice (Item 51) to the Police Department.
4. A letter stating the reasons for the rejection of its offer was sent to AAR Oosman & Co on 14 March 2011.
5. Still unsatisfied with the reply of the Police Department, the aggrieved bidder made an application for review to the Independent

Review Panel on 16 March 2011. On 17 March 2011, all parties concerned were informed accordingly and pursuant to Section 45 (4) of the Public Procurement Act 2006, the proceedings for this item were suspended until the appeal was heard and determined.

6. 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. A three-member Bid Evaluation Committee was appointed by the Public Body to evaluate the ten bids received by the closing date of 10 December 2010. Its report was submitted on 18 March 2011. The bids underwent a preliminary examination in accordance with Part 1: quotation procedures (1 & 2) and four bids were found to be non-responsive.
2. After the preliminary examination of the bids, a detailed technical evaluation was carried out. *For item 51, white long grain rice AAR Oosman & Co. was found to be the cheapest at Rs1,459,250.00 (Solana Brand) and Rs1,378,000.00 (Maxo Brand).*
3. The offer of Worldwide Marketing & Services Ltd for the total amount of Rs1,820,000.00 (Camel Brand) was retained by the Bid Evaluation Committee.
4. The Public Body approved the decision of the Bid Evaluation Committee and on 03 March 2011, bidders were notified of the decision of the Departmental Tender Committee pursuant of the Section 40(3) of the Public Procurement Act 2006.

D. Submissions and Findings

1. This case presents two interesting aspects (a) the strictly legal aspect as provided for in the Bidding document, the Public Procurement Act 2006 and Regulations made under the same Act, and (b) the moral aspect.

2. As stated in the Bid Evaluation Report only two bidders met some of the basic requirements, namely (i) A.A.R. Oosman & Co. and (ii) Worldwide Marketing & Services Ltd. But both the bids were defective as regards the submission of *“a certificate of compliance with respect to the laid down specifications for their respective offers”*
3. The basic technical specifications for the white long grain rice as per Section V “Schedule of Requirements” of the bidding documents are:

*“Cleaned, white long grain rice **1st Grade***
 - *Should be clean, sound and free from infestation and dust*
 - **To be in conformity with the following:**
 - *Broken rice –10 % maximum*
 - *Foreign matter (Grains or paddy) – 1%*
 - *Chalky grains - 7 to 8 %*
 - *Crops not more than one year”*
4. Messrs AAR Oosman & Co. submitted a “Certificate of Compliance” 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. Worldwide Marketing & Services Ltd did not submit a Certificate of Compliance.
5. As stated in the Bid Evaluation Report, *“AAR Oosman & Co. submitted a certificate but same could not be taken into account for the reason that it emanates from the exporter itself and not from an independent body.”*
6. Given the dilemma that *“Since none of the rest of the bidders submitted a compliance certificate with respect to the laid down specifications for rice, the Police Dept. opted to proceed with an evaluation by test cooking of the rice samples submitted by the different bidders. The offer of AAR Oosman & Co. was rejected as the proposed samples in their cooked states were found to be of poor quality regarding taste and texture.”*
7. Based on the practical evidence, the decision of the Bid Evaluation Committee was, *“the 3rd cheapest offer from Worldwide Marketing & Services Ltd is recommended as it meets all the requirements”*.

8. The need to perform a cooking test arose from the urgency to obtain the rice for the Police Force. But since “testing of the samples” is not provided for in the bidding document, it cannot be used to arrive at a decision in the bid evaluation process. The cooking test represents a moral alternate but being given the absence of the provision for the Cooking test in the bidding document, the decision of the Public Body to award the contract basing itself on the findings of the cooking test cannot be legally supported although it provided a practical and timely solution.
9. The submission of a Certificate was a mandatory requirement. A Certificate as per the simplest definition is “*written or printed statement, made by somebody in authority that may be used as proof or evidence of something e.g. a birth certificate.*” An exporter cannot be interpreted to be “*somebody in authority*” or be considered independent enough to certify compliance for the commodities that he is himself exporting. His certificate as regards “*compliance with respect to the laid down specifications of their respective offers*” as was required by the Bidding Document and the Public Body cannot be accepted as it is not from an independent body. Thus the bid from AAR Oosman & Co. was non-responsive in the strictest reading of the provisions of the Bidding Document. The Public Body was thus right in rejecting the compliance certificate from the aggrieved bidder.
10. Given that the bid of the aggrieved bidder was non-responsive in not possessing a valid Certificate of Compliance, there is no merit in this case and pursuant to Section 45 (10) of the Public Procurement Act 2006 the application may be dismissed.

(Mrs. E. Hanoomanjee)
Member

Dated: 10 May 2011