Decision No. 09/11

INDEPENDENT REVIEW PANEL

In the matter of:

FTM (Mauritius) Ltd

(Applicant)

v/s

Ministry of Health & Quality of Life

(Respondent)

(Cause No. 07/11/IRP)

Decision

A. Background

1. The Ministry of Health & Quality of Life using the restricted bidding method on 13 September 2010 invited bids from four suppliers for the Supply, Installation and Commissioning of Echocardiography machine for Cardiology Department, Victoria Hospital. The reference of the procurement exercise was MHPQ/EQUIP/2010/Q25/RB25. The deadline for the submission of bids was 13 October 2010 and the opening of bids was scheduled for the same day at 13.35 p.m.

2. A three-member Bid Evaluation Committee was appointed by the Public Body to evaluate the four bids received. Two of the bidders Chem Tech and Ducray Lenoir Ltd were considered to be non-responsive as they failed to meet some of the mandatory technical requirements. Clarifications were requested from the remaining two bidders, FTM (Mtius) Ltd and IBL Ltd, on 07 December 2010. IBL Ltd submitted the requested information on 09 December 2010 while FTM (Mtius) Ltd did so on 14 December 2010. The bid Evaluation Committee submitted its evaluation report on 17

December 2010 and an award was made to the selected bidder IBL Ltd on 25 January 2011.

3. The Public Body issued a notification of award on 14 March 2011 and FTM (Mtius) Ltd as an aggrieved bidder and pursuant to Regulation 48(7) made under the Public Procurement Act 2006 made an application for review to the Independent Review Panel on 17 March 2011.

A hearing was held by the Panel on 15 April 2011.

B. Grounds for Review

The Grounds for Review are as follows:

"Price quote by FTM (Mauritius) Ltd is cheaper than IBL"

C. The Evaluation Process

1. The three-member Bid Evaluation Committee appointed by the Public Body to evaluate the four bids received submitted its report on 17 December 2010. From the report it is observed that the Bid Evaluation Committee first examined the bids received to check compliance with the mandatory requirements as per Quotation Procedures (Part 1) and Conditions of Contract (Part 3). All four bidders were considered to be compliant and qualified for the Technical Evaluation Process. Two of the bidders Chem Tech Ltd and Ducray Lenoir Ltd were considered to be non-responsive and their bids were rejected. As authorised by the provisions of Directive No. 3 of 01 April 2010 issued by the Procurement Policy Office, the Public Body requested the other two bidders FTM (Mtius) Ltd and IBL Ltd on 07 December 2010 to provide additional information in respect of their bids.

2. IBL Ltd was requested to provide more details on the thermal printer and high-res colour laser printer for its offers 1A and 1B by 14 December 2010.

The bidder submitted "Catalogues for Digital Graphic Printer UP-D987 (thermal printer) and HP Colour Laserjet Printer CP 1515N High resolution Colour Laser Printer" to the Public body on 09 December 2010.

3. The Public Body requested FTM (Mtius) Ltd to submit the following information by 14 December 2010 at latest:

"(i) the offer including the French Console (alphanumeric keyboard & selected key caps) is not appropriate. May the unit be provided with an English Keyboard.

(ii) please provide full details on the 4V-D probe and the FDA Certificate.

(iii) Please specify number of heart volumes per second (vol/s)".

The bidder submitted the following information to the Public Body on 14 December 2010:

"(i) we shall provide English console (alphanumeric keyboard & selected key caps) and English language software with the machine

(ii) FDA certificate for 4V-D probes attached

The 4V-D active matrix probe has the following properties:
It can be used for cardiac, LVO contrast, fetal heart and stress applications
Frequency: 1.5-4.0 MHZ

(iii) Number of heart volumes per second+25-30 volume/sec."

4. The Bid Evaluation Committee considered that the bid of FTM (Mtius) Ltd was not responsive as:

(i) No FDA certificate related to proposed Model Vivid E9 BT11 submitted, and

(ii) Quantitative Analysis Package for the Complex Right Vatricle is not available.

5. The bids 1A and 1B of IBL Ltd were both considered to be responsive but the options proposed by the bidder were not deemed to be necessary. The Bid Evaluation Committee recommended that the contract be awarded to IBL Ltd for its offer 1A for a total sum of Rs8,560,000 (Equipment – Rs8,530,000 VAT exempt + Maintenance 3 years labour only – Rs30,000 VAT inclusive).

D. Submissions and Findings

1. In Section VI of the biding documents, "Specification and Compliance Sheet" the Public Body provides the technical specification of the equipment it proposes to procure.

Section A(1) specifies that it should be a "Dedicated high-end Ecography Machine with true Real-time 3D(4D) cardiac imaging, for advanced cardiac imaging and analysis".

At A(1)(ii) it is indicated that "equipment should have FDA and CE or TUV approved. Certificates to be attached. Equipment should be preferably from European, US or Japanese manufacturing planet".

2. The Panel has examined the bid submitted by FTM(Mtius) Ltd and notes that in the specification and compliance sheet a Vivid E9 model of equipment is indicated in the column "Compliance of Specifications offered". It is also indicated that FDA and CE approved certificates are attached.

The FDA Certificate dated 02 July 2008 refers to a "Trade/Device Name: GE Vivid E9 Ultrasound System".

The EC Certificate dated 16 February 2009 refers to a product "Vivid E9, Ultrasound System, Imaging, Cardiovascular".

However in the "Price Schedule" in Section VII of the bidding documents the bidder indicates that its offer for the Echocardiography Machine is a Vivid E9 BT11.

3. In its reply to the request of the Public body for additional information the aggrieved bidder submitted only part of an FDA Certificate dated 27 August 2010 and it refers to a "Trade/Device Name:GE Vivid E9 BT10 Diagnostic Ultrasound System as described in your pre-market notification".

In these circumstances the Panel finds that the FDA Certificate dated 02 July 2008 for the GE Vivid E9 Ultrasound System has been superseded by the FDA certificate dated 27 August 2010 for the GE Vivid E9 BT10 Diagnostic Ultrasound System.

4. In reply, the aggrieved bidder submitted a copy of an email from its supplier dated 06 April 2011 to the Panel at the hearing. It tends to explain that "BT 11" and "BT 10" are the same engineering program but because of delays in the final sales release and naming-conventions for engineering programs "BT 10" had to be renamed "BT 11". But still the FDA certificate is for CE Vivid E9 BT 11 required as per specification and not Vivid E9 BT10.

It is the responsibility of the bidder to ensure that all documentation submitted relates to the offer it is proposing. The

bidder was given an opportunity to provide additional information but failed to do so in a satisfactory manner as required by the bidding document.

On the basis of the above, the Panel finds that there is no merit in the application and pursuant to Section 45(10) of the Public Procurement Act 2006 dismisses it.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated 20 May 2011