

INDEPENDENT REVIEW PANEL

In the matter of:

FTM (MAURITIUS) LTD

(Applicant)

v/s

Ministry of Health & Quality of Life

(Respondent)

(Cause No. 01/11/IRP)

Decision

A. Background

1. The Ministry of Health & Quality of Life invited bids for the Supply, Installation and Commissioning of 11 Portable Ultrasound Machines to be used in the Area Health Centres for abdominal urology, obstetrics and gynae, small parts and biopsy through restricted bidding from contractors having the capacity to undertake such works. The closing date was 08 September 2010 at 13.30 pm at the Ministry of Health & Quality of Life and the public opening was held on the same day at 13.35 hours.

The estimated cost of the Project comprising the supply of eleven units of the same item is MUR 5,000,000. Bids were valid for 90 days from the date of the submission deadline.

2. Bids were invited through Restricted Bidding from Eight contractors having the capability to undertake such works:
 - VNS Diagnostics Ltd
 - FTM (Mauritius) Ltd
 - Medsell Ltd
 - Separation Scientific (MRU) Ltd
 - Robert Le Maire Ltd
 - Ducray Lenoir Ltd
 - IBL Healthcare Ltd

- Chem-Tech Ltd
3. Based on the recommendations of the Evaluation Committee, the Ministry of Health & Quality of Life on 23 November 2010, confirmed the order for the supply, installation and commissioning of 11 units of the Portable Ultrasound Machine Model: Aloka Prosound 2, Origin: China to Messrs IBL Healthcare Ltd for the total amount of Rs 4,600,981, inclusive of all applicable charges, duties and taxes. Exclusive of 15 % VAT.
 4. After having taken cognizance from the notice board of the Ministry of the award for the procurement of the equipment on 10 January 2011, FTM (Mtius) Ltd submitted its request for Review on 13 January 2011 in accordance with Section 45(1)(c) of the Public Procurement Act 2006.

On 13 January 2011, the Independent Review Panel informed the Ministry of Health and Quality of Life that the FTM (Mauritius) Ltd had made an application for Review. FTM (Mauritius) Ltd's application was acknowledged by letter on 13 January 2011. On 14 January 2011 pursuant to Regulation 53 made under Section 61 of the Public Procurement Act 2006, the Panel requested the Public Body for all relevant information and documentation in respect of the Procurement Contract Reference No. MHPQ/EQUIP/2010/Q37/RB36. The letter was copied to FTM (Mauritius) Ltd.

5. The Ministry of Health & Quality of Life provided its comments on the application for review on 25 January 2011 as well as several relevant documents.
6. The hearing was held on 23 February 2011.

B. Grounds for Review

The Grounds for Review are as follows:

“Our offer was cheapest and we meet all the tender specification. The notification of award has been put on MOH notice board on the Monday 10th Jan 2011 whilst the award has been dated on 24th December 2010”.

C. The Evaluation Process

1. Following the Public Opening of the bid on 08 September 2010, the Public Body set up a Bid Evaluation Committee comprising three members which met on 13 October 2010. The Bid Evaluation Committee prior to undertaking any in-depth analysis, checked whether the bids received met the mandatory requirements as per Quotation Procedures (Part 1) and Conditions of Contract (Part 3). Three of the bids, namely from VNS Diagnostics Ltd, Medsell Ltd and Separation Scientific (MRU) Ltd, did not meet the mandatory requirements. Their bids were not included in the Technical Evaluation.
2. The Bid Evaluation Committee then proceeded with the Technical Evaluation of the remaining five bids. According to the Bid Evaluation Committee, four of the bidders did not meet the technical requirements among which was the Applicant. The reason for the non-responsive was that *“the bid from the Applicant does not meet the Ministry’s requirement as equipment proposed is not FDA Approved.”*
3. The Bid Evaluation Committee then proceeded with the detailed financial appraisal of the responsive bidder, namely IBL Healthcare Ltd Offer 1 and the quoted price at Rs4,600,981 was below the estimated price of Rs5,000,000 thus recommended IBL Health Care Ltd, Offer 1 for the award.

D. Submissions and Findings

1. The Grounds for Review are based on two main issues, namely (i) the aggrieved bidder met all the requirements, and (ii) the delay in putting *the notification of award on MOH notice board which was Monday 10th Jan 2011 whilst the award has been dated 24th December 2010*”.
2. In respect of the first issue, Section VI: Specification and compliance Sheet provides for the following:

“(xvi) Ultrasound scanner should be FDA and CE or TUV approved. Bidder to submit the appropriate certificates.”
3. The ambiguity arises as to whether equipment has to be first and foremost FDA approved and then it should have CE or TUV approval. The equipment proposed by the aggrieved bidder is TUV approved but does not have the FDA approval certificate. For the

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aggrieved bidder, FDA requirement is only necessary for the US market and TUV which is of German origin should be appropriate for Mauritius.

4. For the Public Body, the same wordings for the specifications have been used, whenever FDA certification has been required. In fact, the aggrieved bidder has successfully quoted for the provision of equipment to the Ministry before when the same specifications have been required and the same wordings have been used.
5. The representative of the aggrieved bidder explained to the Panel that he did not seek clarifications before submitting his bid because he was under the impression that his understanding of the specifications was the correct one.
6. It is clear to the Panel that there has been some misunderstanding as regards of the specifications. But the Panel cannot conclude that the interpretation given by the aggrieved bidder was the one contemplated by the Public Body.
7. As regards the second issue - the notification of award, according Regulation 38 made under the Public Procurement Act 2006, Notification of Award *(1) following the identification of the successful bidder in accordance with section 40 of the Act, a Public Body shall*
(2) promptly publish notice of every procurement award as provided under regulations 71.
(3) For the purposes of Section 40(3) of the Act, the prescribed threshold shall be 15 million rupees.
8. It would appear that in the present matter given the value of the procurement contract it does not fall within the purview of Regulation 38 made under the Public Procurement Act.

For these reasons, the Panel finds no merit in the application and pursuant to Section 45 (10) of the Public Procurement Act of 2006 dismisses the application for review.

However the Panel wishes to make the following observations:

The Public Body should ensure in the future that the specifications contained in the bidding documents are spelt out in clear, precise and non equivocal terms in order to avoid multiple interpretations of same as revealed by the contention of the aggrieved bidder in the present application.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated: 30 May 2011