Decision No. 10/12

INDEPENDENT REVIEW PANEL

In the matter of:

Ducray Lenoir Ltd

(Applicant)

v/s

Ministry of Health & Quality of Life

(Respondent)

(Cause No. 15/12/IRP)

Decision

A. Background

1. The Ministry of Health & Quality of Life using open advertised bidding method invited bids on 15 December 2011 for the Supply, Installation and Commissioning of CT-Scan for Dr A. G. Jeetoo Hospital. The deadline for the submission of bids was 15 February 2012 at 13.30 p.m. and the public opening of bids received was scheduled for the same day at 13.35 hrs.

2. A four-member Bid Evaluation Committee was appointed by the Public Body to evaluate the six bids received and it submitted its report on 29 March 2012. Two of the bidders were considered to be non-responsive as they failed to satisfy some of the mandatory requirements. A technical evaluation of the four remaining bids were then carried out. Three of the bidders were considered to be technically responsive and were retained for financial appraisal.

   The Bid Evaluation Committee recommended that the contract for the supply, installation and commissioning of one CT-Scan be

awarded to Robert Le Maire Ltd for a total bid sum of Rs27,390,000.

3. The Public Body notified all bidders of the outcome of the bidding exercise on 16 April 2012 and on the same day Ducray Lenoir Ltd, as an aggrieved bidder, challenged the decision of the Public Body. The Public Body replied to the challenge on 26 April 2012 giving the reasons as to why the bid had not been retained.

4. Ducray Lenoir Ltd still dissatisfied with the decision of the Public Body submitted an application for review to the Panel on 08 May 2012. The Panel notified all parties about the application for review on the same day and then pursuant to Section 45(4) of the Public Procurement Act 2006 suspended the procurement proceedings until the appeal is heard and determined. The Panel held a hearing on 05 June 2012 in the presence of the selected bidder.

B. Grounds for Review

The Grounds for Review are as follows:

"1. Applicant was the lowest bidder for the equipment. The Public Body erred in rejecting the Applicant's bid and the Applicant's subsequent challenge in on the alleged ground that the Applicant's bid did not "meet the delivery schedule laid out in the bidding document".

2. True it is that in filling up the form "List of Goods and Delivery Schedule", the Applicant stated that its offered Delivery Date was "12-16 weeks" while the Schedule of Requirements referred to a period of 14 weeks as being the "Latest Delivery Date".

3. However, the Applicant had also stated and undertaken that, in accordance with item 2 of Section V of the Bidding Documents, the "Final Completion Date of Services" would be 18 weeks.

4. Accordingly, the Public body erred in finding that the Applicant's bid was "not compliant" and ought to have found that the bid was substantially responsive, albeit with a minor deviation as to the actual date of delivery.

5. *In any event, whatever deviation there could have been in the delivery time was not a material deviation inasmuch as the final completion date of 18 weeks was fully complied with.*

6. *In any event and, furthermore, the Applicant's bid was the lowest and ought to have been retained."*

C. The Evaluation Process

1. The six bids received by the closing date of 15 February 2012 were evaluated by a four-member Bid Evaluation Committee and it submitted its report on 29 March 2012. The Bid Evaluation Committee considered that the bid from Ducray Lenoir Ltd failed to satisfy the mandatory delivery period of 12-14 weeks as specified in Section V of the bidding documents – Schedule of Requirements. The bid was thus not retained for further evaluation. A second bidder was also considered to be non-responsive because of an unsigned bid submission form.

2. Only three of the remaining four bids were considered to be technically responsive and their ranking in term of financial offers was as follows:

SN	*Offer*	*Amount (Rs)*	*Remarks*
1	*Robert Le Maire Ltd*	*27,390,000*	*Complete with option 1 and 5 years maintenance labour only*
2	*IBL Health Care*	*30,194,705*	*Main offer AS128 Excel Complete with all quoted options incl. Overseas training c/w 5 years maintenance labour only*
3	*Chem Tech Ltd*	*30,245,000*	*Complete with 5 years maintenance labour only*

3. The Bid Evaluation Committee then recommended that the contract for the supply, installation and commissioning of one unit CT-Scan be awarded to Messrs Robert Le Maire Ltd for the total sum of Rs27,390,000 (Equipment Rs24,950,000 VAT exempt + option 1 Rs340,000 – VAT exclusive + 5 years maintenance labour only Rs210,000 – VAT inclusive).

D. Submissions and Findings

1. The delivery schedule for the CT-Scan is specified in Section V – Schedule of Requirements of the bidding document. Table 1 (pg57) give the "list of Goods and Delivery Schedule" and is as indicated below:

Line Item No.	*Description of Goods*	*Quantity*	*Physical Unit*	*Final Destination (Project Site) as specified in BDS*	*Delivery (as per Incoterms) Date*		
					Earliest Delivery Date	*Latest Delivery Date*	*Bidder's offered Delivery date (to be provided by the bidder)*
1	*CT-Scan*	*1*	*Unit*	*New Dr A. G. Jeetoo Hospital*	*12 weeks*	*14 weeks*	

The last column as can be noted is to be filled by the bidder - Bidder's offered delivery date.

2. ITB 37.3(d) of Section II – Bid Data Sheet (pg32) specifies that there should be no deviation in the Delivery Schedule. Furthermore, it is specified in Section III – Evaluation Criteria that "bids offering delivery after the final date shall be treated as non-responsive".

When all these factors are taken together it is obvious that to be responsive the delivery date of the bidder should not exceed a period of 14 weeks after the award of the contract.

3. The list of related services and completion schedule is specified in Section V, Table 2 (pg 58). It is stipulated that the final completion date of services is eighteen weeks.

Service	**Description of Service**	**Quantity**	**Physical Unit**	**Place where services shall be performed**	**Final completion date(s) of services**
1	CT-Scan	1	Unit	New Dr A. G. Jeetoo Hospital	18 weeks

In Section VI – General Conditions of Contract it is specified at section 19.1 (pg66) it is indicated that *"Two weeks local application training for Imaging Technologist and Radiologists Training should be delivered in two major sessions: one at commissioning and another 2 months later".*

4. For the Panel there are two deadlines to be met by a bidder for it to comply with the conditions of the bidding documents:

   (i) Delivery of the CT-Scan at latest 14 weeks after the award of the contract, and
   (ii) Complete the installation, commissioning and two weeks training of personal a maximum of eighteen weeks after the award of the contract.

   These two conditions taken together indicate that the Public Body realistically considers that a period of four weeks is required for the installation and commission of the CT-Scan.

5. The aggrieved bidder has mentioned in its bid that its proposed delivery date is between twelve weeks and sixteen weeks. This clearly makes the bid non-responsive as per the requirements of the Public Body with respect to delivery schedule. Mr I. Collendavelloo, SC of Counsel argued strongly that the bidder had, however, taken a commitment to complete the contract by 18 weeks from the award. In his opinion this condition of the bidding document should prevail over the delivery schedule. Thus, any problem that may subsequently arise after award will fall outside the purview of the procurement process and will be one of Contract Management to be resolved by the selected bidder and the Public Body.

6. The selected bidder for its part has indicated in its bid that its proposed delivery date will be between twelve weeks and fourteen weeks from time of award. The bid is responsive with respect to the delivery schedule. However, the bidder has not enclosed Table 2 – List of Related Services and Completion Schedule as part of its bid. The Panel concludes that there is no commitment from the selected bidder to complete the installation and commissioning of the service within eighteen weeks from the award date.

7. Based on all the above, the Panel finds that there are shortcomings in both bids. On one side, Ducray Lenoir Ltd is proposing an alternative delivery date contrary to specifications and on other side Robert Le Maire Ltd has not taken a commitment to complete

the contract within eighteen weeks after the award as requested by the specifications.

In these circumstances, the Panel pursuant to Section 45(c) of the Public Procurement Act 2006 recommends a re-evaluation of the bids received.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated 29 June 2012