INDEPENDENT REVIEW PANEL

In the matter of:

FTM (Mauritius) Ltd

(Applicant)

v/s

Ministry of Health & Quality of Life

(Respondent)

(Cause No. 14/12/IRP)

Decision

A. Background

1. The Ministry of Health & Quality of Life using the open advertised method invited bids from both local and international suppliers for the supply, installation, testing and commissioning of medical and general equipment for Dr A. G. Jeetoo Hospital. The procurement was divided into eleven lots and with respect to lot 5 item 1 it was as follows: 4 Anesthesia Units (Life Support).

   The closing date for the submission of bids was 05 July 2011 up to 13.30 hrs and the public opening of bids was scheduled for the same day at 14.00 hrs.

   Addendum No. 1 was issued to all prospective bidders on 14 June 2011.

2. Bids were received from thirteen suppliers and were opened in public on the schedule date. The name of the bidder, the lots offered and the bid amount were read out and recorded.

The Central Procurement Board then appointed a six-member Bid Evaluation Committee to evaluate the bids received. A Dialysis Administrator provided expert advice on dialysis machines on two occasions. The Bid Evaluation Committee held seventy two meetings to evaluate the bids received, and it submitted its report on 01 October 2011. The Bid Evaluation Committee as part of its report recommended that clarifications be sought from some bidders for lots 2, 5, 6, 7, 8, 9 and 10. The deadline for the submission of the required clarifications was 14 December 2011.

3. The Bid Evaluation Committee carried out a technical analysis of the clarifications received and submitted an additional report on 29 December 2011. Additional clarifications were sought by the Central Procurement Board from the bidders on 14 February 2012. A second supplementary report was submitted on 23 February 2012 by the Bid Evaluation Committee. All bidders were informed of the outcome of the bidding exercise on 03 April 2012.

FTM (Mauritius) Ltd as an aggrieved bidder challenged the decision of the Public Body on 05 April 2012. The Public Body replied to the challenge on 19 April 2012. However, FTM (Mauritius) Ltd still dissatisfied with the decision of the Public Body submitted an application for review to the Panel on 24 April 2012. The Panel pursuant to Section 45(4) of the Public procurement Act 2006 suspended the procurement proceedings until the appeal was heard and determined. A hearing was held on 05 June 2012 in the presence of the selected bidder.

B. Grounds for Review

The Grounds for Review are as follows:

- *"MOH did not reply to us regarding the model and brand offered by SOS medical, as per PPO act we can ask for these information and MOH has to provide them.*
- *As per our market intelligence we know that the model quoted by SOS does not meet all the specification mentioned in the tender."*

C. The Evaluation Process

1. Thirteen bidders submitted offers for various lots by deadline for the submission of bids. The name of the bidder, the lots offered and the bid amount were readout and recorded. A six-member Bid Evaluation Committee was appointed to evaluate the bids received.

   Three of the bidders failed to satisfy the mandatory requirements as per ITB 25 and were not retained for further evaluation. The bids were then evaluated for each item within a lot and recommendations for award was on item wise basis. Clarifications were sought from bidders under very specific conditions.

2. Ten bids were retained for technical evaluation for lot 5 item no. 1. One bidder was considered to be substantially responsive and was retained for further evaluation. The responsiveness of five other bidders was subject to the outcome of clarifications sought from them.

3. The clarification sought by the Central Procurement Board on 06 December 2011 from the selected bidder SOS Medical & Laboratoire (Mtius) Ltd with respect to lot 5 item 1: Anesthesia Units was very explicit:

   "Documentary evidence from manufacturer to support the following specification:

   Flucometer Unit: Flow accuracy: maximum deviation ± 5-6% at high flows."

   The bidder on 14 December 2011 submitted documentary evidence from the manufacturer that states the following:

   "Flowblock Assembly Accuracy: ±(1.875% measured value at + 0.625% full scale) at 20°C and 101.3kPa".

   The Bid Evaluation Committee indicates in its supplementary report dated 29 December 2011 that *"The information submitted still does not substantially establish compliance."*

4. In reply to a letter from the Central Procurement Board dated 14 February 2012 the selected bidder provided a letter dated 21 February 2012 from its supplier "SPACELABS Healthcare" confirming that *"The Spacelabs Anesthesia machine offered in Lot 5, item I does comply with the flow accuracy maximum deviation ±*

5-6% at high flows." The Bid Evaluation Committee considered the document to be acceptable in its supplementary report dated 24 February 2012.

As a result of which SOS Medical & Laboratoire (Mtius) Ltd was recommended for an award for four Anesthesia Units for an amount of Rs2,740,000 (exclusive of maintenance costs). The maintenance cost for five years after warranty was Rs10,000.

D. Submissions and Findings

1. The aggrieved bidder wanted to know the model and brand of equipment proposed by the selected bidder and went on to add that that *"the model quoted by SOS does not meet all the specification mentioned in the tender".*

2. The Public Body acting upon a legal advice refused to release any information on the model and brand of equipment proposed by the selected while the procurement proceedings were still on. The Panel concurs with this approach and considers it was the responsibility of the aggrieved bidder to substantiate its averments.

3. The Panel thus examined the evaluation report as well as the clarification reports and considers that all bidders have been treated on an equal footing. However, the Public Body should ensure that the equipment, supplied by the selected bidder does comply with the specifications with respect to "flow accuracy maximum deviation ±5-6% at high flows" at the time of installation and commissioning.

The Panel considers that there is no merit in this application and sets it aside.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated 19 July 2012