

INDEPENDENT REVIEW PANEL

In the matter of:

Ducray Lenoir Ltd

(Applicant)

v/s

Ministry of Health & Quality of Life

(Respondent)

(Cause No. 18/12/IRP)

Decision

A. Background

1. The Ministry of Health & Quality of Life using the open advertised bidding method invited bids from both local and international suppliers for the supply, installation and commissioning of medical equipment for the New Wing of the Cardiac Unit Victoria Hospital. The procurement was for thirteen items and item no. 1 was for "One Single Plane Digital X-Ray Cardiovascular Angiography Examination System".

The closing date for the submission of bids was 08 February 2012 up to 13.30 hrs and the public opening was scheduled for the same day at 13.35 hrs.

2. Bids were received from twelve suppliers and were opened in public on the schedule date of 08 February 2012.

The Public Body then appointed a four member Bid Evaluation Committee to evaluate the bids received and it submitted its report on 06 April 2012. All bidders were notified of the outcome of the

bidding exercise on 15 May 2012. Ducray Lenoir Ltd as an aggrieved bidder challenged the decision of the Public Body with respect to the procurement of Item No. 1.

3. The Public Body replied to the challenge on 28 May 2012. However, Ducray Lenoir Ltd still dissatisfied with the decision of the Public Body submitted an application for review on 11 June 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 03 July 2012 in the presence of the selected bidder.

B. Grounds for Review

The Grounds for Review are as follows:

- “1. *The Applicant’s bid value for Item 1 is lower than that offered by the notified bidder. The Public Body erred in rejecting the Applicant’s bid and the Applicant’s subsequent challenge on the alleged ground that the Applicant’s main offer for Item 1, i.e. – Philips Allura FD 10 – Ceiling Mounted as its offer is for flat panel detector size of 25 cm x 25 cm instead of 30 cm x 30 cm.*
2. *True it is that the Applicant quoted for a flat panel detector size of 25 cm x 25 cm while the requirement mentioned that the flat detector size must be about 30 cm x 30 cm.*
3. *However, having regard to the stated purpose of Item 1, that is for “Single Plane Digital X-Ray Cardiovascular Angiography Examination”, the Applicant offered a flat panel detector with a size of 25 cm x 25 cm, which was suitable for that purpose, the more so as the requirement mentioned that the flat detector size must be about 30 cm x 30cm.*
4. *The Applicant could have offered a flat detector with a size of 30 cm x 40 cm had it been specifically stated in the requirement.*
5. *30 cm x 40 cm could inflate the cost by Rs5M when for the purpose of Single Plane Digital X-Ray Cardiovascular Angiography Examination, only a 25 cm x 25 cm is adequate.*
6. *As such, the requirement for a flat detector of about 30 cm x 30 cm is vague, arbitrary and misleading which led to different interpretations, thereby prejudicing the Applicant.*
7. *Accordingly, the Public Body erred in rejecting the Applicant’s bid; it ought to have found that the bid was substantially responsive.”*

C. The Evaluation Process

1. Twelve bidders submitted offers for various items by the deadline for the submission of bids and a four member Bid Evaluation Committee was appointed to evaluate the bids received.

One bidder failed to satisfy a mandatory requirement and was not retained for further evaluation. The remaining bids were then evaluated on an item wise basis.

2. Five bidders submitted proposals for item no. 1 and were evaluated for technical responsiveness. Only the bid from IBL Health Care was considered to be responsive and the Bid Evaluation Committee recommended it for an award for a total sum of Rs33,884,689.80 as per the following details:

“Main Offer – Siemens Artis Zee – ceiling c/w Injector, overseas training and UPS. On line 160 kVA UPS for the whole system and MAVIC Radiation Protection and Lamp (optional items 64 + 65, + 66) and Radshield accessories (optional item 75 + 76). Complete with 5 years maintenance – labour only.”

D. Submissions and Findings

1. The technical specifications for the items to be procured are detailed Section VI: Specification and Compliance Sheet (pg61) of the bidding documents. Section 5 provides the technical details for the “Flat Panel Detector System” and at 5.1 (pg63) it is specified that *“The flat detector size must be about 30cm x 30cm with selectable 200m.”*
2. The aggrieved bidder indicated the following in its bid with respect to compliance to the Technical Specifications Required:

Item No.	Technical Specifications Required	Compliance of Specifications Offered	Details of Non Compliance/Deviation if applicable
5	<i>Flat Panel Detector System</i>		
5.1	<i>The flat detector size must be about 30cm x 30cm with selectable zoom</i>	<i>Comply, Detector housing 37 x 37cm with following zoom fields; 18 x 18cm; 13.5 x 13.5 cm,</i>	

		<i>11 x 11 cm</i>	
5.2	<i>Output windows to be with fibre optic coupling</i>	<i>comply</i>	
5.3	<i>Detector resolution in Lp/mm should be clearly specified</i>	<i>Nyquist frequency: 2.72 lp/mm</i>	
5.4	<i>Full 3-year warranty on detector</i>	<i>Comply</i>	

The selected bidder indicates the following for its part with respect to 5.1 *“Comply and exceeds 30 x 40 cms, for better vascular coverage with sle”*.

The make of equipment proposed by Ducray Lenoir Ltd is Philips and the model is Allura FD10. According to the literature submitted with the bid *“The compact design with largest field of view of 25 cm (10 in) is the optimal size for dedicated cardiology and EP applications”*.

3. According to the Public Body the equipment was for both coronary angio and vascular examinations and that for vascular examinations a field of view of 25 cm is too small. The minimum recommended field of view is 30 cm.

The other four bidders, according to the Public Body, had understood the importance of the specification and proposed flat panel detectors of size 30cm x 30cm or 30cm x 40cm.

4. Mr A. Domingue of Counsel for the aggrieved bidder argued that the specifications indicated that the dimensions of the detector size must be “about 30cm x 30cm” and that the dimensions of “25cm x 25cm” proposed by his client must be considered as acceptable. He also explained that the Applicant could have offered an equipment of dimensions 30 cm x 40cm if the bidding document was more explicit. The aggrieved bidder conceded, however, that the price would then be some Rs5M more.
5. ITB 8.1 (pg30) indicates the following “Request for clarification should reach the Purchaser not later than fourteen (14) days, prior to the closing date for submission of bids”. The Panel considers that the aggrieved bidder should have sought clarifications from the Public Body if it considered that the specifications were not explicit enough.

Furthermore, the bidder could have submitted, as other bidders did, different options for this item of equipment. The more so, as it

did recognise that the price difference between different options could be substantial.

6. The Public Body explained at the hearing that the dimensions were specified as “about 30 cm x 30 cm” to avoid any perception that a particular bidder was being favoured. However, the Panel feels that since the minimum size required was 30cm then a more appropriate wording could have been used by the Public Body in the specifications thus avoiding several possible interpretations by the bidders

On the other hand, the Panel considers that the aggrieved bidder could and should have sought clarifications in respect of the size of the flat detector from the Public Body or could have proposed different options for the said equipment.

For these reasons, the Panel finds that there is no merit in this application which is accordingly dismissed.

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated 20 July 2012