

INDEPENDENT REVIEW PANEL

In the matter of:

MSJ LTD (UNICORN)

(Applicant)

v/s

Ministry of Health & Quality of Life

(Respondent)

(Cause No. 21/12/IRP)

Decision

A. Background

1. The Ministry of Health & Quality of Life using the open advertised bidding method through press notice dated 08 September 2011 published in two daily newspapers for three alternate days invited bids for the Supply of Medical Disposables for the Trust Fund for Specialised Medical Care – Cardiac Centre.

The deadline for the submission of bid was 27 October 2011 at 13.30 hrs at the Central Procurement Board. And the public opening of bid was carried out on the same day at 14.00 hrs in the conference room of the Central Procurement Board.

2. Twenty three bids were received by the closing date and were opened in public on 27 October 2011 at 14.00 hrs.

The Bid Evaluation Committee submitted its evaluation report on 13 March 2012, wherein it is stated inter alia that "*The validity*

period requested as per the bidding document is 120 days, i.e valid up to 23 February 2011.

However, as the evaluation exercise was not yet completed by 23 February 2012, the BEC requested the Board for extension of the validity period from all bidders.

Subsequently the Board requested from all the 23 bidders to extend their validity period by 45 days and the latest date for submission as 22 February 2012. 20 bidders replied positively for the request for extension of Validity Period and no replies were received from 3 bidders namely Messrs Johnson and Johnson Professional Export, Messrs FTM and Messrs Quality Med.”

The Public Body informed all bidders of the outcome of the bidding exercise on 23 May 2012.

MSJ Ltd (UNICORN), as an aggrieved bidder challenged the decision of the Public Body on 29 May 2012. The Public Body sought materials for reply from the Central Procurement Board and on 05 June 2012 informed the bidder of the reasons as to why its offer had not been retained.

3. The aggrieved bidder still dissatisfied with the decision of the Public Body submitted an application for review to the Panel on 18 June 2012. The Panel pursuant to Section 45(4) of the Public Procurement Act 2006 suspended procurement in respect of the proceedings on 18 June 2012 until the appeal is heard and determined. Hearings were then held by the Panel, in the presence of the selected bidder, on 07 August 2012.

B. Grounds for Review

The Grounds for Review are as follows:

“Our products fit specifications of tender, all supporting documents and award of tender will be present a cost saving to MOH.”

C. The Evaluation Process

1. Twenty three bids were received and were evaluated by the Bid Evaluation Committee set up by the Central Procurement Board. All bids were considered to be substantially complete and responsive to the commercial terms.
2. The technical responsiveness of the bids were then examined on a lot wise basis. The Bid Evaluation Committee then recommended award on an item wise basis for each lot.
3. The public Body informed all bidders of the outcome of the bidding exercise on 23 May 2012.

D. Submissions and Findings

1. MSJ LTD (UNICORN) submitted an application for review to the Panel on 18 June 2012 following a challenge to the Public body on 29 May 2012.

The items concerned were from lot 4(i) – Coronary Stents Chromium Cobalt or Cobalt Alloy as follows: 3(a)-(e), 3(g)-(i), 3(k)-3(u).

2. The aggrieved bidder was informed on 05 June 2012 that its bids had not been retained for the following reasons:

“(i) According to the report of the Bid Evaluation Committee, you have not satisfied the requirements stated at Page 85 of the bidding documents whereby “suppliers should provide good clinical trials published in international journals (circulation, NYJM, Lancet, etc), to support the efficacy of their Coronary Stents and give clinical evidence of re-stenosis rates.

(ii) Moreover, for items 3(f), 3(j) and 3(v), you have offered stents of length 22mm instead of 24± 1mm.”

3. The aggrieved bidder conceded that technically it was not responsive for three items namely 3(f), 3(j) and 3(v). However, it argued that with respect to other items it had submitted the required information.
4. The Panel holds that the Applicant’s missing information could have been sought from the bidder at the evaluation stage, as per

Directive No. 3 issued by the Procurement Policy Office pursuant to Section 7(b)(v) of the Public Procurement Act.

“(v) Nonconformities, Errors and Omissions

5. *Legal advice obtained by the Procurement Policy Office has confirmed that non-submission of factual documents and information like trade license or contractor’s permit that is, documents and information which cannot be tampered with, are non-material omissions.”*

The Panel feels that as highlighted in Section 7(b)(v) of Directive No. 3 that these publications which cannot be tampered with, could have been sought and obtained at the evaluation stage.

For the above reason, the Panel finds merit in the application and pursuant to Section 45(10)(c) of the Public Procurement Act recommends a review of the bids for lot 4(i), items 3(a)-3(e), 3(g)-3(i) and 3(k)-3(u).

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated 04 September 2012