INDEPENDENT REVIEW PANEL

In the matter of:

Florecold Industry Ltd

(Applicant)

v/s

Ministry of Agro Industry & Food Security

(Respondent)

(Cause No. 17/12/IRP)

Decision

A. Background

1. The Ministry of Agro Industry & Food Security using the open advertised bidding method on 14 March 2012 invited bids from qualified bidders for the Supply of one Permanent Chamber Fumigation Plant using Sulfuryl Fluoride for National Plant Protection Office. The procurement reference number is MOAIFS/Q12/2012/OAB. The deadline for submission of bids was 18 April 2012 at 14.00 hrs and the public opening of bids was scheduled for the same day at 14.04 hrs.

2. The Public Body appointed a four-member Bid Evaluation Committee to evaluate the three bids received by the deadline for the submission of bids. The Bid Evaluation Committee in its report dated 24 April 2012 concluded that two of the bidders were not responsive and went on to recommend an award to the commercially and technically responsive bidder, Steam House Ltd. The quoted price of Rs6,854,977.50 exceeded the estimated cost of Rs6M by some 14.25% but was considered to be acceptable.

The recommendations of the Bid Evaluation Committee was approved by the Departmental Tender Committee of the Public Body on 25 April 2004 and an award was made to the selected bidder on 08 May 2012.

3. Florecold Industry Ltd, as a bidder sought information on the outcome of the bidding exercise from the Public Body on 13 May 2012. The Public Body replied to the letter of the bidder on 17 May 2012 giving the reasons as to why its bid had not been retained. The bidder aggrieved by the decision of the Public Body submitted an application for review to the Panel on 21 May 2012. A hearing was held by the Panel on 12 June 2012 in the presence of the selected bidder.

B. Grounds for Review

The Grounds for Review are as follows:

"(i) Florecold Industry Ltd (The "Aggrieved Bidder") verily believes that the non-submission of documentary evidence establishing that the Aggrieved Bidder financial capability for the bidded project as per para 3(a) of Section III – "Evaluation and Qualification Criteria" was not a mandatory requirement.

(ii) The Aggrieved Bidder strongly believes that the ground for rejecting the bid of the Aggrieved Bidder is not in compliance with the bidding documents.

(iii) At the time of submission of the bid, the Aggrieved Bidder had complied with all the mandatory requirements of the bidding documents."

C. The Evaluation Process

1. The Public Body appointed a four-member Bid Evaluation Committee to evaluate the three bids received by 18 April 2012, the deadline for the submission of bids. The Bid Evaluation Committee submitted its evaluation report on 24 April 2012 and its recommendations were approved by the Departmental Tender Committee of the Public Body on 25 April 2012.

2. The Bid Evaluation Committee considered that two of the bidders, Ducray Lenoir Ltd and Florecold Industry Ltd, were not responsive to the commercial terms and conditions as laid down in the

bidding documents. The two bidders were not retained for further evaluation. The third bidder, Steam House Ltd, was considered to be responsive and was evaluated for its technical responsiveness. As the bidder satisfied all the technical specifications defined in the bidding documents its was recommended for an award.

3. The quoted price of the selected bidder, at Rs6,854,977.50 was 14.25% higher than the estimated price of the Public Body – Rs6M. However, the Bid Evaluation Committee considered this to be acceptable as it was in line with both Section 8 of the Regulations made under the Public Procurement Act 2006 and Circular No. 7 of 2010 issued by the Procurement Policy Office.

Steam House Ltd was thus recommended for an award for contract price of Rs6,854,977.50.

D. Submissions and Findings

1. The documents needed to establish the qualifications of a bidder to perform the contract are defined at Section 20 of the ITB and 20.1(c) stipulates that the bidder must meet each of the qualification criterion specified in Section III, *"Evaluation and Qualification Criteria".*

2. ITB 39.2 stipulates clearly that the determination of the post-qualification of the bidder shall be based upon an examination of the documentary evidence of the bidder's qualification submitted by bidder, pursuant to ITB clause 20.

3. The post qualification requirements of (ITB 39.2) are defined at paragraph 3 of the "Evaluation and Qualification Criteria" and 3(a) defines the financial capability:

"The Bidder shall furnish documentary evidence that it meets the following financial requirement(s):

An undertaking from a Commercial Bank that adequate funds, at least equivalent to the amount quoted will be made available for this project."

4. The bidder, Florecold Industry Ltd, conceded at the hearing that it had not submitted the required undertaking with its bid. However, Mr G. Bhanji Soni of Counsel argued that the missing document could have been requested from the bidder as it was a minor omission. The Panel, however, concurs with the Bid Evaluation

Committee that it was a major supporting document, which ought to have accompanied the bid at the stage of submission of bid. Thus, in accordance with the provisions of the bidding document and the clear guidelines issued by the Procurement Policy Office in Directive No. 3 the Bid Evaluation Committee was right to reject the bid of the aggrieved bidder.

Based on all the above, 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 12 October 2012