

INDEPENDENT REVIEW PANEL

In the matter of:

Robert Le Maire Ltd

(Applicant)

v/s

Ministry of Health & Quality of Life

(Respondent)

(Cause No. 24/12/IRP)

Decision

A. Background

1. The Ministry of Health & Quality of Life using the open advertised bidding method invited bids for the Supply of Medical Disposables for the Trust Fund for Specialised Medical Care – Cardiac Centre on 08 September 2011.

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

2. The twenty three bids received by the closing date were opened in public on the scheduled date and the Central Procurement Board appointed a six member Bid Evaluation Committee to evaluate them.

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 2012.

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.

Robert Le Maire Ltd, as an aggrieved bidder challenged the decision of the Public Body on 04 June 2012. The Public Body sought materials for reply from the Central Procurement Board and on 20 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 06 July 2012. The Panel pursuant to Section 45(4) of the Public Procurement Act 2006 suspended procurement in respect of the proceedings on 09 July 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 and 14 August 2012.

B. Grounds for Review

The Grounds for Review are as follows:

“Point i) Item 1a, b, c, g- MOH: According to report of the bid Evaluation committee, the proposed product is not suitable for very small vessels (up to 2mm)

- *Our price is cheaper and product is compliant*
- *Boston scientific product – Apex balloons of the same sizes are in use in hospital and private sector. It has been awarded for 2 awards for MHPDO/MDSP/2012/DO11 and*

MHPDO/MDSP/2012/DO111 and no complaints have been received on this product.

- *This Product is being used worldwide and is CE and FDA approved.*

Point v) Item 4 d, j, k, l, o, p, r, u, v and 5(e). It is mentioned bid evaluation committee has reported that reference numbers mention were not found in the catalogue submitted and bid couldn't be evaluated.

- *Brochures and catalogues have been submitted. Relevant reference have been labelled on the brochures according to the requested item in the bid. Please find an attached copy of the brochures sent.*
- *We have been notified for item 4 b, c, q, s, t found on the same page of the same brochures as item 4u and 4V. It clearly shows that brochures was submitted and labelled accordingly.*
- *We therefore find the reason given in the letter not relevant.*

Point ii, iii, iv, vi, vii, viii: MOH – Item 4g, 4h, 4i, 5c, 5d, 6a: it doesn't meet specifications as in tender XB4, XB LAD 4, XB RCA, XB3.5, XB4, XB3.5

- *XB4, XB LAD4, XB RCA are trademark of Johnson and Johnson brand (Cordis), exclusively distributed by Chemtech in Mauritius. It is therefore impossible to find the same reference from another brand. The reference quoted from Boston Scientific is equivalent to the J&J brand. In the same product range, two companies other than Chemtech namely Nature firm & Unicorn have been notified for item 4g, 5c, d, 6a. Chemtech being the only distributor in Mauritius it is impossible for other companies to quote the exact same reference as mention in the bid documents. Therefore the arguments put forward not sustainable.*

In our letter we are also challenging item 3(a-v) – the coronary stents:

Please note that item 3 have been challenged but no answer has been given to us, why we have been rejected.

We believe that our bid was responsive for the following reasons:

- 1. Latest version of coronary stents and steerable guide wires on the market and mentioned when they were first introduced (this was mentioned in the tender documents pg85)*
- 2. Cheaper offer and high quality product*
- 3. Several letters, studies as well as samples were already given to MOH and Hospitals prior to the launching of the tender.*

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. Robert Le Maire Ltd submitted an application for review to the Panel on 06 July 2012 following a challenge to the Public Body on 04 June 2012.

The items concerned were from lot 4 Items 1(a-c, g), 3(a-v), 4(d, g-l, o, p, r, u, v), 5(c-e) and 6(a).

2. In response to the challenge the aggrieved bidder was informed by the Public Body on 20 June 2012 that its bids had not been retained for the following reasons:

- “(i) Item 1(a), (b), (c) and (g)
According to the report of the Bid Evaluation Committee, the proposed product is not suitable for very small vessels (up to 2mm)*
- (ii) Item 4(g)
The product does not meet specifications as you have offered Voda left curve instead of XB 4 as per bid requirements*
- (iii) Item 4(h)
The product does not meet specifications as you have offered Q curve instead of XB LAD 4 as per bid requirements*
- (iv) Item 4(i)
The product does not meet specifications as you have offered allright curve, ART 3.5, instead of XB RCA as per bid requirements.*

- (v) *Item 4(d), (j), (k), (l), (o), (p), (r), (u) and (v) and 5(e)
The Bid Evaluation Committee has reported that the reference numbers mentioned in quote were not found in the catalogue submitted and the bids could not be evaluated by the Bid Evaluation Committee.*
- (vi) *Item 5(c)
The product does not meet specifications as you have offered Voda left curve 3.5 instead of XB 3.5 as per bid requirements.*
- (vii) *Item 5(d)
The product does not meet specifications as you have offered Voda left curve VL 4 instead of XB as per bid requirements*
- (viii) *Item 6(a)
The product does not meet specifications as you have offered Voda left Curve VL 4 instead of XB 3.5 as per bid requirements.”*
3. On 23 May 2012, the Public Body informed the bidders of the outcome of the bidding exercise. On 04 June 2012, Robert Le Maire Ltd submitted a challenge to the Public Body to the award for item 4(d, g, h, i, j-l, o, p, r, u, v).
4. On 20 June 2012, the Public Body responded to the challenge and gave reasons for not retaining the applicant’s bid for items 1, 4, 5 and 6 but failed to give an explanation for not retaining item 3.
5. On 06 July 2012, the aggrieved bidder submitted an application for review under Section 45 of the Public Procurement Act 2006. The review was for Item 1, 4 and 5.
6. It was also mentioned in the application for review, *“In our letter we are also challenging item 3(a-v) – the coronary stents:
Please note that item 3 have been challenged but no answer has been given to us, why we have been rejected.*
7. At the hearing the Applicant confirmed that it had received a reply to its challenge on 20 June 2012 by fax. It is also not disputed that the reply was incomplete as no explanation was given to the bidder for rejecting its bid for item 3(a-v) – coronary stents. Hence according to the above and in accordance with Section 48(5) of the Regulations, the Panel considers that the application for review should have been submitted by 04 July 2012 at latest.

For the Panel, the Applicant has failed to lodge the application within the prescribed time as provided in Regulation 48(5) made under the Public Procurement Act 2006. Therefore, in accordance with Regulation 56(c), the Panel dismisses the application for failure to comply with deadlines for filing an application for review

(Dr. M. Allybokus)
Chairperson

(H. D. Vellien)
Member

(Mrs. E. Hanoomanjee)
Member

Dated 12 October 2012