

INDEPENDENT REVIEW PANEL

In the matter of:

Sarvak International Trading Ltd

(Applicant)

v/s

Ministry of Health & Quality of Life

(Respondent)

(Cause No. 26/14/IRP)

Decision

A. History of the case

The project consists of the supply of medical instruments for S. Bharati Eye Hospital.

Tenders were invited through open advertised bidding with closing date being 23 April 2014 at the Ministry of Health & Quality of Life.

The Bid Evaluation Committee which was chaired by Dr Uteene submitted its report on 28 July 2014. For all items evaluated, the Bid Evaluation Committee recommended that the contract be awarded to the 9th best and complying bidder Ireland Blyth Ltd.

B. Certificate of Urgency

On 24 September 2014, the Public Body informed the Independent Review Panel that a certificate of urgency issued under 45(5) of the

Public Procurement Act 2006 and the Public Body proposes to proceed with the award of the contract for all items.

C. Notification of award

The Public Body has informed the Panel that the contract has been awarded to Ireland Blyth Ltd on 26 September 2014.

D. Evaluation Report

The Bid Evaluation report was submitted on 28 July 2014. The Bid Evaluation Committee has concluded in its technical appraisal for Item 41-50, supply of Acrylic Foldable Intraocular Lens (IOL) with varying lens power. Nineteen bidders out of twenty have satisfied the mandatory requirements and qualified for technical appraisal.

However the conclusion of the technical appraisal indicated that only bidder no. 9, Ireland Blyth Ltd is fully responsive to the tender requirements. Bidder no. 19, Sarvak International Trading Ltd has not passed the Technical Evaluation on all items quoted following the comments from the Bid Evaluation Committee that the placement system supplied with this item used in the past with difficult insertions of lens resulting in broken haptics of lens. The Bid Evaluation Committee further added that the placement system was not according to specifications.

E. The Challenge

On 01 September 2014, Sarvak International Trading Ltd was informed that his bid was not retained and the successful bidder was Ireland Blyth Ltd. The Applicant challenged that decision on 05 September 2014 and communicated its grounds of challenge to the Public Body. The grounds are as follows:

“Our prices for the items nos. 41 to 50 were more competitive than the winners of the tender. Given that the products meet the requirements requested in the tender documentation we do not understand how another product which is far more expensive has been selected.”

F. The Reply to challenge

The reply dated 10 September 2014 was sent to the Applicant and the latter lodged its application for review before the Panel on 16 September 2014. The reply is as follows:

“Your bid for items 41 to 50 have not retained by the Bid Evaluation Committee as the users have had bad past experience with same. In fact, the users encounter difficulty in inserting the lens with the placement system provided, resulting in broken haptics.”

G. Grounds for Review

The grounds for review are as follows:

“Your bid for items 41-50 have not been retained by the Bid Evaluation Committee as the users had bad past experience with same. In fact, users encounter difficulty in inserting the lens with the placement system provided, resulting in broken haptics”

- 1. We reject this claim as this is the first and only time that we have tendered with this product ULTRASMART IOLS nor has the supplier ever supplied this product to Mauritius. Therefore we cannot understand how the bid evaluation Committee may have had “BAD PAST EXPERIENCE” with the same.*
- 2. Please note that as with every system there is a methodology of use. If you follow the manufacturer’s instructions (you may also refer to various videos available on the internet or we may provide same to you). We may arrange for a live presentation or provide training of your staffs so as there will be no such result of broken haptics as claimed. The steps are straightforward and we fail to understand how much more difficult it is than the Bausch & Lomb product given that it is pretty similar and commonly used throughout the world.*

The Ultrasmart IOLS are manufactured and marketed since the year 2002 with nearly 900,000 ULTRASMART IOL implanted in India and other countries in the World. It is registered with the Ministry of Health in India, Russia, Kazakhstan, Bahrain, Saudi Arabia, Algeria, Ethiopia, Philippines, Malaysia and Sri Lanka. Accepted as a Standard Micro-Incision IOL due to predictable outcomes and superior patient satisfaction. Several surgeons have presented their surgical experiences in various scientific meetings.

Basically the Foldable IOLs first needs to be placed in a cartridge, which is to be closed and placed in an injector for the IOL to be

readied for implantation through a small incision. The size of the cartridges vary from 1.8mm to 3.0mm. The Ultrasmart IOLs which we have supplied as samples for the Tender were supplied with a 1.8mm Cartridge. It can be very well placed in a 1.8mm Cartridge, and the cartridge can be closed and then placed in an injector and implanted into the eye. The important thing is that the IOL needs to be placed well in the cartridge and then the cartridge closed. We trust that this exercise is carried out by trained personnel at your end.

For any new product, there is a soft learning curve and which can only be achieved through some effort and if the best public interests are kept in mind.

3. *We note with concern how can a product which is fully compliant with tender specification and substantially more competitive in price, is being sidelined for reasons that appear to be ill-founded. It only shows the committee's refusal to adapt to new systems and not caring for value engineering nor maintaining the right use of public funds.*

If the bid evaluation committee is of such blinkered opinion and not willing to consider other valuable options, what is the use of technical specifications and the bidding process. They might as well go directly and buy their favoured branded product and waste public funds in so doing."

H. The Hearing

At the hearing, evidence was adduced from both the Applicant and the Respondent. The main contention of the Applicant was that the product has never been exported to Mauritius before and could not understand why and how the Public Body could have rejected it for non-reliability and that it was for the first time that this product is being commercialised in Mauritius. Mr Mihir Desai was called to depose. They are also at a loss when the Public Body had responded that they have had bad experience with the product.

The Applicant found it difficult to believe the Public Body's reasoning. They also produced several testimonials from various foreign countries to show the reliability of the proposed product.

The Public Body called Dr. Daureeawoo, Consultant in Charge at the Subramania Bharati Eye Hospital.

Dr. Daureeawoo, the consultant in charge, has been working in the eye hospital for twenty seven years and has been dealing with intra ocular

lenses (IOL) and the placement systems. He was called to specifically give evidence as regards the items number 41 to 50 of the bidding documents. Dr. Daureeawoo explained that IOL along with the placement systems are used for cataract surgeries and he added that in the course of his career, he has performed about 10, 000 surgeries. He had explained the difficulties being encountered when using the types of IOL and the placement system as proposed by the Appellant as compared to the placement system which has been proposed by the successful bidder.

Dr. Daureeawoo explained that quite often they encounter difficulty in injecting and pushing the type of placement proposed by the Applicant. It gets obstructed and they have to inject it forcefully and this has caused some times the lens to be broken in the eye in the injection process. Once the haptic is broken inside the eye, it can tear the lens resulting thus in more complicated situation whereby further incision is asked for. They then have to remove the haptic and then place another one while making use of another IOL. He further added that the forcefulness of such a procedure may break the inside part of the eye and cause damage thereof. He added that Appasamy Associates markets both products supplied by the Applicant and the successful bidder respectively.

Dr. Daureeawoo also explained that the lens supplied by the Applicant has never been made use of but similar systems have been used previously and they have proved inappropriate.

Dr. Daureeawoo also explained the advantages of using the one from the successful bidder.

I. The Issue

The Panel has gone through the evidence placed before it and is of view that the problem is in respect of the placement system. It is to be noted that the product which has been offered by Applicant has never been tested in Mauritius, and it is therefore the contention of the Applicant that the decision of the Public Body is fundamentally flawed, in as much as the sample proposed by the Applicant would have been used for the first time in Mauritius.

According to Dr. Daureeawoo, similar systems have been used in the past and they closely resemble the one proposed by the Applicant. In view of the similarity of the materials used in the past, and those proposed by the Applicant, there is no apparent difference in the estimated risk.

J. Findings

The Panel has gone through the evidence adduced and bears in mind the reliability of materials and the safety of patients.

However, the Panel is of the view that the Public Body ought to have drawn the attention of all bidders to the problem encountered previously with the type of materials proposed by the Applicant.

Furthermore, the Panel has not been apprised of the number of patients upon whom the system has failed. The Panel also notes that the bidding document did not disclose any previous problems encountered by the Public Body in relation to the similar products in use.

The Panel is, therefore, of the view that the Public Body has failed to comply with Section 11 subsection 2 of the Public Procurement Act 2006.

We accordingly conclude that the Applicant has not received a fair treatment.

(Said Toorbuth)
Chairperson

(Siv Potayya)
Member

(Jacques C. Nauvel)
Member

Dated 13 January 2015