



Independent Review Panel

Decision No. 04/18

In the matter of:

Bluefire Ltd

(Applicant)

v/s

Office of the Commissioner of Police

(Respondent)

(Cause No. 21/17/IRP)

Decision

A. History of the Case

This is a case where Bluefire Ltd hereinafter referred to as “the Applicant” is challenging the decision of the Office of the Commissioner of Police hereinafter referred to as “the Respondent” to award a contract for the supply of training shoes pursuant to an open advertising bidding exercise bearing reference **OAB 31 OF 2016/2017 - POLICE/IFB/2017/21 - Supply of Training Shoes.**

The Applicant was notified of the award by the Respondent on the 24th July 2017 and subsequently challenged the latter’s decision on the 01 August 2017. Feeling aggrieved of the Respondent’s reply to its challenge, the Applicant applied for review of the Respondent’s decision before the Independent Review Panel pursuant to section 45 of the Public Procurement Act on 10 August 2017.

B. Notification of Award

The Office of the Commissioner of Police through a letter dated 24 July 2017, informed the Applicant of the particulars of the successful bidder as follows:

“The contract has been awarded to Allsports Ltd.”

| Item No. | Item Description | Qty | Rate (Rs) | Amount (Rs) Vat Excl. | Make | Country of Origin |
|-----------------|-------------------------|-------------|------------------|------------------------------|-------------|--------------------------|
| 03 | Training Shoes for SMF | 3,000 Pairs | 1,400.00 | 4,200,000.000 | Puma | China |

C. The Challenge

On 01 August 2017, the Applicant challenged the procurement on the following grounds:

“ Bidder submitted lowest responsive bid.”



D. The Reply to Challenge

On 08 August 2017, the Public Body made the following reply to the challenge:

“This is to inform you that your offer was not retained as the samples submitted did not comply with the tender specifications.”

E. Grounds for Review

On 10 August 2017, the Applicant seized the Independent Review Panel for review on the following grounds:

- “1. The Applicant submitted the lowest responsive bid in the sum of Rs3,384,000.00 whereas the Successful Bidder had quoted a higher bid in the sum of Rs4,200,000.00.*
- 2. The bid of the Applicant fulfilled all the conditions required under the bidding documents.*
- 3. In the light of the above the Public Body was wrong to have:*
 - (a) rejected the bid of the Applicant on the ground that “the sample submitted did not comply with the tender specifications”*
 - (b) awarded the contract to the Successful Bidder.”*

F. The Hearing

Hearings were held on 18 August and 21 September 2017. Written submissions were made on 31 August and 30 August 2017, by Applicant and Respondent respectively.

The Applicant was represented by Mr I. Mamoojee together with Mrs W. Peerally Sayed Hossen, Counsel whereas the Respondent was represented by Mr S. Boodhoo, Principal State Counsel.


G. Findings

The Applicant was certainly not the lowest bidder however, it was lower than the bid submitted by the selected bidder (Allsports Ltd). The Respondent rejected the Applicant’s bid because it did not comply with the size and weight requirements. Thus the sample could not be assessed properly.

Furthermore, according to the Respondent the sample provided by the Applicant was of plastic instead of Carbon.

Mr Jundoosing who formed part of the Bid Evaluation Committee stated that he is not an expert in assessing the quality of training shoes however he has experience as he is currently a Physical Training Instructor. He could not ascertain as to whether chemical synthesis can include material having a plastic constituent. He further stated that he could not differentiate between plastic and hard carbon. He explained to the panel that the valuation exercise was done visually. The Panel believes that it would have been very important to have an expert report while assessing the quality of the sample. None of the witnesses who gave evidence in the present case are experts. The Panel therefore concludes that there should have an expert report at the stage of evaluation in order to ascertain the quality and specifications of the training shoes. This bidding exercise involves Public Funds and Public Funds must be used judiciously.

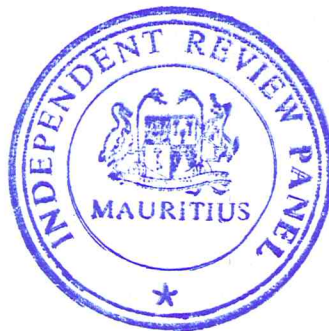
For reasons set out above, the Panel concludes that the application has merits and as the contract has already been awarded the Panel orders a refund of cost of participation to the Applicant.



(Virjanan Mulloo)
Member



(Arassen Kallee)
Vice-Chairperson



(Ramsamy Rajanah)
Member

Dated 23 March 2018