



Independent Review Panel

Decision No. 07/18

In the matter of:

Ducray Lenoir Ltd

(Applicant)

v/s

Forensic Science Laboratory

(Respondent)

(Cause No. 02/18/IRP)

Decision

A. History of the case

This is a case where Ducray Lenoir Ltd hereinafter referred to as “the Applicant” is challenging the decision of Forensic Science Laboratory hereinafter referred to as “the Respondent” to award the contract to Proximed Ltd “the successful bidder” for the supply, Installation, Testing, Training and Commissioning of LC-MS/HRMS pursuant to an open advertising bidding exercise bearing reference FSL/17-18/81/OAB.

The Applicant was notified of the award by the Respondent on 29 March 2018 and subsequently challenged the latter’s decision on 31 March 2018. 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 05 April 2018.

B. Notification of Award

The Forensic Science Laboratory through a letter dated 29 March 2018, informed the Applicant of the particulars of the successful bidder as follows:

Item No.	Description	Quantity	Selected Bidder	Contract Price (Rs)
1	SITTC of LC-MS/HRMS	1 Unit	Proximed Ltd	23,000,000.00

C. The Challenge

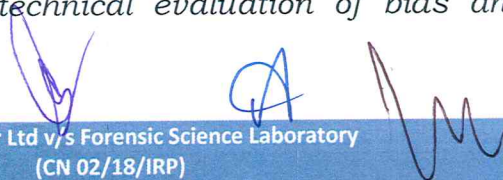
On 29 March 2018, the Applicant challenged the procurement on the following grounds:

“Lowest bidder.”

D. The Reply to Challenge

On 30 March 2018, the Public Body made the following reply to the challenge:

“The evaluation of bids consisted of three (3) processes that includes preliminary evaluation of bids, technical evaluation of bids and financial evaluation bids.”



The preliminary assessment of the bid submitted by Ducray Lenoir Ltd in respect of this tender revealed the following discrepancies:

1. *The Bid Securing Declaration, Paragraph (c), where the Public Body is described as “The Ministry of Health and Quality of Life”.*
2. *The manufacturer’s Authorization letter which is a standard template at page 48 of Bidding document contains erroneous and missing information as follows:*
 - a. *The manufacturer’s authorization letter is dated 10 October 2016.*
 - b. *The manufacturer’s authorization letter bears No procurement reference number.*
 - c. *The manufacturer’s authorization letter is addressed to “Ministry of Agro Industry and Food Security”.*
 - d. *And the name and or brief description of the goods is described as “Liquid Chromatography products’.*
3. *The proposed delivery period proposed by the bidder is 8-10 Weeks as from date of letter of acceptance which is not as per the requirement of this tender.*

Based on the above, the bid submitted by Ducray Lenoir was not retained for technical Evaluation.”

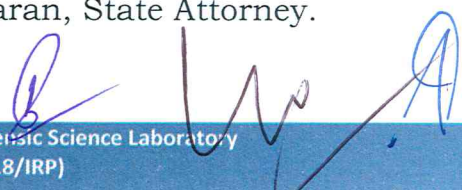
E. Grounds for Review

On 04 April 2018, the Applicant seized the Independent Review Panel for review on the following grounds:

“Lowest bidder”.

F. The Hearing

At the hearing, the Applicant was represented by Mr I. Munsoor, Counsel whereas the Respondent was represented by Mr M. Beeharry, Principal State Counsel and assisted by Mr D. K. Manikaran, State Attorney.



After submission of both Counsel, the Panel concluded the following:

Para 27.3 of the Instruction to Bidders stipulates that “No bid may be withdrawn, substituted or modified in the interval between the deadline for submission of bids and expiration of the period of bid validity specified by the bidder on the bid submission form or any extension thereof.” The Panel notes that the Applicant did modify or rectify its Bid within the timeframe as

set in para 27.3 of the Instruction to Bidders and same was confirmed by Mr L. Seedoo, representative of the Applicant.

On the issue of clarification, the Panel is of the firm view that it is not an application in as much as the bid has ceased to be responsive by virtue of non-compliance with the time frame set out in the bidding documents.

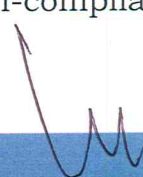
Now, the Panel refers to the issue of different terminology used by the Applicant. The Respondent requested bidders to furnish “Liquid Chromatography Tandem Mass Spectrometry”. The Applicant do not manufacture such product. They have to import it from the manufacturer, i.e. Microsep Ltd.

Paragraph 20(a) of the Instruction to bidders stipulates that “A bidder that does not manufacture or produce the Goods, it offers to supply shall submit the Manufacturer’s Authorisation using the form included in Section IV, Bidding Forms, to demonstrate that it has been duly authorised by the manufacturer to supply these very goods in Mauritius”.

The Panel notes that if such an important document contains some misleading information or omission of any kind then this is fatal to the bid.

ITB 37.3(d) at paragraph (a) stipulates that “The goods specified in the list of goods are required to be delivered within the acceptable time range (after the earliest and before the final date, both dates inclusive) specified in Section VI, Delivery Schedule. No credit will be given to deliveries before the earliest date and bids offering delivery after the final date shall be treated as non-responsive (underline ours).

According to the tender documents, the Respondent was requesting bidders to deliver the equipment within eight weeks whereas that applicant’s time frame for delivery is within eight to ten weeks. Whilst taking into account ITB 37.3(d) para (a), the Panel finds that the Respondent was justified to reject the Applicant’s bid for being non-responsive for non-compliance with the time frame.


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G. Decision

For reasons stated above, the Panel concludes that the Application lacks merits and is therefore set aside.



(Arassen Kallee)
Vice-Chairperson



(Virjanan Mulloo)
Member



(Ramsamy Rajanah)
Member

Dated ²⁴.... May 2018

