

PUBLIC CONTRACTS REVIEW BOARD

Case No. 402

GHPST/536/11

Tender for the Supply of Sterile Powder Free Surgical Gloves, Size 7.5

This call for tenders was published in the Government Gazette on the 27th May 2011. The closing date for this call with an estimated budget of € 70,778 was the 27th June 2011.

Four (4) tenderer submitted their offers.

Drugsales Ltd filed an objection on the 11th January 2012 against the decisions of the Government Health Procurement Services to disqualify its offer as non-compliant and to recommend the award of the tender to Kemimport Ltd.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr. Carmel Esposito and Mr Joseph Croker as members convened a public hearing on Wednesday, 2nd May 2012 to discuss this objection.

Present for the hearing:

Drugsales Ltd

Dr Andrea Gera de Petri	Legal Representative
Ms Charlene Dimech	Representative
Mr Philip Moran	Representative

Kemimport Ltd

Mr Reginald Fava	Representative
Mr Pierre Fava	Representative

Government Health Procurement Services

Mr Mario Ellul	Representative
Ms Miceli	Representative

Evaluation Board

Ms Miriam Dowling	Chairperson
Mr Vincent Bianco	Member
Mr Noel Abela	Member
Ms Josette Camilleri	Secretary



After the Chairman's brief introduction, the appellant company's representative was invited to explain the motives of his company's objection.

Dr Andrea Gera de Petri, representing Drugsales Ltd, the appellant company, made the following submissions:-

- i. y letter dated 6th January 2012, the contracting authority had informed his client that (i) the company's offer had been disqualified as it was considered to be technically non-compliant since the item was quoted with code no. 2D72NT70 which referred to size 7 whereas the requested size was 7.5 and (ii) the tender award was being recommended in favour of Kemimport Ltd;
 - ii. albeit, in its tender submission, the appellant company had clearly described the surgical gloves that it was offering as being of size 7.5 yet, inadvertently, the company's representative(s) quoted catalogue code no. 2D72NT70 – instead of code no. 2D72NT75 - which referred to gloves size 7;
 - iii. whilst, as per Volume 3 'Technical Specifications' of page 34 of the tender document, the bidder was requested to submit samples of product that such bidder was offering, yet, the appellant company was exempted from providing samples since the same company was the current supplier to the Government Health Procurement Services of this kind of surgical glove;
 - iv. the packaging of the sample was, likewise, clearly indicating that the product was size 7.5;
- and
- v. his client's financial offer at € 46,353.60 was substantially cheaper than that of the recommended tenderer at € 64,289.52.

Mr Noel Abela, member of the adjudicating board, submitted the following explanations:-

- a. on verifying the code number quoted by the appellant company in its tender submission with respect to the product that it was offering it emerged that the code number referred to a size 7 glove rather than to a size 7.5 glove as requested in the tender document;
- b. the appellant company's representative was correct in his statement that the product description that the company gave in its tender submission indicated size 7.5;
- c. in view of the fact that page 8 of the tender document, specifically, Note 2 to clause 16.1, stated that "*No rectification shall be allowed. Only clarifications on the submitted information may be requested*", the adjudicating board felt that it was precluded from seeking a rectification/clarification on this technical issue;
- d. and



- e. confirmed that the product code number was not a mandatory requirement in the tender document

The Chairman Public Contracts Review Board made the following observations:-

- i. once the product code number was not a mandatory requirement then the bidder could not be disqualified on something which his company could have not submitted at all;
 - ii. in order to clear the discrepancy between the 'product description', which was mandatory, and the 'code number', which was not mandatory, it would have been quite in order for the evaluation board to ask for a clarification on the information already submitted;
- and
- iii. in the event of award, the tenderer would be bound by the 'product description' and by the 'sample', which were both mandatory requirements.

At this point the hearing was brought to a close.

This Board,

- having noted that the appellants, in terms of their 'letter of objection' dated 11th January 2012 and also through their verbal submissions presented during the hearing held on the 2nd May 2012, had objected to the decision taken by the pertinent authorities;
- having noted all of the appellant company's representative's claims and observations, particularly, the references made to the fact that (a) by letter dated 6th January 2012, the contracting authority had informed the appellant company that (1) the company's offer had been disqualified as it was considered to be technically non-compliant since the item was quoted with code no. 2D72NT70 which referred to size 7 whereas the requested size was 7.5 and (2) the tender award was being recommended in favour of Kemimport Ltd, (b) albeit, in its tender submission, the appellant company had clearly described the surgical gloves that it was offering as being of size 7.5 yet, inadvertently, the company's representative(s) quoted catalogue code no. 2D72NT70 – instead of code no. 2D72NT75 - which referred to gloves size 7, (c) whilst, as per Volume 3 'Technical Specifications' of page 34 of the tender document, the bidder was requested to submit samples of product that such bidder was offering, yet, the appellant company was exempted from providing samples since the same company was the current supplier to the Government Health Procurement Services of this kind of surgical glove and (d) the packaging of the sample was, likewise, clearly indicating that the product was size 7.5;
- having considered the contracting authority's representatives' reference to the fact that (a) on verifying the code number quoted by the appellant company in its tender submission with respect to the product that it was offering it emerged that the code number referred to a size 7 glove rather than to a size 7.5 glove as requested in the tender document, (b) the appellant company's representative was correct in his



statement that the product description that the company gave in its tender submission indicated size 7.5, (c) in view of the fact that page 8 of the tender document, specifically, Note 2 to clause 16.1, stated that "*No rectification shall be allowed. Only clarifications on the submitted information may be requested*", the adjudicating board felt that it was precluded from seeking a rectification/clarification on this technical issue and (d) confirmed that the product code number was not a mandatory requirement in the tender document,

reached the following conclusions, namely:

1. The Public Contracts Review Board opines that once the product code number was not a mandatory requirement then the bidder could not be disqualified on something which his company could have not submitted at all.
2. The Public Contracts Review Board feels that in order to clear the discrepancy between the 'product description', which was mandatory, and the 'code number', which was not mandatory, it would have been quite in order for the evaluation board to ask for a clarification on the information already submitted.

In view of the above this Board finds in favour of the appellant company and recommends that the said company is not only reimbursed with the deposit paid for the appeal to be lodged but also that the company's bid be reintegrated in the evaluation process.



Alfred R Triganza
Chairman

11th May 2012



Carmel Esposito
Member



Joseph Croker
Member