

PUBLIC CONTRACTS REVIEW BOARD

Case No. 503

CT/2042/2011

Tender for the Supply of High Performance Surgical Gowns

This call for tenders was published in the Government Gazette on the 2nd September 2012. The closing date for this call with an estimated budget of € 233,234 was the 22nd November 2012.

Twelve (12) tenderers submitted their offers.

JBC Clothing Mfg & Imp filed an objection on the 1st November 2012 against the decisions of Contracts Department to disqualify its offer as non-compliant and to recommend the award of tender to Treebee Company Ltd.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Joseph Croker and Mr Carmel Esposito as members convened a public hearing on Friday, 7th December 2012 to discuss this objection.

JBC Clothing Mfg & Imp

Mr Joseph Busutil	Representative
Mrs Amy Cassar	Representative

Treebee Company Ltd

Mr Pierre Buontempo	Representative
Mr Simon Bugeja	Representative

Health Division

Ms Stephanie Abela	Representative
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Evaluation Board

Ms Connie Miceli	Chairperson
Ms Deborah Xuereb	Member

Department of Contracts

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

Mr Joseph Busutil, representing JBC Clothing Mfg & Imp, the appellant company, made the following submissions:

- i. by letter/email dated 23rd October 2012 the appellant company was informed that its offer was unsuccessful because "*Certification of Compliance with EN 13795 from a laboratory has been provided however, details of ISO 17025 accreditation of the lab were not. The laboratory's website does not provide this information*";
- ii. since the appellant company was certain that the alleged missing information had been included in its tender submission its representative had contacted the Department of Contracts at once and it was confirmed that the details of ISO 17025 accreditation of the laboratory had, in fact, been submitted and, as a result, its tender submission was compliant;

and

- iii. nonetheless, the appellant company was advised by the Contracts Department to lodge an appeal.

Mr Nicholas Aquilina, representing the Contracts Department, under oath, confirmed that following the receipt of a letter dated 23rd October 2012, whereby the appellant company was informed that its offer had been disqualified, the appellant company had contacted him by telephone and it was confirmed that the disqualification emerged from the evaluation report.

Ms Connie Miceli, chairperson of the evaluation board, provided the following timeline of events:-

- a. on the 26th October 2012 the Contracts Department had informed the evaluation board of the complaint made by the appellant company in the sense that it had, in fact, submitted the details of the ISO 17025 accreditation in its tender submission and, as a result, the Contracts Department instructed the evaluation board to act on that information;
- b. on the 31st October 2012 the evaluation board was reconvened at the Contracts Department to examine the hard copy of the tender submission and, subsequently, the chairperson of the evaluation board informed the Contracts Department that the accreditation certificate had been traced and that a fresh evaluation report was going to be submitted;
- c. on the 31st October 2012 the Contracts Department had brought to the attention of JBC Clothing Mfg & Imp the fact that the evaluation board had traced the details of the ISO 17025 accreditation;

and



d. on the 1st November 2012 JBC Clothing Mfg & Imp lodged its appeal.

Ms Amy Cassar, also representing the appellant company, remarked that on being informed that the details of the laboratory accreditation was no longer an issue, they asked the Contracts Department as to what was the next step and the advice was for JBC Clothing Mfg & Imp to lodge an appeal. She added that JBC Clothing Mfg & Imp was aware that the deadline to file an appeal would lapse on the 2nd November 2012, as per letter dated 23rd October 2012, and therefore it filed the objection on the 1st November 2012.

Mr Aquilina stated that he had referred the appellant company to the legal notice and he expressed the view that it would be opportune to file an appeal otherwise it could be interpreted that JBC Clothing Mfg & Imp was not objecting to the letter of rejection issued on the 23rd October 2012. Mr Aquilina was quick to add that it was not his duty to give advice to bidders and that he, invariably, directed them to seek legal advice.

The Chairman Public Contracts Review Board remarked that once, on verification, it turned out that the tender submission made by JBC Clothing Mfg & Imp was compliant and that the information had been communicated to the latter then there was no reason why this bidder had to file an appeal.

At this point the hearing came to a close.

This Board,

- having noted that the appellant company, in terms of its 'reasoned letter of objection' dated the 1st November 2012 and also through its representatives verbal submissions presented during the hearing held on the 7th December 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/email dated 23rd October 2012 the appellant company was informed that its offer was unsuccessful because "*Certification of Compliance with EN 13795 from a laboratory has been provided however, details of ISO 17025 accreditation of the lab were not. The laboratory's website does not provide this information*", (b) since the appellant company was certain that the alleged missing information had been included in its tender submission its representative had contacted the Department of Contracts at once and it was confirmed that the details of ISO 17025 accreditation of the laboratory had, in fact, been submitted and, as a result, its tender submission was compliant, (c) nonetheless, the appellant company was advised by the Contracts Department to lodge an appeal, (d) also representing the appellant company, remarked that on being informed that the details of the laboratory accreditation was no longer an issue, they asked the Contracts Department as to what was the next step and the advice was for JBC Clothing Mfg & Imp to lodge an appeal and (e) JBC Clothing Mfg & Imp was aware that the deadline to file an appeal would lapse on the 2nd November 2012, as per letter dated 23rd October 2012, and, as a consequence, it filed the objection on the 1st November 2012;

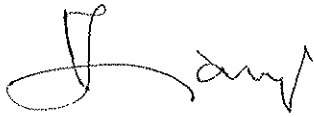


- having considered the contracting authority's representative's reference to the fact that (a) on the 26th October 2012 the Contracts Department had informed the evaluation board of the complaint made by the appellant company in the sense that it had, in fact, submitted the details of the ISO 17025 accreditation in its tender submission and, as a result, the Contracts Department instructed the evaluation board to act on that information, (b) on the 31st October 2012 the evaluation board was reconvened at the Contracts Department to examine the hard copy of the tender submission and, subsequently, the chairperson of the evaluation board informed the Contracts Department that the accreditation certificate had been traced and that a fresh evaluation report was going to be submitted, (c) on the 31st October 2012 the Contracts Department had brought to the attention of JBC Clothing Mfg & Imp the fact that the evaluation board had traced the details of the ISO 17025 accreditation and (d) on the 1st November 2012 JBC Clothing Mfg & Imp lodged its appeal;
- having also considered the intervention made by Mr Aquilina, particularly the fact that (a) his confirmation that, following the receipt of a letter dated 23rd October 2012, whereby the appellant company was informed that its offer had been disqualified, the appellant company had contacted him by telephone and it was confirmed that the disqualification emerged from the evaluation report, (b) he had referred the appellant company to the legal notice and he expressed the view that it would be opportune for the appellant company to file an appeal otherwise it could be interpreted that JBC Clothing Mfg & Imp was not objecting to the letter of rejection issued on the 23rd October 2012 and (c) Mr Aquilina was quick to add that it was not his duty to give advice to bidders and that he, invariably, directed them to seek legal advice,

reached the following conclusions, namely:

1. The Public Contracts Review Board observes that once, on verification, it turned out that the tender submission made by JBC Clothing Mfg & Imp was compliant and that the information had been communicated to the latter then there was no reason why this bidder had to file an appeal.
2. The Public Contracts Review Board, taking full cognisance of (a) the sequence of events and (b) the comments made by Mr Aquilina, feels that interested parties should have liaised better in order to avoid futile filing of appeal by appellant company. Albeit the timing was against the appellant company, yet, there is nothing precluding interested parties to rectify any anomalies in between the filing of an appeal and the actual hearing of the appeal before this Board. Such procedure has been followed in the past and this Board cannot comprehend why it has not been, likewise, followed in this particular instance subject to all formalities being observed in the process. Undoubtedly, such common sense, had it prevailed, would have avoided unnecessary delays as well as wastage of resources, both financial and human. As a result this Board cannot but emphasise enough the need for the relevant authorities (in this case both the Department of Contracts and the Health Division) to be more proactive in similar circumstances and take it upon themselves to take action to avert waste of valuable resources.

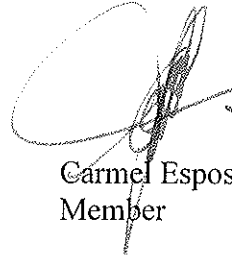
In view of the above this Board finds in favour of the appellant company and recommends that, apart from the deposit paid by the same company for the appeal to be lodged should be reimbursed, this Board also establishes that the appellant company's offer should be reintegrated in the evaluation process.



Alfred R Triganza
Chairman



Joseph Croker
Member



Carmel Esposito
Member

11 December 2012