

PUBLIC CONTRACTS REVIEW BOARD

Case No. 546

GHPST/651/2012

Tender for the Supply of Bandages Wadding 7.5 cm

The call for tender was published on the 13th August 2010 with a closing date on the 13th September 2010. Nine tenders were placed in the tender box by the closing date.

On the 11th January 2013, Messrs Krypton Chemists Ltd filed an objection against the decision of the contracting authority to award the tender to EJ Busuttil Ltd.

The Public Contracts Review Board composed of Mr Joseph Croker, Acting Chairman, and Messrs Carmel Esposito and Paul Mifsud, convened a hearing on the 10th May 2013 to discuss the appeal.

Present:

Krypton Chemists Ltd

Mrs Lorraine Arrigo	Representative
Mrs Patricia Engerer	Representative

E.J. Busuttil Ltd

Ms Nadia Boffa	Representative
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Central Procurement and Supplies Unit (CPSU) – Ministry for Health

Mr Joseph Xuereb	Representative
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Evaluation Board

Mrs Connie Miceli	Chairperson
Ms Alicia Vella Lethridge	Secretary
Ms Juliet Pace	Member
Mr George Debono	Member

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

Mrs Patricia Engerer on behalf of Krypton Chemists Ltd, the appellant, made the following submissions:-

- i. by letter dated 4th January 2013 the contracting authority informed her firm that its offer "was not successful since the material was too stiff and shreds easily";
- ii. Krypton Chemists has been the CPSU's supplier of bandages sizes 7.5cm, 10cm and 15cm for the previous three years and no complaints had ever been made regarding their use;
- iii. these products carried all the international quality certifications required, e.g. ISO and so forth, and these were submitted with the previous tender but were not required this time round since her firm was the current supplier – copies provided at the hearing; and
- iv. the overseas manufacturer, Santex SPA of Italy, had reacted to the exclusion of this offer by stating that the product was up to standard and that the product had never been the subject to such negative remarks.

Mrs Lorraine Arrigo, also on behalf of the appellant, remarked that following this appeal, the contracting authority had placed two direct orders with her firm for the supply of the same product offered in connection with this tendering procedure and therefore it was incomprehensible how the same contracting authority would place two orders if the product did not perform satisfactory. She added that samples had been provided from stock.

Mrs Connie Miceli, chairperson of the evaluation board, remarked that:

- a. the appellant's offer was discarded once the evaluators found the material of the product too stiff and shredded easily; and
- b. she did not exclude the fact that direct orders had been placed with the appellant to bridge the gap between one tender and the next however it could be that different evaluators were involved in the various orders placed for this product.

Ms Juliet Pace, member of the evaluation board, under oath gave the following evidence:-

- i. presently she was performing hospital management duties however she worked as nursing officer at the Orthopaedic Department for about 15 years;
- ii. when analysing the sample provided, the three evaluators, including Dr Jason Zammit, consultant (on duties abroad), were of the opinion that the bandage

was of stiff material and that it shredded easily rendering it unsafe for use on patients;

- iii. the evaluation grids were filled in after the evaluators had discussed the case among themselves; and
- iv. she acknowledged that she had filled in the evaluation grid in the name of Dr Jason Zammit, consultant, on his instructions but that the signature was his.

The A/Chairman pointed out that the evaluation should be carried out individually, i.e. each evaluator had to assess the bids independently from the other evaluators.

Mr George Debono, member of the evaluation board and nursing officer at the Children's Department, under oath, explained that:-

- a. the evaluators first examined the samples and discussed them among themselves and there was general agreement that the product, as per samples provided, was not safe for use on patients, especially in the Paediatric Department;
- b. when comparing the products offered by the bidders participating in this tendering procedure it was noted that there were products which were superior to that offered by the appellant and therefore the evaluators recommended the product which they considered best for the treatment of patients;
- c. when queried by the A/Chairman, Mr Debono confirmed that the appellant's product was compliant with tender specifications; and
- d. he could not tell which product/brand he had recently been using in the course of his duties.

Mrs Lorraine Arrigo remarked that Mr Debono must have been using the bandages provided by Krypton Chemists because for the past three years or so it was the only supplier of this product.

The PCRB could not help noting that it has taken the Ministry for Health almost three years to adjudicate this tender for the provision of bandages which, whatever the circumstance, was an inordinately long time.

The Board:

- having noted that Messrs Krypton Chemists had on the 4th January 2013 submitted an objection to the decision taken by the contracting authority to reject their offer and award it to Messrs EJ Busuttil Ltd.;
- having noted the appellant's claims that they have been supplying identical products to the Contracting Authority for a number of years and that they are still supplying this product to this very day, and that they have never received

any adverse remark; having noted that the product is covered by various quality certificates issued by international certifying agencies; and

- having noted that the Contracting Authority did not confute the appellant's claim that they have continued to procure identical supplies from the appellant through alternative procurement procedures; having also noted that the product was up to tender specifications;

came to the following conclusions:

- 1 That the product was according to the specifications laid down in the tender document;
- 2 That there does not seem to be any tangible reason why the product should have been discarded, so much so that despite the mentioned evaluation report, the contracting authority continued to purchase the product from the appellant.

In view of the above, the Board finds in favour of the appellant and recommends that their bid be reintegrated into the adjudication process. It is also recommended that the deposit paid for their objection to be heard be re-imbursed in full.

The Board urges the Contracting Authority to take all necessary steps to ensure that adjudication processes, especially those concerning ordinary procurement and minimal quantities, are concluded as expeditiously as possible, and within a reasonable time-frame.

Joseph Croker
A/Chairman

Carmel Esposito
Member

Paul Mifsud
Member

17 May 2013