

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 547**

**DH 4023/10**

### **Tender for the Supply, Installation and Commissioning of an Ultrasound Machine for ENT**

The tender under reference was published on the 20<sup>th</sup> April 2012 with a closing date of the 23<sup>rd</sup> May 2012. Seven tenders were submitted by the closing date.

On the 30<sup>th</sup> October 2012 Associated Equipment Ltd filed an objection against the decision of the Ministry for Health to disqualify its offer and to recommend the award of the tender to Suratek Ltd.

The Public Contracts Review Board, composed of Mr Joseph Croker as A/Chairman and Messrs Carmel Esposito and Paul Mifsud as Members convened a hearing on the 10<sup>th</sup> May 2013 to discuss the objection.

#### **Present:**

#### **Associated Equipment Ltd**

Mr Charles Mifsud	Director
Mr Ray Theuma	Director
Mr Keith Vassalo	Representative

#### **Suratek Ltd**

Mr Kevin Galea	Representative
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#### **Central Procurement and Supplies Unit (CPSU) – Ministry for Health**

Dr Adrian Mallia	Legal Representative
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#### **Evaluation Board**

Mr Stephen Mercieca	Chairman
Mr Domnic Camilleri	Secretary
Mr Eric Farrugia	Member
Ms Christine Sammut	Member
Ing. Chris Attard Montalto	Member

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

Mr Charles Mifsud, on behalf of Associated Equipment Ltd, the appellant, made the following submissions:-

- i. by letter/email dated 24th October 2012 the contracting authority informed his firm that its offer was found technically non-compliant since the ultrasound machine had to have a minimum of two (2) active ultrasound probe ports whereas the unit offered only had one active port available;
- ii. the tender document requested the compact version of an ultrasound machine, i.e. the laptop type version, together with a mobile cart or trolley;
- iii. item 5 of his product's description dated 22 May 2012 and included in his tender submission referred to "Isolation cart 240V. Able to accept up to three transducers connected simultaneously", which item was also requested in the tender document and that meant that effectively the equipment offered had more than the two ports requested, i.e. the one in the laptop and another 3 in the trolley; and
- iv. the contracting authority already made use of the type of ultrasound machine offered by his firm and it was considered as standard equipment.

Dr Adrian Mallia, on behalf of the contracting authority, submitted that:-

- a. Section 4 'Construction' at page 33 of the tender document specified that this had to be a portable unit which could be carried about single handedly, user friendly and with a dedicated trolley;
- b. Section 6 'Transducer socket/port' at page 33 of the tender document stated that: *The Unit shall have two active socket or port to allow connection and interchange of the ultrasound probes;*
- c. Therefore, it followed that as per tender specifications the unit, i.e. the laptop, independently of the trolley, had to be the portable type and with two ports whereas that offered by the appellant had only one port as evidenced in page 2 of the technical brochure under the heading 'Console Design' which referred to '1 probe port with micro-connector', and this fact was not being contested by the appellant;
- d. Section 12 'Mobile Cart' at page 35 of the tender document stated, among other things, that *"It shall include holders for at least three ultrasound transducers"* and therefore, the mobile cart, independently of the unit, had to have three transducers as that provided by the appellant; and
- e. It was quite clear in the tender specifications that the two ports of the laptop were requested in addition to the three transducers of the trolley.

Mr Mifsud remarked that:-

- i. the laptop could only make use of only one transducer at any one time, because one could not scan a patient with two probes at the same time;
- ii. besides, the trolley, with its three transducers, was easy to move about in a hospital environment; and
- iii. although he could not rule out the availability of units with two ports it was the first time that he had heard about it because this type of unit was so compact that it had only one port.

Dr Mallia pointed out that:-

- a. it was up to the contracting authority to set out its requirements and it was made quite clear in the tender document that the unit had to have two active ports;
- b. the contracting authority requested a portable unit that could be carried about manually and it did not request a mobile unit, which could be moved about on a trolley; and
- c. if the appellant had any problem to satisfy the tender specifications as published, he could have raised the issue prior to the closing date of the tender.

Mr Kevin Galea, representing the recommended tenderer, shared the arguments expressed by the contracting authority.

The Board;

- having noted that Messrs Associated Equipment Limited had by letter dated 29<sup>th</sup> October 2012 objected to the decision taken by the Contracting Authority to dismiss their bid as technically non-compliant and recommend the award to Messrs Suratek Limited;
- having noted the appellant's claim that his product satisfied the technical specs in that it had one port on the ultrasound unit proper and three additional ones on the trolley; having also noted the appellant's argument that only one probe at a time could be used and that the unit could be moved around in a hospital environment even when attached to the trolley and could not understand the necessity of the portable unit to be provided with two ports; and
- having noted the Contracting Authority's counter claims that it was up to them to lay down the specifications and had the appellant had any doubts about the specs he could have easily raised a query before tender closing date,

came to the following conclusions:

1. The fact that the tender specifications required the portable unit to be furnished with two ports was clearly established;
2. The fact that the appellant's product was equipped with one port was not in dispute; and
3. That had the appellant had any doubt about the tender specifications, he could have raised a query in good time.

In view of the above, the Board finds against the appellant and recommends that the deposit paid for the appeal to be heard be forfeited.

Joseph Croker  
A/Chairman

Carmel Esposito  
Member

Paul Mifsud  
Member

17 May 2013