

PUBLIC CONTRACTS REVIEW BOARD

Case No. 590

DH 3282/12

Supply of a Capsule Endoscopy System and Patency Capsule Lot 1.

The tender was published on the 7th September 2012. The closing date was the 10th October 2012.

The estimated value of the Tender was €100,000.

Three (3) bidders submitted their offers.

Technoline Limited filed an objection on the 3rd June 2013 against a decision taken by the contracting authority Central Procurement & Supplies Unit to award the tender to Messrs. Evolve Limited.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Richard A. Matrenza as members convened a hearing on Tuesday 17th September 2013 to discuss the appeal.

Present:

Technoline Limited - Appellants

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| Mr Ivan Vassallo | Representative |
| Ms Damaris Lofaro | Representative |

Evolve Limited – Recommended Bidder

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| Mr Christopher Busuttil | Representative |
| Mr Adrian Balghy | Representative |

Central Procurement and Supplies Unit – Contracting Authority

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| Ms Ruth Spiteri | Chairperson Evaluation Board |
| Ms Lorna Zahra | Secretary Evaluation Board |
| Mr Ian Mark Attard | Member Evaluation Board |
| Mr Marnol Sultana | Representative |
| Dr Adrian Mallia | Legal Representative |

The Chairman opened the hearing by asking that the Board be given more information about the equipment for which this tender was issued.

Mr Ivan Vassallo on behalf of the appellants explained that the Capsule Endoscopy System and the Patency Capsule were recently introduced method of examination of the digestive tract in patients. The patency capsule consisted of a small pill that contained a camera which took a number of pictures and transmitted them to the Endoscopy System. These capsules are given to patients to swallow and going through the patient's tract would transmit pictures of the insides of the tract, enabling the medical practitioner to examine the condition of the patient's digestive tract.

The Chairman then made a brief introduction and the appellant company's representative was invited to explain the motives of his firm's objection.

Mr Ivan Vassallo on behalf of the appellant said that they objected to the decision to award the tender to the preferred bidder on two points, i) that the tender document at page 13 stated that the tender will be awarded to the cheapest tender that complied with the specifications, and ii) that "no variations to these specifications will be considered. The specifications asked for a 'dual camera system with light source', 'compact micro dual camera system' and 'each capsule shall include a dual camera system. The preferred bidder's offer did not keep to these specifications.

The Chairman remarked that the Board found it strange that there could be such great differences between the prices submitted by the bidders.

Dr Adrian Mallia on behalf of the contracting authority agreed with appellant that the specifications, were as quoted by the appellants, but however the appellants missed out the clarifications issued on the 2 October 2012, whereby the specifications were changed, allowing single cameras. The tender document itself, in the instructions to tenderers, Clause 11.2 allowed such clarifications, including changes to specifications. These clarifications then formed an integral part of the tender document. One of the bidders had asked if it was acceptable to offer a single camera, and the reply given in the clarification was that yes, it was acceptable provided that the single camera could capture the same number of images. This clarification had been sent to all bidders. Furthermore the same bidder who made the enquiry had also brought to the attention of the contracting authority, that if they insisted on a dual camera system, there was only one supplier who would be able to bid. This could have been taken into consideration when the clarification was issued.

Ian Attard, Operations Manager and member of the evaluation board, under oath stated that the specifications required that the camera shall be capable to capture two or more images per second. The preferred bidders' offer indicated that the camera offered was capable of this, in the literature submitted it is stated that "video images at two frames per second during passage through the tract. Evaluation at that stage did not consider price, but was more on the technical side of seeing offers were according to specifications and clarifications. This is a new technology and will probably eventually replace endoscopy. The tender bid of the preferred bidder included a number of images taken by the camera offered. These images were examined by the medical practitioner on the evaluation board and deemed to be acceptable.

Dr Mallia explained that the tender was for the supply of fixed equipment, which was used again and again as needed, and for the capsules that were consumables. These capsules were

for one off use and were disposed of during use. Consumption of these capsules depended on demand. Purchasing of these capsules would be on a demand basis, with the contractor supplying them as the need arises.

Mr Marnol Sultana on behalf of the contracting authority said that estimate consumption of this capsule is around fifty (50) capsules per annum.

Mr Ivan Vassallo for the appellants explained that during its passage through the small intestine the camera kept its direction because the width of the intestine walls did not allow it to tumble. However, when passing through the colon, that is wider, the camera was prone to tumble and change position. Thus a single camera capsule could miss important lesions when passing through the colon. Appellants therefore decided to submit a dual camera to obviate this. The appellants' dual camera capsule was capable of taking 4 to 35 frames per second. Mr Vassallo claimed that the chosen capsule cannot be used to examine the colon. Specifications stated that receivers shall have the facility to play back all the frames at any stage of the procedure. The receiver offered by the appellants was equipped with a screen that enabled viewing the images being taken at all stages. The chosen receiver is not equipped with a screen, the images the camera captures have to be viewed on a computer. Contended that preferred bidders' offer was not according to specifications.

Mr Ian Attard for the contracting authority stated that the specifications nowhere stated that the receiver had to have a monitor but that it was capable of receiving images all the time. At any rate the images have to be viewed by the medical practitioner and not by the patient. Reiterated that the evaluation board examined the products technically and the doctor, who formed part of the board, had examined the product and accepted it as satisfactory. He had the necessary qualification to do this.

Mr Ivan Vassallo for the appellants reiterated that the equipment submitted by the preferred bidder cannot be used for colon examination. Appellants submitted voluminous literature with their bid that showed this.

Replying to a question by the Board, Mr Chris Busuttill Managing Director on behalf of the preferred bidder said that yes, Evolve's offer contained all the necessary literature. The direction the capsule was facing when going through the colon is immaterial. What mattered is that it takes images of all the length of the tract. We submitted samples of images taken by our capsules and technical advice. The capsule complies with the specifications. Lastly Mr Busuttill confirmed that the equipment was being provided free of charge.

At this point the hearing was brought to an end.

This Board,

Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 3rd June 2013, had objected to the decision taken by the pertinent Authority, in that:

- a) The Tender document specified that the cheapest bid will be awarded the tender. This condition also laid out that the Bid had to meet the necessary technical specifications laid out in the tender document.**

- b) The Original specification in the tender document required the implementation of a 'Dual Camera system with light source'.
- c) The Preferred Bidder's system did not comply with such specifications.
- d) The Appellant contends that the equipment and product offered by the preferred Bidder cannot meet the requirement for colon examination.

Having considered the Contracting Authority's verbal submissions during the hearing held on 17th September 2013, in that:

- a) Although the Appellant adhered to the original specifications laid out in the tender document, the same Appellant did not concur to the clarifications required by the Evaluation Board of the Contracting Authority, issued by same , on 2nd October 2012, which same clarifications were communicated to all bidders.
- b) The Clarifications sent to all bidders, allowed specifications to be simulated to a 'Single Camera 'which will fulfil the requirements of the tender.
- c) The tender was for the procurement of a permanent equipment and for capsules that are regarded as consumables.
- d) The Contracting Authority, through the verbal submissions, held during the hearing on 17th September 2013, confirmed that the average consumptions of these capsules are 50 in number per annum.
- e) The Contracting Authority also confirmed that the product offered by the Preferred Bidder was fully compliant with the technical requirements of the tender.

Reached the following conclusions:

1. The product of the Preferred Bidder does indeed meet the compliance of all the specifications as laid out in the tender document and also through clarifications sought later by the Evaluation Board of the Contracting Authority.
2. After having heard the Expert's opinion on the quality of the product being offered by the Preferred Bidder, this Board opines that the product in question does satisfy the requirements of the tender specifications.
3. During the hearing held on 17th September 2013, this Board was informed that the equipment which the Preferred Bidder was offering was being donated, ie free of charge to the Contracting Authority.
4. This Board also noted that the Preferred Bidder's offer was the cheapest.

In view of the above this Board, finds against the Appellant Company and recommends that the deposit paid by the Appellant should not be reimbursed.

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Richard A. Matrenza
Member

2 October 2013

