

PUBLIC CONTRACTS REVIEW BOARD

Case No. 597

CPSU 2753/2012

Tender: Hydrocellular Foam Sacral Shaped Dressings.

The tender was published on the 16th November 2012. The closing date was the 17th December 2012.

The estimated value of the Tender was €18,536 (Exclusive of VAT).

Six Bidders (6) bidder submitted an offer.

On the 19th July 2013, Krypton Chemists Limited filed an objection against the rejection of their bid as being administratively non-compliant.

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 Thursday 26th September 2013 to discuss the appeal.

Present for the hearing:

Krypton Chemists Limited - Appellants

Ms. Patricia Engerer	Representative
----------------------	----------------

Cherubino Limited - Preferred Bidder

Mr Francis Cherubino	Representative
Mr Tommy Cherubino	Representative

Central Procurement and Supplies Unit - Contracting Authority

Mr George Fenech	Chairperson Evaluation Board
Ms Josette Camilleri	Secretary Evaluation Board
Ms Connie Miceli	Representative
Ms Miriam Wubbles	Member Evaluation Board

The Chairman made a brief introduction and asked the appellants' representative to make her submissions on the objection.

Ms Patricia Engerer, marketing manager, Krypton Chemists Ltd. for appellants said that the reason why their bid was disqualified was because they did not submit any registration certificate.

Mr George Fenech chairman of the evaluation board stated that one of the criteria was the submission of certification and that products have to be marked CE. This was a requirement from each bidder. Appellants stated in their letter of objection that this requirement does not feature anywhere in the tender document. Page 36 of the tender document, Clause 24.7.3 states that all non medical products for pharmaceutical purposes must comply with respective standard, and be accompanied by a detailed quality control analysis report by a certified body. Contractor must also provide any relevant support and documentation necessary for the responsible person to ensure the safe use of the product. Appellants although they ticked the relevant box showing that product was EC certified, failed to submit the necessary certificate. The product appellants offered was produced in Egypt, and that is not in the European Union, and thus the requested certification was needed. More so, the required power of attorney from the manufacturer was also not submitted. This was required in case there arose problems with the product and the contracting authority would not be able to proceed against manufacturer without this power of attorney. Malta Standards Authority insisted on products having the said certification. The price factor was never taken into consideration because appellants' offer was administratively non-compliant. Appellants did not submit anything, no literature and no certification were made available to the evaluation board. The preferred bidder included everything, certification and literature.

Ms Engerer claimed that registration certification and EU certification were not the same and that the tender required certification only for medicinal products. She continued that, as the appellants had supplied products to the hospital for more than twelve years, could not the evaluation board have asked for a clarification?

Mr George Fenech said that the evaluation board were precluded from contacting any of the bidders during the evaluation process. This product is not being used for the first time. It is relatively new but it was tested before the issuing of the tender. Samples were obtained through a quotation and the product was tested. This was a generic test and not just one specific brand was tested.

Ms Miriam Wubbles explained that the product served to protect the area around the lower back. It serves both as a kind of cushion as well as for absorbing any liquid that is generated by lower back wounds and lesions. If the product is not of quality it could cause discomfort to patients and cause allergies.

The hearing was here brought to a close.

This Board,

Having noted the Appellant's objection, in terms of the ' Reasoned Letter of Objection' dated 19th July 2013 and also through the Appellant's verbal submissions during the hearing held on 26th August 2013, had objected to the decision taken by the pertinent Authority, in that:

- a) The Appellant's bid was considered by the Evaluation Board of the Contracting Authority as being 'Administratively non compliant' for failure to submit the required certifications. Yet these requirements were not stated in the tender document.**
- b) The tenders that required the certifications were for medicinal products only and in this particular tender the product is non medicinal. Hence, the certifications were not required in this case.**

Having considered the Contracting Authority's verbal submissions presented by same during the hearing held on 26th August 2013, in that:

- a) The Appellant did not submit the required certifications as stated in the tender document.**
- b) The Evaluation Board were not in a position to contact the Appellant during the evaluation stage for missing information as required in the tender document.**
- c) The product had to be of high quality and fully certified as requested in the tender document. One had to take into consideration that the product had to be applied on patients without causing any allergies and other discomforts to same.**

Reached the following conclusions:

- 1. This Board noted that the Appellant's bid for similar and related products was not the first one to be submitted by the latter. In this regard this Board feels that the Appellant should have been aware of the certifications needed.**
- 2. This Board also feels that if the Appellant was not clear as to what type of certification was required, he could have sought clarifications from the Contracting Authority prior to submission of the tender document.**
- 3. The certifications required by the Contracting Authority were of great importance to ensure that the product is of high quality for the benefit of patients.**
- 4. The Preferred Bidder's offer was fully compliant.**

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. Deposit paid by the Appellant should not be reimbursed.

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Richard A. Matrenza
Member

4 November 2013