

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 599**

**CPSU/CPU 2742/12**

Tender for the Supply of Mercury Free Thermometers.

The tender was published on the 9<sup>th</sup> November 2012. The closing date was the 10<sup>th</sup> December 2012.

The estimated value of the Tender was: €113,202 (Exclusive of VAT).

Six (6) bidders submitted offers for this tender.

On the 1<sup>st</sup> July 2013 Pharmafusion Limited filed an objection against the decision to discard its offer and the award to Alphaplus Medical Supplies.

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 26<sup>th</sup> September 2013 to discuss the appeal.

**Present for the hearing were:**

### **Pharmafusion Limited - Appellant**

|                    |                |
|--------------------|----------------|
| Ms Giovanna Pocock | Representative |
| Mr Ives Pocock     | Representative |

### **Alphaplus Medical Supplies- Preferred Bidder**

|                   |                |
|-------------------|----------------|
| Mr Lino Busuttill | Representative |
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### **Central Procurement and Supplies Unit - Contracting Authority**

|                  |                              |
|------------------|------------------------------|
| Mr George Fenech | Chairperson Evaluation Board |
| Mr Joe Darmanin  | Member Evaluation Board      |
| Ms Rose Aquilina | Senior Pharmacy Technician   |
| Ms Connie Miceli | Representative               |

After the Chairman's brief introduction, the representative for the appellant was asked to submit his reasons for the objection.

Mr Ives Pocock for the appellant firm stated that its offer although being the cheapest, had been discarded because of an allegedly technical non-compliance. The product his firm offered was CE certified and was sold all over Europe. The product was also presently being supplied to the contracting authority through a previous contract. Appellant firm was the present contractor and there had been no complaints or problems with the product. In fact appellant had no need to submit samples to be tested, as these were taken from the supply the appellant had already supplied, but the appellant still submitted fresh samples. The previous contract was still in force.

Mr George Fenech, Chairman of the Evaluation Board, on behalf of the contracting authority stated that the letter of objection listed two grievances, one that the offer was the cheapest and the other that the previous contract was still in force and an amount of thermometers from that contract had not been ordered, yet a new tender was issued. The contract was going to lapse thus a fresh tender had to be issued in order to ensure that a constant supply was available. In the previous tender there had been no condition that the contracting authority had to take up all the supplies before issuing another tender. He reminded the Board that his position was Chairman of the evaluation board and was not an evaluator himself. When the tender for mercury free thermometers was issued the first time, there probably had been few suppliers who bid for the tender. In the present tender there were more bidders and the choice available to the evaluation board allowed the said board to raise issues that as users, they considered were important. The evaluation board was of the opinion that appellant product's reading of temperatures was inferior and that it took longer to return to base line temperature after obtaining a reading. Appellant Pharmafusion was the present supplier up to July, when the contract lapsed.

Mr Joe Darmanin, a nursing officer and member of the evaluation board under oath stated that the thermometers in question are only used whenever clinical thermometers are not available. The temperature reading of the thermometers offered by the preferred bidder was clearer, and the return to the normal temperature was faster. The estimated annual consumption of these mercury free thermometers is around 20,000. The evaluation board did not look at the price of the samples that were tested.

Mr Ives Pocock for appellant said that the contracting authority failed to exercise the right to extend the present contract. Furthermore the product we offered was engraved with the DH mark while others had a label stuck on the side.

Me Giovanna Pocock said that the same specifications used for the previous contract were used for the tender under examination. The tender was awarded one month before the lapse of the previous contract, in which appellant was the contractor. She stated that she could not understand how the evaluation board now found the thermometers supplied by appellant to be unreadable.

Mr George Fenech for the contracting authority said that the contracting authority had to seek the patients' needs first and foremost. The contracting authority was seeking an efficient product. The evaluation board did not say that the product offered by the appellant was not good; the board said that they could obtain a better product. The competition had increased.

At this point the hearing was brought to a close.

**This Board,**

**Having noted the Appellant's objection , in terms of the 'Reasoned Letter of Objection' dated 1<sup>st</sup> July 2013, and also through the Appellant's verbal submissions during the hearing held on 26<sup>th</sup> September 2013, had objected to the decision taken by the pertinent Authority, in that:**

- a) The Appellant stated that his offer was the cheapest.**
- b) The Appellant's bid was discarded as being 'technically non compliant'.**
- c) The Appellant has been the supplier for the same product to the same Contracting Authority and no complaints were made by same for the duration of the present contract.**
- d) The Preferred Bidder was awarded the contract one month prior to the expiry period of the present contract.**

**Having considered the Contracting Authority's verbal submissions presented by same during the hearing held on 26<sup>th</sup> September 2013, in that:**

- a) The Tender had to be issued before the lapse of the previous contractual tender, as otherwise the supply of this medical product would not be available.**
- b) Under the previous marketing conditions, there was a limited number of bidders, but now the same market has provided more advanced competitive similar products.**
- c) The Preferred Bidder's Product was more clear to read and more practical in usage.**
- d) The Contracting Authority had to choose the most efficient product which will adapt to the patient's needs.**

**Reached the following conclusions:**

- 1. The product chosen by the Evaluation Board of the Contracting Authority was the most suitable for the benefit of the patient.**
- 2. The Evaluation Board of the Contracting Authority was very diligently aware that shortages of the product would not occur at Mater Dei.**

**In view of the above, this Board finds against the Appellant 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

*31 October 2013*