

PUBLIC CONTRACTS REVIEW BOARD

Case No. 604

CT 2023/2011

Tender for the Supply of Surgical Adhesive Drapes Used at Mater Dei Hospital.

The tender was published on the 21st October 2011. The closing date was the 15th December 2011.

The estimated value of the Tender was €570,000

Twenty one (21) bids were submitted for this tender.

On the 19th August 2013, Trebee Company Limited filed an objection against the rejection of its bid as being administratively non compliant and the award of the tender to Associated Equipment 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 Thursday 3rd October 2013 to discuss the appeal.

Present for the hearing:

Trebee Company Limited - Appellant

Mr Simon Bugeja	Operations Manager
Mr Pierre Buontempo	Administrator

Associated Equipment Company Limited - Recommended Bidder

Mr Solomon Khazmi	Sales Executive
Mr Raymond Teuma	Director
Dr Geoffrey Mifsud Farrugia	Legal Representative
Dr Julienne Portelli Demajo	Legal Representative

Central Procurement and Supplies Unit - Contracting Authority

Ms Connie Miceli	Chairperson Evaluation Board
Ms Marthese Bonello	Secretary Evaluation Board
Mr George Fenech	Representative

Department of Contracts

Mr Nicholas Aquilina	Procurement manager
Mr Anthony Cachia	Director

The Chairman made a brief introduction and asked the appellant's representative to make his submissions on the objection.

Mr Pierre Buontempo, on behalf of the appellant company Trebee Ltd said that its offer was rejected as being administratively non compliant because it was alleged that it did not submit the required samples. Yet, appellant had provided the samples and he was filing a copy of the receipt that the contracting authority had issued on the delivery of the same.

Ms Connie Miceli Chairperson Evaluation Board, on behalf of the contracting authority said the tender was originally issued by the Mater Dei Hospital and the Unit took it over when proceedings had started. The samples provided by the bidders were very large, palette size, and for logistic purposes these had to be delivered to the hospital. She agreed that the receipt mentioned by Mr Buontempo was issued, but was never inserted in the file. She confirmed that the required samples had in fact been supplied by the appellant. She explained that the appellant was the previous supplier and thus did not have to supply all the items as samples. Those items that were already being supplied by the appellant were exempt from the need to provide samples. Thus when the evaluators were evaluating, they did not find all the samples. This explains the wording on the letter informing appellant of the rejection of bid, "*did not submit samples for all the items.*" This was an unfortunate incident caused through lack of communication. When the mistake was discovered, for the sake of transparency, it was not deemed fair to decide on the matter without the presence of the preferred bidder.

Dr Geoffrey Mifsud Farrugia, on behalf of the recommended bidder stated that apart from the mistake already mentioned, it can be seen from the delivery note/receipt that the amounts supplied as samples was very inferior to the required according to the tender document. The contracting authority requested twenty samples of each item, yet the appellant did not supply twenty of each. He stated that failure to submit the samples within five days should have resulted in the rejection of the bid.

The Chairman explained that the items five, six, seven and eight had been supplied before as appellant was the present supplier and did not need to re-submit the samples for these item.

At this stage, the hearing was brought to a close.

This Board,

Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 19th August 2013 and also through the Appellant's verbal submissions during the hearing held on 3rd October 2013, had objected to the decision taken by the pertinent Authority, in that:

- a) The Appellant's bid was disqualified as being 'Administratively non Compliant'. The reason, as stated by the Contracting Authority, was that the Appellant did not submit the samples as required in the tender document.**
- b) The samples were in actual fact submitted by the Appellant and a receipt for such submission was issued by the Contracting Authority.**

Having considered the Contracting Authority's verbal submissions during the hearing held on 3rd October 2013, in that:

- a) The Contracting Authority, quite prudently admitted the fact that the Appellant did submit the required samples.**
- b) The unfortunate incident occurred through lack of communication from the Contracting Authority's end.**

Reached the following conclusions:

- 1. The Appellant did in fact deliver the samples as has been established and confirmed by the Contracting Authority itself.**
- 2. In this regard, the Appellant's offer was 'Administratively Compliant'.**

In view of the above, this Board finds in favour of the Appellant and recommends that:

- i) The deposit paid by the Appellant Company be reimbursed.**
- ii) The Appellant's offer be reintegrated in the evaluation process.**

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Richard A. Matrenza
Member

13 November 2013