

PUBLIC CONTRACTS REVIEW BOARD

Case No. 608

CPSU/CPU/2763/2012

Tender for the Supply of Self Adhesive Fabric Sheets 20x10cms.

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

The estimated value of the Tender was: €24,215.38 (Exclusive of VAT).

Five (5) bids were received for this tender.

On the 19th July 2013 Krypton Chemists Limited filed an objection against the decision to discard their offer and to award the tender to Messrs. Cherubino 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 8th October 2013 to discuss the appeal.

Present for the hearing were:

Krypton Chemists Limited - Appellant

Ms Lorraine Arrigo	Representative
Ms Patricia Engerer	Representative

Cherubino Limited - Preferred Bidder

Mr Tommy Dimech	Representative
Dr Francis Cherubino	Legal Representative

Central Procurement and Supplies Unit - Contracting Authority

Mr George Fenech	Chairman Evaluation Board
Ms Josette Camilleri	Senior Pharmacy Technician
Ms Connie Miceli	Representative

After a brief introduction by the Chairman, the appellant's representative was asked to produce the reasons for the objection.

Ms Lorraine Arrigo on behalf of the appellant said that the reasons why the offer was discarded could not be understood. Appellant firm had offered bids for the same items in three different sizes; the only difference between these tenders was the size of the Self-Adhesive Sheets. Yet, while this tender was deemed non-compliant, the other two were successful and the appellant was awarded the tenders. She contended that a Registration Certificate was only applicable in cases for bids for medicinal.

Mr George Fenech on behalf of the contracting authority said that appellant's tender did not state anywhere that the appellant firm was the previous supplier of the items. The adhesive sheets offered by appellant originated in Egypt, which is not a member of the European Union, and thus the relevant certificates were required. Each evaluation board is composed of different persons, who may not know of the previous supplies made by the bidders. He contended that appellant should have clearly indicated that it had supplied the items previously and thus was a previous supplier.

Ms Lorraine Arrigo explained that the tender form contained a form wherein bidders were asked to indicate if they were previous suppliers, and the appellant's tender shows that the "yes" box was ticked. The same form goes on to ask those who ticked "no", then, the bidder had to complete the list. Since appellant's bid had ticked "yes" then, the rest was left unfilled. Furthermore bidders were to state whether their products were CE marked. Appellant clearly indicated that the items offered carried the CE markings.

Mr George Fenech insisted that the tender form clearly indicated that all non medicine products should be accompanied by certification that a detailed quality and control analysis of the product had been done, and literature. This was compulsory for all bidders, and reiterated that appellants should have stated that the company was a previous supplier. Evaluation boards have to make their assessments on what was provided to them by the bidders.

Ms Connie Miceli on behalf of the contracting authority explained that the form ticked by the appellant was for statistical purposes only. Bidders had to declare if they had previously supplied similar items to the same contracting authority. She contended that the form stated 'similar items' and not 'identical items'.

Ms Lorraine Arrigo stated that the appellant had supplied samples and it could be seen that the items were marked CE, and that appellant was awarded other contracts without producing certificates in the past

The Chairman remarked that mandatory certificates had to be submitted as otherwise the evaluation of the offer was held up at the administratively compliant stage and would not be processed further.

Mr George Fenech stated that appellant's bid did not contain any CE certification, and no power of attorney which, since product was not produced in a European Union country, was mandatory. The tender document, page 36, Clause 24.7.3, states that "*All non-medicine products are required for pharmaceutical purposes. Where applicable, they must comply with the respective standards listed in Ph.Eur. /B.P. /B.P.C. / U.S.P., and be accompanied by a*

complete and detailed quality control analysis report by a certified body. The contractor must also provide any relevant support and documentation, as necessary, for the Responsible Person CPSU to ensure the safe use of the non-medicinal products.” The Malta Government accepts CE certification and B. P. The European Union accepted only CE certification.

Ms Miceli said that pharmaceutical products have to be registered, and have a registration certificate. Non medical products required certification of conformity by an authorised body; this was the certificate that was not submitted by appellant. The letter of the letter of disqualification was not exact because it stated ‘registration certificate’, but the product offered by appellant was still not acceptable.

Ms Lorraine Arrigo stated that if this was made clear from the start, the appellant would not have filed a letter of objection.

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 19th July 2013 and also through the Appellant’s verbal submissions during the hearing held on 8th October 2013, had objected to the decision taken by the pertinent Authority, in that:

- a) The Appellant contended that nowhere in the tender document was indicated that the registration certificate is to be submitted.**
- b) The Appellant contends that the registration certificate was only applicable to medicinal products.**
- c) The tender document included a form where the bidders were asked whether same were previous suppliers, the Appellant in this respect marked the ‘Yes’ box and hence he was not obliged to give further information as required in the tender document.**
- d) The Appellant was a regular supplier to the same Contracting Authority and in this respect he felt that he did not require to submit the necessary certificates.**

Having considered the Contracting Authority’s verbal submissions during the hearing held on 8th October 2013, in that:

- a) The Appellant should have stated in the tender document that he was he was a previous supplier, which he failed in doing so.**
- b) The mandatory requirement in the tender document clearly specified that all bidders had to provide a certification that a detailed quality analysis together with the necessary literature had to be submitted.**

- c) **The Evaluation Board needed to assess and evaluates the tender bids on the submissions provided by the tenderers.**
- e) **The Contracting Authority contends that although the notification of disqualification of the Appellant's bid was not quoted in the correct context, still the product of the Appellant was not compliant.**

Reached the following conclusions:

- 1. The Evaluation Board of any Contracting Authority has to assess the validation of any tender on the information submitted by the tenderer. In this regard, the Appellant failed to submit the registration certificate which was a requisite in the tender document.**
- 2. The tender document clearly stated that all non medicinal products had to be accompanied by the requested certification.**

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

26 November 2013