

PUBLIC CONTRACTS REVIEW BOARD

Case No. 657

CT 2062/2012

Tender for the Supply of Human Growth Hormone Injections.

The tender was published on the 11th May 2012 and the closing date was on the 3rd July 2012.

The estimated value of the tender was €179,727.28 (Inclusive of VAT)

Two (2) bidders had submitted an offer for this tender.

On the 20th December 2013 Charles de Giorgio Limited filed an objection against the decision to its offer and the award of the tender to Cherubino Limited for the price of €125,011.25 including VAT.

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 28th January 2014 to discuss this objection.

Present for the hearing were:

Charles de Giorgio Limited - Appellant

Mr Ivan Laferla	Chief Operations Officer
Mr Mark Mallia	Representative
Mr David Stellini	Representative
Dr Antoine Cremona	Legal Representative

Cherubino Limited - Preferred Bidder

Dr Francis Cherubino	Representative
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Central Procurement & Supplies Unit - Contracting Authority

Ms Astrid Sammut	Chairperson, Evaluation Board
Mr Shaun Ryan Atkins	Pharmacist, Evaluation Board
Ms Sonia Bonnici	Member Evaluation Board
Mr Mark Spiteri	Member Evaluation Board
Ms Sharon Zerafa	Member Evaluation Board
Ms Connie Miceli	Representative

Department of Contracts

Ms Caroline Debono	Procurement Manager
Ms Emily Magro	Procurement Manager

Following a brief introduction by the Chairman, the appellant's representative was invited to explain the reasons behind the objection.

Dr Antoine Cremona on behalf of the appellant said that his client's bid was rejected on grounds that mock ups had not been submitted and appellant did not state that the graphs and educational assistance would be produced free of charge. The tender document explained when such mock ups had to be submitted. At clause 30.4 in page 13, paragraph 5 – it states “within 5 working days when requested.” The appellant did not receive any request to submit the mock ups and thus did not submit them. Furthermore appellant, being the present supplier did not need to produce any samples. Regarding the other grounds of exclusion he admitted that no video cassette was included but said that today the inserts and literature of the product contain links since video cassettes have become quasi obsolete. The exclusion ground was not the non production of these videos, but that no declaration was made that these would be supplied free of charge. He contended that appellant had indicated this in page 27 of the bid ‘Declaration Sheet, Medicinal Products’, under item 9 the appellant had ticked the relative “yes” box and added (free of charge). Thus he insisted that his client was administratively compliant.

Dr Cremona then raised up the matter of the dosage of the hormone since this was not specified in the tender document. This would create difficulties when the price content of the bids are compared. Since the dosage was not specified, the comparison of prices could not be made because that had to be made like with like. It first has to be established what dosage was submitted by the preferred bidder and what dosage was submitted by appellant. Then the comparison of the cost of dosage could be established.

Ms Connie Micallef on behalf of the contracting authority stated agreed that the tender specifications omitted the dosage volume, the international units. After the tender bids were opened and the schedule was drawn up, the schedule listed only the prices as submitted. Furthermore, when the bids were submitted to the contracting authority for evaluation, those who compiled the schedule, again based everything on the price and ignored the dosage factor. However when comparing the prices offered with the submitted *ius*, the cost per unit of each bidder, it is evident that the position of the financial bids has to be reversed. The appellant's bid would be the cheaper one and not the preferred bidder's. One is offering a dosage of 36 *ius* while the other is offering a dosage of 15 *ius*. This obviously was through an oversight. Ms Connie Miceli also agreed that samples were not requested from the appellant.

The hearing was at this point closed.

This Board,

Having noted the Appellant's objection, in terms of the ‘Reasoned Letter of Objection’ dated 17th December 2013 and also through Appellant's verbal submissions during the hearing held on 28th January 2014, had objected to the decision taken by the pertinent Authority , in that:

- a) Appellant's bid was rejected that ‘samples’ were not submitted and same were not denoted as being given for free.**
- b) The ‘Dosage’ was not indicated in the tender document, so that the Evaluation Board could not really ascertain the exact bid price per unit.**

Having considered the Contracting Authority's verbal submissions during the hearing held on 28th January 2014, in that:

- a) The Contracting Authority did in fact, not include the required dosage in the specifications of the tender document.**
- b) The Contracting Authority admitted that the Appellant's bid price would have been cheaper per unit.**

Reached the following conclusions:

- 1. This Board notes with great satisfaction the sincere and professional attitude of the Evaluation Board.**
- 2. Through the submissions of both the Appellant and the Contracting Authority, it is evidently clear that there was an oversight on the part of the Evaluation Board.**
- 3. Since Appellant was the current supplier , there was no need to supply samples.**

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

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

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Richard A. Matrenza
Member

20 February 2014