

PUBLIC CONTRACTS REVIEW BOARD

Case No. 696

CPSU/CPU/2284/2013

Tender for the Supply of Blood Lancets.

The tender was published on the 18th July 2013. The closing date was the 19th August 2013.

The estimated value of the Tender was €70,356 (Exclusive of VAT)

Fifteen (15) offers had been received for this tender.

On the 28th March 2014 Technoline Limited filed an objection objecting about the disqualification of their 3 Options submitted for the tender.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a hearing on Tuesday the 13th May 2014 to discuss the objection.

Present for the hearing were:

Technoline Limited - Appellant

Mr Christopher Rizzo

Representative

Mr Ivan Vassallo

Representative

Reactilab Limited - Preferred Bidder

Mr Stephen Debono

Representative

Dr John L. Gauci

Legal Representative

Central Procurement & Supplies Unit - Contracting Authority

Mr George Fenech

Chairman Evaluation Board

Ms Catherine Azzopardi

Member Evaluation Board

Ms Moira Grixti

Member Evaluation Board

Ms Connie Miceli

Representative

The Chairman made a brief introduction and invited appellant's representative to make his submissions.

Mr Ivan Vassallo on behalf of the appellant said that appellant was given two reasons for the disqualification of bid. One that the lancets offered in Options B and C had a too hard trigger and the other, Option A because it was higher than that awarded. He contended that the appellant's prices for all the three options submitted were in fact cheaper than that of the preferred bidder.

The tender document had not given any specifications of the required lancets in the Technical Specifications which described the lancets as being *"Single use blood lancets for collection of a drop of blood for glucose testing. Individually packed with expiry date printed on boxes containing not less than 200 lancets. Needle should not be less than 23 gauge width and have a depth of not more than 2.25mm. Should have a one step blade activation and puncture technique. To incorporate an automatic and permanent blade retraction design to reduce the risk of sharps injury to staff. At least 200 lancets are to be provided as samples to allow a realistic trial to be undertaken to assess fitness for the purpose."* This makes the reason for the rejection of appellant's lancets highly subjective since there is no mention of the trigger hardness.

Mr George Fenech, the Chairman of the Evaluation Board, on behalf of the contracting authority said that the published schedule states that the cheapest offer is cheaper than those of the appellant. In fact the awarded tender was for €65,450 and this against €66,720 and €74,760 submitted by appellant. Furthermore during the trials and evaluations, the lancets submitted by appellant were found to be very hard to press during use and these are used by patients to prick fingers or earlobes to test blood. The trials are conducted for this reason, to assess samples. The evaluation board chose the cheapest lancets that resulted good enough for the purpose of use. He filed a copy of a declaration made by the evaluators regarding appellant's lancets. It was not feasible to issue specifications for all aspects, the trials are held for this reason. The preferred bidder had submitted two options, one for €65,450 which was awarded and the other for €75,900 which was not the cheapest.

Mr Ivan Vassallo for the appellant said that the letter informing appellant of the tender award stated that the award had been made to Reactilab Ltd at the price of €12.65 per 200 pieces. This works out at .063 per lancet. All the options submitted by appellant were cheaper than that and therefore appellant's option A was cheaper and not higher.

Mr George Fenech on behalf of the contracting authority said that the offers submitted by the preferred bidder were 0.0545 and 0.0632 per lancet while appellant's lancets cost 0.0556 and 0.0623 each. The evaluation board chose the cheapest at 0.0545 from the preferred bidder. Unfortunately the notice sent to the appellant cited the wrong price of the awarded bid; it cited the price of the preferred bidder's other option that was not successful.

Mr Ivan Vassallo for the appellant said that he expected a new letter of rejection citing the true award price since the appellant would not have objected if the real award price had been made clear.

Dr John L. Gauci on behalf of the preferred bidder insisted that the published schedule of the award show no mistake in the award price, it states that the tender was awarded at the price of €10.91 per 200 lancets. He explained that in such tenders samples are demanded for a

purpose – to allow for testing; if the sample cannot be used for the purpose intended then it would be rejected.

The Chairman remarked that more care should be taken when sending information to bidders since the notices are frequently not clear enough and causing needless objections.

At this point the hearing was closed.

This Board,

Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 28th March 2014 and also through Appellant's verbal submissions during the hearing held on 13th May 2014, had objected to the decision taken by the pertinent Authority, in that:

- a) Appellant contends that his offer for all the three options as requested in the tender document was the cheapest.**
- b) Appellant claims that the specifications dictated in the tender document were not clear enough to denote the type of 'lancets' that were being requested by the Contracting Authority. In this regard, the decision of the Evaluation Board was subjective, since, in the tender document, there was no mention of the 'trigger hardness'.**

Having considered the Contracting Authority's verbal submissions during the hearing held on 13th May 2014, in that:

- a) Trials are carried out by the Evaluation Board, on patients to assess the most comfortable product to be applied. This is a health issue and in arriving at the final adjudication, the Evaluation Board had to ensure that the product to be applied on patients is one of the most painless ways of treatment.**
- b) The Preferred Bidder's product was fully compliant and the cheapest.**
- c) The Contracting Authority confirmed that the 'Letter of Refusal' sent by same was faulty.**

Reached the following conclusions:

- 1. This Board notes that the Contracting Authority were at fault in not giving the correct reasons why Appellant's offer was refused. At the same time, this Board opines that such a mistake on the part of the Contracting Authority, did not in any way affect the methodology of the evaluation process.**
- 2. This is a health issue and this Board opines that in such similar tenders the most important objective is to ensure that the product being applied on patients is safe**

and comfortable for the patient in the most painless way. In this regard, the Board notes that the product of the Preferred Bidder does meet these maxims apart from being the cheapest offer.

- 3. The Evaluation Board conducted the evaluation process in a most diligent manner.**

In view of the above, this Board finds against the Appellant Company and recommends that the deposit paid by Appellant should not be reimbursed.

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Lawrence Ancilleri
Member

9 June 2014