

Other Interested Parties

Mr Charles Mifsud
Mr Keith Vassallo
Mr Johann Cini

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

Dr Francis Cherubino for the appellant said that appellant's tender had been rejected because it was alleged by the evaluation board that its product did not incorporate re-chargeable batteries as requested in the tender document. This fact was simply not true. Appellant in fact submitted a product that had internal re-chargeable batteries. This could be clearly seen from the literature submitted with the appellant's tender where it states "Power Sources: 2 "C" Alkaline batteries, AC, external rechargeable battery pack". This means that the product is more flexible offering also an additional external re-chargeable battery pack; batteries can be charged in the machine itself. In addition, it also has the facility to have another set of batteries charged on the external pack for ease of use.

Dr Adrian Mallia on behalf of the contracting authority said that the tender's technical specifications at page 90 clearly stated "the pump is to incorporate an internal re-chargeable battery." Appellant's submission was not clear that it complied with this specification; if the batteries could be charged internally.

Mr Noel Psaila, the chairperson evaluation board on behalf of the contracting authority said that the board, from the submitted literature had understood that the batteries of the offered product had to be removed from the machine in order to be re-charged.

Dr Francis Cherubino contended that if there was any difficulty in the interpretation of appellant's offer the contracting authority should have asked for clarifications. He contended that appellant's submission was according to specifications, and the literature thereof was clear. The alkaline batteries mentioned in the literature are re-chargeable. Additional batteries could be charged at the same time in case of the need for lengthy use.

Dr Adrian Mallia explained that the evaluation board understood that appellant's offer needed to have the batteries removed in order to be recharged.

Mr Noel Psaila for the contracting authority said that internal re-chargeable batteries meant that these would not have to be removed from the appliance in order to re-charge. Appellant's offer was not clear on this.

Dr Francis Cherubino insisted that the machine offered by appellant had batteries that could be charged in the machine itself simply by plugging in the charger. In addition this charger could be used to charge another set of batteries.

At this point the hearing was closed.

This Board,

Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 1st September 2014 and also through Appellant's verbal submissions during the hearing held on 12th September 2014, had objected to the decision taken by the pertinent Authority, in that:

- a) Appellant contends that his offer was in fact technically compliant and in this regard same claims that his offer should be reintegrated in the evaluation process.**
- b) Appellant claims that his product is more practical for such circumstances than that of the Preferred Bidder's.**

Having considered the Contracting Authority's verbal submissions during the hearing held on 12th September 2014, in that:

- a) During the submissions, the Contracting Authority confirmed that from the documentation submitted by the Appellant Company, the Evaluation Board was not in a clear position to determine exactly whether Appellant's offer could meet the technical specifications as dictated in the tender document.**

Reached the following conclusions:

- 1. From credible submissions made by both the Contracting Authority and the Appellant Company, this Board opines that there is sufficient evidence, that, had there been a request for clarifications regarding technical details by the Contracting Authority, the specifications being contested before this Board would have been solved.**
- 2. From the submissions made by Appellant Company, which this Board finds credible, it appears that not only the Appellant's meet the technical specifications stipulated in the tender document but same product has additional features which are beneficial to the user of the product. In this regard, this Board recommends that a more thorough examination of the technical specifications of the product being offered by the Appellant Company, be further adjudicated by the Evaluation Board to deduce the following:**
 - i) Whether the product being offered by the Appellant Company does conform with the technical specifications as stipulated in the tender document.**
 - ii) Whether the product offered by Appellant does in fact has what should be considered to be an internal rechargeable battery together with an**

additional feature (which is to the benefit of the patient) as described by the Appellant during the hearing.

In view of the above, this Board recommends that:

- a) The Appellant's offer be re-integrated in the evaluation process to be technically re-adjudicated on the basis of the submissions made by Appellant during the hearing.**
- b) The deposit paid by Appellant Company be reimbursed.**

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

18th September 2014