

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 848**

**DH 2648/14**

**Tender for the Supply and Delivery of Environmentally Friendly Hand Liquid Soap in containers of 5 litres.**

The Tender was published on the 20th January 2015. The closing date was the 17<sup>th</sup> February 2015. The estimated value of Tender is €67,796.61 (Exclusive of VAT).

Seven (7) offers had been received for this Tender.

On the 10<sup>th</sup> July 2015 ATG Co. Limited filed an objection against the decision of the Contracting Authority to disqualify its Tender and the cancellation of the same.

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 22<sup>nd</sup> September 2015 to discuss the objection.

Present for the hearing were:

**A.T.G. Co. Limited:**

Mr Oliver Attard  
Mr Hans J Wolf, Sr.  
Dr Franco Galea

Director  
Medical Sales Manager  
Legal Representative

**Ministry of Energy & Health (Health):**

Ms Mary Gauci  
Mr John Privitelli  
Mr Adrian Pace  
Ms Marthese Buttigieg  
Ms Rita Tirchett

Chairperson Evaluation Board  
Secretary Evaluation Board  
Member Evaluation Board  
Member Evaluation Board  
CPSU Representative

Following a brief introduction by the Chairman, the Appellant's representative was invited to make his submissions.

Dr Franco Galea on behalf of the Appellant Company said that his client's offer had been rejected for failing to supply "evidence of test result undertaken in ISO 17025 accredited labs". He insisted that the Appellant had submitted and uploaded the necessary certificate. This was in fact admitted by the Contracting Authority in the Letter of Reply. The Laboratory Services Directorate is fully qualified to issue ISO certification. He went on to explain that ISO 17025 did no longer cover liquid soaps since 2011 and therefore Appellant could not produce ISO Certification for the soap. Instead, the Appellant had provided the Analysis Report by the Directorate covering the soap being offered. An email sent by Mr George Cutajar from the Directorate had informed the Contracting Authority that ISO 17025 did no longer covers soaps and this since 2011. Mr Cutajar had also informed the Contracting Authority that soaps are only tested for their PH value. The ISO 17025 submitted by the Appellant with the Objection obviously refers to construction items since the latter refers to the construction industry and not to soap. He also stated that Appellant had previously imported the same product in another size, and this was tested by the Malta Laboratory with certification giving the Alkali/Acidity of the product. He contended that therefore Appellant's Tender should not have been rejected and the Tender should not have been cancelled.

Ms Mary Gauci, Chairperson of the Evaluation Board referred to the Letter of Reply filed by the Contracting Authority and insisted that the evaluators had abided and followed the Tender specification requirements.

Mr John Privitelli for the Contracting Authority said that the Appellant had indeed supplied the test report for the product but failed to provide the ISO accreditation.

Dr Franco Galea for the Appellant explained that it resulted that the National Laboratory was accredited to issue ISO certification. All bidders had to produce test results and the Appellant had complied. He insisted that hand liquid soap was never covered by ISO 17025.

Mr John Privitelli said that Appellant had submitted ISO certification for construction material.

The Chairman asked the representatives of the Contracting Authority to state whether liquid soap is covered by ISO 17025. No representative for the Contracting Authority could reply.

Mr John Privitelli insisted that the Evaluation Board had to follow the Tender specifications to the letter.

At this point the hearing was closed.

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**This Board,**

**Having noted the Appellant's objection, in terms of the "Reasoned Letter of Objection"**

**dated 9<sup>th</sup> July 2015 and also through the Appellant's verbal submissions during the Public Hearing held on 22<sup>nd</sup> September 2015, had objected to the decision taken by the pertinent Authority, in that:**

- a) The Appellant Company contends that its offer was discarded by the Contracting Authority, for failing to submit "Evidence of Test Results undertaken in ISO 17025 by accredited labs". The Appellant maintains that this requisite was submitted through the Malta Laboratory which has the necessary accreditation;**
  
- b) The Appellant also contends that the ISO Certification did not in fact cover the soap being offered by the latter. At the same time, the Contracting Authority was well informed of the situation. In this regard, the Appellant's bid should not have been discarded, hence cancelling the Tender.**

**Having considered the Contracting Authority's "Letter of Reply" dated 6<sup>th</sup> July 2015 and also the verbal submissions during the Public Hearing held on 22<sup>nd</sup> September 2015, in that:**

- a) The Contracting Authority maintains that the Evaluation Committee had abided by the Tender Specification requirements. In this regard, the Appellant did not submit the ISO accreditation.**

**Reached the following conclusions:**

- 1. With regards to the Appellant's First Contention, this Board, after having heard submissions from all the interested parties and examined the relative documentation with regards to the ISO 17025 accreditation, opines that the Appellant did send the test result but not accompanied with the ISO Certification.**

**From the E-Mails dated 10<sup>th</sup> August 2015, it was evidently proved that:**

- (i) PH Testing was removed from the Accreditation scope of ISO 17025 since 2011;**
- (ii) Hand Liquid Soap testing was never under the Accreditation scope of ISO 17025.**

**This Board opines that although the information as stated above emerged after the decision to cancel the Tender, the same information confirms that PH Testing does not fall under the Accreditation scope of ISO 17025. In this regard, this Board upholds the Appellant's First Contention.**

- 2. With regards to the Appellant's Second Contention, this Board opines that the Contracting Authority did in fact act in a proper and just manner in their Evaluation process. However, the details submitted by the MCCA have clarified the bidders' situation and in this regard this Board upholds the**

**Appellant's Second Contention.**

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

- a) The Tendering Process is to be resumed;**
- b) The Appellant's offer should be re-integrated in the Tendering Process**
- c) The deposit paid by the Appellant is to be reimbursed.**

Dr. Anthony Cassar  
Chairman

Dr. Charles Cassar  
Member

Mr. Lawrence Ancillieri  
Member

*29 September 2015*