

PUBLIC CONTRACTS REVIEW BOARD

Case 1002 – MLSP 001/2016 – Supply, Installation and Commissioning of Gas Chromatography (GC), Ultra High-Performance Liquid Chromatography (UHPLC) Systems and a Ducted Fume Hood

The Publication Date of the Call for Tenders was 11 March 2016 whilst the Closing Date for Call of Tenders was 8 April 2016. The Estimated Value of the Tender, (Exclusive of VAT) was € 82,000.

Three (3) Bidders have submitted offers for this Tender.

On 26 October 2016, Technoline Ltd filed an Objection against the decision of the Malta Life Sciences Centre Ltd to award the Tender to Labo-Pharm Ltd for the price of € 84,846.51 (Exclusive of VAT) against a deposit of € 400.

On 10 November 2016, the Public Contracts Review Board composed by Dr Anthony Cassar as Chairman, Mr Lawrence Ancilleri and Mr Carmel Esposito as members convened a Public Hearing to discuss the Objection.

The Attendance for this Public Hearing was as follows:

Appellant – Technoline Ltd

Mr Christopher Bonello	Representative
Mr Ivan Vassallo	Representative
Dr Karl Grech	Legal Representative

Recommended Bidder – Labo-Pharm Ltd

Mr Stephen Debono	Representative
Mr Frank Galea	Representative
Dr John Gauci	Legal Representative

Contracting Authority – Malta Life Sciences Centre Ltd

Mr Joseph Zammit	Chairperson, Evaluation Board
Ms Alexia Sammut	Secretary, Evaluation Board
Mr Marco Abela	Member, Evaluation Board
Mr Karl Herrera	Member, Evaluation Board
Mr Pierre Theuma	Member, Evaluation Board
Ing Joseph P Sammut	Representative
Dr Katrina Borg Cardona	Legal Representative

Following an introduction by The Public Contracts' Review Board Chairman, Dr Anthony Cassar, the Appellants were invited to make their submissions.

Dr Karl Grech, the Legal Representative for Technoline Ltd, opened his submissions by saying that his client's offer was deemed to be non compliant on Lots 1 and 3. With regards to Lot 1, the Contracting Authority discarded Technoline Ltd because not enough documents were submitted which show that their personnel were trained enough to offer the services requested.

The Appellants submitted 3 certificates. One certificate was issued by the manufacturer, Shimadzu, for Mr Jesus Marletta dated 2012 which authorised him to provide training to other people. The other two certificates were submitted following in-house training provided between mid-January 2016 and the beginning of February 2016 by Mr Marletta to Mr Neil Camilleri and Mr Nicholas Chircop.

Dr Grech continued by saying that together with his client's submissions, the latter had included also an internal document which says that Mr Jesus Marletta has given in-house training to Mr Camilleri and Mr Chircop. These reports were not accepted by the Contracting Authority because they were not signed. These documents prove that Shimadzu certifies Mr Camilleri and Mr Chircop to offer their services.

The Appellants submit that they were already compliant because Mr Jesus Marletta was authorised to provide this service from 2012 and the other two were authorised to do the same from Shimadzu themselves. A prove of this was the certificates submitted and the service training report. On the other hand, the Letter of Rejection sent by the Malta Life Sciences Park to the Appellants dated 19 October 2016 had *inter alia* said that "*Two Shimadzu service training reports were supplied, one for Nicholas Chircop and one for Neil Camilleri. These documents were dated 01/02/2016. They were not signed by the trainer Jesus Marletta*". Dr Grech said that the certificates were signed by Mr John Caruana who in Technoline Ltd's line of command, was Mr Marletta's manager.

Dr Anthony Cassar, Chairman Public Contracts Review Board, asked whether the document indicates that Mr Caruana is Mr' Marletta's manager for which Dr Karl Grech, the Legal Representative for Technoline Ltd replied in the affirmative.

Dr Grech continued by explaining that Mr John Caruana was a service manager and that he was in charge of the whole services department at Technoline Ltd. The training was conducted by Mr Jesus Marletta and the training reports prove so. The latter's certificate authorised by Shimadzu in March 2012 was presented as part of the Appellant's offer.

A certificate dated 1 June 2016 was submitted after a request for Clarification by the Contracting Authority regarding the position of Mr Jesus Marletta. Shimadzu was aware that Mr Jesus Marletta was capable of providing training at the time when the latter was providing training to the two other employees. It would not make any sense for the Appellants to provide beforehand dated certificates in their offer and this shows that Technoline Ltd acted in good faith when submitting the Tender.

The Letter of Rejection dated 19 October 2016 also stated that "*Furthermore, the trainer's certificate was not signed and stamped by Shimadzu personnel*". This document, (Mr Marletta's June 2016 certificate), was sent directly from Shimadzu to Technoline Ltd on 16

June 2016 by e-mail and despite the fact that there were no signatures; it does not devalue its authenticity. The Appellants were basing on the 2012 certificate.

With regards to the point raised by Malta Life Sciences Park in their Letter of Rejection that, “*A letter from Shimadzu indicating that Technoline is authorized and trained to sell and service their analytical products was also provided. This document was signed and stamped by Shimadzu personnel. The document is dated 31 May 2016*”, Dr Grech argued that this point was not raised once again in the Contracting Authority’s Reasoned Letter of Reply.

Technoline Limited was in a commercial relationship with Shimadzu from 1999 and they also signed a contract which enables the Appellants to sell Shimadzu’s products and provide after sales services.

Dr Karl Grech, the Legal Representative for Technoline Ltd, continued by saying that every document which was provided at clarification stage was dated during that period. This must not penalise the Appellants who were administratively compliant at Tender stage.

With regards to Lot 3, which involved the Fume Hood, the Letter of Rejection said that “*No training certificates from Esco were provided by Technoline*”. The Appellants had already provided on tender submission a document from Esco who are the manufacturers of these fume hoods, which stated that Technoline Ltd was authorised to undertake the distribution of the fume hoods and perform the installation and maintenance required.

This was a declaration from the manufacturer, continued Dr Grech, which authorises his clients to sell ESCO products. This document was also submitted at clarification stage and besides, the Appellants have requested a confirmation from the manufacturers regarding certifications for specific technicians for their products in Malta for which ESCO replied in the negative. This document was submitted at objection stage.

Besides giving the authorisations to particular resellers to install and service their products, ESCO did not certify anyone in Malta to provide that service. Dr Grech described the Fume Hood as a cabinet which was made either of metal or wood which had also some parts of it made in glass. Its aim was to be used in situations where chemicals are used. For this Tender the basic cabinet made of wood and glass was requested and certifications for Technoline employees were submitted at clarification stage. This shows that the Appellants had employees who were authorised and certified to validate these types of fume hoods.

Dr Karl Grech concluded his submission by saying that the criterion for award was the cheapest compliant Tender. When the Tenders were opened, Technoline Ltd’s offer was € 70,054.11 (excluding VAT) whilst Labo-Pharm Ltd’s offer was of € 75,100. On the other hand, in the Letter of Rejection, the Recommended Bidder’s offer was marked as € 84,846.51 (excluding VAT). This amount was also repeated in the Notice of Award issued by the Contracting Authority.

Dr Katrina Borg Cardona, Legal Representative for Malta Life Sciences Park opened her submissions by saying that with regards to Lot 1, the March 2012 certificates do not indicate that Mr Jesus Marletta was authorised to train people but only to service Shimadzu equipment. Besides, the certificates which the Appellant submitted at clarification stage show a validity period which expired on 31 May 2018 which sustains their argument that

between the certificates issued in March 2012 and the ones issued in June 2016 there was an authorisation period missing.

She continued by referring to the Certificate dated 1 June 2016 indicates that “*Marletta is authorised by Shimadzu Europa (SEG) to do GC-2010-Installation and Prev. Maintenance Training for Technoline engineers. Corresponding Training certificates are issued by SEG with a validity period of 2 years*”. The certificate shows that if Marletta was authorised to give training at the time when Mr Chircop and Mr Camilleri were being trained, namely in January and February 2016, it would have conformed with what was requested. This continues to show the administrative non-compliance of Technoline Ltd in this Tender.

Dr Borg Cardona drew the Public Contracts’ Review Board’s attention that the Contracting Authority was not obliged to seek clarifications since during submission period, all Tenders should have been compliant with the Tender Document.

With regards to Lot 3, Dr Katrina Borg Cardona said that the Tender required that all training certificates had to be submitted with the offers and that all bidders including Labo-Pharm Ltd had done so.

Dr Anthony Cassar, Chairman Public Contracts Review Board, asked the Contracting Authority why there was a difference in the price of the Recommended Bidder for which Dr Katrina Borg Cardona replied that there were some service agreements which had to be taken into consideration with the final price.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board, then asked whether the service agreement came after submission of the Tenders for which Mr Joseph Zammit, the Chairperson of the Evaluation Board replied that there was a service agreement option which was taken into consideration for Evaluation because they wanted to have a complete service.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board, stated that technically if the Tender Award for those specifications was at a particular price, the award should be for that price. Mr Joseph Zammit, the Chairperson of the Evaluation Board replied that the Recommended Bidders had included the service agreement in their submissions but did not add the price in their Financial Bid.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board asked whether Technoline Ltd had quoted the service agreement in their Financial Offer for which Mr Joseph Zammit, the Chairperson of the Evaluation Board replied in the affirmative.

Dr Katrina Borg Cardona, the Legal Representative for Malta Life Sciences Centre Ltd, said that there were no additions to what was indicated in the price quoted by the Recommended Bidders but simply that when they added the totals they did not include the service agreement price unlike Technoline Ltd who included them.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board, remarked that the Contracting Authority should have separated the Financial Offer and the Service Agreement price when issuing the notice of award in order for like-with-like comparisons to be made.

Dr Katrina Borg Cardona, the Legal Representative for Malta Life Sciences Centre Ltd, said that she understood Dr Cassar's point but reiterated that despite the fact that as pointed out by Dr Karl Grech, Technoline's offer was cheaper, the Appellants were administratively non compliant and the Contracting Authority had no choice but to go for the next cheapest compliant offer.

Dr Anthony Cassar, the Chairman of the Public Contracts' Review Board then queried about the function of the Fume Hood for which Mr Christopher Bonello for Technoline Ltd replied that this is a cabinet which included a closed area in glass wherein if you burn something, this extracts outside instead of at the laboratory.

Dr Karl Grech, Legal Representative for Technoline Ltd, clarified that the dates indicated in March 2012 certificate of Mr Jesus Marletta were the dates in which the latter was being trained by Shimadzu.

Dr Katrina Borg Cardona, the Legal Representative for Malta Life Sciences Centre Ltd said that the Contracting Authority cannot assume dates and asked where the validity period prior to the June 2016 certificates was.

Dr John Gauci, the Legal Representative for Labo-Pharm Ltd disagreed with the fact that the Appellant has asked for the certification dates in the clarification to be ignored. On the contrary, if a clarification was requested, one had to proof that the Appellant was certified at Tender stage.

With regards the Fume Hoods, Dr Gauci explained that the hood was a very important tool which prevents the operators from inhaling gases. Malta Life Sciences Centre Ltd had requested a particular certificate from a particular manufacturer. Since this was not submitted neither at Tender stage not at Clarification stage, the Appellant was technically non-compliant, hence the Objection filed by Technoline Ltd was to be rejected.

Dr Karl Grech, the Legal Representative for Technoline Ltd said that the Clarification requested by the Contracting Authority asked for "*Official confirmation signed and dated from Shimadzu that Technoline Ltd employee was certified to give training to other employees.*" What happened was that in March 2012, Mr Jesus Marletta was trained by Technoline Ltd. The certificate did not have an expiry date as long as the latter was employed with the Appellants. The second certificate submitted confirms what was certified in the first certificate.

Dr Katrina Borg Cardona, the Legal Representative for Malta Life Sciences Centre Ltd concluded by saying that there was nowhere in the March 2012 certificate that authorises Mr Jesus Marletta to train other employees

At this stage, the Public Hearing was closed.

This Board,

Having noted this Objection filed by Technoline Ltd (herein after referred to as the Appellant) on 26 October 2016, refers to the Contentions made by the latter with regards to the award of Tender of Reference MLSP 001/2016 listed as Case No 1002 in the records of the Public Contracts Review Board, awarded by Malta Life Sciences Centre Ltd (herein after referred to as the Contracting Authority).

Appearing for the Appellant: Dr Karl Grech

Appearing for the Contracting Authority: Dr Katrina Borg Cardona

Whereby, the Appellant contends that:

- a) With regards to Lot No 1, he had submitted three certificates to show the staff which was to be deployed on the Tender works were properly trained to carry out their respective responsibilities.**

In this regard, the Appellant does not agree with the reasons given by the Contracting Authority for the discarding of his offer.

b) With regards to Lot No 3, the Appellant maintains that he had submitted the necessary documentation to prove that Technoline Ltd was authorised to undertake the distribution of the fume hoods and perform the installation and maintenance thereof.

In this regard, the Appellant disagrees with the Contracting Authority's decision that *"No Training Certificates from ESCO were provided by Technoline"*.

This Board also noted the Contracting Authority's *"Letter of Reply"* dated 3 November 2016 and its verbal submissions during the Public Hearing held on 10 November 2016, in that:

a) With regards to Lot No 1, the Contracting Authority maintains that the submitted certificates do not specify that Mr Jesus Marletta was authorised to train people but to service Shimadzu equipment.

At the same instance, the submitted certificates show a missing authorisation period between March and June 2016 hence the Appellant's offer was deemed as administratively not compliant.

b) With regards to Lot No 3, the Contracting Authority contends that the Tender dictated that all Training Certificates had to be submitted with the offers and all the other Bidders abided by the condition except for the Appellant.

In addition, the Certificates submitted by the Appellant dated March 2012, does not confirm that Mr Jesus Marletta was authorised to train employees.

This Board, after having treated the merits of this case, arrived at the following conclusions:

- 1. With regards to the Appellant's First Grievance, this Board, after having examined the relevant documentation and heard submissions from all parties concerned, opines that, this particular case rests on the type of submissions made by the Appellant both at Tender and at Clarification stage.**

It must be justifiably pointed out that the prospective Bidder is obliged to submit all the information dictated in the Tender Document. When a Tender requests a specific documentation, the

Bidder is in duty bound to submit that specific documentation showing the specific dictated detail as requested in the Tender.

This basic principle cannot be more emphasized. At the same instance, one has to acknowledge the fundamental fact that the Tender Document is a contract in itself.

In this particular case, the Tender Document requested a specific document (Certificate) proving that the personnel deployed on the Tendered Equipment trained by the manufacturer of the same equipment.

In this regard, this Board, after hearing all the submissions, notes that the Appellant did not provide the requested number of personnel with the proper Training Certificate from the equipment manufacturer duly signed to justify this requirement.

The fact that Mr Jesus Marletta was trained by the manufacturer does not, in any plausible way, confirm that he was certified to train others.

At the same instance, this Board notes that the certificates submitted by the Appellant in this regard were dated after the date of the submission. Not to mention the fact that these certificates were not signed by the personnel of the equipment manufacturer and not by the manufacturer himself.

It is an established fact that when issuing certificates, the latter are stamped and signed by the Highest Authority of the entity. In this case, these certificates were signed by a “*Manager*” employed by the equipment manufacturer. In this regard, this Board does not uphold the Appellant’s First Grievance.

- 2. With regards to the Appellant’s Second Grievance, this Board, after having heard credible submissions, justifiably establishes the fact that, in Lot No 3, the “*Fume Hoods*”, are a very important piece of equipment which, for health reasons, one must appreciate their due importance.**

In this regard, the Contracting Authority, quite correctly, requested a particular certificate which the Appellant did submit neither at Tender stage nor at clarification stage. The certificate had to indicate the proven training of personnel to be deployed on such

equipment. In this regard, this Board does not uphold the Appellant's Second Grievance.

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

Dr Anthony Cassar
Chairman

Mr Lawrence Ancilleri
Member

Mr Carmel Esposito
Member

16 November 2016