

PUBLIC CONTRACTS REVIEW BOARD

Case No. 895

DH 2194/2015

Tender for the Supply of 18 inch Wheelchairs.

The tender was published on the 12th August 2015. The closing date was on the 28th August 2015.

The estimated value of the Tender was €120,000 (Exclusive of VAT)

Seven (7) bidders had submitted an offer for this tender.

On the 26th November 2015 OK Medical filed an objection against the decision taken by the contracting authority to award the tender to Europharma Limited.

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 the 26th January 2016 to discuss the objection.

Present for the hearing were:

OK Medical Limited:

Mr Bernard Mallia	Representative
Mr Paul McAlister	Representative
Ms Roberta Mercieca	Representative
Ms Jackie Scerri	Representative

Europharma Limited:

Mr Alex Fenech	Representative
Ms Miriam Gambin	Representative
Mr Michael Peresso	Representative

Central Procurement and Supplies Unit:

Mr Tonio Brigulio	Chairperson Evaluation Board
Ms Idonia Calleja	Secretary Evaluation Board
Mr Chris Attard Montalto	Member Evaluation Board
Mr Steve Cilia	Member Evaluation Board
Mr Charles Galea	Member Evaluation Board
Mr George Cutajar	Representative
Dr Stefan Zrinzo Azzopardi	Legal Representative

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

Dr Jackie Mallia on behalf of the appellant explained that before submitting the tender appellant had done a lot of research trying to obtain a cheaper product satisfying the tender specifications. Therefore the notification of the award of the tender to another bidder led appellant to conclude that some requirements of the tender have not been addressed properly.

Mr Paul Micallef on behalf of the appellant explained that appellant had serious doubts that the wheelchair that won the award did not agree with the tender specifications. According to the contracting authority's letter of reply, four criteria were used as a basis to adjudicate the tender these were a) solid rear wheels; b) under 15 Kgs; c) must have a safety belt and d) must withstand patient weight of 120 Kgs. However these four criteria are just four out of the 16 criteria requested in the tender specifications. He claimed that the most important criterion was that the weight of the wheelchair should be less than 15 kgs. because the tender specifications continue that "its frame shall only be manufactured from aluminium which is resistant to scratches and heavy detergent cleaning materials." He contended that on the market there are light weight wheelchairs less than 15 Kgs but these were made from iron and not aluminium. Appellant was assuming that the preferred bidder had offered iron wheelchairs and not aluminium ones. He insisted that the preferred bidder offered steel wheelchairs.

Dr Stefan Zrinzo Azzopardi on behalf of the contracting authority pointed out that the wording in the letter of objection seems to show that the objection was meant to investigate the adjudication process rather than to object about the decision. The letter of objection used words like "appellant has every right to confirm that the winner of the tender is indeed technically compliant." The contracting authority would produce witnesses to show that the adjudication process was done correctly.

Mr Christ Attard Montalto, ID No. 260567M, an engineer, under oath stated that he was a member of the evaluation board who had followed the tender specifications and examined offers to verify if these tallied with the requested specifications. He recalled the evaluation report in this case and stated that the preferred bidder's offer had met all the specifications and satisfied them. The preferred bidder had offered an aluminium wheelchair. Replying to questions by Dr Jackie Mallia for the appellant he said that no samples had been requested for this tender but adjudication had been made on the submitted literature and documents sent by each bidder. Both bidders had been found compliant. On the date of delivery of the wheelchairs the contracting authority will check that the delivered wheelchairs tally exactly with the submitted literature. Replying to a question by Mr Paul Micallef he insisted that if the deliveries did not agree with the literature the contracting authority had the necessary remedies.

Dr Jackie Mallia on behalf of the appellant said that the appellant wished to see the preferred bidder's submitted literature. The Chairman explained that that was not possible. Dr Mallia insisted that the appellant had a right to examine the preferred bidder's literature and said that she could not understand why samples had not been demanded.

Mr Paul Micallef on behalf of the appellant contended that thus a bidder could offer anything and later on supply a different product.

Mr Alex Fenech on behalf of the preferred bidder stated that the preferred bidder had been on the market for over 40 years and offered to supply appellant with any number of wheelchairs similar to the one which were awarded the tender.

At this point the hearing was closed.

This Board,

Having noted the appellant's objection, in terms of the "Reasoned letter of objection" dated 26 November 2015 and also through appellant's verbal submissions during the hearing held on 26 January 2016, had objected to the decision taken by the pertinent authority, in that:

- a) **Appellant contends that he had serious doubts whether, through the preferred bidder's quoted price, the latter would deliver the product tendered for, with the same technical specifications as those dictated in the tender document. In fact, appellant is contending that the preferred bidder would supply an iron wheelchair and not and aluminium one.**

Having considered the contracting authority's "Letter of reply" dated 19 January 2016 and also through the authority's verbal submission during the hearing held on 26 January 2016, in that:

- a) **The contracting authority contends that the preferred bidder's offer was the cheapest, fully compliant bid. At the same instance, through a technical witness, an engineer, the latter confirming that the preferred bidder has met all the specifications as dictated in the tender document.**

- b) The evaluation process and the adjudication of the award was based on the information and accompanying literature submitted by the preferred bidder, as is normally done.**

Reached the following conclusions:

- 1. With regards to appellant's grievance this Board, after having examined the relative documentation with specific reference to this appeal, justifiably notes that it is not proper for any appellant to make assumptions without providing concrete evidence to this same Board.**

This Board, heard credible submissions by the technical person of the evaluation board. In this respect this Board credibly contends that, the evaluation committee had verified that the offer submitted by the preferred bidder was technically compliant with the technical specifications as dictated in the tender document.

The fact that the evaluation process was conducted on the information and technical literature is quite normal, transparent and just. All the other offers were adjudicated on the same "Level playing field". This Board also credibly notes that the two offers submitted were both fully compliant; however, the preferred bidder was the cheapest.

The contention of the appellant company in that samples should have been requested by the contracting authority, so that the evaluation committee would assess, *prima facie*, the type of product the bidders were offering, does not, in any credible way justify appellant's

objection for complaint. The contracting authority has other remedies to ensure that the preferred bidder would deliver the product, as dictated in the tender document.

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 Richard A Matrenza
Member

1 February 2016