

PUBLIC CONTRACTS REVIEW BOARD

Case No. 908

CT 2074/2015

Tender for the Supply of Coagulation Reagents with Equipment on Loan.

The Tender was published on the 26th June 2015. The closing date was on the 6th August 2015. The Estimated Value of the Tender is € 577,380.50 (Exclusive of Vat).

Five (5) bidders had submitted offers for this Tender.

On the 25th January 2016 Technoline Limited filed an Objection against the decision of the Contracting Authority to award the Tender to Cherubino Limited for the price of € 257,024.00.

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 1st March 2016 to discuss the Objection.

Present for the hearing were:

Technoline Limited:

Mr Christopher Rizzo	Representative
Mr Ivan Vassallo	Representative
Dr Paul Gonzi	Legal Representative

Cherubino Limited:

Dr Francis Cherubino	Representative
Ms Janet Pace	Representative
Dr Adrian Delia	Legal Representative
Dr Danica Caruana	Legal Representative

Central Procurement and Supplies Unit:

Mr Larkin Bonnici	Chairperson Evaluation Board
Ms Carmen Buttigieg	Secretary Evaluation Board
Mr George Camilleri	Member Evaluation Board
Ms Antonella Zahra	Member Evaluation Board
Dr Alex Gatt	Member Evaluation Board
Dr Stefan Zrinzo Azzopardi	Legal Representative

Department of Contracts:

Dr Christopher Mizzi	Legal Representative
Dr Franco Agius	Legal Representative

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

Dr Christopher Mizzi on behalf of the Department of Contracts however explained that following the Department's Letter of Reply of the 15th February 2016, the Department had examined matters and investigated the award as recommended by the Evaluation Board. As a result the Department of Contracts is now of the opinion that the Tender submissions should be re-evaluated by another new Evaluation Board. He said that this was explained in the Department of Contracts in the Letter of Reply to the Objection that was not submitted in the name of the Contracting Authority. It can be seen also that the Appellant was stating the same in the Letter of Objection. The new Evaluation Board would re-evaluate again all the submitted offers including the Appellant's which was previously rejected.

Dr Paul Gonzi on behalf of the Appellant pointed out that his client's Objection was mainly based on the fact that the Recommended Bidder's offer had not been technically compliant.

Dr Adrian Delia on behalf of Cherubino Limited, the Recommended Bidder contended that what the Department of Contracts is demanding cannot be decided by the Public Contracts Review Board. He cited a Court of Appeal case that had decided on this point in the case between Brian Vella and the Cospicua Local Council wherein it was declared that the Board can only decide on the grievances raised by the Appellant. In the present case the Appellant was objecting to a validly made award and the Department of Contracts cannot ask this Board to order a re-evaluation of the Tender; it was not in the Board's remit to do so.

Dr Christopher Mizzi for the Department of Contracts said that the case referred to by the Recommended Bidder was different. In that case the Public Contracts Review Board had decided on matters that had not been raised in the Letter of Objection. This case is different. He cited from another decision of the courts in a constitutional case, *Schembri vs Advocate General* wherein it was decided that "*a public entity is obliged to intervene whenever something amiss was discovered.*" The Department of Contracts has the right to request the Public Contracts Review Board to decide on the matter since the Board has all the leeway on how to regulate procedure in cases before it; in any case it should act according to the Code of Organization and Civil Procedure which gives the right to the defendant to make counter claims.

The Chairman pointed out that this Board has the duties to decide whenever it becomes aware that something in the award process was amiss.

Dr Adrian Delia on behalf of the Recommended Bidder said that that the Department of Contracts contended that the Letter of Rejection sent to the Appellant was not precise. However the Recommended Bidder is not aware of this. The fact that the Department of Contracts is demanding the withdrawal of the Letter of Rejection does not nullify the award itself. The difference between the Recommended Bidder's offer as shown in the Schedule and that as shown in the award was because of a clarification.

Dr Franco Agius on behalf of the Department of Contracts said that the Department was asking to be allowed to withdraw the award and not just the Letter of Rejection. The Department has an institutional role and had felt that the award process should be investigated further. The Department could not take action at the time because the process was stopped immediately the Letter of Objection was filed.

Dr Paul Gonzi for the Appellant declared that in view of what has been said and declared by the Department of Contracts above, his client was withdrawing the Objection.

Dr Adrian Delia for the Recommended Bidder contended that at least the mistake in the Letter of Rejection should have been identified. In fact he wanted it in the minutes that he was demanding that the Recommended Bidder should receive an explanation of what the mistake was.

The Chairman explained that since the Appellant had withdrawn the Objection the Board could not take any further cognizance of the case.

The hearing was at this point brought to an end.

This Board,

Having noted the Appellant's Objection, in terms of the "*Reasoned Letter of Objection*", dated 25 January 2016 and also through their verbal submissions during the Public Hearing held on 1 March 2016, had objected to the decision taken by the Pertinent Authority, in that:

- a) The Appellant Company's main contention was that the Recommended Bidder's offer was not Technically Compliant.**

Having considered the Contracting Authority's "*Letter of Reply*" dated 15 February 2016 and also through their verbal submissions during the Public Hearing held on 1 March 2016, in that:

- a) The Contracting Authority contends that after having examined the**

award, as recommended by the Evaluation Committee, they opine that for internal indicative reasons, it felt the need that this Tender should be re-assessed and re-adjudicated by a different Evaluation Board.

This Board respectfully notes that since the Appellant Company has withdrawn its objection, this same Board is not in a position to treat the merits of this Appeal. However, this Board recommends that the deposit paid by the Appellant should be re-imbursed.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

4 March 2016