

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

Mr Claudio Muscat for Double C Creations said that he objected because the Contracting Authority has discarded the offer because the product did not have an adequate temperature control. Mr Muscat was wondering how the Contracting Authority can say what does he has without making the relevant inspections and clarifications being made.

Dr Stefan Zrinzo Azzopardi for Central Procurement and Supplies Unit declared that the Tender, had first made a Request for Proposal with the economic operators where Central Procurement and Supplies Unit gave them instructions on what they needed. The operators who were eligible in the Request for Proposal were then allowed to take part in the Tender.

When evaluating the offer presented by the Appellant, continued Dr Zrinzo Azzopardi, the Evaluation Board was not convinced that the target requested for in the Request for Proposals was going to be reached.

The Contracting Authority continued Dr Zrinzo Azzopardi, needed to store, deliver and prepare the medicines and the Appellant did not have the adequate temperature control needed according to the same Evaluation Board.

The Request for Proposals' aim was eventually superceded because when the Tender was issued the shortlisting needed in the RFPs were discarded hence Double C Creations were not excluded once the Second Tender was re-opened.

Dr Anthony Cassar, Chairman Public Contracts Review Board, asked the Appellant whether he was conscious of this fact.

Mr Claudio Muscat replied that when the Request for Proposal was issued there was nothing different and that no further details were requested. The second Tender issued was not viable for him as it was expensive for Double C Creations to tender for.

Dr Stefan Zrinzo Azzopardi, Legal Representative, Central Procurement and Supplies Unit, said that the Estimated Tender Value of € 120,000 was a threshold and that even the Letter of Rejection of 28 June 2016 said: *"You may wish to note that a Competitive Call for Tenders for the Provision of these services will be issued in the coming weeks and that your company will still be entitled to participate"*

At this stage, the Public Hearing was closed.

This Board,

Having noted the Appellant's Objection, in terms of the *"Reasoned Letter of Objection"* dated 28 June 2016 and also through their verbal submissions

during the Public Hearing held on 4 October 2016 had objected to the decision taken by the Pertinent Authority, in that:

- a) Double C Creations contend that its offer was rejected due to the fact that the premises being offered were not adequate to provide “*Temperature Control*”. In this regard, the Appellants maintain that no inspection or clarification was made.

Having considered the Contracting Authority’s “*Letter of Reply*” dated 4 October 2016 and their verbal submissions during the Public Hearing held on 4 October 2016, in that:

- a) Central Procurement and Supplies Unit maintain that the documentation submitted by the Appellants was not convincing enough to ensure that the objectives of the Tender would be reached.

Reached the following conclusions:

1. This Board, after having examined the relative documentation and heard the submissions made by both Double C Creations Ltd and Central Procurement and Supplies Unit, opine that the availability of a “*Temperature Control*” environment was a mandatory and essential

condition in the Tender Document, i.e. that the temperature had to be between 15 and 25 degrees Centigrade.

From the submissions made by Double C Creations, it was stated that: *“The store has a size of approximately 175sq m and 13 courses high at ground floor level with adequate ventilation, which is ideal for temperature control. No humidity is present”*.

It is to be pointed out that the Appellants never confirmed that the premises being offered had a *“controlled temperature”* environment of 15 to 25 degrees centigrade. In this respect, the Evaluation Board could not allocate marks for such an important issue which was missing from the submissions.

One has to bear in mind that what is being stored in the premises are medicine and medicinal products and a *“temperature controlled”* environment is essential.

In this regard, the Evaluation Board could not ask for a clarification as this would have tantamount to a *“Rectification”* and not a *“Clarification”*. The Evaluation Board could not have asked for a

clarification on the missing information, which, in this Board's opinion, is not the case.

2. On a general note, this Board notes that Double C Creations Ltd have not been excluded from participating in the Tender to follow in accordance with the "*Letter of Rejection*" dated 28 June 2016, wherein it was clearly stated that, "*You may wish to note that a competitive call for Tenders for the provision of these services will be issued in the coming weeks and that your company will still be entitled to participate*".

This Board opines that although the Appellant was not successful in the "*Call for Proposals*", he is being invited to participate in a call for Tenders for the same services, in the coming weeks.

In view of the above, this Board finds against Double C Creations Ltd, however due to the circumstances, this same Board recommends that the deposit paid by the latter is to be refunded.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Richard A Matrenza
Member

11 October 2016