

## **PUBLIC CONTRACTS REVIEW BOARD**

### **Case 1037 – DH 2615/2016 – Supply and Installation of energy Efficient Medical Equipment and Ancillary Items for Kirkop Health Centre**

The Publication Date of the Call for Tenders was 11 October 2016 whilst the Closing Date for Call of Tenders was 15 November 2016. The Estimated Value of the Tender, (Exclusive of VAT) was € 98,832.20.

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

On 13 March 2017, Unicare Ltd filed an Objection against the decision of the Central Procurement and Supplies Unit to award the Tender to Technoline Ltd for the price of € 112,589.25 (Exclusive of VAT) against a deposit of € 563.

On 11 April 2017, the Public Contracts Review Board composed by Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Carmel Esposito as members convened a Public Hearing to discuss the Objection.

The Attendance for this Public Hearing was as follows:

#### **Appellant – Unicare Ltd**

|                  |                      |
|------------------|----------------------|
| Mr Chris Lia     | Representative       |
| Dr Sarah Sultana | Legal Representative |

#### **Recommended Bidder – Technoline Ltd**

|                     |                |
|---------------------|----------------|
| Mr Nicholas Sammut  | Representative |
| Mr Charlot Scicluna | Representative |

#### **Contracting Authority – Central Procurement and Supplies Unit**

|                            |                               |
|----------------------------|-------------------------------|
| Mr Neil Buhagiar           | Chairperson, Evaluation Board |
| Ms Rita Tirchett           | Secretary, Evaluation Board   |
| Mr Jesmond Farrugia        | Member, Evaluation Board      |
| Ms Marie Louise Grech      | Member, Evaluation Board      |
| Dr Ray Sammut              | Member, Evaluation Board      |
| Dr Stefan Zrinzo Azzopardi | Legal Representative          |

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

Dr Sarah Sultana, the Legal Representative for Unicare Ltd submitted that her clients have submitted a bid for this particular Tender and on 3 March 2017 they were informed by the Central Procurement and Supplies Unit that their bid was rejected because the Appellants have offered a 12 channel unit against the 16 channel unit which was required for this Tender.

Dr Sultana continued by saying that this was not the case because the offer submitted stated that the Evaluation Board did not take into consideration the fact that the Technical Specifications of the Apparatus quoted by Unicare Ltd indicates that although it had a 12 lead combination, more lead combinations can be actually set up and freely comparable by the user.

Since there was this particular clause in the Technical Specifications which could be interpreted that there can be more than 12 lead combinations, the most that the Evaluation Board could have done was to request a clarification from Unicare Ltd prior to award stage.

The Appellants' Legal Representative continued by saying that her clients presented a user manual together with their Letter of Objection to show that effectively the product can be transformed into a 16 channel unit through a simple 14-wire cable which can be connected with the 12 channel unit. This cable was also quoted in Unicare Ltd's Bill of Quantities when the latter submitted their bid.

According to Unicare Ltd, the Central Procurement and Supplies Unit have told the latter that this cable was not presented with the original offer. The Appellants have admitted that this was true but added that they were expecting the Evaluation Board to seek a clarification regarding the matter when eventually it would have been clarified that the machine presented had a 16 channel unit.

Dr Sarah Sultana continued by referring to the Letter of Rejection dated 3 March 2017 wherein it was also *inter alia* stated that

*"...this tender be awarded to Messrs Technoline Ltd for the price of € 112,589.25 excluding VAT being the cheapest acceptable offer"*

Dr Sultana noted that when the bids were opened on 15 November 2016, the price quoted by the eventual Recommended Bidders was of € 141,589.25 and not of € 112,589.25 as stated in the Letter of Rejection. The quoted bid for Technoline Ltd as per Schedule of Offers was much higher than the one quoted by Unicare Ltd.

Dr Stefan Zrinzo Azzopardi, the Legal Representative for the Central Procurement and Supplies Unit, countered by saying that with regards to the latter point issued by Dr Sultana, in view of the current circumstances, there was no need to delve into it since that this Tender was a Tender which requested a number of medical apparatus, which was into one lot and therefore the technical compliance had to concern anything regarding that same lot.

The main topic of discussion for this Public Hearing was to be that amongst the things which were to be presented in the offer, there was the ECG machine which according to the

Evaluation Board, it was not technically compliant. Once Unicare Ltd was excluded from the Adjudicating Process because of this, the discussion should feature around whether the Appellants were eventually technically compliant or not.

Dr Zrinzo Azzopardi continued by referring to Page 57 of the Tender Documents under the heading “*Functional Specifications*”, where it was *inter alia* stated that,

*“The ECG Machine is to produce hard copy printouts of patient electrocardiographs, in a twelve-channel format + 1 rhythm strip + 3 Vector Leads on an A4 size page. The equipment shall be capable of acquiring twelve ECG channels plus three vector leads via a sixteen (16)-lead ECG cable”*

The Contracting Authority’s Legal Representative continued by saying that the discussion was clear in the sense that what should have been presented was a type of machinery which would take 16 cables, which was exactly what the Central Procurement and Supplies Unit requested. If one had to look in the documents which were presented from Unicare Ltd with the bid, one cannot say that the Evaluation Board did not take into consideration documents which were not submitted.

Dr Anthony Cassar, the Chairman of the Public Contracts’ Review Board intervened by asking the Contracting Authority to focus only on what was submitted by the Appellants.

Dr Stefan Zrinzo Azzopardi, on behalf of the Central Procurement and Supplies Unit, continued by saying that he was just drawing the Public Contracts Review Board’s attention regarding the matter.

The Contracting Authority’s Legal Representative then continued by saying that if one had to see the Technical Data regarding the machine “*Cardiovit AT-102 plus*” submitted by Unicare Ltd, specifically where the Lead Combinations were concerned, one would see that there were,

*“up to 12 simultaneous leads, Standard/Cabrera, more lead combinations were to be freely programmable by the user”.*

The crux of everything was the words “*up to 12 simultaneous leads*”, continued Dr Stefan Zrinzo Azzopardi. On the other hand, the Tender Document requested a 16 lead ECG cable. One shouldn’t be a technical person to note that there was this difference. It was because of this that Unicare Ltd was excluded from the Adjudication Process.

At this point, Mr Jesmond Farrugia, an Operations Manager in the Bio Medical Section within Mater Dei Hospital who was also a member of the Evaluation Board, holding ID Card Number 541664 M was summoned by Dr Stefan Zrinzo Azzopardi to testify under oath before the Public Contracts Review Board.

At this stage, the Public Hearing was adjourned to Tuesday 18 April 2017 at 09:00 wherein the Public Contracts Review Board will transmit the decision taken for this Objection verbally and then distribute a hard copy of the same to all parties concerned.

**This Board,**

**Having noted this Objection filed by Unicare Ltd (herein after referred to as the Appellant) on 13 March 2017, refers to the Contentions made by the latter with regards to the award of Tender of Reference DH 2615/16 listed as Case No 1037 in the records of the Public Contracts Review Board, awarded by the Central Procurement and Supplies Unit (herein after referred to as the Contracting Authority).**

**Appearing for the Appellant: Dr Sarah Sultana**

**Appearing for the Contracting Authority: Dr Stefan Zrinzo Azzopardi**

**Whereby, the Appellant contends that:**

- a) The alleged reasons given by the Central Procurement and Supplies Unit for the rejection of his offer are not correct. In this regard, the Appellant maintains that although the offered unit had a 12 channel unit, it was also made clear that this could be increased to a 16 channel unit. Unicare Ltd insist that the Contracting Authority should have sought clarification in this regard;**

**b) The fact that Technoline Ltd's bid was € 141,589 and not € 112,589 as stated in the Letter of Rejection is incorrect.**

**This Board also noted the Contracting Authority's "*Letter of Reply*" dated 21 March 2017 and its verbal submissions during the Public Hearing held on 11 April 2017, in that:**

**a) The Central Procurement and Supplies Unit insist that Unicare Ltd's offer dictated, quite clearly, that the unit to be supplied was up to 12 simultaneous leads and not through a 16 core cable. In this regard, the Evaluation Board had no other option but to reject the Appellant's Offer. The Contracting Authority also points out that there was no room for clarifications at this particular stage;**

**b) The Central Procurement and Supplies Unit insist that the financial issue has no bearing on this Appeal as Unicare Ltd's offer was not Technically Compliant.**

**This same Board also noted the Testimony of the witness namely, Mr Jesmond Farrugia duly summoned by the Central Procurement and Supplies Unit's Legal Representative.**

**This Board, after having considered 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 relative documentation and heard the submissions made by the Technical Expert, a Bio-Chemical Engineer, opines that the crux of this Appeal is whether Unicare Ltd's offer was compliant to the Technical Specifications as dictated in the Tender Document or not. The latter, quite vividly, dictated that**

***“The equipment shall be capable of acquiring Twelve ECG Channels plus Three Vector Leads via a Sixteen (16) Lead ECG Cable”.***

**On the other hand and also according to his submissions, the Appellant's Technical Offer states that:**

***“Up to 12 Simultaneous Leads: Standard/Cabrera/Nehb: More Lead Combinations Freely Programmable by the User”.***

**At submission stage, it is justifiably evident that Unicare Ltd's Medical Equipment is a 12 Lead and not a 16 Lead as requested. In**

**this regard, this Board took consideration of the Technical Expert's Testimony wherein, it was credibly noted that what the Tender requested was an Apparatus having a "*16 Lead Hard Wire*".**

**On the other hand, this Board justifiably notes that the Appellant's offer had a "*12 Lead Hard Wire*", which is not the same as what did the Technical Specifications requested.**

**Unicare Ltd claims that although his apparatus is a 12 Lead Hard Wire, they have stated in their offer that this Technical Specification can be increased to 16 Lead through Software. In this regard, this Board considered the Technical Expert's credible justification in that the "*Lead Hard Wire*" cannot be increased to a 16 Lead one, the software being quoted by the Appellant can only increase the channels.**

**In this regard, this Board, after taking into consideration, the dictated Technical Specifications of the Tender and those submitted by the Appellant together with the credible explanations and justifications of the Technical Expert, does not uphold Unicare Ltd's First Grievance.**

**2. With regards to the Appellant's Second Contention, this Board is aware of the fact that the stage of Evaluation commences with the Technical Offer duly submitted by the prospective Bidder. If the latter's offer complies with the Technical requirements, his offer moves on to the next stage, which is the financial stage.**

**In this particular case, as stated in the preceding paragraph, this Board is justifiably convinced that Unicare Ltd's offer was not technically compliant and therefore, his offer could not enter in the financial evaluation. In this regard, this Board opines that it cannot consider Unicare Ltd's Second Contention and therefore it does not uphold the latter.**

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

Dr Anthony Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Carmelo Esposito  
Member

\_\_\_ April 2017