

## **PUBLIC CONTRACTS REVIEW BOARD**

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### **Case 1122 – CFT 020-6777/2017 – Tender for the Supply of Standard Steel Teflon Coated 0.035” x 145cm/150cm Guided Wires**

The Publication Date of the Call for Tenders was 6 October 2017 whilst the Closing Date for Call of Tenders was 26 October 2017. The Estimated Value of the Tender, (Exclusive of VAT) was € 52,000.

Seven (7) Bidders have submitted Ten (10) offers for this Tender.

On 2 January 2018, Krypton Chemists Limited filed an Objection against the decision of the Central Procurement and Supplies Unit to award the Tender to Evolve Limited for the price of € 24,850 (Exclusive of VAT) against a deposit of € 400.

On 16 January 2018, 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 – Krypton Chemists Limited**

Mr Matthew Arrigo Representative

#### **Recommended Bidder – Evolve Limited**

Mr Mark Mizzi Representative

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

Mr Jesmond Mangion	Chairperson, Evaluation Board
Ms Maria Cassar	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.

Mr Matthew Arrigo, representing Krypton Chemists Limited opened by asking whether it was possible for him to read a statement.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board, accepted on condition that this statement concerned the Tender in Question.

Mr Matthew Arrigo, representing Krypton Chemists Limited then proceeded to read a statement wherein despite admitting that the Declaration of Conformity submitted with his offer was an incomplete one, this same product was awarded a previous Tender issued last year and that this time around, and they have just duplicated the same offer which they have submitted previously. Following the reading of this statement, a copy of the same was presented to all parties concerned by the Appellant.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board asked the Contracting Authority what were the reasons for Rejection of Krypton Chemists Limited's offer.

Dr Stefan Zrinzo Azzopardi, the Legal Representative for the Central Procurement and Supplies Unit replied that they have followed previous directions issued by this same Board in previous cases to give clear and direct reasons why offers were being rejected. If one had to see the documents which were annexed with the Reasoned Letter of Reply issued by the same Contracting Authority on 8 January 2018, one could see the differences in the two documents which led to the reasons why Krypton Chemists Limited's offer was rejected.

Dr Zrinzo Azzopardi continued explaining that the Declaration of Conformities submitted had to be up to the standards imposed by the European Union. Besides they had to ensure that all tests and quality assurances were clearly and correctly made. Doc B annexed with the Reasoned Letter of Reply was submitted after the Letter of Rejection issued by the Central Procurement and Supplies Unit on 21 December 2017 when it had to be submitted by the Closing Date for Submission of Tenders.

Dr Stefan Zrinzo Azzopardi, added that a valid Declaration of Conformity had to be submitted by the Bidders and once this was not found in the Appellant's offer, the Evaluation Board had no other option but to reject the Bid submitted by Krypton Chemists Limited.

Mr Matthew Arrigo, representing the Appellants said that they knew that the Declaration of Conformity was incomplete but they had copied the previous successful proposal onto the new Bid.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board noted that it was a mistake to use the "*Copy and Paste*" technique when submitting offers for Tenders.

Mr Matthew Arrigo, representing Krypton Chemists Limited said that if the Tender Requirements did not change, there was nothing wrong in using the "*Copy and Paste*" technique.

At this stage, the Public Hearing was adjourned to Tuesday 23 January 2018 at 09:00 wherein the Public Contracts Review Board will transmit the decision.

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**This Board,**

**Having noted this Objection filed by Krypton Chemists Limited (herein after referred to as the Appellant) on 2 January 2018, refers to the Contentions made by the latter with regards to the award of Tender of Reference CFT 020-6777/2017 listed as Case No 1122 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: Mr Matthew Arrigo**

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

**Whereby, the Appellants contend that:**

- a) Although, admittedly, their offer was incomplete, their submission for this offer was a replica of a Previous Tender awarded to the same. In this regard, Krypton Chemists Limited maintain that their offer should not have been discarded due to the incomplete information submitted with their original offer.**

**This Board also noted the Contracting Authority's "*Letter of Reply*" dated 8 January 2018 and its verbal submissions during the Public Hearing held on 16 January 2018, in that:**

- a) **The Central Procurement and Supplies Unit insist that the Appellant's Offer was adjudicated on the submissions made by the same. In this regard, the Evaluation Board noted that during the Evaluation Stage, the Appellants' Offer did not include the references to the relevant harmonised standards, in their "*Declaration of Conformity*". At the same instance, the same Declaration was lacking the designation of the person signing it. The Evaluation Board had no other option but to discard the Appellants' Offer.**

**This Board also took note of the documents submitted by Krypton Chemists Limited which consisted of a Statement explaining their Reasons for Objection to the Award of this Tender.**

**This Board, after having examined the relevant documentation to this Appeal and heard submissions made by all parties concerned, opines that the sole issue of this Objection is the alleged contention that the Evaluation**

**Board should have accepted Krypton Chemists Limited’s submissions as being compliant due to the fact that in a previous similar Tender awarded to the same Appellants, the same documentation was submitted and accepted.**

**This Board would, first and foremost, justifiably emphasize that it is the responsibility and obligation of the Bidder to ensure that he has abided by all the conditions laid out in the Tender Dossier, prior to the submission of his offer. In this regard, this Board noted that the Appellants submitted incomplete information which could not be rectified or clarified by the Evaluation Board as the offer had missing information on the “*Declaration of Conformity*”. It is an obvious and logical assumption that the latter certificate should state by which standards or directive it is conforming. In this respect, this Board notes that Appellants’ admitted that this was a “*Cut and Paste*” procedural.**

**In view of the above, this Board opines that any references to previous Tenders are being totally disregarded as this Board’s remit is to determine whether the Evaluation Process was carried out in a fair, just and Transparent manner but to matter referring to this particular Tender. In this respect, this Board credibly confirms that the Adjudication process**

**was carried out appropriately and conformed to the procedure as stipulated in the Public Procurement Regulations.**

**At the same instance, this Board cannot but emphasize the fact that, if in doubt, Krypton Chemists Limited had all the remedies to clarify any misunderstandings or conceptions prior to the Closing Date of the Tender and in this respect, this Board notes that Appellants did not avail themselves of such remedies.**

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

Dr Anthony Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Carmel Esposito  
Member

*23 January 2018*