

After a brief introduction Dr Anthony Cassar, Chairman of the Public Contracts Review Board, invited the parties to make their submissions.

Dr Andrea Gera de Petri, representative of Drugsales Ltd, said that the reason for this appeal was that in compressing the tender documents when transmitting them electronically some words had come out garbled as a result of which 'Forceps measuring 128 cm' had come out as 'orceps measuring 12 cm'. This was an obvious error as forceps measuring 12 cm were a toy and not a medical instrument. In support of his claim he referred the Board to the documents filed with the tender wherein it was clear that several words had come out garbled. His Company were not aware of this until the receipt of the letter of disqualification from the Contracting Authority.

Dr Stefan Zrinzo Azzopardi said that he did not oppose the Appellants' objection.

The Chairman thanked both parties for their submission and declared the hearing closed.

This Board,

Having noted this Objection filed by Drugsales Limited (herein after referred to as the Appellant), on 23 January 2018, referring to the contentions made by the same Appellant with regards to the award of Tender of Reference CFT 020-6144/2017 listed as Case No 1137 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 Andrea Gera de Petri

Appearing for the Contracting Authority: Dr Stefan Zrinzo Azzopardi

Whereby the Appellants contend that:

- a) **The cause for the Contracting Authority, to reject their offer was simply due to the fact that the information transmitted regarding the dimensions of the forceps, was received by the latter in a garbled form that distorted the exact dimensions of the medical instrument being offered. In this regard, the information received was obviously corrupted through no fault of the Appellants.**

This Board also considered the Contracting Authority's "*Letter of Reply*" dated 2 February 2018 and its verbal submissions during the Public Hearing held on 22 February 2018, in that:

- a) **The Central Procurement and Supplies Unit maintains that the Evaluation Board could only adjudicate on the information so submitted by the Appellants. Due to the fact that the Contracting Authority, at this stage, could not request clarifications or rectifications, the Evaluation Board had no other option but to deem the Appellants' offer as being technically non-compliant.**

This Board, after having examined the relevant documentation pertaining to this Appeal and heard the submissions made by the parties concerned, opines that the issue refers directly to the information so submitted by Drugsales Limited through the Electronic Public Procurement System.

It has been credibly established that the Central Procurement and Supplies Unit did receive the information with regards to the dimensions of forceps but in a garbled form which obviously did not make sense and in fact, distorted completely the technical compliance issue of the Appellants' offer.

At the same instance, this Board acknowledges the fact that the Contracting Authority could not at this evaluation stage; ask for clarifications or rectifications, so that their decision to discard the Appellants offer was appropriate. However, after examining the garbled information so received by the Contracting Authority, it was obviously and vividly evident that there was a genuine error which was not due to any omission of the technical details, on the part of the Appellants. In applying the principle of proportionality, this Board:

- i) Upholds the contentions made by Druggals Limited;**

- ii) Recommends that the deposit paid by the same Appellants is to be fully refunded;**

- iii) Revokes the Central Procurement and Supplies Unit's decision in awarding the Tender;**

- iv) Recommends that the offer submitted by Druggals Limited is to be reintegrated in the evaluation process, taking into consideration the correct and factual dimensions of the forceps as per technical specifications duly submitted which under item of reference RM 14-010 shows "*Forceps Griprite Blue 128mm*"**

Dr Anthony J Cassar
Chairman

Mr Lawrence Ancilleri
Member

Mr Richard A Matrenza
Member

1st March 2018