

PUBLIC CONTRACTS REVIEW BOARD

Case 1156 – TO19-6061/2017 - Tender for the Physical Validation Services at Pharmacy Reconstitution Sites

The publication date of the call for tenders was the 17th November 2017 whilst the closing date of the call for tenders was the 15th December 2017. The estimated value of the tender (exclusive of VAT) was € 88,792.20.

There were three (3) bidders on this tender.

Inspectra Ltd filed an appeal on 7th March 2018 against the Contracting Authority's decision to reject the tender on the grounds that Appellant had failed to satisfy the criterion for the award due to lack of ISO certification. A deposit of € 443.96 was paid.

On 17th April 2018 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Carmel Esposito as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellant – Inspectra Ltd

Dr Richard Galea Debono	Legal Representative
Mr Mark Camilleri	General Manager
Ing Joe Caruana	Representative
Dr Maria D'Aguanno	Representative

Recommended Bidder – Evolve Ltd

Ms Fiona Mallia	Representative
Ms Leonora Casingena	Representative

Contracting Authority – Central Procurement and Supplies Unit

Dr Marco Woods	Legal Representative
Dr Alison Anastasi	Assistant Director
Mr Robert Demicoli	Chairperson Evaluation Board
Mr Hristo Ivanov Hristov	Secretary Evaluation Board
Mr Ralph Azzopardi	Member Evaluation Board
Mr Kevin Pearson	Member Evaluation Board
Mr Jesmond Farrugia	Member Evaluation Board

Dr Anthony Cassar, Chairman of the Public Contracts Review Board welcomed the parties and invited the Appellant to make their submissions.

Dr Richard Galea Debono, Legal Representative of Inspectra Ltd said that the sole criterion in this tender document was the price, provided all the other administrative requirements were met. The tender specified that the service provider had to have ISO 17025 accreditation, or had to, if successful, provide this document within twelve months. His client did not have accreditation but had submitted the lowest price. From researches made it transpires that no European country has all the certification requested. He enquired if the Contracting Authority was in a position to indicate if the tender winner has the necessary certification.

The Contracting Authority called Mr Hristo Ivanov Hristov to testify.

Mr Hristo Hristov (35656A) stated on oath that he was the tender co-ordinator and secretary of the Evaluation Board. He confirmed that Evolve Ltd had ISO 17025 certification. He then tabled a copy of the Certificate in question (from UKAS) which he said confirmed his point. At this stage Appellant claimed that there should be eight separate certificates to meet the stipulated condition in the tender.

Mr Mark Camilleri (298472M) testified on oath that he was the General Manager of Inspectra Ltd. He explained that when a company was accredited this is done through the National Accreditation Board of the country where it operates. Although UKAS had listed all the companies which are accredited, Validair (whom the Recommended Bidder was relying on for their certification) was not credited for certain of the accreditations required - in fact it had two out of seven accreditations.

The next witness called was Mr Ralph Azzopardi (520781M) who on oath testified that he was a Chemist and Quality Assurance Pharmacist at Mater Dei Hospital and a member of the Evaluation Board. He said that if at the Evaluation stage the tenderer undertook to do all the tests the tender submission would still be valid and the accreditation would be in order. The technical documents required an ISO 17025 certification and the Evaluation Board was satisfied that the winning tenderer had complied.

Ing Joe Caruana (672162M) stated under oath that he was a Director of Inspectra Ltd. He said that the Accreditation Certificate presented from UKAS was useless as there was missing a page showing which tests can be carried out. The date on the Certificate was 2013 which made it out of date as certificates were issued annually.

The Chairman of the Board said that although it was commendable for several reasons for the Contracting Authority to accept the European Single Procurement Document it behoves the Authority to ensure that documents submitted were compliant. A tenderer is not safeguarded by submitting a document that is not in conformity with the tender. He noticed from the documents available that the tender required eight certificates while only six had been submitted. The missing documents made the tender non-compliant.

Dr Richard Galea Debono, in his closing submissions said that the comments of the Chairman were precisely what this appeal was about. It was obvious that the Evaluation Board made an error. The tender required all physical tests declarations which no tenderer had submitted. This made none of the tenders compliant. If, therefore, this tender was disqualified it made all the tenders compliant, and as the lower bid his client ought to win the tender.

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

This Board,

Having noted this Objection filed by Inspectra Limited, (hereinafter referred to as the Appellant) on 7 March 2018, refers to the contentions made by the same Appellant with regards to the award of Tender of Reference T 019-6061/2017 listed as Case No 1156 in the records of the Public Contracts Review Board, awarded by the Central Procurement and Supplies Unit, (hereinafter referred to as the Contracting Authority).

Appearing for the Appellant: Dr Richard Galea Debono

Appearing for the Contracting Authority: Dr Marco Woods

Whereby, the Appellant contends that:

- a) Their offer was deemed to be technically non compliant due to the fact that they did not have ISO 17026. In this regard, the Tender Document**

dictated that the service provided had to have ISO 17025 accreditations, if successful, provided that this document was provided within twelve months and not at Evaluation Stage.

This Board also noted the Contracting Authority's "*Letter of Reply*", dated 4 April 2018 and its verbal submissions during the Public Hearing held on 17 April 2018, in that:

- a) The Central Procurement and Supplies Unit insist that an offer which does not have an ISO 17025 accreditation can only be accepted by the Contracting Authority in the case that none of the Bidders are in possession of such accreditation. In this particular case, the Recommended Bidder was compliant with this requirement whilst the Appellants were not.**

This same Board also noted the testimony of the following witnesses:

- 1. Mr Hristo Ivanov Hristov duly summoned by the Central Procurement and Supplies Unit;**
- 2. Mr Mark Camilleri duly summoned by the Public Contracts Review Board;**

3. Mr Ralph Azzopardi duly summoned by Inspectra Limited;

4. Mr Joseph Caruana duly summoned by Inspectra Limited..

This Board has also taken note of the document submitted by the Central Procurement and Supplies Unit which consists of an Accreditation Certificate with regards to Validair (Euro) Limited.

This Board, after having examined the relevant documentation to this Appeal and heard submissions made by the parties concerned, including the testimony of the witnesses duly summoned, opines that the issue that merits consideration is the accreditation of ISO 17025.

This Board would respectfully refer to Clause 4.1, Article 1.1, (ISO Accreditation) of the Tender Document, wherein it is stipulated that:

“It is required that the Service Provider (SP) is ISO 9000 (QMS) accredited and ISO 17025, (Competence of Testing and Calibration Laboratories), accredited for all physical tests required under ISO 14644 covered by this contract.”

Furthermore under the same article, it is dictated that:

“ISO 9000 is a requirement in this Service Contract. If none of the Tenderers or the proposed SPs in the Tenders, is accredited for ISO 17025 for all physical tests required under ISO 14644 upon submission of the Tender offers, the SP must provide assurance that at least, it is subscribed in a proficiency testing scheme run by an ISO accredited company. The SP is required to achieve ISO 17025 accreditation for all tests covered within this contract, within 12 months of the award of this contract.”

This Board opines that the above mentioned clause forms the backbone of the spirit of this Appeal. It has been made evidently clear that the service provider must hold ISO 17025 upon submission of offer and if none of the Bidders are in possession of such accreditation then the successful Bidder is given the opportunity to obtain the ISO 17025 within a period of twelve months. In this regard, this Board establishes the fact that such accreditation under these circumstances could be obtained within 12 months of the Award of the Tender.

During the submissions, this Board was made aware that the Recommended Bidder did submit an ISO 17025 accreditation. At the same instance, this Board notes, from the stipulated Clause 4.1 Article 1.1 of the Tender Dossier that, ISO 17025 consists of the Certificate of Competence of Testing and

Calibration Labs and that such accreditation must be made for all physical tests required under ISO 14644, the latter of which covers seven major tests. From the testimony of Mr Mark Camilleri, it was established that the Preferred Bidder's accreditation was not complete, that is, it covered only two out of seven tests and the witness confirmed that:

“Irid ikun accredited in each of the seven tests. You have to be accredited, it-Tender Document jispeċifika eżattament li jrid ikun Accredited ISO-17025 in each of the tests that fall”

This Board also notes that the witness made the following statement:

“Ha nikkoreġi xi haġa fuq dak li għadu kemm semma. Jista' jkun li s-seba' testijiet 14644 Chapters, ma jintużawx kollha it-testijiet li għandna bżonn pero', at Evaluation Stage, la t-Tenderer qed jiddikjara li ha jagħmel it-testijiet kollha skond il-14644, jiena ma nistax ngħid li dan m' għandux l-Accreditation tal-14644 at Evaluation Stage.”

The above testimony confirms that at Evaluation Stage, the Recommended Bidder did not have the accreditation on all the mandatory tests and at the same instance, although this accreditation was mandatory, the Evaluation

Board did not seek confirmation on the accreditation presented by Evolve Limited.

This Board would respectfully point out that through the European Single Procurement Document, (ESPD), it is acceptable not to request certain documentation/certification at submission stage. These certifications would then fall as mandatory requirements at award stage. If however, the Tender Document dictates that such certification must be submitted with the offer, then it is the responsibility of the Central Procurement and Supplies Unit, through its Evaluation Committee, to verify whether such submissions are complete or valid. In this particular case, it has been proved that the Recommended Bidder's ISO certification does not cover all the tests as duly requested to enable the ISO 17025 Certification to be complete, so that no bidders' offers were provided with a valid certification to comply with Clause 4.1 Article 1.1

In view of the fact that no offer was submitted with the requested certification, Article 1.1 Paragraph 2 will apply.

In view of the above, this Board:

- i) Orders the cancellation of the Award of the Tender;**

ii) Recommends that the offer submitted by Inspectra Limited is to be re-integrated in the Evaluation Process;

iii) Recommends that the deposit paid by the Appellant is to be fully refunded;

iv) Orders that a new re-evaluation process is to be carried out, but by a new Evaluation Board composed of different members.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Carmel Esposito
Member

8 May 2018