

PUBLIC CONTRACTS REVIEW BOARD

Case 1160 – CFT 019 – 10104/16 - Tender for the Supply of Foldable/Injectable Lenses

Third Hearing

The publication date of the call for the first tender was the 28 August 2015 whilst the closing date of the call for first tenders was the 8th October 2015. The estimated value of the first tender (exclusive of VAT) was € 806,250.

There were five (5) bidders on this first tender.

The publication date of the call for the second tender was 19th February 2016 whilst the closing date of the call for the second tender was 4th April 2016. The estimated value of the second tender was € 107,500

There were six (6) bidders on the second tender

Cherubino Ltd filed an appeal on 24th February 2017 against the Contracting Authority's decision to award the second tender to AMAS Ltd. A deposit of € 540 was paid.

At a sitting of the Public Contracts Review Board held on 28th March 2017 it was decided that the appeal by Cherubino Ltd was justified and the decision reached at the first hearing be implemented.

On the 18th July 2017 the Appeal Court heard the submissions of AMAS Ltd against the appeal filed by Cherubino Ltd and ordered the case to be heard again and to consider the objections of Cherubino Ltd regarding the call for the second tender

On 24th April 2018 the Public Contracts Review Board composed of Dr Charles Cassar as Chairman, Mr Richard A Matrenza and Mr Anthony Vassallo as members convened a public hearing to discuss the submissions.

The attendance for this public hearing was as follows:

Appellant - Cherubino Ltd

Dr Danica Caruana
Dr Francis Cherubino

Legal Representative
Representative

Contracting Authority – Central Procurement and Supplies Unit

Dr Stefan Zrinzo Azzopardi

Legal Representative

Dr Marco Woods

Legal Representative

Ms Ruth Saliba

Chairperson Evaluation Board

Mr Thomas Fenech

Member Evaluation Board

Ms Renee Mifsud

Member Evaluation Board

Ms Rita Zammit

Representative

Mr Mark Zammit

Representative

The Chairman of the Public Contracts Review Board, Dr Charles Cassar, welcomed the parties and stated that the Board had been advised that AMAS Ltd were no longer interested in the tender and therefore it was unable to follow the Appeal Court's directions to rehear the case.

Dr Danica Caruana, Legal Representative of Cherubino Ltd argued that they had requested the cancellation of the first tender which they now wished to re-instate as a standalone bid. Her clients were not submitting an appeal but wanted a re-hearing on the technical compliance of their bid. It was incorrect not to proceed with hearing the appeal. The AMAS decision was irrelevant as the Court had obliged the PCRБ to rehear the Case which stands on its own two feet. Her contentions were supported by Dr Cherubino.

Dr Stefan Zrinzo Azzopardi, Legal Representative of the Central Procurement and Supplies Unit, said that the withdrawal of AMAS Ltd altered the situation, and it was not sustainable to evaluate Cherubino's new offer. The Court decision cancelled the PCRБ decision, but if Appellant wanted to discuss the technical compliance of their bid then the CPSU had an expert witness available, such process meant going round in circles. The sensible step would be to cancel the whole tender and start again.

After a short recess called by the Chairman, Dr Danica Caruana advised the Board that her clients appreciated the new situation and were prepared to withdraw their appeal.

The Chairman thanked both parties for their co-operation and declared the hearing closed.

The purpose of this hearing is to re-consider Cherubino Limited's offer with regards to technical compliancy, as directed by the Court of Appeal via "Appell Numru 178/2017", dated 18 July 2017.

Appearing for Cherubino Limited (the Appellants): Dr Danica Caruana

Dr Francis Cherubino

Appearing for the Contracting Authority: Dr Stefan Zrinzo Azzopardi

In accordance with the decision of the Court of Appeal, this Board (in a different composition) was instructed to reconsider Cherubino Limited's offer regarding the second case.

- 1. Through an e-mail dated 29 March 2018, this Board was informed that AMAS Company Limited, (the Preferred Bidder), was no longer interested in participating in this Tender and in this respect the Preferred Bidder was withdrawing his offer;**
- 2. The Appellants requested that, in view of such withdrawal of the offer by the Preferred Bidder, they wished to be re-instated, as a standalone Bidder, so that the Board would still consider whether their offer was technically compliant or not;**
- 3. At the same instance, the Contracting Authority maintained that since circumstances has now changed drastically, the only solution will be to cancel the Tender;**

4. In view of the different suggestions put forward by the interested parties, this Board ordered a recess to decide the way forward;

5. After the recess, this Board was informed that the Appellants have reconsidered their request and are now withdrawing their appeal.

In view of the above, this Board is not in a position to execute the direction given by the Court of Appeal and due to the fact that all interested parties are now withdrawing from participating in this Tender, this Board has no other remedy available except to order the cancellation of the Tender.

Dr Charles Cassar
Chairman

Mr Richard A Matrenza
Member

Mr Anthony Vassallo
Member

19th July 2018