

PUBLIC CONTRACTS REVIEW BOARD

Case 1175 – CT 2244/2017 – Tender for the Supply of Low Profile Gastrostomy Kits (Various Sizes) and Accessories

The publication date of the call for tenders was the 24th November 2017 whilst the closing date of the call for tenders was the 9th January 2018. The estimated value of the tender (exclusive of VAT) was € 258,434.

There were three (3) bidders on this tender.

Cherubino Ltd filed an appeal on 9th May 2018 against the Contracting Authority's decision that their bid was technically non-compliant. A deposit of € 1,292 was paid.

On 5th June 2018 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Mr Carmel Esposito and Mr Richard Matrenza as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellant – Cherubino Ltd

Dr Danica Caruana	Legal Representative
Dr Francis Cherubino	Representative

Contracting Authority – Central Procurement and Supplies Unit – Health

Dr Marco Woods	Legal Representative
Ms Marika Cutajar	Chairperson Evaluation Board
Mr Eman Gravino	Member Evaluation Board
Mr Patrick Ghigo	Member Evaluation Board

The Chairman of the Public Contracts Review Board, Dr Anthony Cassar, invited Appellants to make their submission.

Ms Danica Caruana, Legal Representative for Cherubino Ltd stated that her clients' offer had not been accepted, as according to the Evaluation Committee, there was no signature on the Declaration of Conformity presented with the tender documents, yet a cursory examination will show a signature on the DOC. Further, Cherubino Ltd was the incumbent supplier of this product and they had submitted exactly the same document, also in use abroad, in past tenders without any problems. The DOC requires a signature and this had been done electronically as in the past. The Evaluation Board not only rejected this electronic signature but went a step further and cancelled the tender. At most, they should have confirmed the validity of the DOC with her clients. The MCCA had confirmed to her clients, through an email message, that an electronic signature was valid.

The Chairman of the Board pointed out that so long as the person signing the DOC could be identified then the tender requirements were fulfilled. It was necessary for a contracting authority to understand how the procurement system worked and evaluation committees should undertake due diligence and ask questions were appropriate. He thanked the parties for their submissions and declared the hearing closed.

This Board,

Having noted this Objection filed by Cherubino Limited, (hereinafter referred to as the Appellant), on 9 May 2018, refers to the contentions made by the same Appellant with regards to the Cancellation of Tender of reference CT 2244/2017 listed as Case No 1175 in the records of the Public Contracts Review Board, issued by the Central Procurement and Supplies Unit, (hereinafter referred to as the Contracting Authority).

Appearing for the Appellant: Dr Danica Caruana

Dr Francis Cherubino

Appearing for the Contracting Authority: Dr Marco Woods.

Whereby, the Appellant contends that:

- a) Their offer was discarded as the Evaluation Board, during the Evaluation process, assumed that there was no signature on the Declaration of Conformity. In this regard, Cherubino Limited insist that such a signature was present yet in digital form;**

- b) There existed no valid reasons for the Cancellation of the Tender.**

This Board has also noted the Contracting Authority's "*Letter of Reply*" dated 18 May 2018 and also its verbal submissions during the Public Hearing held on 5 June 2018, in that:

- a) Since the Evaluation Committee deemed the Appellant's offer as being technically non-compliant, and there were no other compliant offers, the Contracting Authority had no other option but to cancel the Tender.**

This Board, after having examined the relevant documentation to this Appeal and heard submissions made by the interested parties opines that the issue

which must be considered is the “*Declaration of Conformity*” duly submitted by the Appellants.

This Board would respectfully refer to the “*Declaration of Conformity*” dated 30 November 2017, wherein all the necessary requirements are so dictated. At the end of such a declaration, there is clearly denoted, “*Signed 30 November 2017*”, and the sender of such a correspondence is also clearly stipulated as :

“*Chris Zantopulos*
General Manager”

So that Chris Zantopulos as clearly stated represents the signature of the sender, but in a digital form. In this regard, this Board opines that the Declaration of Conformity submitted by Cherubino Limited was in fact, a signed document which has an electronic valid signature.

In view of the above, this Board:

- a) Revokes the decision taken by the Central Procurement and Supplies Unit to cancel the Tender;

- b) Upholds the contentions made by Cherubino Limited that the “Declaration of Conformity” submitted by the same has a valid signature;**
- c) Orders the Contracting Authority to re-integrate the Appellant ‘s offer in the Evaluation Process;**
- d) Recommends that the deposit paid by the Appellant should be fully refunded.**

Dr Anthony Cassar
Chairman

Mr Carmel Esposito
Member

Mr Richard A Matrenza
Member

13th June 2018