

# **PUBLIC CONTRACTS REVIEW BOARD**

## **Case 1182 – CFQ 020-6748/2017 – Tender for the Supply of Colour Coded Fibre Light Cables**

The publication date of the call for tenders was the 29<sup>th</sup> September 2017 whilst the closing date of the call for tenders was the 19<sup>th</sup> October 2017. The estimated value of the tender (exclusive of VAT) was € 11,437.

There were three (3) bidders.

Evolve Ltd filed an appeal on 16th May 2018 against the Contracting Authority's decision to disqualify their bid as it was technically non-compliant. A deposit of € 400 was paid.

On 26th June 2018 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Mr Carmel Esposito and Mr Richard A Matrenza as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

### **Appellant – Evolve Ltd**

Mr Mark Mizzi	Representative
Mr Adrian Balghy	Representative

### **Recommended Bidder – Associated Equipment Ltd**

Mr Raymond Teuma	Representative
Mr Carmel Mifsud	Representative

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

Dr Marco Woods	Legal Representative
Ms Rita Zammit	Chairperson Evaluation Committee
Mr Stanley Iles	Member Evaluation Committee

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

Mr Mark Mizzi, Representative of Evolve Ltd, said that out of three bidders his company's bid was the cheapest. On the 11<sup>th</sup> May 2108 bidder was advised that his tender was not technically compliant as the cables they had offered were 2.5m in length. Straightaway Evolve advised the CPSU that in fact their cables were 2.7m long. However they were advised that the CPSU's decision still held even though their bid was 30% cheaper than the nearest next offer and they were the incumbent suppliers. Mr Mizzi re-iterated that the tender stated that the cables had to be approximately 3m in length, and he did not feel that there was any need to define what 'approximate' meant.

Dr Marco Woods, Legal Representative of the CPSU said that the specification requested cables of a length of approximately 3m but the bidder offered cables only 2.7 m in length. These cables fulfilled a specific function and if they were shorter than specified they failed to fulfil that function.

The Chairman pointed out a 2.7m length falls within an approximation of the specifications.

Mr Stanley Iles (463763M) testified on oath that he was the Senior Manager at the Operating Theatre and was a member of the Evaluation Committee. He explained the use of the cables and how the length in the specifications had been calculated. He confirmed that the technical specifications had not been prepared by him.

The Chairman pointed out to the witness that if the CPSU had wanted 3m cables they should have stated 3m – that was the whole issue of this appeal. He thanked both parties for their submissions and declared the hearing closed.

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**This Board,**

**Having noted this Objection filed by Evolve Limited, (hereinafter referred to as the Appellants) on 16 May 2018 refers to the contentions made by the same Appellants with regards to the award of Tender of Reference CFQ 020-6748/2017 listed as Case No 1182 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 Appellants: Mr Mark Mizzi**

**Appearing for the Contracting Authority: Dr Marco Woods.**

**Whereby, the Appellants contend that:**

- a) **Their offer was within the technical specification of the Tender. In this regard, the Appellants' offer stipulated that their cables were 2.7 metres long whilst the Tender requested an approximate length of 3 metres, thus within the dictated technical parameters;**

**This Board also noted the Contracting Authority's "*Letter of Reply*" dated 25 May 2018 and its verbal submissions during the Public Hearing held on 26 June 2018, in that:**

- a) **The Central Procurement and Supplies Unit contends that since the cables being requested were to be used for a special application, such equipment of length of less than 3 metres would not serve the intended purpose.**

**This same Board also noted the testimony of the witness, namely Mr Stanley Iles, Senior Manager, Operating Theatre, who was duly summoned by the Public Contracts Review Board.**

**This Board, after having examined the relevant documentation to this appeal and heard submissions made by the interested parties, including the testimony of the technical witness, opines that the only issue worth of consideration is the dictated length of the cables so requested in the Tender Dossier.**

**First and foremost, this Board would respectfully point out that the Technical Specifications should be described in a clear manner so as not to confuse the prospective bidders. In this particular case, the Tender Document dictated the length of the cables to be, “*Approximately 3 metres*” and although no tolerance has been stipulated, this Board opines that the word “*approximate*” surely means, “*more or less*”, so that the decision of the Evaluation Board was very subjective and even so, not in accordance with the principle of self limitation.**

**One has to appreciate that the dictated technical specifications should be formulated so as to describe the objective of such a requirement. From the testimony of the technical witness, it was revealed that, if the cable is less than 3 metres, the equipment would not serve the purpose for which it is intended, so then why not specify that the cable had to be 3 metres in length? This**

**Board, justifiably establishes that the wording “*Approximately 3 metres in length, was highly misleading*”.**

**In view of the above, this Board,**

- a) Does not uphold the Central Procurement and Supplies Unit’s decision in the award of the Contract;**
- b) Upholds the contentions made by Evolve Limited;**
- c) Recommends that the deposit paid by the Appellant is to be refunded;**
- d) Orders the Contracting Authority to cancel the Tender and issue a fresh one with a proper description of what is being requested.**

Dr Anthony J Cassar  
Chairman

Mr Carmel Esposito  
Member

Mr Richard A Matrenza  
Member

*12<sup>th</sup> July 2018*