

## **PUBLIC CONTRACTS REVIEW BOARD**

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### **Case 1310 – CFT 020-1219/18 – Tender for the Supply of Incontinence Bed Pads Sz 60x90cm**

The publication date of the call for tenders was the 23<sup>rd</sup> November 2018 whilst the closing date of the call for tenders was 14<sup>th</sup> December 2018. The estimated value of the tender (exclusive of VAT) was € 62,000.

On the 5<sup>th</sup> April 2019 Medsytec Engineering Ltd filed an appeal against the Central Procurement and Supplies Unit as the Contracting Authority objecting that their bid was rejected although being the cheapest. A deposit of € 400 was paid.

There were nine (9) bidders.

On 16<sup>th</sup> May 2019 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Mr Lawrence Ancilleri and Mr Carmel Esposito as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

#### **Appellants – Medsytec Engineering Ltd**

Dr Matthew Brincat	Legal Representative
Mr Daniel Camilleri	Representative

#### **Recommended Bidder – V J Salomone Ltd**

Mr Christopher Treeby Ward	Representative
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#### **Contracting Authority – Central Procurement and Supplies Unit**

Dr Marco Woods	Legal Representative
Ms Marika Cutajar	Chairperson Evaluation Committee
Ms Solange Vella	Secretary Evaluation Board
Mr Daniel Attard	Member Evaluation Board

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

Dr Matthew Brincat Legal Representative for Medsytec Engineering Ltd stated that the critical point of this appeal is that contrary to what the Contracting Authority was claiming, Appellant had

submitted all required data. Had this been not so, the tender would not have been accepted by the electronic system when they uploaded it.

Dr Marco Woods Legal Representative for the Central Procurement and Supplies Unit said that when the ePPS was opened no attachments were found – only the total price was shown.

Mr Daniel Camilleri Representative of Medsytec Engineering Ltd said that the system saves uploaded files and the files had been seen when he checked the upload to ensure that his submissions were complete. He tabled copy of an email (Doc A) confirming that his offer had been uploaded.

The Chairman said that the Board in this case required the presence of a technical person from the Department of Contracts to explain this anomaly. Presently such person was not available and therefore he deferred the Case to a date when a technical person will be available to testify before the Board.

## **SECOND HEARING**

The hearing was resumed on 21<sup>st</sup> May 2019 by the Public Contracts Review Board consisting of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Lawrence Ancilleri as members.

The attendance for this public hearing was as follows:

### **Appellants - Medsytec Engineering**

Dr Matthew Brincat	Legal Representative
Mr Daniel Camilleri	Representative

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

Dr Marco Woods	Legal Representative
Ms Marika Cutajar	Chairperson Evaluation Committee

Dr Anthony Cassar Chairman of the Public Contracts Review Board welcomed the parties and stated that evidence has now been provided by the Central Procurement and Supplies Unit that the documents claimed to have been missing had been submitted and though not downloadable had been visible to the evaluation committee. The issue therefore had been solved. In the respect the Board will be directing that Appellants’ offer should be re-integrated in the evaluation process.

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

**This Board,**

**having noted this objection filed by Medsytec Engineering Limited (herein after referred to as the Appellants) on 5 April 2019, refers to the claims made by the same Appellants with regard to the Tender of reference CFT 020-1219/2018 listed as case no. 1310 in the records of the Public Contracts Review Board, awarded by Central Procurement and Supplies Unit (herein after referred to as the Contracting Authority).**

**Appearing for the Appellants: Dr Mathew Brincat**

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

**Whereby, the Appellants contend that:**

- a) Their main concern refers to the fact that, the Authority is alleging that it is not in receipt of the documentation as prescribed in the tender dossier. In this regard, Appellants strongly maintain that they had submitted all requested documentation through the EPPS system and are in possession of the system's confirmation that such documentation has been uploaded and thus remitted to the Authority.**

**This Board also noted the Contracting Authority’s ‘Letter of Reply’ dated 12 April 2019, and its verbal submissions during the hearing held on 16 May 2019, in that:**

- a) The Authority contends that when Appellants’ offer was opened no attachments were found, so that it had no other option but to deem Appellants’ offer as administratively non-compliant.**

**This Board, after having examined the relevant documentation to this appeal and heard submissions made by the parties concerned, opines that, since the issue that merits consideration represents an IT technical procedure, this same Board requested an opinion from an IT Technical Person in charge of the EPPS and in this respect, this Board received the following email which states:**

*“Following the advice given by the Board at the public hearing, IT Department at the Department of Contacts has confirmed that EO did in fact submit the attachments when requested through the Tender Response Format. The files were visible to the Evaluation Committee but not downloadable due to an issue which has since been solved.*

*Attached kindly find the offer (documents) submitted by the EO.*

*Marika Cutajar  
Principal  
Health-Central Procurement and Supplies  
Central Procurement Unit”*

**The above email confirms in actual fact that, due to a technical problem, Appellants’ documentation was visible to the Evaluation Committee but could not be downloaded, so that Appellants’ contentions were correct.**

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

- i. does not uphold the Contracting Authority’s decision in the award of the tender,**
- ii. upholds Appellants’ contentions,**
- iii. directs that the deposit paid by Appellants be fully refunded,**
- iv. directs that Appellants offer be reintegrated in the evaluation process.**

Dr Anthony Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Lawrence Ancilleri  
Member

Mr Carmel Esposito  
Member

*23 May 2019*