

PUBLIC CONTRACTS REVIEW BOARD

Case 1342 – CFT 020-0083/19 – Tender for the Provision of Devices for Percutaneous Closure of Atrial Septal Defects (ASD) and Patent Foramen Ovale (PFO)

The publication date of the call for tenders was the 1st February 2019 whilst the closing date of the call for tenders was 21st February 2019. The estimated value of the tender (exclusive of VAT) was € 58,176.

On the 17th June 2019 Technoline Ltd filed an appeal against Central Procurement and Supplies Unit as the Contracting Authority contesting the decision to disqualify them as their bid was in excess of the departmental budget and against the subsequent cancellation of the tender. A deposit of € 400 was paid.

There were three (3) bidders.

On 13th August 2019 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:

Appellants – Technoline Ltd

Ms Ivan Vassallo	Representative
Ms Damaris Lofaro	Representative

Contracting Authority – Central Procurement and Supplies Unit

Dr Marco Woods	Legal Representative
Ms Rita Zammit	Chairperson Evaluation Committee
Ms Claudine Aitken	Member Evaluation Committee
Ms Pauline Sultana	Representative

Dr Anthony Cassar, Chairman of the Public Contracts Review Board, welcomed the parties and prior to inviting submissions commented that appeals regarding bids which were in excess of budgets were a burden on bidders but it was the practice not to publish the estimated value of a tender.

Mr Ivan Vassallo Representative of Technoline Ltd said that the Contracting Authority was within its rights to cancel the tender as the bids were well over the budget. What has to be borne in mind is that at the opening of a tender all the prices become public knowledge which will put his firm

at a disadvantage when the tender is re-issued, as it is bound to be since the product is necessary for health reasons. As an alternative he suggested that since the tender has to be re-issued anyway the tender value should be revised in line with current market conditions and not set on prices quoted in the past. Previous tenders showed fluctuations in prices and the policy of relying on past prices should be reconsidered.

Ms Rita Zammit Chairperson of the Evaluation Committee said that the tender does not allow revisions and it was impossible to research the market each time that a tender was issued. The current thinking was that the tender will be reissued in the near future.

Dr Marco Woods Legal Representative of the Central Procurement and Supplies Unit said that since all bid prices are published Technoline will not be disadvantaged as they were on a level playing field with other bidders.

The Chairman acknowledged the confirmation from the CPSU that the tender will be reissued and said that the Board will base their decision on that basis. He thanked the parties for their submissions and declared the hearing closed.

This Board,

having noted this objection filed by Technoline Limited (herein referred to as the Appellants) on 17 June 2019, refers to the claims made by the same Appellants with regard to the cancellation of the tender of reference CFT 020-0083/2019 listed as case no 1342 in the records of the Public Contracts Review Board.

Appearing for the Appellants: Mr Ivan Vassallo

Appearing for the Contracting Authority: Dr Marco Woods

Whereby, the Appellants contend that:

a) Their main concern refers to the fact that the tender was cancelled for the simple reason that all the offers were outside the financial estimates of the Authority. In this regard, Appellants maintain that, since the tender is going to be re-issued, as is, and the estimates were based on outdated pricing, the tender should not be cancelled.

This Board also noted the Contracting Authority's 'Letter of Reply' dated 18 July 2019 and its verbal submissions during the hearing held on 13 August 2019, in that:

a) The Authority contends that, since no offer was within the estimated value, it had no other option but to cancel the tender.

This Board, having examined the relevant documentation to this appeal and heard submissions made by the parties concerned, opines that the issue that merits consideration is the reason for the cancellation of this tender.

1. Prior to considering the merits of this case, this Board was made aware that, such tender for this medical device, must be reissued under the same terms and conditions.

- 2. This Board acknowledges the fact that the Contracting Authority has the right to cancel the tender in accordance with clause 18 of the General Rules Governing Tenders. At the same instance, one has to appreciate that the offers were published and the cheapest offer, has, in actual fact established the minimum offer possible, so that all bidders are aware of the quoted prices.**

- 3. During the hearing, this Board noted that the estimated value of the tender was established by adding on 10% of the value of the previous tendered price. From the quoted prices and in particular, the quoted price of the incumbent supplier, the present estimated price is far too low and does not cater for the real increase in cost, since the last tendered quote, so that, this Board opines that the quoted values does, more or less, represent the going market rate.**

In conclusion, this Board opines that:

- a) The tender should not be cancelled due to any administrative miscalculations on the part of the Authority.**

- b) There is no logical justification to cancel this tender and issue another, with the same terms and conditions, knowing that, the prospective offers are not likely to be discounted by 50%.**

- c) From the offers received, which tend to be representing more than twice the estimated value, it can be safely deduced that the market price of the device is nowhere near the budgeted amount by the Authority.**

- d) The device has to be procured and it is the duty and obligations of the Authority to save the offers made.**

In view of the above, this Board,

- i) directs the Authority not to cancel the tender,**

- ii) directs the Authority to establish a realistic estimated value,**

- iii) directs the Authority to resume the evaluation process of all the offers,**

iv) directs that the deposit paid by Appellants should be fully refunded.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Carmel Esposito
Member

22 August 2019