PUBLIC CONTRACTS REVIEW BOARD

Case 1356 – CFT 019-0326/19 – Tender for the Provision of Portable Automated External Defibrillators for Mater Dei Hospital

The publication date of the tender was the 5th April 2019 whilst the closing date was 9th May 2019. The estimated value of the tender (exclusive of VAT) was € 63,000

On the 5th August 2019 Pharma-Cos Ltd filed an appeal against the Central Procurement and Supplies Unit as the Contracting Authority contesting the decision to disqualify their bid as it was not technically compliant. A deposit of € 400 was paid.

There were four (4) bidders and six (6) bids.

On 24th September 2019 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – Pharma-Cos Ltd

Dr Matthew Paris	Legal Representative
Mr Marcel K Mifsud	Representative
Mr Stephen Attard	Representative
Mr Claudio Martinelli	Representative
Ms Luana Vella	Representative

Preferred Bidder – Technoline Ltd

Mr Nicky Sammut	Representative
Mr Bjorn Bartolo	Representative

Contracting Authority – Central Procurement and Supplies Unit

Dr Marco Woods	Legal Representative
Mr Albert Incorvaja	Secretary Evaluation Board
Mr Samuel Bonnici	Member Evaluation Committee
Mr Jimmy Bartolo	Member Evaluation Committee
Ms Lisa Wright	Member Evaluation Committee
Ms Ruth Spiteri	Representative

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

Dr Matthew Paris Legal Representative for Pharma-Cos Ltd stated that the Appellant was aggrieved at their exclusion but more so as contrary to the claim by the Central Procurement and Supplies Unit no clarification had been submitted by Appellant.

Dr Marco Woods Legal Representative for the Central Procurement and Supplies Unit (CPSU) said that this was an error on the part of his clients and he can confirm that no clarification was sought by Appellants.

Dr Paris then went on to state that the CPSU were claiming that the document tabled as Doc 1 was compiled by the Appellant, whereas in fact it was a document originated by the manufacturers of the product in question.

Dr Woods said that the CPSU agreed that the document originated from the manufacturers and this claim was also withdrawn. However the overall rejection of the bid still applied.

Dr Paris said that the reason for Appellants' bid rejection, according to the Contracting Authority was that the equipment offered did not include real time Cardiopulmonary Resuscitation (CPR) feedback (hereinafter referred to as 'feedback') and that no documentation in this regard had been submitted with the bid. The Technical Specifications made no reference to feedback and this change of specifications appeared later through a clarification sought by another party. The European Resuscitation Council Guidelines (ECR) for 2015 was tabled as Doc 2 and reference was made to a paragraph on page 89 dealing with feedback on compression techniques which indicated the various forms of feedback procedures accepted in the European Union. A further datasheet titled Lifepak CR 2 Defibrillator (Doc 3) was tabled. This was submitted with the original bid and showed that their product met fully with specification 2.3 of the tender requirements and tallied with the provisions of ECR 2015. Having met all the mandatory requirements Appellants had still been disqualified.

Mr John Mary Bartolo (228464M) called as a witness by the PCRB testified on oath that he was one of the evaluators of the tender. The documents submitted by Appellants did not indicate that they offered real response feedback. The guidelines required depth and rate of compression feedback whilst CPR is being applied and this did not appear in any documents submitted.

Questioned by Dr Paris witness confirmed that feedback was only requested in the clarification note but not in the original tender. In reply to further questions witness confirmed that according to the ECR 2015 more than one form of feedback is available and acceptable. Referred to Doc 3 witness accepted that Appellants' bid offered voice and metronome facility; however he did not feel that voice prompts and metronome satisfy the requirements of the tender as the depth of compression was not indicated. The guidelines issued in the clarification indicated a compression

depth of 5 to 6 cm and 100 to 120 beats per minute. Appellants' submissions do not show these details.

Mr Ben Mundigian (UK Passport 560646720) called as a witness by Appellants testified on oath that he has been the Development Manager for Physio-Control Company since 2013 with experience of working in the Middle East, North Africa and Turkey. He stated that the equipment Lifepak CR2 has real time feedback. He explained in detail the process when it is in use with metronome and compression instructions tailored to what is being done to the patients' chest with constant and continuous real time advice during use. Both instructions and feedback are built into the electrodes of the instrument such that if the operator is not compressing correctly or not at the correct rate the instrument tells you.

Dr Paris referred the witness to ERC 2015 (Doc 2) and he confirmed that the product meets all the specifications listed in real time. Referred to Doc 3 witness stated that the system will adjust according to what it is reading on the patients' state. The product meets not only all the requirements of the tender specifications but is the only product on the market that meets specification 2.8 in the technical specifications.

Questioned by Dr Woods witness said that their product performs the best chest compression in real time - it does not tell the depth you should compress at but by following the advice on the angle of elbow use it ensures that the user is operating at the correct depth.

Dr Paris said that the reason for exclusion was that the original documents were deemed to be insufficient - a sign that the evaluation was not carried out correctly. On this point alone Appellants bid should be re-evaluated and the Public Contract Review Board should uphold the appeal. With regard to the merits of the feedback, the product offered is top class and as shown during the hearing the manufacturers have gone to great lengths to uphold their product's reputation. The impression given during the hearing is that to the evaluation committee the only meaning of real time was the depth of the compression when all the entire tender documents point otherwise. Referring to specification 2.8 in the tender Dr Paris said that Appellants' product meets all the requirements.

Dr Woods said that the CPSU claim is that documents submitted are not sufficient to meet the requirements of the evaluation committee. No feedback is available on the depth of the compression in Appellants' product and therefore the offer fails.

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

End of Minutes

Decision

This Board,

having noted this objection filed by Pharma-Cos Ltd (herein after referred to as the Appellants) on 5 August 2019, refers to the claims made by same Appellants with regard to the tender of reference CFT 019-0326/19 listed as case no 1356 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 Matthew Paris

Appearing for the Contracting Authority: Dr Marco Woods

Whereby, the Appellants contend that:

a) **Their offer was rejected due to the alleged claim that their equipment did not include 'Real Time Cardiopulmonary Resuscitation (CPR) Feedback'. In this regard, Appellants strongly maintain that there is more than one system of feedback and their product does contain the necessary features to satisfy this requirement.**

This Board also noted the Contracting Authority's 'Letter of Reply' dated 22 August 2019 and its verbal submissions during the hearing held on 24 September 2019, in that:

a) **The Authority contends that from the literature submitted by Appellants, there was no indication that the feedback feature whilst operating the equipment, was present in Appellants offer. In this respect, since this particular feature is of the utmost importance and same was missing, Appellants' offer was deemed technically non-compliant.**

This same Board also noted the testimony of the witnesses:

Mr John Mary Bartolo, duly summoned by the Public Contracts Review Board

Mr Ben Mundigian, duly summoned by Pharma-Cos Ltd.

This Board has also taken note of the documents submitted by Pharma-Cos Ltd which consisted of:

Doc 1, technical literature from manufacturers of Lifepak LR2

Doc 2, evidence by European Resuscitation Council

Doc 3, data sheet of 'Lifepack CR2' defibrillator

This Board, after having examined the relevant documentation to this appeal and heard submissions made by the parties concerned, including the testimony of the witnesses duly summoned, opines that the issue which merits consideration is whether Appellants equipment meets the technical specifications as duly stipulated in the tender document.

1. **This Board was made aware of the importance of the inclusion of feedback in the equipment, while CPR was being administered in such a 'Life or Death' situation. The objective of the feature is to guide and administer the proper application of the procedure itself. This Board was also informed that such a procedure, on certain occasions, is carried out by not so highly qualified personnel, so that, 'Real Time Feedback' is of the utmost importance for proper guidance to the actual application of the equipment.**

2. **This Board would respectfully refer to an extract from the 'European Resuscitation Council Guidelines' wherein, under the heading of 'Compression Technique', it is stated as follows:**

   "The use of CPR feedback and prompt devises during CPR in clinical practice, is intended to improve CPR quality as a means of increasing the

chances of survival. The forms of feedback include voice prompts, metronomes, visual dials, numerical display, waveforms, verbal prompts and visual alarms".

At the same instance, this Board would also refer to the data sheet included in Appellants' original submissions, with special reference to paragraph entitled 'CPR Coaching' which describes Appellants' offered equipment specifications in this regard, as follows:

"CPR Coaching: instructions for adult and paediatric CPR, including feedback when no CPR is detected, rate and depth guidance, a metronome and instructions on hand placement".

From the above, it can be safely deduced that Appellants' product meets fully with specification 2-3 (Technical Specifications) of the tender document.

3. **This Board also noted the testimony of Mr John Mary Bartolo who confirmed that according to the ECR 2015 guidelines, more than one form of feedback is available and acceptable. At the same instance, witness also confirmed that Appellants' equipment provided voice prompts and metronome: however, he also indicated that Appellants'**

offer did not indicate the compression depth and heart beat per minute. Regarding this non-indicated feature, a credible explanation was given by the witness namely Mr Ben Mundigian who clarified that, when the equipment is in use with metronome and compression instructions, the machine has built in electrodes which will ensure and guide the operator to apply compression at the correct rate and the correct depth.

4. **This Board would respectfully refer to clause 2.8 of the technical specifications of the tender document which states that:**

   "the AED shall be able to analyse the underlying patient rhythm even during ongoing compressions".

   In this respect, this Board noted Appellants' unrebutted claim that their machine is the only product on market that meets the above-mentioned specification and at the same instance, this Board noted that such a claim was not contested by the Authority.

In conclusion, this Board opined that:

a) **It acknowledges that the equipment being procured by the Authority will be applied under a 'Life or Death' situation and also understands that,**

such equipment should be as user friendly as possible, having the best of real time feedback facility, for the benefit and well-being of the patient.

b) From the submissions made by the parties concerned and the testimony of the technical witnesses, this Board is not comfortably assured that, all the technical specifications of Appellants' product were closely examined and assessed, during the evaluation process.

c) Appellants' unrebutted claim that their machine is the only product that meets clause 2.8 of the technical specifications creates a concern to this Board since, it might imply that the other offers do not meet the requirement of such an important condition and in this regard, such an implication must be addressed by the Evaluation Committee.

In view of the above, this Board,

i. Does not uphold the Contracting Authority's decision in the award of the tender,

ii. directs that Appellants' offer be re-integrated in the evaluation process,

iii. directs the Authority to appoint an Evaluation Committee differently composed,

iv. directs the new Evaluation Committee to take into consideration this Board's findings and examine closely the technical specifications of all the offers received, in the Evaluation process,

v. directs that the deposit paid by Appellants be fully refunded.

Dr Anthony Cassar	Dr Charles Cassar	Mr Lawrence Ancilleri
Chairman	Member	Member

10 October 2019