

PUBLIC CONTRACTS REVIEW BOARD

Case 1369 – CT 2268/2018 – Tender for the Supply of Drip Sets Adults

The publication date of the tender was the 17th October 2018 whilst the closing date was the 20th November 2018. The estimated value of the tender (exclusive of VAT) was € 153,099.

On the 5th September 2019 Technoline Ltd filed an appeal against the Central Procurement and Supplies Unit as the Contracting Authority on the grounds that their bid was rejected as it was technically non-compliant. A deposit of € 765 was paid.

There were fifteen (15) bidders.

On 17th October 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 – Technoline Ltd

Dr James Muscat Azzopardi	Legal Representative
Dr Maria Grech	Legal Representative
Mr Alan Mizzi	Representative
Ms Damaris Lofaro	Representative

Recommended Bidder – Micar Medics Ltd

Mr Keith Vassallo	Representative
Mr Raymond Theuma	Representative

Contracting Authority – Central Procurement and Supplies Unit (CPSU)

Dr Marco Woods	Legal Representative
Ms Marika Cutajar	Chairperson Evaluation Board
Ms Krystle Refalo	Secretary Evaluation Board
Mr Edmond Balzan	Member Evaluation Board

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

Dr James Muscat Azzopardi Legal Representative of Technoline Ltd stated that his clients' appeal was on two bids – however he was now advising the Board that the objection to Bid 104014 was being withdrawn.

Regarding Bid 104012 this was not accepted due to the lack of the manufacturers' name on the sample label, that the ISO in the literature is different from that on the package and the notified body on the EC Certificate is different from that on the package. The Board was referred to Doc B in the appeal letter which clearly indicates that the name and address of the manufacturer of the sample submitted are shown. Appellant also had in hand a signed receipt from the CPSU indicating receipt of the sample by them.

Dr Marco Woods Legal Representative of the Central Procurement and Supplies Unit stated that the sample allegedly submitted by Appellant (a duplicate of which was shown to the Board at this hearing) is not the same as the one handed to the CPSU. He referred the Board to Doc B and Doc D of the appeal letter which indicates that there exist two different sample labels.

Mr Edmond Balzan (472665M) called as a witness by the PCRБ testified on oath that he was a member of the evaluation committee. He stated that the sample claimed to have been sent by Appellants had not reached the CPSU. He displayed the samples actually received which did not bear manufacturers' name. There was no possibility of a mix-up of samples as clarification was asked from only one bidder. The samples received had not even been sent for testing once it was realised that the wrong sample had been sent.

Dr Muscat Azzopardi presented a copy of the receipt for the samples which even included the correct code number of the manufacturer signed for by a representative of the CPSU (Doc 1) and no further proof of submission was necessary. Appellant was not responsible if the samples were mislaid by the CPSU. Appellants had provided the maximum proof necessary to substantiate their claim.

Dr Woods said that the name of the manufacturer had definitely not been on the samples submitted - in fact when the samples had been received by the CPSU their Schedule of Samples had indicated 'Tech' under manufacturer due to the lack of a name (Doc 2). The evaluator had testified that the samples received were different to those claimed by Appellant. The details on the receipt in the hands of Appellants had been completed by themselves and there was no way of proving that those details referred to the samples provided.

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 Technoline Ltd (herein after referred to as the Appellants) on 5 September 2019, refers to the claims made by the same Appellants with regard to the tender of reference CT 2268/2018 (offer 104012 and 104014) listed as case No. 1369 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 James Muscat Azzopardi

Appearing for the Contracting Authority: Dr Marco Woods

Whereby, the Appellants contend that:

- a) They claim that their offer was unjustly disqualified due to the Authority's alleged contention that the samples so submitted, did not contain the manufacturer's name and that the ISO in the literature is different from that shown on the package. In this regard, Appellants insist that they have submitted the samples relating to their particular**

offer, containing all the requested information, for which the Authority itself issued a receipt.

This Board also noted the Contracting Authority's 'Letter of Reply' dated 17 September 2019 and its verbal submissions during the hearing held on 17 October 2019, in that:

- a) The Authority insists that the samples being claimed by Appellants to have been submitted, did not reach the Authority and in this regard, Appellants submitted samples referring to another offer and which did not bear the manufacturer's name.**

This same Board also noted the testimony of the witness namely:

Mr Edmond Balzan, Evaluator duly summoned by the Public Contracts Review Board.

This Board has also taken note of the documents submitted by Technoline Ltd and the Authority respectively which consisted of:

Doc 1 - receipt of samples

Doc 2 – schedule of samples presented by the Central Procurement and Supplies Unit

Appellants’ objection referred to their two submitted offers of reference 104012 and 104014, however during the hearing this Board was informed that Appellants are withdrawing their objection on their offer of reference number 104014, so that this Board will consider the merits of the objection on offer having reference No. 104012 only.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by the parties concerned, including the testimony of the witness duly summoned opines that the issue which merits consideration is the submission of samples.

- 1. It is common knowledge to all parties concerned that, when samples are requested, these must conform to all the technical specifications as stipulated in the tender document and must also confirm the details declared in the technical offer submitted by the bidder. At the same instance, the Evaluation Committee must carry out its deliberations whilst adhering strictly to the principle of self-limitation.**

- 2. In this particular case, the samples submitted by Appellants were clearly presented to this Board during the hearing and such samples do not denote the name of the manufacturer. On the other hand, this Board was made aware that samples submitted are received and recorded by non-technical personnel so that these are not checked as to contents, on the spot.**
- 3. This Board noted that the receipt of samples showing the code number of what should have been submitted by Appellants, was not compiled by the Authority, but signed for by the receiver of the Contracting Authority. In this regard, this Board opines that such receipt does not confirm that the correct samples were submitted by Appellants but rather acknowledges that Appellants submitted five samples.**
- 4. It is a logical circumstance that, the fact that the Contracting Authority has in its possession the samples, is proof enough that these were submitted by the Appellants and such samples do not show the manufacture's name and details. In this regard, it is obvious that the samples submitted by Appellants were not the proper ones and the Evaluation Committee could not ask for a clarification as otherwise they**

would have breached the basic principle of equal treatment and transparency.

In conclusion, this Board opines that:

- a) The receipt presented to this Board, marked as document number 1, does not, in any particular manner, provide credible evidence that the correct samples were submitted by Appellants, for reasons stated in the foregoing paragraph 3.**

- b) It was clearly proven by the Authority that, the samples received were not according to what was requested in the tender dossier and did not satisfy the objective for which they were requested.**

- c) The evaluation process was carried out in a fair and transparent manner throughout and this Board confirms that the Evaluation Committee could not ask for a clarification on this particular issue.**

In view of the above, this Board:

- i) does not uphold Appellants' contentions,**

ii) upholds the Contracting Authority's decision in the award of the tender,

iii) directs that the deposit paid by appellants should not be reimbursed.

Dr Anthony Cassar
Chairman

Mr Lawrence Ancilleri
Member

Mr Carmel Esposito
Member

25 October 2019