

## Public Contracts Review Board

### Case 1306 – CFT 020-1017/2018. Tender for the Supply of Alcohol Hand Rub

The publication date of the call for tenders was the 20<sup>th</sup> September 2018 whilst the closing date of the call for tenders was 10<sup>th</sup> October 2018. The estimated value of the tender (exclusive of VAT) was €143,640.

On the 21<sup>st</sup> February 2019, Martin Grima Limited filed an appeal against the Central Procurement and Supplies Unit as the Contracting Authority objecting that their bid was rejected as Appellant failed to submit the Financial Bid Form. A deposit of €718.20 was paid.

There were six (6) bidders

On the 2<sup>nd</sup> May 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 – Martin Grima Limited

Dr Jacques Farrugia	Legal Representative
Mr Martin Grima	Representative
Mr Carl Grima	Representative

#### Recommended Bidder – Cherubino Limited

Mr Paul Calleja

#### Contracting Authority – Central Procurement and Supplies Unit (CPSU)

Dr Marco Woods	Legal Representative
Ms Marika Cutajar	Chairperson Evaluation Committee
Ms Solange Vella	Secretary Evaluation Committee
Mr Edmond Balzan	Member Evaluation Committee

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

Dr Jacques Farrugia Legal representative of Martin Grima Limited requested that witness be heard before he made his submissions.

Mr Carl Grima (292089M) called as a witness by Appellants testified on oath that he was a representative of Martin Grima Ltd. He stated that this tender specified that the contract was for delivery of 66,500 bottles of alcohol hand rub in bottles of 500mls or 1 litre capacity in packs of 20 bottles per pack. Through human error the Technical Offer was uploaded for a second time instead of the Financial Bid Form – however the documents submitted still indicated the bid price of € 109,725 as a grand total price. When questioned witness confirmed that he accepted all the terms and conditions of the tender and he was aware that the Financial Bid Form formed part of the requirements of the tender and it had not been submitted.

Dr Farrugia said that the CPSU in clause 9.1 of Section 1 of the tender had indicated that the principal point of the tender was the cheapest price. In their submissions Appellants confirmed the volume, the packaging and the overall price of his offer but due to a clerical error had failed to upload the Financial Bid, duplicating instead the Technical offer. The Contracting Authority, totally against the principles of the Public Procurement Regulations acted disproportionately in rejecting Appellants' offer. The necessary information had all been supplied in a clear and transparent manner and the Contracting Authority deviated from the scope of the tender by failing to accept the cheapest offer. Reference was made to the Court of Appeal Case 440/2012 Ballut Blocks Services Ltd vs Minister for Resources and Rural Affairs in which it was held that enough information was supplied to meet the tender requirements even though the price was not stated. In this Case Appellants had clearly indicated the price. The Contracting Authority had enough information to have considered Appellants' offer.

Dr Marco Woods Legal Representative for the CPSU said that the detailed specifications had been incompletely submitted. Note 3 did not allow rectification – the Financial Form had not been uploaded and the bid was therefore incomplete. The Financial Bid was an integral part of the offer and the lack of it made the offer not compliant.

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

**This Board,**

**having noted this objection filed by Martin Grima Limited (herein after referred to as the Appellants) on 21 February 2019 refers to the claims made by the same Appellants with regard to the tender of reference CFT 020-1017/2018**

**listed as Case no 1306 in the records of the Public Contracts Review Board and awarded by Central Procurement and Supplies Unit (herein after referred to as the Contracting Authority).**

**Appearing for the Appellants: Dr Jacques Farrugia**

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

**Whereby, the Appellants contend that:**

- a) their main concern refers to the fact that, although their offer was the cheapest and technically compliant, it was rejected due to the simple fact that, inadvertently they failed to submit the financial bid form, although the price was quoted in their offer. In this regard, Appellants maintain that the Evaluation Committee should have applied the principle of proportionality.**

**This Board also noted the Contracting Authority's 'Letter of Reply' dated 1 March 2019 and its verbal submissions during the hearing held on 2 May 2019, in that:**

**a) The Authority insists that the detailed specifications had been incompletely submitted and since these fall under Note 3, no rectification was permissible so that Appellant's offer was deemed as technically non-compliant.**

**This same Board also noted the testimony of the witness namely,**

**Mr. Carl Grima duly summoned by Martin Grima Limited.**

**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 by Appellants, opines that the issue that merits consideration is the non-submission of the financial bid form by Appellants.**

- 1. This Board would refer to Appellants' claim that, the Authority deviated from the objective of the tender since it had not accepted the cheapest price. In this respect, this Board would respectfully point out that, although the award criterion was the price, same offer had to satisfy both the administrative and technical compliant factors.**

- 2. In this particular case, Appellants failed to submit the financial bid form so that their offer was incomplete and at the same instance, the Evaluation Committee could not request any clarification on the matter, as Note 3 of Clause 7 D clearly states that, no rectification shall be allowed. Only clarification on the submitted information may be requested.**
- 3. With regard to Appellant's reference to Court of Appeal Case 444/2012, this Board would pertinently point out that in that particular case, the situation was utterly different, in that, Appellant had submitted the financial bid form, whilst in this particular case, Appellants failed to submit such documentation and information contained in this form was missing.**
- 4. This Board would point out that both the Tenderer and the Authority are bound by the principle of self-limitation, so that, the Evaluation Committee has to evaluate on the submitted documentation and the stipulated conditions and technical specifications stipulated in the tender dossier. At the same instance, it must be emphasized that the financial bid form, forms an integral and important part of the tender document and non-submission of same renders the offer incomplete. Needless to note that, missing**

**technical and financial information cannot be rectified and, in this regard, this Board opines that the Evaluation Committee acted in a just and transparent manner when refusing the Appellant's offer.**

**5. With regard to Appellant's contention that the Authority's decision was disproportionate, this Board would justifiably point out that, the principle of proportionality should not be applied to rectify omissions made by the Tenderer, in the first place. At the same instance, such a principle should not obstruct self-limitation, transparency and equal treatment to all the submitted offers. In this respect, this Board opines that, in this particular case, there was no necessary instance for the principle of proportionality to be applied.**

**6. This Board would also point out that it is the responsibility and obligation of the Tenderer to submit all the requested documentation and not the obligation of the Evaluation Committee to request missing information. The Evaluation Committee must treat all offers on the same level playing field.**

**In conclusion, this Board opines that:**

**a) The Authority's decision to reject Appellants offer was not disproportionate.**

**b) Appellant's offer was incomplete due to the fact that the financial bid form which forms an integral part of the tender dossier, was not submitted.**

**c) The Evaluation Committee carried out the evaluation process in a just and transparent manner, having applied the principles of self-limitation, equal treatment and assessed all the offers on a level playing field.**

**d) There existed no appropriate instance for the Evaluation Committee to apply the principle of proportionality.**

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

- I. Does not uphold the Appellants contentions,**
- II. Upholds the Contracting Authority's decision in the award of the contract,**
- III. Directs that the deposit paid by Appellants should not be refunded.**

Dr Anthony Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Carmel Esposito  
Member

*14 May 2019*