

PUBLIC CONTRACTS REVIEW BOARD

Case 1602 – CFT 001-1327/20 (CPSU4270/20) Tender for the Supply of Whole Ham

19th August 2021

The Board,

Having noted the letter of objection filed by Mr Raymond Grech acting for and on behalf of Quality Meat Products Ltd, (hereinafter referred to as the appellant) filed on the 16th April 2021;

Having also noted the letter of reply filed by Dr Marco Woods on behalf of Central Procurement and Supplies Unit (hereinafter referred to as the Contracting Authority) filed on the 26th April 2021;

Having heard and evaluated the testimony of the witness Mr Ernest Theuma (member of the Evaluation Committee) as summoned by Dr Marco Woods acting for Central Procurement and Supplies Unit.

Having taken cognisance and evaluated all the acts and documentation filed, as well as the submissions made by the legal representatives of the parties;

Having noted and evaluated the minutes of the Board sittings of the 20th July 2021 & 10th August 2021 hereunder-reproduced.

Minutes

Case 1602 – CFT 001-1327/20. Tender for the Supply of Whole Ham

The tender was published on the 29th December 2020 and the closing date was the 18th January 2021. The value of the tender was € 56,781.

On the 15th April 2021 Quality Meat Products Ltd filed an appeal against the Central Procurement and Supplies Unit (CPSU) as the Contracting Authority objecting to their disqualification on the grounds that their offer was technically not compliant.

A deposit of € 400 was paid.

There were four (4) bidders.

On 20th July 2021 the Public Contracts Review Board (PCRB) composed of Mr Kenneth Swain as Chairman, Mr Lawrence Ancilleri and Dr Vincent Micallef as members convened a public virtual hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellant – Quality Meat Products Ltd

Mr Ray Grech

Representative

Contracting Authority – Central Procurement and Supplies Unit

Dr Marco Woods	Legal Representative
Mr Hristov Hristo Ivanov	Representative

Preferred Bidder – Attard & Co Food Ltd

Mr Pierre Pellegrini	Representative
Mr Joseph Micallef	Representative

Mr Kenneth Swain Chairman of the Public Contracts Review Board welcomed the parties. He noted that since this was a virtual meeting all the parties agreed to treat it as a normal hearing of the Board in line with Article 89 of the Public Procurement Regulations. He then asked Appellant's representative to make his submissions.

Mr Ray Grech Representative for Quality Meat Products Ltd said that his company's products show two labels – one indicating the supplier and on the other side the nutritional content (Appellant demonstrated a typical sample of a whole ham as submitted in his offer to the Board members). The image supplied by the CPSU in support of their letter of reply shows only one side of the product which makes one wonder why one side was missing – it could be that through handling the second label became detached.

Dr Marco Woods Legal Representative for the Central Procurement and Supplies Unit said that the Evaluation Committee can only go on what is presented to them and the image supplied indicates that only one label was found on the product and hence the technical specifications were not met.

Mr Grech stated that the paperwork supplied with the sample indicated the batch number which is similar to the sample displayed to the Board. Regrettably the label discrepancy means that the award went to a higher bidder.

Dr Woods replied that the value of the bid is not a matter considered in the technical aspect of a tender. The Authority is not at fault if the label became detached and this was not a rectifiable point. The sample produced cannot be considered for evaluation purposes.

A member of the Board asked Dr Woods if the Authority could provide the testimony of an evaluator to testify under oath that the label was missing when the evaluation was carried out but Dr Woods advised that there were no evaluators present at the hearing.

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

End of Minutes

SECOND HEARING

On the 10th August 2021 the Public Contracts Review Board (PCRB) composed of Mr Kenneth Swain as Chairman, Mr Lawrence Ancilleri and Dr Vincent Micallef as members convened a public virtual meeting to discuss further the objections.

The attendance for this public hearing was as follows:

Appellant – Quality Meat Products Ltd

Mr Ray Grech Representative

Contracting Authority – Central Procurement and Supplies Unit

Dr Marco Woods	Legal Representative
Mr Josef Borg	Chairperson Evaluation Committee
Mr Lawrence Cauchi	Member Evaluation Committee
Mr Ernest Theuma	Member Evaluation Committee
Mr Hristov Hristo Ivanov	Representative

Preferred Bidder – Attard & Co Food Ltd

Mr Pierre Pellegrini	Representative
Mr Joseph Micallef	Representative

Mr Kenneth Swain Chairman of the Public Contracts Review Board welcomed the parties. He noted that since this was a virtual meeting all the parties agreed to treat it as a normal hearing of the Board in line with Article 89 of the Public Procurement Regulations. He then reminded the parties that the point of this hearing was to hear the testimony of an evaluator regarding the missing label.

Mr Ernest Theuma (363570M) called as a witness by the Contracting Authority testified on oath that he was an evaluator of the tender in question. He stated that the sample was delivered to the provisions store and passed on to the evaluator. There was only one label on the sample package received with the company logo and the tender reference with no mention of nutritional value.

Questioned by Mr Ray Grech of the Appellant Company witness stated that the product sample met the quality requirements. In reply to a question from Dr Woods witness replied that no nutritional requirements were carried out.

Mr Grech said that this incident was a repeat of a previous event on another tender. It was a definite fact that the product was properly labelled and there were no shortcomings on the part of the Appellant who was fully aware of the labelling requirements and would not have risked an appeal had there been any doubt about it.

Dr Woods said that the Authority understood Appellant's point but their hands were tied by the self limitation principle. No proof had been provided that the product had been mishandled and the evaluation committee had no interest in which bid was successful. The Board cannot accept hearsay evidence that the label was on the packet and the Authority had no option but to refuse the bid.

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

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sittings of the 20th July 2021 & 10th August 2021.

Having noted the objection filed by Quality Meat Products Ltd (hereinafter referred to as the Appellant) on 16th April 2021, refers to the claims made by the same Appellant with regards to the tender of reference CFT 001-1327/20 listed as case No. 1602 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Mr Raymond Grech

Appearing for the Contracting Authority: Dr Marco Woods

The Board is also noting that there was a 'Reasoned Reply' filed on 26th April 2021 by Mr Raymond Grech on behalf of Quality Meat Products Ltd with further submissions. In this respect the Board has received an application from Dr Marco Woods acting for Central Procurement and Supplies Unit for this reply to be deemed inadmissible. The Board upholds Dr Marco Woods' application and invites all interested parties to follow the procedures as set out in the Regulations. All parties within the hearing will still have their opportunity to submit their verbal submissions hence no party should feel aggrieved to not having the opportunity to a fair hearing. Unless otherwise directed by the Board, written submissions, after the Objection Letter filed by the Appellant and Reasoned Letters filed by the Contracting Authority and Preferred Bidder, will not be accepted.

Whereby, the Appellant contends that:

- a) The appellant offer is the cheapest compliant and the labelling on the sample supplied conformed to the specification required.
- b) On 25th January 2021, the company emailed a photo of the product label from the same batch with the same expiry date as the sample supplied, as requested, three days after the delivery of the sample in question.
- c) The label is printed directly on the actual packaging so it is utterly impossible for this product not to be labelled.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 26th April 2021 and its verbal submission during the virtual hearings held on 20th July 2021 & 10th August 2021, in that:

- a) The Evaluation Committee is duty bound to analyse and review all information and documentation as submitted at Tendering stage.
- b) Evidently, the third technical specification (as listed in the Tender dossier) specifically requested that the product has the Nutritional Facts indicated on the label. Furthermore, the Tender clearly stipulated that the Sample provided must be identical to the final product which would be delivered further to the said Tender in the eventuality of award. CPSU contend that the sample which was provided by the objector did not contain any nutritional facts as specifically requested in the Tender document. The sample which was provided merely contained the Tender Reference, name of supplier and type of ham. No nutritional facts were present on the label as submitted.
- c) Email referred to by Appellant of 25th January 2021, was sent to Mr Reno Grech – Mental Health Services, however CPSU fail to understand the relevance of this email within the context of the Tender as well as of this objection, as Mr Reno Grech did not form part of the team handling this Tender, nor did he form part of the Evaluation team.
- d) Due to the fact that the label containing the nutritional facts of the product in question was not submitted at tendering stage nor at the time when CPSU requested samples of the products, the document sent to CPSU on 12th April 2021 at 10.43 am (after the closing date of submission, after the evaluation and subsequently after the notice of the rejection letter as issued by CPSU) cannot and could not be considered by the Evaluation Committee.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties including the testimony of the witness duly summoned, will consider Appellant's grievances, as follows:

1. The only issue which is relevant in this case is whether, in fact, there was a label attached to the sample provided to the Contracting Authority for evaluation with the necessary nutritional facts as per the 3rd technical specification in the tender dossier which read "*Nutritional Facts indicated on the label (in the English language) – ready packed articles must include an indication of the net weight and nutritional facts of the packed item.*"
2. Other matters;
 - a. such as the point raised by the Appellant that their offer was "*the cheapest compliant....*"; is deemed irrelevant since the Appellant's proposal stopped being evaluated at the technical stage and did not proceed to the last section of the evaluation process, being the financial section.
 - b. whereby the Appellant stated, "*Regrettably the label discrepancy means that the award went to a higher bidder*". This is also deemed irrelevant, since if a cheaper offer is deemed technically non-compliant; it does not proceed to the financial evaluation section.

3. This Board notes the testimony under oath of the Evaluation Committee member, Mr Ernest Theuma, whereby he stated that only one label was present on the sample provided which only included the company logo and the tender reference number. Nutritional information was not included.
4. To this end, this Board notes that the Evaluation Committee can only evaluate what is in front of it. The concept of 'Self Limitation' is crucial in achieving the objectives of Public Procurement. Therefore, the Evaluation Committee correctly concluded that the bid by the Appellant company to be deemed non technically compliant.

Therefore, this Board does not uphold Appellant's grievances.

In conclusion this Board;

Having evaluated all the above and based on the above considerations, concludes and decides at this stage:

- a) Does not uphold Appellant's Letter of Objection and contentions,
- b) Upholds the Contracting Authority's decision in the recommendation for the award of the tender,
- c) Directs that the deposit paid by Appellant not to be reimbursed.

Mr Kenneth Swain
Chairman

Dr Vincent Micallef
Member

Mr Lawrence Ancilleri
Member