

PUBLIC CONTRACTS REVIEW BOARD

Case 1609 – RFP 021-6125/20 – Request for Participation (Negotiated) for Over-labelling Services of Medicinal Products

3rd August 2021

The Board,

Having noted the letter of objection filed by Mr Mark Camilleri acting for and on behalf of Inspectra Ltd, (hereinafter referred to as the appellant) filed on the 17th May 2021;

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

Having heard and evaluated the testimony of the witness Dr Richard Despott (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 representatives of the parties;

Having noted and evaluated the minutes of the Board sitting of the 27th July 2021 hereunder-reproduced.

Minutes

Case 1609 – RFP 021-6125/20. Request for Participation (Negotiated) for Over-Labeling Services of Medicinal Products

The RfP was published on the 11th December 2020 and the closing date was the 11th February 2021. The value of the RfP was not stated.

On the 17th May 2021 Inspectra Ltd filed an appeal against the Central Procurement and Supplies Unit as the Contracting Authority objecting to their disqualification on the grounds that the offer was not the best offer on certain lots.

A deposit of € 400 was paid.

There were five (5) bidders.

On 27th July 2021 the Public Contracts Review Board (PCRB) composed of Mr Kenneth Swain as Chairman, Dr Vincent Micallef and Mr Richard Matrenza as members convened a public virtual hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellant – Inspectra Ltd

Mr Mark Camilleri Representative

Contracting Authority – Central Procurement and Supplies Unit

Dr Marco Woods Legal Representative
Dr Richard Despott Member Evaluation Committee
Mr Hristov Hristo Ivanov Representative

Preferred Bidders – Medical Logistics Ltd

Dr Karl Tanti Legal Representative
Ms Samantha Cusens Representative

- Consolidated Packaging Ltd

Dr Calvin Calleja Legal 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 Mark Camilleri Representative for Inspectra Ltd stated that the licence meets the eligibility criteria and the serialisation has been applied for and is being processed by the Medical Authorities. The only full and complete portfolio offer was that submitted by his Company. The lead times are secondary as the main criterion is the price as confirmed in the tender where it stated that this was a cost saving exercise. As this was a negotiated tender Appellant wondered why the Authority was not negotiating on the cheapest priced offer.

Dr Woods Legal Representative for the Central Procurement and Supplies Unit said that the technical specifications made it clear that price is not the only criterion otherwise why would the tender mention time lines – consideration was given to price and shorter time lines. Page 9 in the tender specifies maximum time frame. It appears that Appellant considered only the part of the tender that suited it.

Dr Richard Despott (38068M) called as a witness by the Authority testified under oath that he was an evaluator of the tender. He stated that eligibility and quality of the technical offers were considered as part of the evaluation process. Both costs and time lines were considered and the cost saving exercise was merely a part of the tender. Article 5.1 on page 4 of the tender dossier makes it clear that the tender was based on cost saving performance and minimum time lines. Appellant's offer in respect of lead times was not accepted as other bids had better time lines.

In reply to a question from Mr Camilleri witness stated that price and time lines were both considered and the tender was evaluated on quality and value.

Dr Karl Tanti Legal Representative for Medical Logistics Ltd referred the Board to his written submissions. He said that Inspectra expects to be given preference because they had applied for all nine portfolios but the Evaluation Committee was not obliged to give them the full award bearing in mind that the criteria were set for the overall tender not for the parts.

Dr Calvin Calleja Legal Representative for Consolidated Packaging Ltd said that he does not agree that the time line was a criterion when several references in the tender refer to the best financial offer – the time line was subordinated to cost.

Mr Camilleri expressed the view that negotiations should start with the cheapest offer that had reasonable time lines with price being the first preference.

Dr Woods stated that time lines were not a secondary requirement and the technical criteria were to be read *in toto* as they were linked to each other. Various interpretations have been made of the criteria to suit certain bidders; bids must be considered as a whole.

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

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 27th July 2021.

Having noted the objection filed by Inspectra Ltd (hereinafter referred to as the Appellant) on 17th May 2021, refers to the claims made by the same Appellant with regards to the tender of reference RFP 021-6125/20 listed as case No. 1609 in the records of the Public Contracts Review Board.

Appearing for the Appellant:	Mr Mark Camilleri
Appearing for the Contracting Authority:	Dr Marco Woods
Appearing for the Preferred Bidder:	Dr Karl Tanti
Appearing for the Interested Party (Consolidated Packaging Ltd):	Dr Calvin Calleja

Whereby, the Appellant contends that:

- a) The RfP states “Preference will be given to the bidder offering the complete portfolio of the 9 subtitles”. Appellants are sure that they were the only Bidders that offered a price for all 9 subtitles. Therefore, they should have had preference over other bidders.
- b) The Appellant’s offer, by inference was cheaper. The RfP does say that due consideration will also be given to offers with tangible advantages in shorter timeframes, but the main Criterion is Price.

Having the cheapest offer and reasonable lead times, it is expected that the CPSU would negotiate with the Appellant for better lead times before recommending a more expensive offer.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 26th May 2021 and its verbal submission during the virtual hearing held on 27th July 2021, in that:

- a) CPSU submit that the reasons why their offer for sub types 1, 1.1a, 2, 2.1a, 3 and 3.1a were not accepted as due to the fact that the Recommended Bidder proposed shorter lead times.
- b) The sole award criterion clearly stated *"the Contract for each respective Works Order sheet will be awarded to the Economic Operator submitting the cheapest offer; **provided that the offer reflects the minimum timelines**, which ensure least delay in making the medicinal product available to users within the Government Healthcare Service. In this regard, **due consideration will also be given to those applicants who offer tangible advantages in terms of shorter timeframes and overall reduction of logistical delays.**"*
- c) The RfP clearly outlined that the cheapest technically compliant offer will be chosen, provided that the offer reflects the minimum timelines.
- d) The offer as submitted by the preferred bidder did in fact provide the more advantageous Lead Times, and due to this their offer was chosen for the sub-types in question. It is irrelevant for the objector to state that their offer was the most advantageous offer due to the fact that they had the cheapest offer with **reasonable** lead times in seeking to justify their offer.
- e) In justifying their objection, the Objectors specifically refer to the extract from the RfP, which states *"Preference will be given to the bidder offering the complete portfolio of the 9 sub-titles"*. CPSU submit that the sub-types will be divided between different economic operators depending on the offers as submitted. The clause above does not change the fact that the preferred bidder provided shorter and more advantageous lead times in order to carry out the services requested in the sub types 1, 1.1a, 2, 2.1a, 3 and 3.1a.

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:

- a) It is imperative to note that the sole award criterion of this tender dossier is making reference to both the ***'cheapest offer'*** and also the ***'minimum timelines'*** which will inherently have tangible advantages in terms of shorter timeframes and overall reduction of logistical delays. The award criterion is to be read and interpreted *'in toto'*.

- b) With regards to the Appellant's contention that "*Preference will be given to the bidder offering the complete portfolio of the 9 sub titles.*" this Board humbly points out that this is not a binding clause on the Evaluation Committee and / or the Contracting Authority.
- c) The Evaluation Committee's assessment had to be based on both the cost element and the time lines offered by the prospective bidders. This was stated under oath by Dr Richard Despott, member of the Evaluation Committee, whereby it was also stated that the tender dossier is explicit in Section 1 – Instructions to Tenderers, paragraph 5.1 whereby this was a cost saving exercise but also due importance was to be given to minimum time lines offered.
- d) The preferred bidder did offer shorter lead time for sub sections 1, 1.1a, 2, 2.1a, 3 and 3.1a.

When considering all the above, this Board decided not to uphold the Appellant's grievances.

The Board,

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

- 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 Richard Matrenza
Member