

PUBLIC CONTRACTS REVIEW BOARD

Case 1593 – CPSU 2404/2020 – Tender for the Supply of Low Profile Gastronomy Kits and Accessories

8th July 2021

The Board,

Having noted the letter of objection filed by Dr Francis Cherubino acting for and on behalf of Cherubino Ltd, (hereinafter referred to as the appellant) filed on the 26th March 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 30th March 2021;

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 sitting of the 6th July 2021 hereunder-reproduced.

Minutes

Case 1593 – CPSU 2404/2020. Tender for the Supply of Low Profile Gastronomy Kits and Accessories

The tender was published on the 11th December 2020 and the closing date was the 6th January 2021. The value of the tender was € 69,465.

On the 26th March 2021 Cherubino Ltd filed an appeal against the Central Procurement and Supplies Unit as the Contracting Authority objecting to their disqualification on the grounds that their offer was rejected since the financial bid cannot be rectified as requested by Appellant.

A deposit of € 400 was paid.

There were three (3) bidders.

On 6th July 2021 the Public Contracts Review Board (PCRB) composed of Mr Kenneth Swain as Chairman, Dr Charles Cassar 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 – Cherubino Ltd

Dr Matthew Paris

Dr Francis Cherubino

Legal Representative

Representative

Contracting Authority – Central Procurement and Supplies Unit (CPSU)

Dr Marco Woods
Mr Emanuel Gravino

Legal Representative
Representative

Preferred Bidder – Prohealth Ltd

Dr Alessandro Lia
Dr John Jaccarini

Legal Representative
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.

Dr Matthew Paris Legal Representative for Cherubino Ltd said a genuine error had occurred in uploading the tender in that in one of the items on the Financial Bid Form the wrong price had been inserted. An attempt to request this to be altered was rejected since the bid cannot be rectified. Appellant was not requesting change at this stage but simply that the amount as submitted in the bid form is accepted. The CPSU in paragraph 4 of their letter of reply indicated that subject to the decision of the Board they were amenable to a re-evaluation of the offers as submitted at the tendering stage. Appellant confirms the submitted bid in its entirety and will abide by the decision of the Board.

Dr Marco Woods Legal Representative for CPSU said that once Appellant had confirmed the submitted form in its entirety than it would be sensible to re-evaluate the tender.

Dr Alessandro Lia Legal Representative for Prohealth Ltd did not object to a re-evaluation but requested confirmation that the erroneous offer made of € 11 per pack stands and hoped that the CPSU will bear in mind the possibility of an abnormally low tender in that case.

Dr Paris said that Dr Lia was jumping the gun at this stage and it was up to the evaluation committee to consider the abnormally low aspect when they get to it.

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 6th July 2021.

Having noted the objection filed by Cherubino Ltd (hereinafter referred to as the Appellant) on 26th March 2021, refers to the claims made by the same Appellant with regards to the tender of reference CPSU 2404/2020 listed as case No. 1593 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Matthew Paris

Appearing for the Contracting Authority: Dr Marco Woods

Whereby, the Appellant contends that:

- a) ***Offer is cheapest technically compliant*** – Appellant emphasises that the email dated 6th January 2021 sought permission to rectify the submission by the appellant company. It did not per se rectify and / or alter anything within the submitted bid. The original offer was never withdrawn, nor altered.
- b) ***Principle of proportionality*** – the Contracting Authority should have applied the principle of proportionality in evaluating this tender, a principle which was not upheld in the current context. Adopting the principle to this case, would have maintained that, whilst rejecting in its entirety the request for rectification, the offer by the Appellant should have retained its status within the evaluation, without further action.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 30th March 2021 and its verbal submission during the virtual hearing held on 6th July 2021, in that:

- a) The Contracting Authority contends that the Financial Bid Form is constituted as a Note 3 document, and therefore no rectifications are permitted to the said document once submitted.
- b) It appears that objectors are not insisting on any form of rectification and do not wish to alter their financial bid form as submitted at tendering stage.
- c) The Authority indicated that subject to the decision of this Board it would not be averse to a re-evaluation of the offers as submitted

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

The Board:

- notes that the Appellant company confirmed that they are not insisting on any form of rectification and do not wish to alter their financial bid as submitted at tendering stage.
- notes that in actual fact there was no rectification done on the financial bid form and this was never altered
- the Appellant requested the opportunity for a rectification but this was not acceded to
- hence no amendment and / or rectifications were done to the original financial bid form
- opines that the Evaluation Committee should have kept the original offer by the Appellant in its original status and evaluated it on this original accord.

Therefore, the Board upholds Appellant's grievances.

In conclusion this Board;

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

- a) To uphold the Appellant's concerns and grievances;
- b) To cancel the Letter of Acceptance dated 16th March 2021 sent to "Prohealth Ltd";
- c) To cancel all the Letters of Rejection dated 16th March 2021;
- d) To order the contracting authority to re-evaluate all the bids received in the tender and therefore re-instating the offer by Cherubino Limited;
- e) after taking all due consideration of the circumstances and outcome of this Letter of Objection, directs that the deposit be refunded to the Appellant.

Mr Kenneth Swain
Chairman

Dr Charles Cassar
Member

Mr Richard Matrenza
Member