

## **PUBLIC CONTRACTS REVIEW BOARD**

### **Case 1668 – CT 2326/2020 – Tender for the Supply of Safety Blood Collection Set and Holder 21Gx<sup>3/4</sup>**

**10<sup>th</sup> January 2022**

The Board,

Having noted the letter of objection filed by Dr Francis Basile Cherubino for and on behalf of Cherubino Limited, (hereinafter referred to as the appellant) filed on the 22<sup>nd</sup> November 2021;

Having also noted the letter of reply filed by Dr Alexia Farrugia Zrinzo and Dr Leon Camilleri acting for the Central Procurement and Supplies Unit (hereinafter referred to as the Contracting Authority) filed on the 2<sup>nd</sup> December 2021;

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 6<sup>th</sup> January 2022 hereunder-reproduced;

#### **Minutes**

#### **Case 1668 – CT 2326/2020 – Tender for the Supply of Safety Blood Collection Set and Holder 21G x <sup>3</sup>/<sub>4</sub>"**

The tender was issued on the 30<sup>th</sup> October 2020 and the closing date was the 1<sup>st</sup> December 2020. The value of the tender, excluding VAT, was € 1,374,450.

On the 22<sup>nd</sup> November 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 bid was rejected since no samples were submitted.

A deposit of € 6,872 was paid.

There were nine (9) bidders and ten (10) bids.

On the 6<sup>th</sup> January 2022 the Public Contracts Review Board composed of Mr Kenneth Swain as Chairman, Dr Charles Cassar and Ms Stephanie Scicluna Laiviera as members convened a public virtual hearing to consider the appeal.

The attendance for this public hearing was as follows:

#### **Appellant – Cherubino Ltd**

Dr Francis Cherubino

Legal Representative

## **Contracting Authority – Central Procurement and Supplies Unit**

Dr Leon Camilleri	Legal Representative
Ms Marika Cutajar	Member Evaluation Committee
Ms Jacqueline Borg	Member Evaluation Committee

## **Preferred Bidder – Cherubino Ltd**

Dr Francis Cherubino	Legal Representative
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## **Department of Contracts**

Dr Kristina Busuttil	Legal Representative
Mr Nicholas Aquilina	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 invited submissions noting that the Contracting Authority had proposed a re-evaluation of the tender.

Dr Francis Cherubino Legal Representative for Cherubino Ltd said that the CPSU now accepts that samples had been submitted and Appellant accepts the offer to re-evaluate the tender whilst seeking a refund of the deposit paid.

Dr Leon Camilleri Legal Representative for the Central Procurement and Supplies Unit said that the Contracting Authority relied on their letter of reply to the objection.

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

End of Minutes

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**Hereby resolves:**

The Board refers to the minutes of the Board sitting of the 6<sup>th</sup> January 2022.

Having noted the objection filed by Cherubino Limited (hereinafter referred to as the Appellant) on 22<sup>nd</sup> November 2021, refers to the claims made by the same Appellant with regards to the tender of reference CT 2326/2020 as case No. 1668 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Francis Basile Cherubino

Appearing for the Contracting Authority: Dr Leon Camilleri

Whereby, the Appellant contends that:

- a) Whereas, by means of a letter dated 12<sup>th</sup> November 2021, Appellants where informed that their offer with reference TID 144887 was being rejected since no samples were submitted;
- b) Whereas, Appellants feel aggrieved by such a decision, as samples were in fact submitted as well as received, based on the above consideration.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 2<sup>nd</sup> December 2021 and its verbal submission during the virtual hearing held on 6<sup>th</sup> January 2022, in that:

- a) CPSU and DOC agree with the objector that the samples in relation to tender number 144887 were in fact provided and submit that disqualification letter was issued erroneously. CPSU and DOC therefore agree that the disqualification letter should be withdrawn, and the tender is re-evaluated

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:

- a) The Board notes the Contracting Authority's same admission that the samples in reference to bid 144887 were in fact provided. Therefore, it agrees and upholds Appellant's grievances.

**The 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 'Notice of Award' letter sent to Cherubino Limited regarding offer number 144948;
- c) To cancel the Letters of Rejection dated 12<sup>th</sup> November 2021;
- d) To order the contracting authority to re-evaluate the bid received from Cherubino Limited (offer number 144887) in the tender;
- 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

**Ms Stephanie Scicluna Laiviera**  
Member