

In the Public Contracts Review Board

3rd December 2021

Re: Objection Ref 009-6055/21 CPSU158/17 - Request for Quotations for the Supplies of Oxygen Concentrators on Loan for 12 Months including all consumables

Reply of the Central Procurement and Supplies Unit (CPSU) to the objection lodged by OK Medical Limited (C79739) (objectors).

1. On the 10th of August 2021, CPSU issued a request for Quotations to enter into a negotiated procedure without prior publication in terms of regulation 150 and 153 of the Public Procurement Regulations.
2. By means of a letter of rejection, the objector was informed that its 2 offers were being rejected, one because it was not technically compliant and the other because it was not the cheapest compliant offer.
3. The objectors allege that the bidder recommended for negotiations, Sidroc Services Ltd, is not technically compliant and is therefore filing the present objections.

Submissions

On the procedure

4. Primarily CPSU submits that the procedure used in the case in question was a negotiated procedure without prior publication in terms of regulation 150 et seq of the Public Procurement Regulations;
5. That the above effectively means that in such a situation, the contracting authority regulates its own procedure whilst respecting the general principles of public procurement legislation.
6. This effectively means also that the contracting authority could have proceeded to acquire directly from a particular supplier without requesting various quotations from different suppliers;
7. However, various Quotations from various suppliers, known to the contracting authority were acquired out of the contracting Authority's public responsibility in trying to acquire the supplies or services at the best market price possible, and this in the best general interest;



8. CPSU therefore submit that this Honourable Board in deciding this case ought to take into consideration that this is a particular procedure undertaken in a particular scenario and should consider that the contracting authority should, whilst respecting the basic principles of public procurement legislation, be afforded more flexibility in determining who shall supply the products or services;
9. Although CPSU notes that the procedure undertaken is not in any way being challenged in this objection, CPSU submit for purposes of clarity that this procedure was resorted to as it was a case of urgency and for a short time span of 12 months until a new contract following a competitive process is in place;
10. This was required on the basis of urgency since there was the necessity of redrafting of the tender document which was being prepared;
11. The contracting Authority' s primary motivation to use this form of procedure to acquire the service was to ensure that service availability is not in any way interrupted. In fact, although currently the service is still being given by the economic operator, who happens to be the objector, after the expiration of a previous contract, the service is being given without a contractual basis;

On the Grievances of the Objector

12. The grievance of the objectors is that the economic operator recommended to negotiate with the contracting authority was not technically compliant with the technical specifications circulated by CPSU;
13. The objector alleged that following market research it resulted to it that the flow rate of the model submitted by the recommended economic operator for the type 2 Oxygen Concentrator, was 2-10 litres per minute (LPM), not 0.5 - 10 (LPM) as requested in the circulated specifications;
14. Moreover the objectors alleged that the sound level of the model submitted by the recommended economic operator for the type 2 Oxygen Concentrator was 58DBA and not 50DBA (+/- 5DBA) as requested in condition 2.6 of the request for quotations;
15. With regard to the DBA levels, CPSU submit that from the documentation which it was provided by the recommended economic operator it results that the DBA levels of the New Life Intensity 10, the DBA levels are 55DBA, the maximum permissible DBA level according to the technical specifications circulated, but still in conformity with the specifications required;

16. With regard to the LPM levels, CPSU submits, that it is true that the LPM level of the product offered by the recommended economic operator was 2LPM-10LPM, **however all quotations submitted were offering a 2LPM-10LPM Oxygen concentrator for the type 2 requested;**
17. In order to clarify for the benefit of this Honourable Board, CPSU submits that, as stated in the objection, the quotation was requested for 2 types of oxygen concentrators, one ranging from 0.5LPM(+/- 0.5LPM) to 5LPM(+/- 0.2LPM) and another ranging from 0.5LPM(+/- 0.5LPM) to 10LPM (+/- 0.5LPM);
18. The oxygen concentrators with up to 10LPM are used in a small number of cases, circa 5-10% of cases, when the required LPM level is above 5LPM, which effectively means that for cases where the required LPM is below 5LPM, the oxygen concentrators with up to 5LPM are used;
19. Given that all submitted quotations were offering for type 2 oxygen concentrators (up to 10LPM) a 2LPM to 10LPM, given the urgency and type of procedure (negotiated procedure without prior publication), the evaluators decided, in line with the principle of proportionality, that the procurement cycle should be saved, in the interest of all the bidders, the contracting authority and always in respect to the best interest of the patients;
20. The evaluator's decision was also taken with full respect to the principle of equal treatment since all economic operators submitting their quotation, with respect to the same criterion were offering the same LPM range of 2LPM-10LPM;

CPSU hereby reserving their right to present further evidence both written and orally to further their submissions in relation to the said application throughout the hearings.

In view of the above, the objection lodged by the objectors ought to be rejected in full, whilst the decision of the Contracting Authority and the Evaluation Board confirmed, and the relevant deposit forfeited.

With Costs.

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