

PUBLIC CONTRACTS REVIEW BOARD

Case 1697 – LCA 004/2021 – Tender in Lots for Automatic External Defibrillators (AEDs) including Protective Cabinets and Training

18th March 2022

The Board,

Having noted the letter of objection filed by Dr Clement Mifsud Bonnici and Dr Calvin Calleja on behalf of Ganado Advocates acting for and on behalf of OK Medical Limited, (hereinafter referred to as the appellant) filed on the 7th February 2022;

Having also noted the letter of reply filed by Dr Leon Camilleri acting for the Association of Local Councils (hereinafter referred to as the Contracting Authority) filed on the 16th February 2022;

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 17th March 2022 hereunder-reproduced;

Minutes

Case 1697 – LCA004/2021 – Tender for the Supply of Automatic External Defibrillators (AEDS) including Protective Cabinets and Training (Four Lots)

The tender was issued on the 11th November 2021 and the closing date was the 10th December 2021. The value of the tender, overall, excluding VAT, was € 98,800

On the 7th February 2022 OK Ltd filed an appeal against the Local Councils Association as the Contracting Authority objecting to their disqualification on all four lots on the grounds that their offer was deemed not to be the cheapest.

A deposit of € 400 per lot was paid.

There were five (5) bidders.

On the 17th March 2022 the Public Contracts Review Board composed of Mr Kenneth Swain as Chairman, Dr Charles Cassar and Dr Vincent Micallef as members convened a public virtual hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – OK Ltd

Dr Clement Mifsud Bonnici
Dr Calvin Calleja

Legal Representative
Legal Representative

Mr Andrew Meli Representative

Contracting Authority – Local Councils Association

Dr Leon Camilleri Legal Representative
Mr Mario Fava Representative
Ms Lianne Cassar Representative

Interested Party – Pharma-Cos Ltd

Dr Matthew Paris Legal Representative
Mr Marcel Mifsud Representative
Mr Gordon Zammit Representative
Mr John Soler 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 proposed that since the appeals of the both Appellant and Interested Party were similar the Cases should be heard concurrently. This was agreed to by both parties. Submissions were invited.

Dr Leon Camilleri Legal Representative for the Local Councils' Association stated that the Authority would rely on the written submissions, namely that the tender is re-evaluated by a newly appointed evaluation committee.
Both parties concurred.

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 17th March 2022.

Having noted the objection filed by OK Medical Limited (hereinafter referred to as the Appellant) on 7th February 2022, refers to the claims made by the same Appellant with regards to the tender of reference LCA 004/2021 listed as case No. 1697 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Clement Mifsud Bonnici & Dr Calvin Calleja

Appearing for the Contracting Authority: Dr Leon Camilleri

Whereby, the Appellant contends that:

- a) That a number of clarifications were issued by the Contracting Authority prior to the closing date for the submissions of bids, most relevant to this appeal is Clarification Note 3 and extract of which is quoted below:

Q: Good afternoon, Please can you advise on the queries below: • The specification requests an automated device which usually has no buttons and independently shocks without user interaction, the spec goes on to asks for buttons to be lit and the ability to not discharge. Please could you elaborate on if the requirement is for a semi or fully automated device please.

A: Dear Sir /Madam, The tender is requesting fully automated AEDs which are easy to use by the general public.

- b) The Appellant submitted 2 separate offers for each Lot on 10 December 2021- this appeal concerns only TID 165690. A total of 6 economic operators participated in this Tender. On 26 January 2022, the Appellant received a letter of rejection stating that the successful bidder for Lots 1, 2, 3 and 4 was Avantmed Limited (the “Successful Bidder”) and that the Appellant’s offers were rejected because they were not the cheapest despite being administratively and technically compliant.
- c) On 1 February 2022, and after a request by the Appellant, the Contracting Authority disclosed the manufacturer and model number of the product offered by the Successful Bidder as follows:

In addition to the information provided, to each bidder in the letter dated 26th January 2022, is in a position to inform the compliant bidders that the brand/ manufacturer of the Automatic External Defibrillator offered by the successful bidder is manufactured by A.M.I Italia, Geo Saver and the model number of that AED is Geo Saver D 200 J (with Q-CPR and Universal Pads).

The Appellant presumes that this product was offered by the Successful Bidder for all 4 lots.

- d) Following market research made the Appellant, it would appear that Geo Saver D 200 J does not comply with the technical specifications set in the Tender, specifically,
- i. Clarification No. 3 which required a fully-automatic external defibrillator when the product offered by the Successful Bidder is a semi/-automatic external defibrillator;
 - ii. The requirement in item No. 2.1.6 of Section 3 – Specifications / Terms of Reference which requires that “First time users can successfully perform each critical step [sic] of a rescue [sic] with real-time CPR feedback, user paced instructions, intuitive pad design and automatic shock delivery” and this is simply not possible with the semi-automatic external defibrillator offered by the Successful Bidder;
 - iii. The requirement in item No. 2.1.2 of Section 3 - Specifications / Terms of Reference which require compliance with the European Resuscitation Council Guidelines (ERC) 2015 and when these guidelines expressly recommend fully- automatic external defibrillators over semi-automatic external defibrillators:
 - iv. Clarification No. 3 which required that the fully-automatic external defibrillator can transmit data to Health Authorities via Wi-Fi connection or USB when the product offered by the Successful Bidder does not offer the transmission of real data from the semi-automatic external defibrillator to Health Authorities using Wi-Fi or USB.
- e) On this basis, it would appear that the model proposed by the Successful Bidder was not technically compliant with the Specifications/Terms of Reference of the Tender and the clarifications thereon, and that these matters of non-compliance were overlooked, perhaps by way of an oversight, during the evaluation of bids.

This Board also noted the Contracting Authority’s Reasoned Letter of Reply filed on 16th February 2022 and its verbal submission during the virtual hearing held on 17th March 2022, in that:

- a) The objectors allege that the offers of the product offered by the recommended bidder is not technically compliant. Following further investigations, for the avoidance of any doubt and in the best interests of all parties and a transparent procurement process respecting the general principles of procurement legislation, the Contracting Authority agrees that the tender is re-evaluated by a newly appointed evaluation committee.

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) That the Contracting Authority is itself agreeing to a re-evaluation of the bid through a newly appointed evaluation committee.

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 dated 26th January 2022;
- c) To cancel the Letters of Rejection dated 26th January 2022 sent to OK Limited;
- d) To order the contracting authority to re-evaluate all the bids received in the tender through a newly constituted Evaluation Committee composed of members which were not involved in the original Evaluation Committee;
- e) after taking all due consideration of the circumstances and outcome of this Letter of Objection, directs that the deposits be refunded to the Appellant.

Mr Kenneth Swain
Chairman

Dr Vincent Micallef
Member

Dr Charles Cassar
Member