

PUBLIC CONTRACTS REVIEW BOARD

Case 1698 – 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 Matthew Paris on behalf of Dalli Paris Advocates acting for and on behalf of Pharma-Cos 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 1698 – 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 Pharma-Cos 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 – Pharma-Cos Ltd

Dr Matthew Paris
Mr Marcel Mifsud

Legal Representative
Representative

Mr Gordon Zammit	Representative
Mr John Soler	Representative

Contracting Authority – Local Councils Association

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

Interested Party – OK Ltd

Dr Clement Mifsud Bonnici	Legal Representative
Dr Calvin Calleja	Legal Representative
Mr Andrew Meli	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 Pharma-Cos 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. 1698 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Matthew Paris

Appearing for the Contracting Authority: Dr Leon Camilleri

Whereby, the Appellant contends that:

a) **Recommended bid is not technically complaint (sic)**

Following the publication of the AED manufacturer, brand and model by AKL, it is clear that the product on offer is not technically complaint (sic) and does not meet the minimum standards specifications indicated in Section 3 of the tender document; The specifications/terms of reference, which are subjected to NOTE 3, clearly determine precise and detailed specifications, which must be strictly adhered to. Thus and thereby, the specifications are mandatory and non-derogable. Publicly available documents in relation to the product on offer by Messrs Avantmed Limited confirm that it is in breach of inter alia the following provisions: 2.1.6; 2.1.9; 2.1.10.

b) **Strict adherence principle**

This Board has already been called upon to decide and determine in analogous situations, in particular when other contracting authorities sought to purchase AED'S. In so determining, whilst in each and every tender, specifications are to be fully adhered to, wheresoever the context permitted, this board and the Court of Appeal applied the principle of proportionality and favoured competition over strict adherence - the very fact that this product is of a 'life or death' nature, creates an obligation of strict adherence and no deviation from the rigours (sic) standards may be or should be permitted;

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 Pharma-Cos 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 deposit be refunded to the Appellant.

Mr Kenneth Swain
Chairman

Dr Vincent Micallef
Member

Dr Charles Cassar
Member