

Public Contracts Review Board

Case 1783 – RfP 021-6125/20 – Request for Participation (Negotiated) for Supply of Over-labelling Services of Medicinal Products

23rd September, 2022

The tender was issued on the 11th December 2020 and the closing date was the 11th February 2021. No estimate of value was provided for this tender.

On the 11th March 2022 Inspectra Ltd filed an appeal against the Central Procurement and Supplies Unit as the Contracting Authority objecting to its disqualification on the grounds that the preferred bid was not as beneficial as that submitted by it.

A deposit of € 400 was paid.

There were five (5) bids.

On the 12th September 2022 the Public Contracts Review Board composed of Dr Charles Cassar as Chairman, Mr Lawrence Ancilleri 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 – Inspectra Ltd

Dr Richard Galea Debono	Legal Representative
Mr Mark Camilleri	Representative

Contracting Authority – Central Procurement and Supplies Unit

Dr Alexia Farrugia Zrinzo	Legal Representative
Dr Leon Camilleri	Legal Representative
Mr Hristo Ivanov Hristov	Representative
Dr Alison Anastasi	Representative

Preferred Bidder – Medical Logistics Ltd

Dr Karl Tanti	Legal Representative
Ms Samantha Cusens	Representative

Dr Charles Cassar Deputy Chairman of the Public Contracts Review Board welcomed the parties and invited submissions.

Dr Richard Galea Debono Legal Representative for Inspectra Ltd mentioned that this was the second time that this case was being heard. The Court of Appeal had decided that all three criteria – price, time lines and full offer had to be taken into consideration. Inspectra was the only bidder to meet all three criteria. The Appeal Court had also stated that the conditions of award should be clarified. After the CPSU issued the bid prices it transpired that the successful bidder had much higher prices than Appellant

– in one case by as much as 169%. The Court of Appeal had not decided whether price or delivery was the main factor to base the award on. Overall the award does not make sense as there was a big imbalance between time lines and prices.

Dr Leon Camilleri Legal Representative for the CPSU made reference to the point raised in the letter of reply which proposed a re-evaluation although the Appeal Court mention of the need for equilibrium makes the re-issue of the tender with clear criteria and instructions a more feasible solution.

Dr Debono said that the tender is clear as it is and the price should be the determining factor. There was the danger of direct orders being issued whilst the tender process was taking place and cancellation of the tender was not a just solution.

Dr Alison Anastasi (398380M) called as a witness by the Contracting Authority testified on oath that the delivery date was paramount and that whilst the Department of Contracts had authorised translation work for patient literature, labelling had not been authorised.

Dr Camilleri noted that whilst price is crucial the Court of Appeal had insisted that all factors had to be considered.

Dr Karl Tanti Legal Representative for Medical Logistics Ltd said that the CPSU had first stated that it proposed re-evaluation but had now changed its stance to cancellation of the tender. Cancellation is an exceptional route and no exceptional reason had been given to justify cancellation. Once offers had been received the process should not be interrupted. The three factors applied to all bidders and all had accepted them by tendering. The Appellant could have requested the evaluators to give evidence how the tender was decided - instead all we had were mere allegations.. This is not the time to start contesting the terms of the tender. The Court of Appeal had made it clear that three criteria had to be considered and emphasised that there was discretion in the choice. It is not clear that Inspectra's offer was the cheapest due to the difficulty in gauging the different prices on various quantities. The preferred bidder does not agree with the request for cancellation as no valid reason was given to justify such decision.

Dr Debono said that the facts are clear and there is no need to ask the Evaluation Committee to explain. The tender as written has given rise for doubts.

Dr Camilleri said that the Contracting Authority is prepared to cancel tender and Regulation 90 (3) of the PPR allows the Board to use its discretion and order cancellation. The wish of the CPSU is to have a uniform ruler.

Dr Tanti stated that it would be a bad precedent if the decision is based on allegations.

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

End of Minutes

Decision

The Board refers to Case 1784, pertaining to the tender in question, whereby it was decided that tender is cancelled and a fresh tender is issued. In this respect, the Board's decision and directions pertaining to case 1784 also applies in this case in question namely case 1783.

For easy reference Board's decision and direction is being quoted hereunder:

"Based on the Sentence of the Court of Appeal regarding the lack of equilibrium in the published

tender

since the measuring criteria were not clear and specific therefore it follows that the adjudicating committee could not perform a proper adjudication.

Hence it directs:

That a new Procurement Procedure to be published by 20 October 2022,

wherein

the award criteria are clearly defined and adhered to through the determination of appropriate

specifications and conditions.

The Procurement Procedure must determine clearly what specifications and respective parameters

are required.

The Board therefore concludes and decides that:

- a) It partially upholds the Appellant's Letter of objection.
- b) The existing Tender is cancelled
- c) A new tender is issued by the date specified above.
- d) It directs that the deposit paid by the Appellant be reimbursed.

Dr Charles Cassar
Chairman

Mr Lawrence Ancilleri
Member

Ms Stephanie Scicluna Laiviera
Member

