

## **PUBLIC CONTRACTS REVIEW BOARD**

### **Case 1443 – CFT 019-0314/19 – Tender for the Provision of Automated Microplate Reader and Washer System for the Pathology Department at Mater Dei Hospital**

The tender was published on the 2<sup>nd</sup> April 2019 and the closing date of the call for tenders was the 25<sup>th</sup> April 2019. The estimated value of the tender (exclusive of VAT) was € 18,000.

On the 20<sup>th</sup> April 2020 ProCare Ltd filed an appeal against Central Procurement and Supplies Unit as the Contracting Authority objecting to their disqualification on the grounds of their offer being technically non-compliant. A deposit of € 400 was paid.

There were four (4) bidders.

On 12<sup>th</sup> May 2020 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Mr Lawrence Ancilleri and Mr Carmel Esposito as members convened a public virtual hearing to discuss the objections.

The attendance for this public hearing was as follows:

#### **Appellants – ProCare Ltd**

Dr Robert Galea	Legal Representative
Mr Pierre Calleja	Representative

#### **Preferred Bidder – E.J.Busuttil Ltd**

Mr Aaron Grima	Representative
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#### **Contracting Authority – Central Procurement and Supplies Unit**

Dr Marco Woods	Legal Representative
Mr Rambert Paul Attard	Secretary Evaluation Committee
Mr Jesmond Farrugia	Member Evaluation Committee

Dr Anthony Cassar Chairman of the Public Contracts Review Board welcomed the parties. He noted that since this was a virtual meeting all the parties had agreed to treat this as a normal meeting of the Board and that the Contracting Authority in their letter of reply had requested a re-evaluation of the tender.

Dr Marco Woods Legal Representative of the Central Procurement and Supplies Unit said that an internal review of the evaluation process had taken place and a decision taken to have a re-evaluation.

Dr Robert Galea Legal Advisor for ProCare Ltd said that whilst his clients had no objections to a re-evaluation he wondered what was going to change through a re-evaluation.

Dr Woods explained that the Contracting Authority wanted to ensure that there were no mistakes in the first evaluation as it appears that not all points had been considered then. It was only equitable that it was looked at again.

Dr Galea said that the letter of refusal had not indicated which one of the two offers by his clients had been rejected and the technical specifications were not clear. He requested refund of the deposit paid.

The Chairman said that the Board feels that from the documents submitted a re-evaluation process was necessary. He then thanked the parties for their submissions and declared the hearing closed.

End of Minutes

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## **Decision**

**This Board,**

**having noted this objection filed by ProCare Ltd (hereinafter referred to as the Appellants) on 20<sup>th</sup> April 2020, refers to the claims made by the same Appellants with regard to the tender of reference CFT 019-0314-19 listed as case No. 1443 in the records of the Public Contracts Review Board awarded by the Central Procurement and Supplies Unit (hereinafter referred to as the Contracting Authority).**

**Appearing for the Appellants:**

**Dr Robert Galea**

**Appearing for the Contracting Authority: Dr Marco Woods**

**Whereby, the Appellants contend that:**

- a) Their main concern relates to the fact that, the ‘Letter of Rejection’ dated 13 April 2020, sent by the Authority, does not indicate, which one of the two offers submitted by them was disqualified.**
  
- b) At the same instance, Appellants maintain that, the Authority’s assumption that, their offer was technically non-compliant, is erroneous, as will be proved during the hearing of this appeal.**

**This Board also noted the Contracting Authority’s ‘Letter of reply’ dated 29<sup>th</sup> April 2020 and its verbal submissions during the virtual hearing held on 12<sup>th</sup> May 2020, in that:**

- a) After having reviewed Appellants’ objection letter dated 20<sup>th</sup> April 2020, the Authority noted that, during the evaluation process, it appears that, not all the issues were considered so that a re-evaluation process would be more equitable and transparent.**

**This Board would respectfully refer to the Authority’s submissions, in its ‘Letter of Reply’ dated 29<sup>th</sup> April 2020, as follows:**

“Submissions

*In reply to the objection lodged by the objectors, CPSU submit the following:*

*1) Following the objection lodged in regard to the offers submitted by the objectors, mainly those bearing reference TID 111728 and TID 111727, CPSU humbly submits that the Evaluation Board conducted an internal review in order to determine whether any issues were encountered during the said evaluation.*

*Upon conclusion of the said internal review, CPSU submits that it would be in the best interest of Procurement Practices for a fresh evaluation to be carried out over and above the said evaluation which has been concluded.*

*Therefore, CPSU is hereby requesting this Board to consider ordering the withdrawal of the award to E.J Busuttil Ltd and subsequently ordering that a fresh evaluation is carried out of all offers submitted with regard to the Tender in caption.”*

**1. This Board would point out that, it will be in the interest of Good Governance and transparency to re-evaluate all the offers received, so that, the most advantageous offer will be equitably determined. In this regard, this Board:**

- i. directs that the Authority’s decision in the award of the tender, be cancelled,**

- ii. directs that the Authority will conduct a re-evaluation process which will reflect the tender document's requirements,**
  
- iii. directs that the deposit paid by Appellants be fully refunded.**

Dr Anthony Cassar  
Chairman

Mr Lawrence Ancilleri  
Member

Mr Carmel Esposito  
Member

*18<sup>th</sup> May 2020*