

PUBLIC CONTRACTS REVIEW BOARD

Case 1824 – 025 – 0571/22 (CPSU0026/22) – Tender for the Supply of Tamper-Proof Security Seals

12th December 2022

The Board,

Having noted the letter of objection filed by Dr Douglas Aquilina and Dr Mark Attard Montalto on behalf of Saga Juris Advocates acting for and on behalf of Galaxy Limited, (hereinafter referred to as the appellant) filed on the 31st October 2022;

Having also noted the letter of reply filed by Dr Leon Camilleri acting for and on behalf of the Central Procurement and Supplies Unit (hereinafter referred to as the Contracting Authority) filed on the 7th November 2022;

Having also noted the letter of reply filed by Dr Raymond Zammit acting for and on behalf of Ortis Ltd (hereinafter referred to as the Preferred Bidder) filed on the 8th November 2022;

Having heard and evaluated the testimony of the witness Mr Reuben Zarb (Representative of Galaxy Limited) as summoned by Dr Mark Attard Montalto acting for Galaxy Limited;

Having heard and evaluated the testimony of the witness Mr Mark Garrett (Member of the Evaluation Committee) as summoned by Dr Leon Camilleri acting for Central Procurement and Supplies Unit;

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 6th December 2022 hereunder-reproduced.

Minutes

Case 1824– CT 025-0571/22 – Tender for the Supply of Tamper-Proof Security Seals

The tender was issued on the 20th May 2022 and the closing date was the 10th June 2022. The estimated value of the tender excluding VAT, was € 36,450.

On the 31st October 2022 Galaxy Ltd filed an appeal against the Central Procurement and Supplies Unit as the Contracting Authority objecting to their disqualification on the grounds that their offer was not technically compliant.

A deposit of € 400 was paid.

There were seven (7) bids.

On the 6th December 2022 the Public Contracts Review Board composed of Mr Kenneth Swain as Chairman, Ms Stephanie Scicluna Laiviera and Dr Vincent Micallef as members convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – Galaxy Ltd

Dr Mark Attard Montalto	Legal Representative
Mr Reuben Zarb	Representative

Contracting Authority – Central Procurement and Supplies Unit

Dr Leon Camilleri	Legal Representative
Dr Alexia Farrugia Zrinzo	Legal Representative
Ms Joyce Grech	Secretary Evaluation Committee
Ms Angele Vella	Member Evaluation Committee
Mr Mark Garrett	Member Evaluation Committee
Mr Jean Pierre Azzopardi	Member Evaluation Committee

Preferred Bidder – Ortis Ltd

Mr Mario Callus	Representative
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Mr Kenneth Swain Chairman of the Public Contracts Review Board welcomed the parties and before inviting submissions noted that one of the Board members would be following proceedings virtually.

Dr Mark Attard Montalto Legal Representative for Galaxy Ltd stated that the appeal was based on two grievances – the number of decimal points according to the tender conditions and the length of the label. On the first grievance the financial bid restricted financial offer values to two decimal places. One of the bids made an offer with more than two decimal places but the tender was based on unit price and the bidding form is not part of the intrinsic part of the tender. Reference was made to the similarity with PCRB Case 1550 in this regard. Article 26.1 of the tender states that it is a unit price offer and Article 1.1 showed the quantity required.

As regard the second grievance Appellant was objecting to the interpretation put by the Tender Evaluation Committee (TEC) on the label length as nowhere in the tender does it state that the label should not include the lock – the tender simply gives the length required. Appellant is currently the incumbent supplier of these labels, which it has been supplying for years with no problems. The TEC's decision is incorrect as the tender was not fully followed. There is no mention of locks in the tender dossier and the Appeal should be upheld.

Dr Leon Camilleri Legal Representative for the Central Procurement and Supplies Unit dealt first with the number of decimal places and said that three places cannot be accepted as this is made clear in the technical offer form. The financial bid form was expecting bidders to show quantity, price per packet and total cost. All that was requested in the financial bid was the price and that was what was offered. Offer form clearly showed two places and this grievance was just created by the Appellant. Quoting past history regarding the labels does not count since specifications may change with each tender. The principle of self-limitation has to be applied and the seal offered did not respect what was requested.

Mr Reuben Zarb (60973M) called to testify by the Appellant stated on oath that he has many years' experience in submitting tenders. This was a unit price supply contract with an estimated quantity of 405,000 units. The change referring to packets only appears in the financial bid but not in the tender.

Document I submitted in the letter of appeal confirmed the label's length as 50mm and no samples were requested.

Mr Mark Garrett (159166M) called as a witness by the Contracting Authority testified on oath that he was one of the evaluators. There were seven bids and samples were requested from the cheapest three bidders. They started evaluating the cheapest bid and were obliged to accept it if compliant. In the case of the Galaxy bid the TEC did not ask for samples but worked on the basis that when they got the cheapest compliant offer the evaluation was stopped. The label length was interpreted as label plus writing area. The Galaxy offer was based on the literature submitted and when measured it indicated that there was not enough room to write on it.

Questioned by Dr Attard Montalto witness stated that the label length was interpreted as including space for writing. Ortis sent three samples and Ruslan Cilia one sample.

In reply to Dr Camilleri witness said that when measuring label it transpired that it was less than 50mm in length when the tender asked for labels 50 to 60mm long.

In reply to further questions from Dr Attard Montalto witness said the TEC checked the samples and if they did not agree with the tender terms they were eliminated – they were guided by the specifications in their decisions. Referring to Specification 2.7 in the tender, witness said this clearly stated 'Label Length: 50 – 60mm' and this was mandatory.

This concluded the testimonies.

Dr Attard Montalto said that Procurement Policy Rule 10 states the decimal point requirements and if these not abided by then bid is not compliant. The tender further stipulates this and it cannot be interpreted otherwise. Mr Garrett in his testimony gave an interpretation regarding the labels that does not exist in the tender. In Specification 2.7 it clearly states the length of the label and it is incorrect to interpret it otherwise. Appellant followed the conditions laid out and samples were requested of the fifth based bidder but not of the Appellant who was placed fourth.

Dr Camilleri stated that the tender document required two decimal places and it is normal in tenders to ask for price per pack when small quantities are involved. If this was not clear or appeared ambiguous to the bidder then recourse for a remedy was available under Regulation 262. It does not appear that the tender was ambiguous as all the other bids were interpreted correctly. On the question of the size of the label Appellant referred to the pamphlet submitted from the manufacturer of the labels which states the size at 50mm, but what matters is what the TEC found; they justifiably checked with the incumbent's labels in hand and used their discretion. In Case 1804 there was a discussion on what exactly a product had to be, similarly to this case. The TEC was justified in refusing this bid.

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

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 6th December 2022.

Having noted the objection filed by Galaxy Limited (hereinafter referred to as the Appellant) on 31st October 2022, refers to the claims made by the same Appellant with regard to the tender of reference 025-0571/22 (CPSU0026/22) listed as case No. 1824 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Mark Attard Montalto

Appearing for the Contracting Authority: Dr Leon Camilleri & Dr Alexia Farrugia Zrinzo

Whereby, the Appellant contends that:

a) **Non-Compliance of the Bids of Ortis Limited and all other Tenderers (apart from Galaxy Limited)**

The bids submitted by Ortis Limited and also by all other tenderers (apart from Galaxy Limited), include a financial bid with more than two decimal places and are therefore, in any case, non-compliant. as here explained.

The Tender Dossier states:

- Section 2 Article 26.1 (p.10 of the Tender) states that this is a “unit-price supplies contract”
- Section 1. Article 1.1. (p.3 of the Tender) states that the Estimated Quantities required - 405,000 units in 36 months
- The financial bid form also has a column again confirming the “Quantity (based on estimated consumption for this tender) in Units” as being 405,000

Therefore, it is evident that this tender was based on the unit price, of which there is estimated to be acquired 405,000 units. It is well-established that all financial values/bids must be up to two decimal places, and any unit prices that are not to two decimal places, are non-compliant. This according to the tender documents, general conditions governing tenders, and relative documents issued by the Department of Contracts, and as decided in case 1550 on the 25th March 2021 (TM030/2020 Tender for the Printing, Supply and Delivery of Vehicle Registration Certificates).

According to the circular published by the Department of Contracts on March 5th 2020 -

“..... Further to the above, all Financial Values/ Amounts quoted in the Financial Bid Form or any reference to monetary values as part of applicable documentation shall quote the Euro currency and shall be up to two (2) decimal points.....”

In accordance to the provisions of Council Regulation (EC) No. 974/98, it is here being reiterated that three (3) decimal points do not exist as currency. To this effect, any financial value/amount in the Financial Offer of a

Procurement Call shall be up to two (2) decimal points. Therefore, if a Financial Bid offer contains a value with three (3) or more decimal points, such a bid cannot be accepted and shall thus be disqualified.”

The appellant makes reference to Procurement Policy Note #10 which applies to all contracting authorities and of the General Rules Governing Tenders which are applicable to the tender in question in terms of Section 4.4 of the tender documents. These two documents are expressly mentioned in the circular dated 5th March 2020, and confirm that any financial amounts or values indicated in the bid are to be disqualified if they indicate more than two decimal places. This information was all publicly available and forming an essential part of the tender document and process.

It was also clearly indicated to prospective bidders on the Financial Bid form relative to this tender which states that: *“Three decimal points do not exist as currency: therefore such offers will be rejected. Offers are to be submitted up to two decimal points.”*

As explained above, this tender was based on unit-price, of which there were 405,000 units. Therefore, the unit price had to be quoted up to a maximum of two decimal places in order to be a compliant and financially valid bid. It is evident from the tender results that all bids (apart from Galaxy Ltd) had a unit-price bid with more than 2 decimal places. Therefore the said bids are non-complaint(sic)and should be rejected.

b) **Rejection of the Bid of Galaxy Ltd**

The appellant objects to the ground of rejection of its bid. The appellant's bid was rejected for the reason *“This cannot be accepted because the label length is less than the specifications. Label length is taken to be the area for printing purposes and does not include the lock”.*

Galaxy Ltd objects to this rejection for the following reasons:

1. Section 3, Part 2 of the Tender (p. 13 Doc A) simply requires "Label length: 50-60mm"

The tender at no point requires that the label length is the "area for printing purposes" or that it should not include the lock.

2. In terms of the manufacturer's literature submitted with the bid, the label length is 50mm

3. Furthermore it is to be noted that Galaxy Ltd has supplied this exact security seal to the contracting authority under previous tenders which were awarded to Galaxy Ltd. It is therefore evident that the requirement of label length - even as interpreted in the manufacturer's technical literature and by the contracting authority in previous tenders - does not refer to the "area for printing purposes" but simply to the label length. In fact Galaxy Ltd has in fact supplied these identical security seals to the contracting authority for a number of years without any complaints and which have clearly been fulfilling the requirements of the contracting authority.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 7th November 2022 and its verbal submission during the hearing held on 6th December 2022, in that:

a) First grievance -

In the first grievance the objector alleges that all other offer(sic) submitted in this request for tenders was(sic) invalid and not compliant since the products offered were submitted with more than 3 decimal places in their financial bid form. This grievance is unfounded in fact and at law and CPSU was surprised this was raised as none of the bidders have access to the financial bid form of the other bidders.

The financial bid form is up to the bidder to fill and the only criterion set by CPSU was the number which it was seeking to purchase, which was that of 405,000 pieces. The quantity per pack, price per pack and total price was up to the bidder to fill up, depending on the packs of the product they are offering and none of these fields in the financial bid form of the recommended offer and of any other was more than 2 decimal places. This will be evidenced from the financial bid forms at this Honourable Board's disposal and therefore this first Grievance ought to be rejected.

b) Second Grievance -

In its second grievance the objector rebuts the reason for its technical non compliance given by CPSU and states that the specifications did not indicate that the label should not contain the lock. CPSU submits that the obvious ought not to be stated. A label in its natura(sic) is something where something is or can be written. A dictionary definition of the word label is that a label is a *"small piece of paper, cloth or plastic that is attached to something in order to show what it is or give information about it."* It is in CPSU's humble view that since nothing can be written on the lock, it does not form part of the label, irrespective of the measurements of the product literature presented by the objector.

That it is a fundamental principle that the evaluation committee should adjudicate on the basis of what it provided in the tender document, however it is equally established the evaluation committee does have a certain degree of discretion in the adjudication process, as is in the 'normal' interpretation of the tender document which from its nature is clear and self explanatory. The fact that the evaluation committee interpreted the word label in the same way that the Oxford Dictionary define label, that is, where something is or can be written, surely does not constitute any breach of the principle of proportionality by the evaluation committee. Moreover the fact that the objector has in the past supplied the same product to CPSU does not and shall not have any inferences on this objection which was evaluated on its own merits and not with reference to any

other procurement process. CPSU therefore submits that this second grievance ought to also be rejected.

This Board also noted the Preferred Bidder's Reasoned Letter of Reply filed on 8th November 2022, in that:

- a) Messrs Galaxy Limited submit that *"The bids submitted by Ortis Limited and also by all other tenderers (apart from Galaxy Limited), include a financial bid with more than two decimal places and are therefore, in any case, non compliant."* Messrs Galaxy Limited refer to Articles on the Tender Dossier, to Procurement Policy Note Number 10 and in the General Rules Governing Tenders to back their claim. The grievance is unfounded in fact and at law because the values submitted in my client's offer are all expressed in not more than 2 decimal places.
- b) The subject of this tender is the purchase of Tamper-proof security seals, an item of very low pecuniary value, and bought in large quantities. Procurement Policy Note Number 15 of the Department of Contracts - Minimum Indicative Quantities to be requested in a Bill of Quantities (PPN 15) - refers specifically to cases such as this one. It is evident that the objector is not aware of this important policy.
- c) PPN 15 *"aims to correct a possible anomaly that might arise when procuring particular services/ supplies which due to their nature command very small pecuniary values."*
- d) Whilst referring to Procurement Policy Note Number 10 (PPN 10), PPN 15 states that: *"Contracting Authorities (CA) are to ensure that this minimum indicative line quantity, against which a bidder will eventually submit his/ her financial offer, must be of such an amount that allows all offers to be in line with the afore mentioned policy (i.e. up to 2 decimal places) while at the same time leaving all the necessary room for a healthy competition to take place. By way of example, if a CA is procuring a photocopying service, where the difference between the most financially competitive and the least competitive offer, for a black and white copy, might probably be smaller than €0.01, then the indicative quantity must be of such a volume (i.e. multiple copies) in order to allow prospective bidders to submit their compliant best offer up to two decimal places."* The examples given in PPN 15 confirm without any doubt that the worked-out price of the individual unit may result in a value expressed in more than two decimal places if the total price for the "indicative quantity" is expressed in up to two places of decimal. This without rendering the offer as non-compliant.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties including the testimony of the witnesses duly summoned, will now consider Appellant's grievances.

- a) ***1st Grievance - Non-Compliance of the Bids***

Initially, this Board makes reference to the General Rules Governing Tenders V4.5 paragraph 7.5 whereby: “*The currency of the tender is the Euro (€). Offers are to be submitted up to two decimal points. In accordance to the provisions of Council Regulation (EC) No. 974/98, it is here being reiterated that three (3) decimal points do not exist as currency. To this effect, any financial value/amount in the Financial Offer of a Procurement Call shall be up to two (2) decimal points. Therefore, **if a Financial Bid offer contains a value with three (3) or more decimal points, such a bid cannot be accepted and shall thus be disqualified.***” (bold & underline emphasis added). It is therefore abundantly clear that reference is being made to the Financial Bid Form. It is an undisputed fact that the Financial Bid form of the preferred bidder did not contain any offer/s which were listed / declared in 3 decimal places.

Further arguments brought forward by Appellant, regarding Procurement Policy Note #10, are deemed irrelevant by this Board, as such instances and / or anomalies that might arise when procuring particular services / supplies which due to their nature command very small pecuniary values (as is the case in this appeal), are duly also dealt with by Procurement Policy Note #15.

This Board is of the opinion that both the General Rules Governing Tenders V4.5 paragraph 7.5 and the respective Procurement Policy Notes have all been followed to the letter. No irregularities or non-compliance issues have been encountered in the preferred bidder’s financial bid form.

Therefore, this Board does not uphold the appellant’s first grievance.

b) **2nd Grievance - Rejection of the Bid of Galaxy Ltd**

In this grievance, the appellant raises three (3) separate issues. This Board will now analyse these one by one.

- i) Appellant states “..... *it is to be noted that Galaxy Ltd has supplied this exact security seal to the contracting authority under previous tenders.....*”. This Board will from the outset declare its position, already outlined in previous cases of the PCRB, that this line of argumentation is not acceptable. This due to various reasons, the main being that each tendering procedure is to be evaluated and adjudicated on its own merits. By having supplied the “exact security seal” does not mean that the tender specifications between previous tendering procedures and this one are exactly the same. It is not this Board’s remit to check technical specifications of previous tendering procedures.
- ii) Appellant states “*In terms of the manufacturer's literature submitted.....*”. From review of the documentation submitted by same appellant, it transpires that the document listing description, sizes etc, is submitted on Galaxy Ltd’s own letterhead. Therefore, it is not clearly evident if such listed dimensions have been provided directly by the supplier or inputted by hand of the same appellant.
- iii) Appellant states “*Section 3, Part 2 of the Tender (p. 13 Doc A) simply requires "Label length: 50-60mm"*”. This Board agrees with the Appellant that this is what the tender dossier required.

What it can't understand and agree with the appellant is how it can be expected that the label is also including the 'lock' part of the product. It is evident from documentation submitted by same appellant (which as already discussed, such information has been provided on appellant's letterhead and hence it cannot be deemed as supplier's official documentation), that in order to meet the minimum tender requirements specifications in regards to the label size, the diagram is including the 'lock' part of the seal, which is certainly not part of the 'label' part. Therefore, this Board is in agreement with the assessment made by the Evaluation Committee

Therefore, this Board does not uphold the appellant's second grievance.

The Board,

Having evaluated all the above and based on the above considerations, concludes and decides:

- a) Does not uphold Appellant's Letter of Objection and contentions,
- b) Upholds the Contracting Authority's decision in the recommendation for the award of the tender,
- c) Directs that the deposit paid by Appellant not to be reimbursed.

Mr Kenneth Swain
Chairman

Dr Vincent Micallef
Member

Ms Stephanie Scicluna Laiviera
Member