

## PUBLIC CONTRACTS REVIEW BOARD

**Case No. 460**

**DH/3934/11**

**Tender for the Supply of 20 Large Stainless Steel Instrument Trolley**

This call for tenders was published in the Government Gazette on the 13<sup>th</sup> January 2012. The closing date for this call with an estimated budget of € 20,000 was the 15<sup>th</sup> February 2012.

Nine (9) tenderers submitted their offers.

FGP Ltd filed an objection on the 17<sup>th</sup> July 2012 against the decision of Central Procurement and Supplies Unit of the Ministry for Health, the Elderly and Community Care to disqualify its offer as technically non-compliant.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr Carmel Esposito and Mr Joseph Croker as members convened a public hearing on Tuesday, 2nd October 2012 to discuss this objection.

Present for the hearing were:

### **FGP Ltd**

Mr Paul Izzo                      General Manager

### **Technoline Ltd**

Mr Nicky Sammut              Representative

### **Central Procurement and Supplies Unit of the Ministry for Health, the Elderly and Community Care**

Dr Adrian Mallia              Legal Representative  
Mr Marnol Sultana              Representative

### **Evaluation Board**

Ms Ruth Spiteri              Chairperson  
Mr Noel Borg                  Member  
Mr David Grech                Member  
Ms Mary Grace Balzan        Secretary



After the Chairman's brief introduction, the appellant company's representative was invited to explain the motives of the company's objection.

Mr Paul Izzo, representing FGP Ltd, the appellant company, submitted that:-

- i. by email dated 11<sup>th</sup> July 2012 the contracting authority informed him that his company's tender had been adjudicated to be technically non-compliant "*as the upper and lower shelves sides are upwards while that requested in the specifications shall have flanges turned down*".
- ii. the product the company offered complied with specifications and the drawing submitted with the offer demonstrated that the rear and side flanges turned down and that only the front flanges were turned up;  
  
and
- iii. these trolleys were produced locally and, if need be, one could easily modify the trolley at the request of the contracting authority.

Dr Adrian Mallia, legal representative of the contracting authority, explained that:-

- a. clause 6 of Volume 3 'Technical Specifications' stated that "*The shelves shall have rear and side flanges turned down*";  
  
and
- b. it was evident both from the illustrations provided with both the offer and the letter of objection that one of the flanges was turned up and, according to the assessment carried out by the evaluation board, it was, in fact, the rear flange that was turned up and that decision was arrived at because the two swivel castor wheels indicated in the illustration were generally located at the rear of the trolley.

*The Public Contracts Review Board noted that it was rather open to interpretation whether the flange turned up was the rear, the front or the side flange.*

The Chairman Public Contracts Review Board remarked that the tender had to be adjudicated according to what had been submitted and that the bidder was not allowed to, technically, alter a tender submission during adjudication stage.

Mr Noel Borg, principal technical officer and member of the adjudication board, under oath, explained that these trolleys were meant to have all their flanges turned down because of their specific use, namely to place on them the medical instruments required in the operating theatres.

The Chairman Public Contracts Review Board observed that, evidently, the contracting authority required trolleys without any of the flanges turned up and, in that case, it should have requested that 'all' the flanges had to be turned down and not only the rear and side flanges because, as published, it was open to interpretation whether the front flanges had to be turned up or down or turned up.



Dr Mallia and Mr Borg maintained that the castor wheels were always placed at the rear of the trolley and, since the flanges at the rear of the trolley were turned up, the appellant company's offer did not comply with tender specifications.

Mr Izzo concluded that:-

- a. according to his assessment the turned up flange was at the front of the trolley;
- b. clause 8 of the tender specifications requested that *'The trolley shall be counted on Qty 4 Anti Static Non Marking Swivel Castor wheels'*;
- c. therefore, both front and rear wheels had to be castor wheels and so, contrary to what the contracting authority was claiming, one could deduct that the turned up flanges were either at the rear or at the front of the trolley and so the appellant company's product was compliant with tender specifications.

The Chairman Public Contracts Review Board opined that the tender specifications were not clear enough because if the contracting authority wanted all the flanges to be turned down then it should have indicated so and not limit itself to the rear and side flanges while giving no indication as to whether the front flanges had to be turned up or down.

At this point the hearing came to a close.

This Board,

- having noted that the appellants, in terms of their 'reasoned letter of objection' dated the 13<sup>th</sup> July 2012 and also through their verbal submissions presented during the hearing held on the 2nd October 2012, had objected to the decision taken by the pertinent authorities;
- having noted all of the appellant company's representative's claims and observations, particularly, the references made to the fact that (a) by email dated 11<sup>th</sup> July 2012 the contracting authority informed the appellant company that its tender had been adjudicated to be technically non-compliant "*as the upper and lower shelves sides are upwards while that requested in the specifications shall have flanges turned down*", (b) the product the appellant company offered complied with specifications and the drawing submitted with the offer demonstrated that the rear and side flanges turned down and that only the front flanges were turned up, (c) these trolleys were produced locally and, if need be, one could easily modify the trolley at the request of the contracting authority, (d) according to the appellant company's assessment, the turned up flange was at the front of the trolley, (e) clause 8 of the tender specifications requested that *'The trolley shall be counted on Qty 4 Anti Static Non Marking Swivel Castor wheels'* and (f) both front and rear wheels had to be castor wheels and so, contrary to what the contracting authority was claiming, one could deduct that the turned up flanges were either at the rear or at the front of the trolley and so the appellant company's product was compliant with tender specifications;

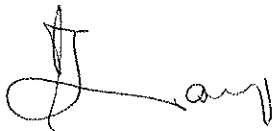


- having considered the contracting authority's representative's reference to the fact that (a) clause 6 of Volume 3 'Technical Specifications' stated that "*The shelves shall have rear and side flanges turned down*", (b) it was evident, both from the illustrations provided with both the offer and the letter of objection, that one of the flanges was turned up and, according to the assessment carried out by the evaluation board, it was, in fact, the rear flange that was turned up and that decision was arrived at because the two swivel castor wheels indicated in the illustration were generally located at the rear of the trolley, (c) these trolleys were meant to have all their flanges turned down because of their specific use, namely to place on them the medical instruments required in the operating theatres and (d) the castor wheels were always placed at the rear of the trolley and, since the flanges at the rear of the trolley were turned up, the appellant company's offer did not comply with tender specifications;

reached the following conclusions, namely:

1. The Public Contracts Review Board opines that a tender has to be adjudicated according to what is submitted and that a bidder is not allowed to, technically, alter a tender submission during adjudication stage. Needless to say that, similarly, a change by the contracting authority in the tender document's specifications, terms and conditions is not allowed.
2. The Public Contracts Review Board opines that the tender specifications were not clear enough because if the contracting authority wanted all the flanges to be turned down then it should have indicated so and not limit itself to the rear and side flanges while giving no indication as to whether the front flanges had to be turned up or down.

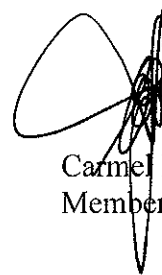
In view of the above, this Board finds in favour of the appellant company and recommends that, apart from being reintegrated in the evaluation process, the deposit paid by the same appellant company for the appeal to be lodged should be reimbursed.



Alfred R Triganza  
Chairman



Joseph Croker  
Member



Carmel Esposito  
Member

26 October 2012