

PUBLIC CONTRACTS REVIEW BOARD

Case No. 481

DH/1351/2012

Tender for the Supply of New Equipment required for the opening of a New Ward at the Rehabilitation Hospital Karen Grech

This call for tenders was published in the Government Gazette on the 30th March 2012. The closing date for this call with an estimated budget of € 120,000 for 27 lots was the 18th April 2012.

Nine (9) tenderers submitted their offers.

Serolf Trading Agency Ltd filed an objection on the 30th August 2012 against the decision of the Ministry for Health, the Elderly and Community Care to disqualify its bid and to recommend the award of the tender to Technoline Ltd.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr Joseph Croker and Mr Paul Mifsud as members convened a public hearing on Thursday, 1st November 2012 to discuss this objection.

Present for the hearing were:

Serolf Trading Agency Ltd

Dr Claudia Cassar	Legal Representative
Dr David Grech	Representative
Mr Francis Flores	Representative

Technoline Ltd

Ms Astrid Baldacchino	Representative
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Ministry for Health, the Elderly and Community Care

Dr Adrian Mallia	Legal Representative
Ms Stephanie Abela	Representative

Evaluation Board

Mr Charles Schembri	Chairman
Ms Antonia Attard	Member
Dr Stephen Abela	Member
Mr Matthew Mangion	Member



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

Dr Claudia Cassar, legal representative of Serolf Trading Agency Ltd, the appellant company, stated that by email/letter dated 23rd August 2012 the appellant company was informed that its offer was adjudicated to be technically non-compliant for the following reasons:

- a. sliding linen tray was not included in the sample of the bed offered
- b. service agreement was not provided in the offer, and
- c. the over bed table was not equipped with self locking mechanism.

A) Sliding Linen Tray

Dr Cassar submitted that:

- i. in the appellant company's tender submission the latter had clearly included the sliding linen tray with the type of bed that it offered;
- ii. in the course of tender evaluation the appellant company was asked to provide a sample of the bed offered and, given the time constraints to deliver the item, the appellant company did not have the time to verify that the bed was, actually, delivered with all the accessories and what might have happened was that, although the supplier included the sliding linen tray in the invoice, it had not been, actually, provided with the sample bed;

and
- iii. the appellant company contended that the contracting authority had sent various communications in connection with this tender and, as a result, it could have asked for a clarification on this matter especially since this accessory was included in the written tender submission.

Dr David Grech, medical doctor, also representing the appellant company, remarked that:-

- a) the contracting authority could have either only asked Serolf Ltd to submit a sample or it could have been the case that the contracting authority was already making use of the bed offered by the recommended tenderer and, as a consequence, no sample was necessary;

and
- b) the sliding linen holder was a minor item and it did not affect the proper functioning of the bed itself and a clarification in that regard would have been in place.

Mr Charles Schembri, chairman of the evaluation board, remarked that a sample was requested from compliant tenderers and, on inspecting the sample provided by the

appellant company, it was evident that the sliding linen tray was not with the sample and, as a result, that state of fact did not warrant any clarification.

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

- a. the appellant company was not contesting that the sample was submitted without the sliding linen tray;
- b. this accessory formed part of the bed specifications and, generally speaking, evaluation boards did not have the discretion to decide what specifications could be done away with;
- c. one could concede the fact that, once the sliding linen tray was included in the written tender submission, then the contracting authority could have asked for a clarification;

and

- d. the 'Technical Specifications', among other things, stated that "*A sliding linen tray is to be included at the foot section of the bed, which is used to stack clean bed linen.*"

B) Maintenance Agreement

Dr Cassar remarked that although no maintenance agreement had been submitted with the offer, the item in question carried a 5-year warranty which covered parts, labour and preventive maintenance.

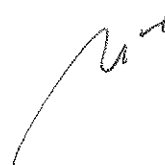
Dr Grech confirmed that the 5-year warranty included maintenance and, as a result, there would be no extra costs to the contracting authority otherwise such costs would have been included in the offer in the first place. Following a question made by the contracting authority's representative, Dr Grech failed to trace in the appellant company's tender submission any reference to the five-year warranty.

Dr Mallia referred to the 'Technical Specifications' where, under the heading 'Maintenance' there was stipulated that "*The contractor shall provide the cost of a five-year maintenance programme for the above mentioned beds. Any part needing replacement during the five-year period shall be quoted separately.*"

C) Over Bed Table not with Self Locking Mechanism

Dr Cassar contended that the bed offered by the appellant company did have the over bed table with self locking mechanism and asked the contracting authority to explain its decision in this regard.

Ms Antonia Attard, a member of the evaluation board and nursing officer, explained that:-



a. the specifications laid down that:

'The over bed table is to include an easily accessible mechanical release to lower and raise the table according to the patient's requisites. A self-locking mechanism to prevent accidental descent should also be incorporated.'

b. the sample provided by the appellant company did not have this self-locking mechanism but instead it had a manually operated mechanism to lower and raise the over bed table which was not compliant with specifications – illustrations were provided to this effect.

Dr Grech, after examining the illustrations, acknowledged that there was a misunderstanding on the appellant company's part in the sense that the latter's representative did not have in mind the particular locking device being mentioned by Ms Attard.

Mr Schembri stated that the appellant company was the only bidder, out of nine, to have misinterpreted self-locking mechanism of the over bed table.

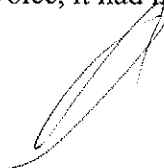
On a general note, Dr Mallia stated that the opportunity to ask for a clarification was available both ways, namely to the contracting authority and to the bidder, in the latter case prior to the closing date of the tender.

The Chairman Public Contracts Review Board remarked that this specification assumed a certain degree of functional importance considering that these beds were meant for use by elderly patients.

At this point the hearing came to a close.

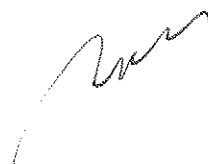
This Board,

- having noted that the appellants, in terms of their 'reasoned letter of objection' dated the 29th August 2012 and also through their verbal submissions presented during the hearing held on the 1st November 2012, had objected to the decision taken by the pertinent authorities;
- having noted all of the appellant's representative's claims and observations, particularly, the references made to the fact that (a) by email/letter dated 23rd August 2012 the appellant company was informed that its offer was adjudicated to be technically non-compliant for the following reasons (1) sliding linen tray was not included in the sample of the bed offered, (2) service agreement was not provided in the offer and (3) the over bed table was not equipped with self locking mechanism, (b) in the appellant company's tender submission the latter had clearly included the sliding linen tray with the type of bed that it offered, (c) in the course of tender evaluation the appellant company was asked to provide a sample of the bed offered and, given the time constraints to deliver the item, the appellant company did not have the time to verify that the bed was, actually, delivered with all the accessories and what might have happened was that, although the supplier included the sliding linen tray in the invoice, it had not been, actually, provided



with the sample bed, (d) the appellant company contended that the contracting authority had sent various communications in connection with this tender and, as a result, it could have asked for a clarification on this matter especially since this accessory was included in the written tender submission, (e) the contracting authority could have either only asked Serolf Ltd to submit a sample or it could have been the case that the contracting authority was already making use of the bed offered by the recommended tenderer and, as a consequence, no sample was necessary, (f) the sliding linen holder was a minor item and it did not affect the proper functioning of the bed itself and a clarification in that regard would have been in place, (g) although no maintenance agreement had been submitted with the offer, the item in question carried a 5-year warranty which covered parts, labour and preventive maintenance, (h) confirmed that the 5-year warranty included maintenance and, as a result, there would be no extra costs to the contracting authority otherwise such costs would have been included in the offer in the first place, (i) following a question made by the contracting authority's representative, Dr Grech failed to trace in the appellant company's tender submission any reference to the five-year warranty, (j) the bed offered by the appellant company did have the over bed table with self locking mechanism and asked the contracting authority to explain its decision in this regard and (k) after examining the illustrations, acknowledged that there was a misunderstanding on the appellant company's part in the sense that the latter's representative did not have in mind the particular locking device being mentioned by the contracting authority's representative;

- having considered the contracting authority's representative's reference to the fact that (a) a sample was requested from compliant tenderers and, on inspecting the sample provided by the appellant company, it was evident that the sliding linen tray was not with the sample and, as a result, that state of fact did not warrant any clarification, (b) the appellant company was not contesting that the sample was submitted without the sliding linen tray, (c) this accessory formed part of the bed specifications and, generally speaking, evaluation boards did not have the discretion to decide what specifications could be done away with, (d) one could concede the fact that, once the sliding linen tray was included in the written tender submission, then the contracting authority could have asked for a clarification (e) the 'Technical Specifications', among other things, stated that "*A sliding linen tray is to be included at the foot section of the bed, which is used to stack clean bed linen.*", (f) in the 'Technical Specifications' under the heading 'Maintenance' there was stipulated that "*The contractor shall provide the cost of a five-year maintenance programme for the above mentioned beds. Any part needing replacement during the five-year period shall be quoted separately*", (g) the specifications laid down that "*The over bed table is to include an easily accessible mechanical release to lower and raise the table according to the patient's requisites. A self-locking mechanism to prevent accidental descent should also be incorporated*", (h) the sample provided by the appellant company did not have this self-locking mechanism but instead it had a manually operated mechanism to lower and raise the over bed table which was not compliant with specifications – illustrations were provided to this effect, (i) the appellant company was the only bidder, out of nine, to have misinterpreted self-locking mechanism of the over bed table and (j) the opportunity to ask for a clarification was available both ways,



namely to the contracting authority and to the bidder, in the latter case prior to the closing date of the tender,

reached the following conclusions, namely:

1. The Public Contracts Review Board recognizes the fact that the appellant company was not contesting that the sample was submitted without the sliding linen tray which accessory formed part of the bed specifications.
2. The Public Contracts Review Board opines that, albeit the specifications laid down that *'The over bed table is to include an easily accessible mechanical release to lower and raise the table according to the patient's requisites. A self-locking mechanism to prevent accidental descent should also be incorporated'*, yet the sample provided by the appellant company did not have this self-locking mechanism but instead it had a manually operated mechanism to lower and raise the over bed table which was not compliant with specifications.
3. This Board cannot but reflect on the fact that the appellant company was the only bidder, out of nine, to have misinterpreted the self-locking mechanism of the over bed table. Furthermore, during the hearing, after examining the illustrations, the same appellant company's representative acknowledged that there was a misunderstanding on the company's part in the sense that the latter's representative did not have in mind the particular locking device being mentioned by the contracting authority's representative. The Public Contracts Review Board argues that this specification ('self-locking mechanism') assumed a certain degree of functional importance considering that these beds were meant for use by elderly patients.

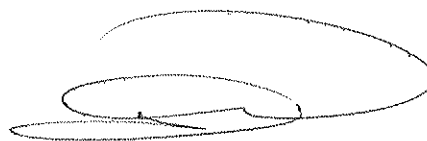
In view of the above this Board finds against the appellant company and recommends that the deposit paid by the same appellant for the appeal to be lodged should not be reimbursed.



Alfred R Triganza
Chairman



Joseph Croker
Member



Paul Mifsud
Member

19 November 2012