PUBLIC CONTRACTS REVIEW BOARD

Case No. 526

GHPST/108/11

Tender for the supply of External Collection Kit

This call for tenders was published in the Government Gazette on the 11th February 2011. The closing date for this call with an estimated budget of €48,739 (Excl. VAT) was the 14th March 2011.

Three (3) tenderers submitted their offers.

Technoline Ltd filed an objection on the 10th December 2012 against the decision of the Ministry for Health to disqualify its offer as technically non-compliant and to recommend award to A.M. Mangion Ltd.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr Carmel Esposito and Mr Paul Mifsud as members convened to public hearings, namely on Tuesday, 26th March 2013 and Monday, 15th April 2013 respectively, to discuss this objection.

Present for the hearing were:

Technoline Ltd

Ms Damaris Lofaro	Sales Executive
Mr Ivan Vassallo	Technical Expert
Mr Nicholas Sammut	Representative
Dr John Attard	Managing Director

A.M. Mangion Ltd

Mr Emanuel Spiteri	Representative
Mr Ray Vella	Representative

Central Procurement and Supplies Unit (CPSU)– Ministry for Health

Ms Connie Miceli	Representative, CPSU

Evaluation Board

Mr George Fenech	Chairman
Mr Antoine Zrinzo	Consultant Surgeon/Member
Ms Catherine Chetcuti	Sen. Pharm. Tech/Secretary

After the Chairman's brief introduction, the appellant company's representative was invited to explain the motives of the company's objection. A second sitting had to be resorted to because during the first sitting the technical experts, namely, Mr Antoine Zrinzo, Consultant Surgeon/board member, and Mr Ivan Vassallo, representing the appellant company, were unable to attend.

Ms Damaris Lofaro, representing Technoline Ltd, the appellant company, made the following submissions:

i. by letter dated 4th December 2012 the appellant company was informed that its offer was not successful since the ventricular catheter had two flaps for loading and since it could dislodge easily the product was unacceptable;

ii. the product offered by Technoline Ltd did satisfy all the requirements laid down in the tender document and, in fact, it was manufactured by a globally renowned firm, *Metronic*, and no fault had ever been reported similar to that indicated by the contracting authority;

and

iii. besides being compliant, the product offered by the said bidder was about 40% cheaper than the recommended one.

Mr Ivan Vassallo, also representing the appellant company, remarked that:-

a. if the appellant firm did not object to this reason for disqualification that would automatically mean that the product was or could be dangerous to patients;

and

b. the technical specifications did not indicate the requirements for securing the ventricular catheter to the patient and, as a consequence, one could not exclude a bidder on something which did not even feature in the tender technical specifications.

Mr George Fenech, chairman of the evaluation board, explained that:-

i. although certain correspondence and annexes to the evaluation report referred to 'Codman External Collection Kit', where 'Codman' was a propriety name, yet the title of the tender read 'External Collection Kit';

ii. in layman terms, this item was used to either drain the head of the patient from excessive fluid, which would otherwise exert pressure on the brain and other organs, or else inject fluid in the head/brain if such fluid was in short supply;

iii. Volume 3 of the tender document laid down the technical specifications of this product and, among other things, it referred to 'two clamps' and although the appellant company claimed that in its case 'the flaps' represented 'the clamps', the contracting authority considered them distinct from one another;

iv. *Metronic* was a globally renowned manufacturer of medical equipment and 'Mater Dei Hospital' made use of various items supplied by *Metonic*;

and

v. the contracting authority was not, in any way, attributing bad workmanship or something of the kind to this firm but the contracting authority was simply stating that, on examining and testing the sample provided, it was found that part of this device could easily dislodge rendering it unacceptable.

Mr Vassallo maintained that the product offered by Technoline Ltd not only met the tender specifications but it even exceeded them.

At this stage Mr Vassallo provided Mr Zrinzo with a sealed sample of the external collection kit offered by Technoline Ltd.

Mr Antoine Zrinzo, Consultant Neurological Surgeon and evaluation board member, explained that:

a. part of this device was fixed to the head of the patient usually to drain the excess fluid and the tube of that part had to join with the tube of another part of the same device;

b. at adjudication stage a problem was encountered on joining together the tubes of these two parts of the device because on tightening the flaps one of them broke and fell off with the consequence that the two tubes were not properly joined/connected together;

c. if these tubes did not connect/close properly then the patient would be exposed to infections;

d. there were other such devices where these two tubes were joined together by means of a helical thread instead of flaps, which, perhaps, rendered them more secure;

e. it was conceded that, incidentally, the sample used at adjudication stage turned out to be defective whereas other samples might not present this problem;

and

f. in fact, the sample just provided by the appellant company at the hearing provided an 'obliquely closed system', namely the two tubes were securely connected, and he would, therefore, be comfortable to use the product.

Mr Vassallo remarked that his firm undertook to take in and replace any defective items and that it was its policy to report and send any defective items to the supplier for testing.

At this point the hearing came to a close.

This Board,

- having noted that the appellant company, in terms of its 'reasoned letter of objection' dated 10th December 2012 and also through its representatives verbal submissions presented during the hearing held on the 15th April 2013, 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 letter dated 4th December 2012 the appellant company was informed that its offer was not successful since the ventricular catheter had two flaps for loading and since it could dislodge easily the product was unacceptable, (b) the product offered by Technoline Ltd did satisfy all the requirements laid down in the tender document and, in fact, it was manufactured by a globally renowned firm, *Metronic*, and no fault had ever been reported similar to that indicated by the contracting authority, (c) besides being compliant, the product offered by the said bidder was about 40% cheaper than the recommended one, (d) if the appellant firm did not object to this reason for disqualification that would automatically mean that the product was or could be dangerous to patients, (e) the technical specifications did not indicate the requirements for securing the ventricular catheter to the patient and, as a consequence, one could not exclude a bidder on something which did not even feature in the tender technical specifications, (f) the product offered by Technoline Ltd not only met the tender specifications but it even exceeded them and (g) the appellant firm undertook to take in and replace any defective items and that it was its policy to report and send any defective items to the supplier for testing;

- having considered the contracting authority's representative's reference to the fact that (a) although certain correspondence and annexes to the evaluation report referred to 'Codman External Collection Kit', where 'Codman' was a propriety name, yet the title of the tender read 'External Collection Kit', (b) in layman terms, this item was used to either drain the head of the patient from excessive fluid, which would otherwise exert pressure on the brain and other organs, or else inject fluid in the head/brain if such fluid was in short supply, (c) Volume 3 of the tender document laid down the technical specifications of this product and, among other things, it referred to 'two clamps' and although the appellant company claimed that in its case 'the flaps' represented 'the clamps', the contracting authority considered them distinct from one another, (d) *Metronic* was a globally renowned manufacturer of medical equipment and 'Mater Dei Hospital' made use of various items supplied by *Metonic* and (e) the contracting authority was not, in any way, attributing bad workmanship or something of the kind to this firm but the contracting authority was simply stating that, on examining and testing the sample provided, it was found that part of this device could easily dislodge rendering it unacceptable;

- having also considered Mr Zrinzo's references to the fact that, (a) part of this device was fixed to the head of the patient usually to drain the excess fluid and the tube of that part had to join with the tube of another part of the same device, (b) at adjudication stage a problem was encountered on joining together the tubes of these two parts of the device because, on tightening the flaps, one of them broke

and fell off with the consequence that the two tubes were not properly joined/connected together, (c) if these tubes did not connect/close properly then the patient would be exposed to infections, (d) there were other such devices where these two tubes were joined together by means of a helical thread instead of flaps, which, perhaps, rendered them more secure, (e) it was conceded that, incidentally, the sample used at adjudication stage turned out to be defective whereas other samples might not present this problem and (f) in fact, the sample just provided by the appellant company at the hearing provided an 'obliquely closed system', namely the two tubes were securely connected, and he would, therefore, be comfortable to use the product,

reached the following conclusion, namely the Public Contracts Review Board opines that the very fact that the same consultant / board member (Mr Zrinzo) (a) conceded that whilst it was a fact that, whereas the sample used at adjudication stage turned out to be defective other samples might not present this problem (b) informed those present that the sample just provided by the appellant company at the hearing provided an 'obliquely closed system', namely the two tubes were securely connected, and that, as a result, he would be comfortable to use the product, provided enough evidence to one and sundry that the product being offered by the appellant company was indeed acceptable.

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

Alfred R Triganza	Carmel Esposito	Paul Mifsud
Chairman	Member	Member

26 April 2013