

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 574**

**CPSU/CPU/2375/12**

Tender for Sterile Disposable CS Drapes for 3 Years Supply.

The tender was published on the 25<sup>th</sup> May 2012. The closing date was the 11<sup>th</sup> June 2012.

The estimated value of the Tender was: €49,650 for three years. (Exclusive of VAT).

Sixteen (16) bids were received for this tender.

On the 22<sup>nd</sup> May 2013 Trebee Limited filed an objection against its exclusion from the tender because its product was not technically compliant.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Richard A. Matrenza as members convened a hearing on Thursday 30<sup>th</sup> July 2013 to discuss the appeal.

**Present for the hearing were:**

### **Trebee Company Limited - Appellants**

Mr Pierre Buontempo	Representative
Mr Simon Bugeja	Representative
Mr Adnan Kar	Representative

### **RND Limited - Preferred Bidder**

Mr Roderick Abela	Representative
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### **Central Procurement & Supplies Unit – Contracting Authority**

Mr George Fenech	Chairperson
Ms Jacqueline Borg	Secretary Evaluation Board
Ms Catherine Bonnici	Member Evaluation Board
Ms Astrid Sammut	Representative

After a brief introduction, the Chairman invited the appellants to explain the reasons for the objection.

Mr Pierre Buontempo on behalf of the appellant explained that appellant's bid was disqualified because of questions of permeability of the product offered. He stated that they supply the same product to the contracting authority and they did not have any problems before. Appellants filed this appeal in order to investigate more about problems being encountered, and even brought over a representative of the manufacturing firm. They wished to know what the problem was.

Mr George Fenech, the chairman of the evaluation board explained that the product in question consists of drapes that are used during operations. They are used to cover patients through the operation and had thus to be sterile to ensure no infection of the patient occurs. He stated that as from February last year they had encountered problems and informed appellants through several emails of these problems. The suppliers, (appellants) admitted that there was a defect in the manufacturing process and promptly exchanged the defective product. But the problem persisted. It was thought at first that the defective batch was not all returned to suppliers, but this proved to be not so as problems were still encountered with samples from the new batch, bearing the new batch number. Here the PCRБ was shown photographs showing the problems.

The present tender is a fresh tender and the present supplier's product had to be evaluated with those from the other bidders. The evaluators in such cases are the end users themselves, the scrub nurses and the surgeon.

On being asked by the Public Contracts Review Board Mr Fenech stated that the preferred bidder was both technically and administratively compliant and had to provide samples for testing. Those bidders who failed to provide samples are disqualified. Appellant, being the present supplier, did not need to provide samples as the hospital had the items in stock and used those. The drapes are supposed to be water-repellent but on occasions, they absorb blood and liquids, become heavy and tear. Sterile Drapes have a shelf-life and also come with an expiry date. It is for this reason that staggered supplies are requested from the contractor.

Mr Pierre Buontempo said that his firm had supplied the same drapes in 2011 and 2012 and it was only in February 2013 that they received any complaint that one item was torn. One drape had its pouch torn. When our suppliers were informed of this we were instructed to exchange the stock with new one without any conditions. We did so and consider the matter as closed. However another complaint was raised on a pouch containing a drape that had not been properly sealed. Yet again the remaining stock was changed and replaced. On the 9<sup>th</sup> May 2013 we were informed by email that there were no problems. He reiterated that the problem encountered was in a pouch in which the drape is enclosed. The product offered by the appellant is still being used at the hospital today. The boxes of drapes that were replaced were opened at random and not one of these was found to be defective.

Mr George Fenech insisted that the pouch was an integral part of the drape and is used to hold blood and fluids. The replacement of the defective products taken back by appellants in February 2013 was only received in June 2013. This is not acceptable since to continue performing operations they had to use drapes intended for use in other operations, not

caesarean, and this could lead to shortages. The appellants had informed Central Procurement & Supplies Unit that there were two batches from two manufacturers, and that the batch which had defects was to be discarded while the other was to be used. The replacements supplied still had defects. He explained the methodology used in determining the compliancy of the samples provided by the preferred bidder. About ten samples are submitted by bidders. These samples are distributed to end users who use them in their daily work. This process takes about three weeks after which the evaluators meet in a meeting that Mr Fenech chairs but has no vote. He had to accept what the end users decided. One consultant who used appellant's product stated that there were problems with it. There were at least another 4 complaints that arose during the evaluation process. But it must be noted that appellants had a drawback in the sense that the evaluation was being made during February 2013 a period when problems with the product were being encountered.

Mr Roderick Abela on behalf of the preferred bidder contended that the appellant's supplier has quality control problems.

At this point the hearing was brought to a close.

**This Board,**

**Having noted the Appellant's objection in terms of the 'Reasoned Letter of Objection' dated 22<sup>nd</sup> May 2013 and also through the verbal submissions by same during the hearing held on 30<sup>th</sup> July 2013, had objected to the decision taken by the pertinent Authority, in that:**

- a) The Appellant's Product was not technically compliant.**
- b) The Appellant is currently the supplier to the Contracting Authority.**
- c) There are no current problems as the quality of the product being supplied to the Contracting Authority.**
- d) Any defective product was replaced to the satisfaction of the Contracting Authority.**

**Having considered the Contracting Authority's verbal submissions presented by same during the hearing held on the 30th July 2013, in that:**

- a) The chosen product under consideration is used exclusively during operations to the effect that, the product under tender had to be 100% sterile to avoid any unnecessary infections on patients.**
- b) During the submissions of the Evaluation Board of the Contracting Authority, the requirement for a good and reliable product end was explicitly elaborated.**
- c) The Evaluation Board of the Contracting Authority had, in its obligations, to ensure that the chosen product had to be sterile enough so that infections do not occur after the operation.**
- d) The Contracting Authority had previously encountered technical problems with the product of the Appellant's bid and such problems were notified in writing by the Contracting Authority to the Appellant.**

- e) **The technical quality of the product of the Appellant still persisted although the Appellant was made aware of this shortcoming by the Contracting Authority.**
- f) **The Preferred Bidder was administratively and technically compliant.**
- g) **The samples and batches supplied by the Appellant, including replacements were of inferior quality, as confirmed by experts in the field.**

**Reached the following conclusions:**

- 1. From submissions made during the hearing it was clearly established that the product of the Preferred Bidder was of a superior quality than that of the Appellant.**
- 2. At the end of the day it is not always the price which matters, but also great consideration must be given to the purpose for which the product is to be utilised.**
- 3. In the long term, although the Preferred Bidder's offer was not the cheapest, cost wise it will reap the required results.**
- 4. From the submissions of experts during the hearing, it emerged that the Preferred Bidder's offer was more suitable for the purpose for which the same product is intended.**

**In view of the above, This Board finds against the Appellant Company and recommends that the deposit paid by the Appellant should not be reimbursed.**

Dr. Anthony Cassar  
Chairman

Dr. Charles Cassar  
Member

Mr. Richard A. Matrenza  
Member

*3 September 2013*