PUBLIC CONTRACTS REVIEW BOARD

Case No. 906

CPSU 1024/2015

Tender for the Supply of Mobile Contrast Ultrasound Machine for General/Interventional Applications.

The Tender was published on the 2nd April 2015. The closing date was on the 30th April 2015. The estimated value of the Tender was €60,000.00 (Exclusive of Vat).

Twelve (12) offers had been submitted for this Tender.

On the 4th December 2015 Jamesco Trading Co. Limited filed an Objection against the decision of the Contracting Authority to disqualify its Tender number 33022 for being non-compliant with the specifications.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a hearing on Tuesday the 1st March 2016 to discuss the Objection.

Present for the hearing were:

Jamesco Trading Co Limited:

Mr Philip Chircop	Director
Mr Guillaume Gauthier	Representative
Dr Alessandro Lia	Legal Representative

Suratek Limited:

Mr Kevin Galea	Representative

Mater Dei Hospital:

Mr Wayne Caruana	Chairperson Evaluation Board
Mr Marnol Sultana	Secretary Evaluation Board
Mr Kenneth Saliba	Member Evaluation Board
Dr Stefan Zrinzo Azzopardi	Legal Representative

The Chairman made a brief introduction and invited the Appellant's representative to make his submissions.

Dr Alessandro Lia on behalf of the Appellant said that his client's Tender had been rejected because it was claimed that it did not satisfy the required specifications. However he contended that the Appellant had offered equivalent equipment which provided the same service.

Mr Guillaume Gauthier, passport number 13CR04010, on behalf of the Appellant, under oath said that he was a bio medical engineer and worked with Esaorte for a number of years and follows the distribution of the company's products around Europe and Africa. The item that caused the disqualification is the one referred to at page 14 the *"wide-band sector array probe for superficial abdominal applications, frequency range 4 (+/- 10%) to 9MHz (+/- 10%)".*

The item offered by the Appellant satisfied all the elements of these specifications except for the sector name. The equipment by the Appellant covers more than the range requested. It also has superficial abdominal applications and was quoted with the TP view. There are sector views which provide a fan view, and linear views which provide a straight line view; TP view creates a fan view from a linear view.

A sector refers to a fan image having a triangular shape, (Here the witness showed those present some drawings). Mr Gauthier contended that the first showed a phased array probe that was used for cardiac applications and was not optimal for abdominal application as requested in the Tender.

The second drawing was of a linear one with TP view as submitted by Jamesco Trading Co Ltd. This provided the enlarged sector image that was mandatory. The Tender had also requested the supply of contrast media examination, a liquid that is injected prior to examination. The equipment submitted by the Appellant also performs this function.

Dr Stefan Zrinzo Azzopardi, on behalf of the Contracting Authority, asked the witness to confirm that the Appellant had offered one wide band convex array probe and two wide band linear array probes. Mr Gauthier stated that the linear wide band array probe offered by the Appellant still provided the same results. The wide band sector array probe for superficial abdominal applications was not offered by the Appellants but instead they offered two wide band linear array probes which gave better results. The sector probe is traditionally used for cardiac applications and not for superficial applications.

Mr Philip Chircop, ID No. 118661M, on behalf of the Appellant, under oath said that the Tender requested a sector probe with a specific frequency. He pointed out that the specifications of the other two probes did not ask for superficial abdominal use. The Appellant's supplier, Esaorte, is a world leader in the production of these products.

The requested sector probe provides a fan shape image. A linear probe can be either sequential or phased. The Appellant had offered equipment which covered all the Tender specifications because a linear IT probe with TP view was ideal for superficial imaging.

The Recommended Bidder must have submitted probes that were intended for cardiac use whereas the Appellant had submitted equipment ideal for superficial abdominal application.

Bidders had also to supply contrast media, or CNTI that was injected to enable examination, and since the requested probe was point generated this meant that patients would have to be given a larger dose of the contrast fluid.

Replying to Dr Lia who referred to the wording in the Letter of Rejection "*spectrum of probes not adequate*", Mr Chircop said that he did not agree because the probe offered by the Appellant was ideal for superficial abdominal application and fell within the requested specifications.

Replying to Dr Zrinzo Azzopardi he said that he did not agree to the fact that the Appellant had submitted 2 linear probes and 1 convex probe because the latter had offered 1 convex probe, 1 linear probe and 1 linear IQ probe. Jamesco Trading Co Ltd had not submitted a wide band sector probe. The Tender had provisions for submitting equivalent equipment. There was no difference between a wide band linear and wide band sector arrays. The Tender had requested equipment that provided a sector image and Appellant had supplied this.

Dr Kenneth Saliba ID No. 419774M after making a solemn declaration said that he was a member of the Evaluation Board stated that the equipment in question is used by the Radiology Department. The Tender had requested 3 items intended for general use and intervention use which would also be used during interventions. For this reason 3 types of probes were required:

i) A linear array, used normally for veins and arteries which uses high frequency;

ii) Sector array use low frequencies but offer more penetration. This probe is used for kidney/liver examinations because it has a footprint of 2cm and can easily pass between the ribcage. It is also used for biopsies where precision is needed. It is also used for children and patients with emaciated organs;

iii) Convex array that is used for abdominal examinations and having low frequency.

The Appellant did not offer these three types of probes but offered a curved probe and two linear array probes but no sector array probe; hence the machine could not be used as desired. Linear arrays always function at different frequencies but are not point source; (Here the witness showed the Board several images).

These are used superficially for arteries and veins and also could be used for other purposes but problems would arise since they have a wide footprint and cannot be used for delicate work.

These probes are made from a row of crystals while the sector probe starts from a point. An array means that the pattern of crystals–convex arrays is semicircular, linear arrays which are in a straight line. On the other hand, the sector arrays fan out from a point.

The Appellant's offer did not provide the same result and was not what was requested in the Tender. Low frequency probes penetrate deeper and sector arrays are needed for this. Replying to Dr Lia, Dr Saliba agreed that the Appellant's submission was within the frequency range.

On the other hand, he did not agree that the linear probe with TP view gave the same results

as a sector array, that is, fan like imaging. It was not a point source but an elaboration of the image.

Dr Saliba agreed with Dr Lia that the probe opens the image but the latter is not fan shaped because it starts from a line and not from a point source. It is commonly known that a sector probe has a small footprint although this was not specifically indicated in the Tender. This small footprint enables targeting of interior organs that may be partly hidden by the ribs while a linear probe cannot do this; does not provide the same result because it has a footprint of 5cm.

The images which were shown to the Board were of equipment manufactured by Esaorte. Phased arrays and Sector arrays both produce an image from a source point. These can be used for cardiology but are also used for superficial abdominal use. The low frequency sector probes allow imaging without deep penetration. The sector probe is mainly used during interventions. The equipment offered by the Appellant does not allow intervention use in all cases.

Dr Alessandro Lia for the Appellant contended that it was clear from the witnesses' submissions that there are two nearly conflicting views of the matter. It also resulted that his client's offer satisfied the frequency range requirement. The abdominal application offered is optimal and better than the sector probe.

Jamesco Trading Co Ltd offered two linear probes and nowhere in the Tender there is mention of the footprint of the required probes or the use that is going to be made. The Appellant's offer, continued to argue Dr Lia, satisfied the three specifications of the Tender. He contended that the Recommended Bidder's offered equipment was intended for use in cardiology. The Appellant's equipment was optimal for superficial abdominal use requested in the Tender.

Dr Stefan Zrinzo Azzopardi for the Contracting Authority said that the witness was the end user of the equipment and he had explained in detail why the wide band convex array gives different results from wide band sector array, and different from wide band linear array. The Appellant had offered alternative equipment that did not meet the needs of the Contracting Authority. He stressed that Appellant had submitted two of the three requested probes because linear probes could never be sector array probes.

The hearing was at this point brought to an end.

This Board,

Having noted the Appellant's Objection, in terms of the "*Reasoned Letter of Objection*" dated 4 December 2015 and also through their verbal submissions during the Public Hearing held on 1 March 2016 and had

objected to the decision taken by the Pertinent Authority, in that:

a) **The Appellant Company contends that their offer was discarded as the equipment offered by them was not deemed to be Technically Compliant, yet at the same time, they were insisting that it would render the same result requested by the Tender Document;**

b) **Jamesco Trading Co Ltd maintains that the Tender Document allowed bidders to submit equivalent equipment and in this regard, they contend that the equipment offered was equivalent to what has been asked for.**

Having considered the Contracting Authority's "*Letter of Reply*" dated 14 January 2016 and also their verbal submissions during the Public Hearing held on 1 March 2016, in that:

a) **The Contracting Authority maintains that the Appellant's offer was not conform to the Technical Specifications as dictated in the Tender Document where three types of probes were requested whilst the Appellant offered other types of these probes which do not allow intervention use in all cases of application.**

Reached the following conclusions:

1. **This Board acknowledges the fact that this Appeal consists of a highly Technical Medical Nature, so that great emphasis was made on the Technical Submissions and vivid explanation made by the Technical Expert, Dr Kenneth Saliba who is highly experienced on the subject matter, has also explained in detail why the Technical Specifications were dictated in such a way.**

   With regards to the Appellant's First Grievance, this Board, after having heard the Technical Expert's submissions under a solemn declaration, opines that, first of all the Technical Specifications stated that the Equipment was to consist of a "*Linear Array*", a "*Sector Array*" and a "*Convex Array*".

   The Technical Expert credibly and justifiably explained with Medical reasons, why this type of Equipment was requested. It was also justifiably proven that the Equipment offered by Jamesco Trading Co Ltd could not be used as desired.

   During the Technical Submissions, this Board noted that the Technical Specifications dictated were not made capriciously but

were made to include the required equipment which was to serve specific functions in radiology.

In this regard, this Board credibly established that the equipment offered by the Appellant consisted of a "*Curved Probe*" and two "*Linear array Probes*" which in fact do not render the possibility of the intended applications.

It was also proved that the Appellant's Equipment does not allow intervention used in all cases. In this respect, this Board is credibly convinced that the Technical Specifications were dictated to be applied for "*Specific Medical Reasons*" which in the Board's opinion were credibly justified.

At the same instance, this Board notes that the equipment offered by the Appellants does not give the same results requested by the Contracting Authority. This Board does not uphold the Appellant's First Grievance.

2. **With Regards to the Appellant's Second Grievance, this Board, after having established through the Expert's submission, that it is correct for the Tender Document to provide for the submission of equivalent**

equipment, stated also that the latter had to have specifications as dictated in the same Tender Document.

With particular reference to the Appellant's Equipment, it was technically proved that the "*Linear Probe with TP View was not a point of source but an elaboration of the image.*"

The image from the Appellant's Equipment is not "*Fan Shaped*". At the same instance, the equipment which they were offering does not allow intervention use in all the cases.

In this regard, this Board justifiably opines that the equipment offered by the Appellant Company did not represent an alternative source of supply and did not give the results as dictated in the Tender Document. In this respect, this Board does not uphold the Appellant's Second Grievance.

In view of the above, this Board finds against the Appellant Company and recommends that the deposit paid by the same should not be refunded.

Dr Anthony Cassar Chairman	Dr Charles Cassar Member	Mr Lawrence Ancilleri Member

22 March 2016