

PUBLIC CONTRACTS REVIEW BOARD

Case 982 – CFT 019-10061/16 – Framework Contract for the Supply of Insulin Syringes

The publication date of the Call for Tenders was 29 January 2016 whilst the Closing Date for Call of Tenders was 29 February 2016. The Estimated Value of the Tender was € 48,686.440 (Exclusive of Vat).

Nine (9) Bidders have submitted offers for this Tender.

On 20 April 2016, Drugsales Ltd filed an Objection against the decision of Central Procurement and Supplies Unit to award the Tender to Medic Sante for the price of € 50,407.50 against a deposit of € 400.

On 29 September 2016, the Public Contracts Review Board composed by Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a Public Hearing to discuss the Objection.

The Attendance for this Public Hearing was as follows:

Appellant – Drugsales Ltd

Dr Giulia Attard Montalto	Representative
Ms Claudia Dimech	Representative
Mr Stephen Farrugia	Representative

Recommended Bidder – Medic Sante Ltd

No representatives were present for this Public Hearing

Contracting Authority – Central Procurement and Supplies Unit

Ms Marika Cutajar	Chairperson, Evaluation Board
Ms Rose Aquilina	Member, Evaluation Board
Mr Donald Attard	Member, Evaluation Board
Dr Stefan Zrinzo Azzopardi	Legal Representative

The Public Contracts' Review Board Chairman, Dr Anthony Cassar, started the Public Hearing by remarking that the Reasoned Letter of Reply has arrived late. In fact the Letter was filed at the Board's offices on 27 September 2016, two days prior to the Public Hearing. Following this statement, Dr Cassar invited the Appellants to make their submissions.

Dr Giulia Attard Montalto, on behalf of Drugsales Ltd, argued that in their Letter of Objection, it was explained that they were compliant with the Technical Specifications which required a 0.5cc needle with a 29g gauge.

The Evaluation Board, according to Dr Attard Montalto, said that the needle which they were offering was 25g but in their offer Drugsales had made it clear that they were offering a 29g gauge and they made it clear both in the space left at the Technical Specifications for the bidders to fill in further info and also at the same space left at the Financial Offer.

Dr Attard Montalto referred also to the Reasoned Letter of Reply which said that the Literature submitted was not compliant as it stated that Drugsales Ltd were offering a 25g needle. Page 14 of the Appellant's offer mentioned Disposable Hypodermic Needles but these were not relevant to the Tender in question as they are different from the Insulin Syringes requested by the Contracting Authority.

She continued by saying that the Evaluators saw only the page related to the Hypodermic Needles and ignored what they were offering, which was shown in Page 13 and which stated that they were offering Insulin Syringes with a 29g needle. In the description, there was no mention of the 29g because the standard needles in this industry were always between 29g and 31g for 2 reasons, so that the insulin will go directly at the place needed in the body and also so that the patient won't hurt that much.

The Contracting Authority, continued Dr Attard Montalto, should have asked for either clarifications or samples if they were not clear on something in their offer. Drugsales Ltd were the cheapest technical compliant bidders. In Note 2 of the Instructions to Tenders, it was stated that the Contracting Authority can ask for clarifications. It was not the case, the Appellant concluded, that the latter was not going to use this product and thus they did not agree on the Tender Cancellation.

Dr Stefan Zrinzo Azzopardi, representing Central Procurement Supplies Unit, started by saying that the Evaluation was made on the documents presented by the bidders. From what the Appellants submitted, there was no specification that they were going to use the 29g needles. It was very important for the Adjudicators to be in conformity with the requisites made at the Tender Document.

Recently, continued Dr Zrinzo Azzopardi, there was another case which appeared before this Board because no Technical Literature was presented and both CPSU and this Board agreed with the decision made at that time, namely to disqualify the Appellant. It was true that the Contracting Authority had the right to ask for clarifications but they were not obliged to do so. When the Evaluation Board saw that when Drugsales Ltd was not conforming with the requested Technical Specifications, the former had to reject the latter's offer.

Dr Anthony Cassar, Chairman Public Contracts Review Board, declared that the Technical Literature had to be 100% conforming with the Technical Specifications.

Dr Giulia Attard Montalto, on behalf of Drugsales Ltd, said that Central Procurement and Supplies Unit were wrong in stating that they submitted a 25g needle.

Dr Stefan Zrinzo Azzopardi for the Contracting Authority replied that the 25g was quoted according to the way the offer was presented but even if the Evaluation Board was misled, the offer presented showed that the Appellants did not present the needles requested.

Dr Anthony Cassar, Chairman Public Contracts Review Board asked whether the standard needles were of 29g.

Dr Giulia Attard Montalto for Drugsales Ltd replied that the 0.5ml insulin syringes were found with either 29g or 31g syringes. Mr Stephen Farrugia, also for Drugsales Ltd, added that usually they go for the 29g needles because they were cheaper. Dr Giulia Attard Montalto continued by saying that in the Tender Document there was enough evidence that they were going to offer the 29g needles.

Dr Anthony Cassar, Chairman Public Contracts Review Board, stated that the Contracting Authority was not obliged to seek clarifications from the bidders.

At this point Mr Donald Attard, ID 304763 M, member of the Evaluation Board, was called to testify under oath.

Dr Anthony Cassar, Chairman Public Contracts Review Board asked whether the 29g needles were the standard needles used for these types of syringes.

Mr Attard answered that he was obliged to follow what the Tender Document dictates and he made his Evaluation according to what the Appellants had presented. In this case, there was no indication of the gauge of the needle on the first part of the offer; this has led to the witness to refer to a second page of the same offer where thanks to the colour coding, Mr Attard had some indication on what needle Drugsales Ltd were offering

Dr Anthony Cassar, Chairman Public Contracts Review Board then asked the witness to confirm whether there were any clear indications on which needle the Appellants were offering.

The witness replied that many of these items were colour coded and they indicate immediately what gauge is referring to. The colour codes were both on the same Technical Literature.

Dr Giulia Attard Montalto for Drugsales Ltd said that there was a page which said Disposable Insulin Syringes while another page said that Disposable Hypodermic Needle which was a different product from the one requested.

Mr Donald Attard replied that both items were at the same submission.

Dr Anthony Cassar, Chairman Public Contracts Review Board then asked what the description of the item needed was for which Mr Attard answered Insulin Syringes 0,5ml. Dr Cassar then asked what does the Tender Document specifies. The Tender Document, replied the witness, specified that the needles needed were the 29g ones.

In the Technical Literature, continued Mr Attard, there was enough information to conclude that Drugsales Ltd did not present the gauges requested in the Tender Document, when comparing them with the colour codes. The Evaluation Board felt that there was no need for Clarifications.

Dr Stefan Zrinzo Azzopardi, for Central Procurement Supplies Unit, asked the witness whether in the Technical Description submitted by Drugsales Ltd the 29g was mentioned, for which the reply was no. Dr Zrinzo Azzopardi then asked Mr Attard whether he saw the description at the Technical Sheet for which the latter replied that he saw everything which the Appellants submitted.

Dr Anthony Cassar, Chairman Public Contracts Review Board, stated that the issue was whether the Technical Literature sent by Drugsales Ltd agreed with the Technical Specifications which they have sent.

Mr Stephen Farrugia, for Drugsales Ltd agreed with the latter statement. Dr Giulia Attard Montalto, also for the Appellants, added that the Disposable Hypodermic Needle was a different product she also added that in the Technical Literature which they have submitted, there were other products which they were not offering for this Tender.

Drugsales Ltd, continued Dr Attard Montalto, wrote that the needles offered were of 29g both in the financial bid and in the Technical Specifications. The Evaluators, according to the Appellants, had to take everything into consideration. It should be a general practice to seek for a clarification when things are not clear from the part of the Contracting Authority. They had also bought the samples in case, the latter asked for them.

Dr Stefan Zrinzo Azzopardi, for Central Procurement Supplies Unit said that things would have been clearer if there was a declaration from the manufacturer that the needle supplied was of 29g. Dr Anthony Cassar, Chairman Public Contracts Review Board, agreed with this statement.

At this stage, the Public Hearing was closed.

This Board,

Having noted the Appellant's Objection, in terms of the "*Reasoned Letter of Objection*" dated 20 April 2016 and also through their verbal submissions during the Public Hearing held on 29 September 2016 had objected to the decision taken by the Pertinent Authority, in that:

- a) **Drugsales Ltd's main grievance is that its offer was discarded due to the alleged fact that the product which they offered was not Technically Compliant as according to the Contracting Authority, they submitted syringes with a 25g gauge instead of 29g as requested in the Tender Document. The assumption on which the Contracting Authority arrived at its decision was in fact the Literature submitted with the offer;**
- b) **Drugsales Ltd also contend that the Contracting Authority should have asked for clarifications if there was anything which was unclear regarding their submissions.**

Having considered the Contracting Authority's "*Letter of Reply*" dated 27 September 2016 and also their verbal submissions during the Public Hearing held on 29 September 2016, in that

- a) **Central Procurement and Supplies Unit contend that the Evaluation Board had to deliberate on the actual documentation submitted by the Appellants which ascertained that the product being offered did not have a 29g gauge. The Literature submitted did not complement the Technical Specifications as dictated;**

b) With regards the Appellant's Second Grievance, Central Procurement and Supplies Unit maintain that they were not legally obliged to seek qualifications, in this respect.

Reached the following conclusions:

1. This Board, after having examined the relative documentation and heard submissions made by the parties concerned, first of all would like to stress on the extent of relevance of the "*Technical Literature*" as and when requested by the Contracting Authority.

Certain products which are being tendered for, especially in the medical field, need to be precise down to the finest detail as dictated in the Tender Document.

The purpose of requesting the Technical Literature is to compare and confirm that the product as described in the Technical Specifications of the Tender Document is what the Appellant is offering.

The Technical Literature, gives in detail, certain information which confirms the same information as that in the Bill of Quantities, so

that, the request and submission of the Technical Literature will confirm that the Bidder's offer complies with all the requisites of the Tender Document.

In this particular case, through an examination of the submitted documentation and from the testimonies provided under oath by the witness, it can be comfortably established that the Technical Literature submitted by Drugsales Ltd did not indicate or described the offered product as having a 29g gauge. This, in fact, does not complement what was stated in the Technical Submission and in the Financial Bid form.

This Board, as had on many occasions, would like to stress the importance of the Technical Literature submissions, in that, it must complement and agree in total with what has been declared to be offered in the Tender Document.

The argument brought about by Drugsales Ltd, in that, *“Although there was no mention of the 29g gauge in the Technical Literature, it was a standard practice to use this gauge for such a purpose”*, does not necessarily imply or indicate that the needle gauge, as shown in the Technical Literature, is of 29g.

The measurement of a 29g gauge had to be illustrated or dictated so that the evaluators can confirm that what the Appellant is offering is the correct product. In this regard, this Board does not uphold the Appellant's First Grievance.

- 2. With regards to the Appellant's Second Grievance, this Board would like to credibly point out that clarifications are only sought on information submitted.**

In this particular case, it was established that the gauge on the Technical Literature submitted, was not made available. Therefore, the Evaluation Board could not rectify what was not submitted but rather compare the Technical details with those declared in the Tender Document.

It must also, be made clear that the Evaluation Board may ask for Clarifications but is not obliged to do so. In this regard, this Board does not uphold the Appellant's Second Grievance.

In view of the above, this Board finds against Drugsales Ltd, however due to the fact that the Tender is being cancelled, this Board recommends that the deposit paid by the latter should be refunded.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

4 October 2016