

PUBLIC CONTRACTS REVIEW BOARD

Case 1073 – CFT 019-10500/2016 – Tender for the Supply of Control Slides and Related Items for Bacteriology

The Publication Date of the Call for Tenders was 9 September 2016 whilst the Closing Date for Call of Tenders was 10 October 2016. The Estimated Value of the Tender, (Exclusive of VAT) was € 12,800.

Four (4) Bidders have submitted Five (5) offers for this Tender.

On 20 June 2017, Procare Ltd filed an Objection against the decision of the Central Procurement and Supplies Unit to award the Tender to Technoline Ltd for the price of € 11,611.80 (Exclusive of VAT) against a deposit of € 400.

On 8 August 2017, the Public Contracts Review Board composed by Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Carmel Esposito as members convened a Public Hearing to discuss the Objection.

The Attendance for this Public Hearing was as follows:

Appellant – Procare Ltd

Mr Pierre Calleja	Representative
Mr Mark Camilleri	Representative

Recommended Bidder – Technoline Ltd

Mr Christopher Rizzo	Representative
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Contracting Authority – Central Procurement and Supplies Unit

Mr Charles M Borg	Chairperson, Evaluation Board
Mr Carmen Buttigieg	Secretary, Evaluation Board
Dr Paul Caruana	Member, Evaluation Board
Mr Robert Cassar	Member, Evaluation Board
Ms Julie Haider	Member, Evaluation Board
Mr Marco Woods	Representative
Mr Joseph Xuereb	Representative
Dr Stefan Zrinzo Azzopardi	Legal Representative

Following an introduction by The Public Contracts' Review Board Chairman, Dr Anthony Cassar, the Appellants were invited to make their submissions.

Mr Mark Camilleri, representing Procare Ltd, opened by saying that they have submitted an offer for this Tender according to its specifications. One of these specifications requested the Bidders to submit Faecal Parasite Concentrators. The Contracting Authority has requested a sample of what the Appellants were offering, which the latter submitted. However, when ProCare Ltd filed their Objection, they were advised by the Central Procurement and Supplies Unit that they should have submitted a specimen vial.

Mr Camilleri continued submitting that if one had to see what the Appellants had offered regarding the Faecal Parasite Concentrators one would have seen two separate and totally different items. Besides, the Tender Document did not request a specimen vial. There were different specifications and different options which were requested for the vial.

The Appellants argued that not only they expected the Contracting Authority to say that they were requesting a specimen vial but also the requested specifications, which options one had to choose in order for the vial to be chosen. Procare Ltd followed the Tender Specifications, the latter did not request any vial and therefore they have submitted a bid on what was requested.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board asked whether the Tender requested any vials for which Mr Mark Camilleri, representing ProCare Ltd replied that there was nowhere in the Tender where the word vial was mentioned.

Dr Stefan Zrinzo Azzopardi, the Legal Representative for the Central Procurement and Supplies Unit, stated that he would produce a witness with all the samples which were presented in order for the Public Contracts Review Board to understand clearly what was being discussed and what were his clients expecting from the Appellants.

At this point, Ms Julie Haider, an Allied Health Practitioner who was also part of the Evaluation Board for this Tender, holding ID Card Number 231782 M was summoned by the Central Procurement and Supplies Unit to testify under oath before the Public Contracts Review Board

At the end of Ms Haider's Testimony, the Public Hearing was adjourned to Tuesday 22 August 2017 at 09:00 wherein the Public Contracts Review Board will transmit the decision taken for this Objection verbally and then distribute a hard copy of the same to all parties concerned.

This Board,

Having noted this Objection filed by Procure Ltd (herein after referred to as the Appellant) on 20 June 2017, refers to the Contentions made by the latter with regards to the award of Tender of Reference CFT 019-10500/2016 listed as Case No 1073 in the records of the Public Contracts Review Board, awarded by the Central Procurement and Supplies Unit (herein after referred to as the Contracting Authority).

Appearing for the Appellant: Mr Mark Camilleri

Appearing for the Contracting Authority: Dr Stefan Zrinzo Azzopardi

Whereby, the Appellant contends that:

- a) His offer was in accordance with the Technical Specifications as those dictated in the Tender Dossier. In this regard, Procure Ltd maintains that the item being mentioned by the Central Procurement and Supplies Unit as being not included in his offer was not requested in the Tender Document.**

This Board also noted the Contracting Authority’s “*Letter of Reply*” dated 2 August 2017 and its verbal submissions during the Public Hearing held on 8 August 2017, in that:

- a) The Central Procurement and Supplies Unit insists that the product offered by the Appellant did not include a part known as “*Fixative/Specimen Vial*”, which forms an integral part of the filtration process of the concentrator itself.**

In this regard, the Appellant should have been aware that this formed part of item B of the Technical Specification under the heading of “*Faecal Parasite Concentrators without liquid fillings*”.

This same Board also noted the Testimonies of the witness namely, Ms Julie Haider duly summoned by the Central Procurement and Supplies Unit.

This Board, after having considered the merits of this case, arrived at the following conclusions:

- 1. Since this Appeal is of a specialised medical nature, this Board has placed great importance on the testimony of the Technical Witness**

duly summoned by the Central Procurement and Supplies Unit and who is technically competent in this medical procedure.

After having heard the submissions made by the parties concerned, this Board opines that the main issue of this Appeal is whether Procure Limited's product was in accordance with what was requested by the Contracting Authority.

The Tender Dossier, in Section 4 – Technical Specifications, under item B, requested “*Faecal Parasite Concentrators – Without Liquid Filling*”. The purpose and use of this product was described in great detail by the Technical Witness who also demonstrated the component parts contained in the Concentrator, the *Filtration Unit*, and the part known as the “*Specimen Vial*”.

It was also credibly proved that since this mentioned part is an integral part of the product's system and Procure Limited's offer did not include such a part, the latter's product was not complete, so much so, that even the literature contained with the sample indicated that to be operative and render the required results, an additional part was necessary.

In this regard, this Board justifiably noted that from the testimony of the Technical Witness, it was credibly established and proved that the Appellant’s offer did not include the complete kit to allow the concentrator to be operative. At the same time, the latter’s product lacked the inclusion of the filtration part which was the “*Fixative/Specimen Vial*” and which forms an integral part of the whole process that is applied by a “*Faecal Parasite Concentrator*”

At the same instance, the Appellant is claiming that the Tender Dossier did not request a “*Fixative/Specimen Vial*” and in this regard, this Board, after having gone through the testimony and explanations given by the Technical Witness, contends that enough credible information was presented by the latter to prove that the “*Fixative/Specimen Vial*” forms an integral part of the “*Faecal Parasite Concentrator*” and that the Appellants offered a product which lacked such a part.

In this regard, this Board would respectfully point out that the Bidders in this field of activity are well aware and conversant with what was requested and as such, the Bidder is expected to be aware of the components which form a “*Faecal Parasite Concentrator*”.

This Board justifiably notes that Procure Limited’s product without the “*Fixative/Specimen Vial*”, cannot serve the purpose for which it is intended. This Board is credibly convinced that when the Tender Document dictated a “*Faecal Parasite Concentrator*”, it requested a product with all the components to form such a medical kit and not a partial one.

In this regard, this Board also noted that no evidence or proof was presented by the Appellant to prove that what he had offered was complete enough to carry out the function as that intended in the Tender Document.

This Board would like to respectfully refer to Procure Limited’s claim that the Tender Document did not specify sufficient information for the Bidder to understand precisely what the Central Procurement and Supplies Unit was requesting.

Apart from the very fact that this Board justifiably expects that the Appellant, prior to submitting his offer, was fully aware of what is being requested, the latter was also expected to be conversant with the product he has offered in his bid so that he should have been aware that the “*Fixative/Specimen Vial*” forms an integral part of the

“*Faecal Parasite Concentrator*”, which was clearly specified in the Tender Document.

This Board is conscious of the fact that if the Appellant was not fully aware of what components constituted a “*Faecal Parasite Concentrator*”, he had the opportunity to clarify any misunderstandings through a Pre-Contractual Concern, a remedy which the Appellant did not avail of.

- 2. On a general note, this Board contends that such similar Appeals are being lodged always referring to interpretation of terminology or misinterpretation of the Technical Specifications of a Tender, especially on Tenders of a medical nature.**

Such appeals can be avoided or minimised through the application of remedies available at law and in this regard, this same Board expects that Appeals are resorted to after the first instance remedies have been exhausted.

In view of the above, this Board:

- i) Does not uphold Procure Limited’s contentions;**

ii) Upholds the decision taken by the Central Procurement and Supplies

Unit;

iii) Does not recommend the refund of the deposit made by Procare

Limited.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Carmel Esposito
Member

22 August 2017