

PUBLIC CONTRACTS REVIEW BOARD

Case 1076 – CFT 021-6206/2017 – Supply of Bendrofluazide 2.5mg Tablets

The Publication Date of the Call for Tenders was 17 March 2017 whilst the Closing Date for Call of Tenders was 6 April 2017. The Estimated Value of the Tender, (Exclusive of VAT) was € 50,893.00.

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

On 4 August 2017, AMAS Co Ltd filed an Objection against the decision of the Central Procurement and Supplies Unit to award the Tender to Cherubino Ltd for the price of € 64,285.71 (Exclusive of VAT) against a deposit of € 400.

On 22 August 2017, 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 – AMAS Co Ltd

Mr Andrew Borg	Representative
Dr Robert Tufigno	Legal Representative

Recommended Bidder – Cherubino Ltd

Dr Francis Cherubino	Legal Representative
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Contracting Authority – Central Procurement and Supplies Unit

Ms Monica Sammut	Chairperson, Evaluation Board
Mr Andre Farrugia	Member, Evaluation Board
Mr Adrian Spiteri	Member, Evaluation Board
Mr Marco Woods	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.

Dr Robert Tufigno, the Legal Representative for AMAS Co Ltd wanted to listen to the Administrator of the E-Tendering System who his clients have summoned for this Public Hearing.

Dr Stefan Zrinzo Azzopardi, the Legal Representative for the Central Procurement and Supplies Unit added that there is a representative for the Department of Contracts available to answer any related questions regarding the matter.

At this point, Mr David Gatt, a Procurement Manager within the Department of Contracts holding ID Card Number 5879 M, was summoned by AMAS Co Ltd to testify under oath before the Public Contracts Review Board.

Following Mr Gatt's testimony, Dr Stefan Zrinzo Azzopardi, the Legal Representative for the Central Procurement and Supplies Unit, wanted to testify the Chairperson of the Evaluation Board for further questioning about the documents uploaded by AMAS Co Ltd.

At this point, Ms Monica Sammut, a Pharmacist within the Central Procurement and Supplies Unit who was also the Chairperson of the Evaluation Board for this Tender, holding ID Card Number 42482 M, was summoned by the Contracting Authority to testify under oath before the Public Contracts Review Board.

Following Ms Sammut's testimony, Dr Anthony Cassar, the Chairman of the Public Contracts Review Board wanted to asked one of the Evaluators some questions.

At this point, Mr Adrian Spiteri, another Pharmacist within the Central Procurement and Supplies Unit who was also the Chairperson of the Evaluation Board for this Tender, holding ID Card Number 139581 M, was summoned by the Chairman of the Public Contracts Review Board to testify under oath before the latter.

At the end of Mr Spiteri's testimony, Dr Stefan Zrinzo Azzopardi, the Legal Representative for the Central Procurement and Supplies Unit said that this was a question where we have people who follow a system set up by the Department of Contracts who after their verifications, they have confirmed that a pdf document was submitted.

Given the fact that the two other documents had to be submitted and that when the Tender was opened these were not found, the Central Procurement and Supplies Unit had no other option but to discard the offer submitted by AMAS Co Ltd.

At this stage, the Public Hearing was adjourned to Tuesday 29 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 AMAS Co Ltd (herein after referred to as the Appellant) on 4 August 2017, refers to the Contentions made by the latter with regards to the award of Tender of Reference CFT 021-6206/2017 listed as Case No 1076 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: Dr Robert Tufigno

Appearing for the Contracting Authority: Dr Stefan Zrinzo Azzopardi

Whereby, the Appellant contends that:

- a) His bid was discarded due to the alleged non submission of two documents, namely, the “*Summary of Product Characteristics*”, also known as the SPC and the “*Patient Information Leaflet*”, also known as the PIL. In this regard, the Appellant maintains that he had submitted these documents through the E-Tendering System.**

This Board also noted the Contracting Authority’s “*Letter of Reply*” dated 14 August 2017 and its verbal submissions during the Public Hearing held on 22 August 2017, in that:

- a) The Central Procurement and Supplies Unit insists that during the Evaluation Process the documents known as the SPC and PIL were missing from the Appellant’s Offer. In this regard, the Evaluation Board had no other option but to deem the Bid submitted by AMAS Company Limited as technically non compliant.**

This same Board also noted the Testimonies of the witnesses namely:

- 1. Mr David Gatt duly summoned by AMAS Company Limited;**
- 2. Ms Monica Sammut duly summoned by the Central Procurement and Supplies Unit;**
- 3. Mr Adrian Spiteri duly summoned by the Chairman of the Public Contracts Review Board.**

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

1. This Board, after having heard the testimonies of witnesses duly summoned by all parties concerned and also by this same Board and after having examined the relative documentation, opines that this Appeal refers solely to the electronic system better known as the E-Tendering, hence this Board's deliberations rest solely on the submissions of the testimonies made by the Technical People and the evidence which they have provided during the Public Hearing of this Appeal.

This Board, as had done on many occasions, would like to respectfully emphasise the simple fact that the Evaluation Board can only assess an offer on the documentation submitted and made available during the Evaluation Process.

In this particular case, this Board justifiably notes that the Tender Dossier dictated the submission of documents relating to the *“Summary of Product Characteristics”* (SPC) and *“Patient Information Leaflet”* (PIL). Both documents were mandatory requirements, to the effect that non receipt of such documentation left no other alternative for the Evaluation Board but to deem the Appellant's offer as being technically non-compliant.

At the same instance, this Board was presented with a very credible explanation as to how the uploading and downloading of information, through the E-Tendering System, is carried out. In this regard, this Board is justifiably assured that the procedure itself provides the necessary precautions to ensure full confidentiality and secured submissions of documents throughout the system.

In this particular case, as confirmed by the Technical Submissions of the Witnesses, AMAS Company Limited's alleged submissions of the SPC and PIL documents were not, in fact, received through the electronic system by the Central Procurement and Supplies Unit. This Board was also informed and credibly assured that the necessary checks were carried out by the Evaluation Board to confirm the non submission of such documentation.

In this regard, this Board had to rely heavily on the evidence produced during the Public Hearing of this appeal and consequently, this same Board was not presented with any credible proof by AMAS Company Limited justifying his claim.

At the same time, the Central Procurement and Supplies Unit, provided all the necessary justifications to prove that such

documentation were, in actual fact, not received, hence leaving the Evaluation Board with no other choice but to consider the Appellant's offer as being technically non compliant.

This Board had also taken into account the fact that all electronically submitted data can be traced, so that, if by any imaginable coincidence or chance, such alleged information went astray through the system, it could have been traced and in this particular case, no such submitted information could be identified as received by the Central Procurement and Supplies Unit. At the same instance, the latter presented tangible proof that such documentation was not available to the Contracting Authority during the Evaluation process.

This Board acknowledges the fact that it was in the interest of the Appellants to submit the mandatory documentation and in this regard, this same Board is only relying on facts and evidence provided for this Appeal whilst on the other hand, the Appellant could not provide proof to justify his submissions, yet the Contracting Authority presented enough evidence to prove the non-submission of such mandatory documentation.

At the same instance, it has been proved that once a document is submitted through the E-Tendering System, it is registered as such and can be traced. In this particular case, this Board was presented with enough evidence to justify the Central Procurement and Supplies Unit's claim, in that the two mandatory documents namely the "*Summary of Product Characteristics*", also known as the SPC and the "*Patient's Information Leaflet*", also known as the PIL, were not received by the Contracting Authority.

In view of the above, this Board finds against AMAS Company Limited and recommends that recommends that the deposit paid by the latter should not be refunded. At the same instance, this Board justifiably confirms the decision taken by the Central Procurement and Supplies Unit.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

29 August 2017