PUBLIC CONTRACTS REVIEW BOARD

Case 1101 – CT 2136/2017 – Tender for the Supply of Various Sutures

The Publication Date of the Call for Tenders was 15 September 2017 whilst the Closing Date for Call of Tenders was 17 October 2017. The Estimated Value of the Tender, (Exclusive of VAT) was € 2,615,617.60.

On 16 October 2017, Cherubino Limited filed a Call for Remedies before the Closing Date of the Competition against the Central Procurement and Supplies Unit.

On 14 November 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 – Cherubino Limited

Dr Francis Cherubino Representative

Contracting Authority – Central Procurement and Supplies Unit

Ms Alison Anastasi
Mr Walter Busuttil
Mr Stanley Iles
Ms Renee Mifsud
Ms Rita Zammit
Representative
Representative
Representative

Dr Stefan Zrinzo Azzopardi Legal Representative

Department of Contracts

Mr Jason Attard Representative Mr Silvio Cini Representative

Ms Alicia Vella Lethridge Procurement Manager Dr Christopher Mizzi Legal Representatives

Other Interested Parties Present for the Public Hearing

Mr Emanuel Spiteri Representative, AM Mangion Limited Mr Ray Vella Representative, AM Mangion Limited

Ms Denise Fleri Representative, Associated Equipment Limited Mr Keith Vassallo Representative, Associated Equipment Limited

Dr Christopher Mizzi, the Legal Representative for the Department of Contracts declared that there were technical people from the Central Procurement and Supplies Unit present who were involved in the compilation of the Tender Document who will be available for questioning if needed.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board, found no Objection on the matter and proceeded by inviting the Appellant to make his submissions.

Dr Francis Cherubino, representing Cherubino Limited said that they had to make this Call for Remedy prior to the Closing Date of Competition since the Technical Specifications in the Tender Document limited the products to be offered to those coming from one single company only. The Tender was issued in three lots which were separate from each other. A Clarification was issued for Lots 1 and 2. Dr Cherubino referred to Article 1.1 from Section 4 of the Tender Document which *inter alia* stated that.

"For Lots 1 and 2 Only: The Contract shall be awarded on a pay-per-use basis as is already established with other similar contracts related to the provision of medical consumables."

Dr Cherubino continued by saying that the way which Lot 2 was issued, the specs in Clauses 2.040 and 2.041 were specific since there is only one manufacturer in the market for these. If there were products which for a particular reason had to come from a certain manufacturer, the Appellants were requesting that these will get out of the Tender and issued in a separate Lot so that everybody can participate.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board asked whether there was somebody from the Contracting Authority who can be brought in for further questioning on the matter.

At this point, Mr Stanley Iles, an Operating Theatre Manager at Mater Dei Hospital, holding ID Card Number 463763 M was summoned by the Chairman of the Public Contracts Review Board to testify under oath, before the latter.

Following Mr Iles' testimony, the Public Hearing was adjourned to Tuesday 5 December at 11:30 where all parties will review their position with regards to the Tender Document and the testimony of the same Witness.

Second Public Hearing

On 5 December 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 – Cherubino Limited

Dr Francis Cherubino Representative

Contracting Authority – Central Procurement and Supplies Unit

Ms Renee Mifsud Representative Ms Rita Zammit Representative

Dr Stefan Zrinzo Azzopardi Legal Representative

Department of Contracts

Ms Valentina Cassar Representative Mr Silvio Cini Representative

Ms Alicia Vella Lethridge Procurement Manager
Dr Christopher Mizzi Legal Representatives

Other Interested Parties Present for the Public Hearing

Mr Emanuel Spiteri Representative, AM Mangion Limited Mr Ray Vella Representative, AM Mangion Limited

Mr Charles Mifsud Representative, Associated Equipment Limited Mr Keith Vassallo Representative, Associated Equipment Limited

Dr Christopher Mizzi, the Legal Representative for the Department of Contracts said that in view of the Testimony made by Mr Stanley Iles in the previous Public Hearing before the Public Contracts Review Board, both the Department of Contracts and the Central

Procurement and Supplies Unit agreed that the Tender will have to be cancelled and re-issued

once again.

Dr Francis Cherubino, representing Cherubino Limited requested the Central Procurement

and Supplies Unit to consider also Clauses 2.040 and 2.041 which were mentioned in the

discussion.

Dr Christopher Mizzi, the Legal Representative for the Department of Contracts replied that

the re-assessment was going to be made for the whole Tender.

At this point, the Public Hearing was adjourned.

This Board,

Having noted this Call for Remedies before the Closing Date of

Competition filed by Cherubino Limited (herein after referred to as the

Appellant) on 16 October 2017, refers to the Contentions made by the

latter with regards to the Tender of Reference CT 2136/2017 listed as Case

No 1101 in the records of the Public Contracts Review Board, issued by the

Central Procurement and Supplies Unit (herein after referred to as the

Contracting Authority).

Appearing for the Appellant: Dr Francis Cherubino

Appearing for the Contracting Authority: Dr Christopher Mizzi

Dr Stefan Zrinzo Azzopardi

4

Whereby, the Appellant contends that:

a) His main concern is that in the Tender Document, there are products in the Tender Specifications, which will limit the scope of fair competition. In this regard, the Appellant referred to Lot 2 with particular reference to Clauses 2.040 and 2.041 wherein the specificed products can only be supplied by one manufacturer.

This Board also noted the Contracting Authority's "Letter of Reply" dated 1 November 2017 and its verbal submissions during the Public Hearings held on 14 November 2017 and 5 December 2017, in that:

a) The Central Procurement and Supplies Unit maintains that the specifications dictated in the Tender Document were construed in conformity with the standards and characteristics of the requirements for the medical interventions taking into account the patients' safety.

This Board, after having heard the submissions made by both parties concerned, was informed by the Contracting Authority, during the Second Sitting held on 5 December 2017, that the Tender is being cancelled and a

new one will be issued, taking into consideration the concerns raised by Cherubino Limited into account and thus ensuring that fair competition and Bidder participation was not limited in any way. In this regard, this Board upholds the Central Procurement and Supplies Unit's decision to cancel the tender.

Dr Anthony Cassar Chairman Dr Charles Cassar Member Mr Carmel Esposito Member

12 December 2017