

PUBLIC CONTRACTS REVIEW BOARD

Case 1121 – CT 2163/2017 – Tender for the Supply of Arthroscopic Surgery Soft Tissue Consumables on Pay per Use

The Publication Date of the Call for Tenders was 17 November 2017 whilst the Closing Date for Call of Tenders was 19 December 2017. The Estimated Value of the Tender, (Exclusive of VAT) was € 1,591,310.

On 18 December 2017, Cherubino Limited filed a Call for Remedies before the Closing Date of the Competition against the Tender issued by the Central Procurement and Supplies Unit.

On 16 January 2018, 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

Mr Paul Calleja	Representative
Dr Francis Cherubino	Representative

Contracting Authority – Central Procurement and Supplies Unit

Mr Stanley Iles	Representative
Ms Rita Zammit	Representative
Dr Stefan Zrinzo Azzopardi	Legal Representative

Department of Contracts

Dr Christopher Mizzi	Legal Representative
----------------------	----------------------

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

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board opened by pointing out to the Appellants that they did not receive a reply to an e-mail dated 12 January 2018 sent by the Secretariat of this Board.

Dr Francis Cherubino, representing the Appellants, said that they did reply to this e-mail but that this Board was procedurally correct in requesting the reasons for Objection.

Dr Stefan Zrinzo Azzopardi, the Legal Representative for the Central Procurement and Supplies Unit asked whether these reasons can be indicated.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board then asked the Contracting Authority whether they would accept to hear the Appellants' reasons.

Dr Stefan Zrinzo Azzopardi, the Legal Representative for the Central Procurement and Supplies Unit replied in the affirmative but added that if they needed to verify the points raised by the Appellants, they would request time to verify any related matters.

Dr Francis Cherubino, on behalf of Cherubino Limited, explained that this Tender was divided into two lots, something which the Appellants appreciated since previously this Tender was issued in one single lot. However, from the information which Cherubino Limited has, there was only one supplier who was capable to supply the items requested in Lot 2.

Dr Cherubino continued by saying that Item 2 from Lot 1, the Anchor Peek for double row repair technique, which has two types, the 5.5mm and the 8.5mm, is only supplied by one particular supplier. This was the reason why the Appellants have filed this Call for Remedies prior to the closing date for Competition.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board, asked what the distinction was between the 5.5mm and the 8.5mm for which Dr Stefan Zrinzo Azzopardi, the Legal Representative for the Central Procurement and Supplies Unit replied that from the information which he has, this was a size distinction.

Dr Zrinzo Azzopardi said that Item 2 was being divided because it concerns the same type of medical device which is distinguished by the size. The Contracting Authority, however, has brought a witness who can explain the issue further.

At this point, Mr Stanley Iles, a Procurement Liaison Specialist within the Central Procurement and Supplies Unit, holding ID Card 463763 M was summoned by the same Contracting Authority to testify under oath before the Public Contracts Review Board.

At this stage, the Public Hearing was adjourned to Tuesday 23 January 2018 at 09:00 wherein the Public Contracts Review Board will transmit the decision.

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 18 December 2017, refers to the Contentions made by the latter with regards to the issue of Tender of Reference CT 2163/2017 listed as Case No 1121 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

Whereby, the Appellant contends that:

- a) Item 2 of Lot 1 (Anchor Peek for Double Row Repair Technique), of the Technical Specifications of the Tender stipulates two types of sizes, the 5.5mm and the 8.5mm. In this regard, Cherubino Limited's main concern is that the restricted size of 8.5mm might limit the scope of Competition.**

This Board also noted the Contracting Authority’s “*Letter of Reply*” dated 8 January 2018 and its verbal submissions during the Public Hearing held on 16 January 2018, in that:

- a) The Central Procurement and Supplies Unit maintains that the quoted sizes of Item 2, Lot 1 of the Technical Specifications were stipulated so as to complement the medical device, the latter of which is distinguished by size.**

This same Board also noted the Testimony of the witness namely, Mr Stanley Iles duly summoned by the Central Procurement and Supplies Unit.

This Board, after having examined the relative documentation and heard submissions by the parties concerned, including the testimony of the Witness duly summoned by the Central Procurement and Supplies Unit, opines that, first and foremost it was credibly established that the sizes of 5.5mm and 8.5mm were so stipulated on the basis of the medical device through which the Treatment is carried out.

Secondly this Board took into consideration the Testimony of the Witness duly summoned, who explained very clearly the usage of such requisites and the availability, in various forms that are on the market. The Witness

also confirmed that such sizes, (including the 8.5mm), can be supplied from various manufacturers and the latter consideration was taken into account by the Central Procurement and Supplies Unit. In this regard, this Board would respectfully refer to the Testimony of the same witness, in that, he stated:

“Kull sena niskopru kumpaniji ohra li jistgħu l-offerti tagħhom għal dan il-prodott. Bhalissa hafna prodotti qed jidhlu mit-Turkija, hafna prodotti qed jidhlu mill-Ewropa, minn kontinenti ora imma taht il-liċenzja Ewropea, li biha jistgħu jidhlu għal Tenders. Hawn hafna kumpaniji li jistgħu jidhlu għal dan il-prodott.”

This Board is comfortably convinced that such sizes are available from various manufacturers and therefore, this same Board does not envisage any indication of a limitation to free competition. In this regard, this Board, while dismissing Cherubino Limited’s concerns, recommends the continuation of the Tendering Process.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Carmel Esposito
Member

23 January 2018