

## **PUBLIC CONTRACTS REVIEW BOARD**

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### **Case 1188 – MHAS/103/2018 - Tender for the Supply and Delivery of Handheld Laser Raman Spectrometer Devices for the Malta Police Force.**

The publication date of the call for tenders was the 21<sup>st</sup> March 2018 whilst the closing date of the call for tenders was the 6<sup>th</sup> April 2018. The estimated value of the tender (exclusive of VAT) was € 120,000.

There were four (4) bids submitted.

On the 14<sup>th</sup> May 2018, Labo-Pharm Ltd entered an appeal against the Contracting Authority decision to exclude them on the grounds that their bid was found to be not the cheapest technically compliant. A deposit of € 600 was paid.

On 26<sup>th</sup> July 2018 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

#### **Appellant – Labo-Pharm Ltd**

Dr John L Gauci	Legal Representative
Dr Ruth Ellul	Legal Representative
Mr Stephen Debono	Representative
Mr Frank Galea	Representative
Dr Robert Stokes	Representative

#### **Recommended Bidder – EloDiz**

Mr Dawid Polanski	Representative
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#### **Contracting Authority – Malta Police Force**

Inspector Charlot Casha	Chairperson Evaluation Board
Sergeant Jeffrey Hughes (PS 659)	Secretary Evaluation Board
Ms Doreen Seracino	Representative
Mr Steve Calleja	Representative
Mr Christopher Avellino	Representative

The Chairman of the Public Contracts Review Board, Dr Anthony Cassar, welcomed the parties and invited submissions.

Dr John Gauci, Legal Representative for Labo-Pharm Ltd, stated that Appellant was objecting to both recommendations of the Contracting Authority - on Lot 1 (Handheld Spectrometers for detecting drugs) and Lot 2 (ditto for detecting chemical explosives). The winning bidders' equipment, unlike that of Labo-Pharm Ltd, could not detect material in opaque containers, as stipulated in the tender documents. Although the Malta Police Force (Police) did not specifically request opaque detection equipment it stands to reason that paper and cardboard are opaque materials and therefore they fall outside the award specification.

Dr Robert Stokes testified on oath that he has a Doctorate in Physics and Chemistry from Cranford University, has held several UK Home Office roles in narcotics and explosives detection and has published many papers on these subjects. He gave a visual presentation on the Raman Spectrometer (Raman) and expressed the view that the resolve system of the Raman offers the safest and best performing solution for the requirements specified in the tender, by reducing the risk of exposure to the operator especially when dealing with narcotics, by protecting the integrity of evidence and by keeping tested materials intact. In reply to a question witness confirmed that the word 'opaque' did not appear in the tender specifications, but made the point that translucent material could be opaque and that the Raman could identify materials through coloured plastics.

The Chairman said that the jurisdiction of the PCRFB was to ensure that a fair and just evaluation process had been carried out. The tender was meant to obtain the best equipment and it is argued that the preferred bid does not seem to cater for opaque materials as stipulated in Lot2 specifications 14 (c) (e) and (f). The tender document, however, did not specify opaque materials and therefore was compliant. On the other hand if the selected equipment was not able to detect material in opaque containers the Police were procuring something that was not 100% foolproof.

Inspector Charlot Casha (458473M) testified on oath that he was the Chairperson of the Evaluation Committee. In reply to questions he confirmed that the preferred bidders' offer does not include equipment for the detection of opaque materials. The Appellants' equipment was compliant but the Police had specified the tender requirements according to their needs – if they had required opaque recognition they would have asked for it.

Dr John Gauci stated that the preferred bid does not cater for detection of opaque coloured plastic containers or coloured plastic bags and thus was deficient in the tender requirements. He tabled a copy of the technical specification of the Labo-Pharm Ltd winning equipment indicating areas where it did not meet the tender specifications.

The Chairman thanked both parties for their submissions and declared the hearing closed.

**This Board,**

**Having noted this Objection filed by Labo-Pharm Limited, (hereinafter referred to as the Appellants), on 14 May 2018, refers to the contentions made by the same Appellants with regards to the award of Tender of Reference MHAS/103/2018 listed as Case No 1188 in the records of the Public Contracts Review Board, awarded by the Malta Police Force, (hereinafter referred to as the Contracting Authority).**

**Appearing for the Appellants: Dr John L Gauci**

**Appearing for the Contracting Authority: Inspector Charlot Casha**

**Whereby, the Appellants contend that,**

- a) Apart from the fact that their product is fully compliant, the Preferred Bidder's offer does not meet a basic requirement, in that, it cannot detect drugs and other substances contained in paper or cardboard materials, in other words through opaque materials.**

**This Board has also noted the Contracting Authority’s “*Letter of Reply*” dated 25 May 2018 and also its verbal submissions during the Public Hearing held on 26 July 2018, in that:**

- a) The Malta Police Force maintains that the technical specifications were stipulated as such, so as to meet the Contracting Authority’s requirements and in this respect, the Recommended Bidder’s offer did meet all the specifications so dictated in the Tender Dossier.**

**This same Board has also noted the testimony of the witnesses duly summoned by Labo-Pharm Limited namely,**

- 1. Dr Robert Stokes**
- 2. Inspector Charlot Casha**

**This Board, after having examined the relevant documentation to this Appeal and heard submissions made by the parties concerned, including the testimony of the technical witnesses, opines that the major issue worth of consideration is whether the Appellants’ alleged contentions with regard to the technical compliance of the Preferred Bidder’s product, are factual or not.**

**First and foremost, this Board would respectfully refer to the technical specification requirement, Item 14, of the Tender Document which specifies that the product must have a “*non-contact analysis*” feature, so that the device must be able to positively identify materials that are:**

- a) Exposed in Free Space;**
- b) Contained in clear plastic bags/containers;**
- c) Contained in coloured plastic bags/containers;**
- d) Contained in clear glass containers;**
- e) Contained in coloured glass containers;**
- f) Packed in paper, cardboard and/or fabric**

**From the submissions made, this Board was made aware that the Appellants’ major objection is that the product of the Preferred Bidder does not detect drugs or substances through paper and cardboard, as these are classified as opaque materials.**

**This Board noted that the Preferred Bidders’ offer met the required specifications as dictated in the Tender Dossier, in all the above mentioned requisites. At the same instance, the technical specifications do not mention “*opaque material*” and in this respect, there arises the issue as to whether**

**paper and cardboard packing, can be considered as opaque materials. This Board had to rely substantially on the testimony of the Chairman of the Evaluation Committee, who has extensive experience in the subject matter and extracts from such testimony illustrate the main objective of the Tender Specifications in this regards, as follows:**

*“Question: Am I right in saying that from your experience in the Police Force, most paper cardboard or fabric containers, at least a huge chunk and I mention 25% are indeed opaque?”*

*Reply: I cannot say the percentage but there are some that are opaque. As much as there are some others which are translucent.”*

**This Board noted that the Contracting Authority laid out their objectives with certain specifications to suit the attainment thereof. The Preferred Bidders’ offer satisfied such technical conditions and the offer was much cheaper than the Appellants’ product, so that the Malta Police Force conducted its evaluation process in accordance with the Public Procurement Regulations. At the same instance, this Board, after having considered all the issues raised by the parties concerned during the Hearing, opines that the Evaluation procedure was carried out in a fair and transparent manner.**

**In view of the above, this Board,**

- i) Upholds the decision taken by the Malta Police Force in the award of the contract;**
- ii) Does not uphold Labo-Pharm Limited's contention that ELoDiz's product is not technically compliant;**
- iii) Recommends that the deposit paid by the Appellants should not be refunded.**

Dr Anthony Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Lawrence Ancilleri  
Member

*7<sup>th</sup> August 2018*