

PUBLIC CONTRACTS REVIEW BOARD

Case No 2082 –CFT020-3237/24 - CPSU 5296/24 – Supplies - Tender for the Supply of Sterile Synthetic Surgical Gloves Size 8.5

Decision dated 5th March 2025

ERRATA CORRIGE

The following corrections are hereby made to the decision dated 3rd March 2025:

Page 6/7 where it reads:

“The third ground of appeal: the contract is recommended for award to an offer which complies with additional requirements not stated in the tender document

- The Appellant suspects that the TEC recommended the contract to be awarded to the Recommended Bidder on the basis of additional requirements which were not declared in the tender documentation.
- Prior to submitting this appeal, the Appellant requested the disclosure of the packaging artwork and the technical literature of the product offered by the Recommended Bidder. The Contracting Authority disclosed this information on the 27th of August 2024, 6 days after the Appellant's request on the 21st of August 2024 and only 2 days before the deadline to lodge an appeal lapsed.
- Apart from confirming that it is latex-free, the technical literature for the recommended product declares on page 81 that it is also free of accelerators, that is:

"[it is] made from synthetic polymers and a 100% chemical accelerator-free formulation, these sterile surgical gloves eliminate the risk of a Type I latex allergy and the potential of developing Type IV chemical allergies caused by chemical accelerators".

- Accelerators are chemicals used in the process of manufacturing synthetic rubber. They are also capable of triggering allergic reactions in individuals who are sensitive to these specific compounds or known to cause Type IV allergies and sensitivities, as they are known in the industry.
- However, these chemicals do not trigger a latex allergy in the user. Therefore, the fact that the Recommended Bidder's product is capable of being produced without these compounds has, or should have, no effect on the TEC's evaluation. It is immaterial whether the product submitted by the Appellant is free of these chemicals because this was not a requirement in the tender document.
- If, as the Appellant suspects, the Recommended Bidder's bid was chosen over its own bid because of this additional characteristic, then the Contracting Authority fell foul of the obligation to treat all economic operators equally.

- It also actively shifted the goalposts. This on its own is already a breach of procurement principles but the-so far alleged-fact that it gave an undue advantage to the Recommended Bidder over the Appellant is an aggravating factor.”

Should read:

“The third ground of appeal: there was no lawful reason to cancel the tender

- Article 18.3 of the General Rules Governing Tenders prescribes a specific set of circumstances where the contracting authority has the right to cancel a tender.
- The reason cited by the Contracting Authority in this case is that it received no "qualitatively or financially worthwhile" tenders which is the first ground set out in Article 18.3.
- In this case, the Appellant submitted a bid which is technically compliant with the specifications requested in the Tender. Furthermore, the financial price of the Appellant's bid is € 3,771.45 which is below the estimated procurement value of € 20,000. All bids are significantly lower than € 20,000 which leads one to wonder whether the Contracting Authority carried out the appropriate market research in the first place.
- Be that as it may, there is no doubt that the Appellant's bid is both qualitatively and financially worthwhile. Therefore, the assertion that the Contracting Authority did not receive any such bids is factually and legally incorrect.”

Page 9 where it reads:

“On the Third Grievance: The contract is recommended for award to an offer which complies with additional requirements not stated in the tender document

- The objector alleges that the recommendation of the evaluation committee was based on qualities of the recommended product which were not part of the technical specification.
- CPSU strongly rebuts to this claim, as the evaluation committee evaluated all the offers in line with the technical specifications as published.
- CPSU submit that this third grievance is highly speculative and has not legal or factual basis.
- Any added features of an offered product (unless prohibited by any technical specification) do not have any bearing on the evaluation process. The product of the recommended bidder was recommended for award because it was the cheapest technically compliant product offered. The objector's product was not technically compliant.”

Should read:

“On the Third Grievance: There was no lawful reason to cancel the tender

- This grievance depends on the first 2 grievances;
- If the first: 2 grievances are not upheld, the contracting authority's decision that there are no qualitatively and financially worthwhile tenders will be confirmed;

- For this reason, CPSU submit that whilst the first 2 grievances should be rejected, consequentially this third grievance should be rejected as well;”

Page 11 where it reads:

“On the First and Third Grievances

Given that the requisite clarification request was improperly omitted from the evaluation process, the Board determines that the first grievance concerning technical compliance and the third grievance regarding alleged preferential treatment of the Recommended Bidder are premature and cannot be definitively adjudicated at this juncture. A proper evaluation process, including appropriate clarifications, must first be completed to establish the factual basis for these claims.”

Should read:

“On the First and Third Grievances

Given that the requisite clarification request was improperly omitted from the evaluation process, the Board determines that the first grievance concerning technical compliance and the third grievance regarding that there was no lawful reason to cancel the tender are premature and cannot be definitively adjudicated at this juncture. A proper evaluation process, including appropriate clarifications, must first be completed to establish the factual basis for these claims.”

All other text in the decision dated 3rd March 2025 remains unchanged.

For all intents and purposes of the law, the applicable date the decision should be the 5th of March, 2025.

**Dr Vincent Micallef
Chairman**

**Mr Lawrence Ancilleri
Member**

**Dr Ing Damien Gatt
Member**

5th March 2025