

Case No. 12

Advert No CT 392/2001 – Supply of Atenolol 100mg Tablets

Estimated Value of Tender	Lm 56,825.32
Date of Request received from Government Pharmaceutical Services (GPS)	03.10.2001
Closing Date of Tender	18.12.2001
Final extension date: 'Binding Period'	15.07.2003

Offers received (Total 11)

- 1st cheapest tenderer *Michele Peresso Ltd.* (not according to specifications)
- 2nd cheapest tenderer *Rodel Limited* (not according to specifications)
- 3rd cheapest tenderer *Vivian Commercial Ltd.*

Date of Award of Tender	27.06.2003
Date of Objection	02.07.2003
Adjudication Board	M. Dowling (Chairperson) M. Fenech (Pharmacist) M. Hardon (Senior Pharmacy Technician)

The objection filed by Messrs. Rodel Ltd against the decision taken by the General Contracts Committee to award the tender in caption to Messrs. Vivian Commercial Corporation was discussed during a Public Hearing which took place on the 12th November, 2003

The said hearing was chaired by the Chairman of the Public Contracts Appeals Board, Mr. Alfred Triganza, who on the occasion was flanked by Mr. Edwin Muscat and Mr. Maurice Caruana in their capacity of Board members.

Other participants in the proceedings that ensued were:

- **Rodel Ltd**
Dr Norman Vella (Manager)
Dr Noella Grima LLD
- **Vivian Commercial Corporation**
Ms Maria Formosa (Tender Manager)
Mr Gordon Zammit (Qualified Person)
- **Health Department**
Ms Anna Debattista (Director GPS)
Ms Miriam Dowling (Chairperson
Adjudicating Board)

Dr Noella Grima stated that the objection raised in this case was similar to that filed in respect of the Sulphasalazine case (*Case Ref. No. 11*), the public hearing of which was held on 1 October 2003 and the decision of which was still pending.

In fact, in their letter of objection, Rodel Ltd stated that they were informed by the Contracts Department that, despite the fact that their principals Aegis Ltd offered a cheaper price, they were not the recommended tenderer for the supply of the item in question. The reason given was that the offer by Aegis Ltd was not according to the tender conditions as Aegis Ltd (the tenderer) did not possess a valid receipt for the relative Certificate of Pharmaceutical Product (CPP), since the CPP receipt was in the name of the Maltese commission agent (Rodel Ltd) and not in the name of Aegis Ltd who signed and submitted the tender. However, Rodel contended that the CPP had been submitted by Aegis Ltd through Rodel Ltd (the intermediary) to the Medicines Regulatory Affairs Unit (MRAU) according to the tender conditions that allow foreign tenderers to participate directly in Malta Government tenders. The fact that the receipt for CPP was issued in the name of Rodel Ltd and not in the name of the foreign bidder who actually submitted the CPP could not be used as a hurdle against foreign bidders who were allowed to submit offers. Also, in their motivated letter of objection they made reference to an e-mail sent by Mrs L. Wismayer (Director - Medicine Regulatory Unit), in which it was stated that “the Marketing Authorisation Holder is currently equivalent to that entity submitting a CPP for a particular product.” This meant that although the submission of the CPP was effected through Rodel Ltd. as intermediary, the Marketing Authorisation Holder of the CPP were Aegis Ltd.

When, during the proceedings it was mentioned that Vivian Commercial Corporation did not submit a motivated letter of reply, Ms Maria Formosa insisted that this was due to the fact that they were not informed about the objection filed by Rodel Ltd. She complained about the fact that the letter of objection was circulated to them four months later.

It was acknowledged that the Department of Contracts made a mistake when it did not furnish Vivian Commercial Corporation with a copy of Rodel Ltd’s motivated letter of objection. However, it was explained to them that this should not have precluded them from their right to submit a reply because the Director General Contracts published the notice of objection on the Department’s notice board immediately after Rodel Ltd. filed it. Furthermore, their attention was drawn to the fact that in the Third Schedule of the Public Service (Procurement) Regulations, 1996, it was stipulated that *‘Within five days from the publication of the letter of objection, any tenderer who had registered an interest may send a motivated reply to the letter of objection.’*

Following this, Dr Noella Grima continued to elaborate on Rodel Ltd’s objection by stating that although they presented the same arguments for both cases, they were different in the sense that the Sulphasalazine case dealt with two issues (the CPP and the language used on the package) whilst the Atenolol case dealt with the CPP issue only.

Dr Norman Vella and Dr Noella Grima suggested that, in view of the fact that there was an obvious overlap between both cases, a decision could be taken on both cases. It was confirmed that they had no further points to raise other than those mentioned in their motivated letter of objection. The Board agreed with Rodel Ltd's proposal that,

in the prevailing circumstances, the Public Contracts Appeals Board should consider both cases together.

In line with the arguments raised, this Board confirmed its decision taken in connection with the objection raised by Messrs. Rodel Limited in Case No. 11 - *Advert Notice No CT 59/2002 – Supply of Sulphasalazine 500mg tablets.*

Consequently, this Board decided to reiterate its position in regard, namely that:

- Rodel's offer was fully compliant with the tender conditions as confirmed by the Adjudicating Board in their final recommendation;
- the reason given for Rodel's non-recommendation was that the tenderer did not "*..... possess a receipt for a valid CPP, since CPP receipt is in the name of the Maltese commission agent and not the entity who signed and submitted the tender offer(memo dated 2nd September (2002) refers).*

and

- this latter requirement resulting from internal instructions was not specified in the tender documents,

decides that Rodel Limited was fully compliant with the published tender conditions and therefore should be awarded the contract.

Furthermore, the Board strongly recommends that in future the Department should ensure that all defined requirements relating to any procurement should be expressly stated in the tender documents, since prospective bidders are only bound by these documents.

Alfred R. Triganza
Chairman

Edwin Muscat
Board Member

Maurice Caruana
Board Member

Date: 02.12.2003