

## PUBLIC CONTRACTS APPEALS BOARD

### Case 90

#### **CT 2151/2006: Ex Advert Notice CT 209/2004 - GPS.01.041.T04.AS - Supply of Tacrolimus 1mg Capsules**

This call for tenders was originally published in the Maltese Government Gazette on 3<sup>rd</sup> August 2004 and was issued by the Contracts Department following a request transmitted to the latter by the Government Pharmaceutical Services (GPS).

The closing date for this particular call for offers was 16 September 2004 and the global estimated value of the contract (covering a period of three years) was Lm 68,013.55. Only one (1) tenderer, Vivian Corporation Ltd, submitted an offer. In *Minute 61* dated 27 December 2005 in file no. 2151 / 2006, the Contracts Committee noted *Minute 60* of the same file wherein it was indicated that the request made to the tenderer to register the offered product had proved futile. As a consequence, the same Committee had no alternative other than that to accept the original recommendations at red 35 of the above mentioned file for cancellation of this tender and for the issue by the GPS of an *Ex-Advert* requesting quotes from the indicated suppliers.

The Contracting Authority formalised the cancellation of the said tender on 19 January 2006.

An *Ex-Advert*, this time covering a one year time frame and with a closing date of 11 April 2006, was subsequently published. The departmental estimate was Lm 20,547.90

Following the publication of the *Notification of Recommended Tenderers* on 11 August 2006, Messrs Vivian Corporation Ltd filed an objection on 21 August 2006 against the intended award of the said tender to P & D Pharmaceuticals Ltd (Lm 18,066.82).

The Public Contracts Appeals Board (PCAB) made up of Mr Alfred Triganza (Chairman) with Mr Anthony Pavia and Mr Edwin Muscat, respectively, acting as members, convened a public hearing on 20.09.2006 to discuss this objection.

#### **Vivian Corporation Ltd**

Ms Joanna Cremona

Executive Director

#### **Government Pharmaceutical Services**

Ms Anna Debattista

Director GPS)

#### **Adjudication Board**

Ms Miriam Dowling

Chairperson

Mr Audrey Sciberras

Sen. Pharmacy Technician

#### **Witness**

Mr Edwin Zarb

Director, General Contracts

After the Chairman's brief introduction, *Vivian Corporation Ltd* was invited to explain the motive behind their objection.

Ms Joanna Cremona, the appellants' Executive Director, stated that *Vivian Corporation Ltd* was the current supplier of this medicinal product, namely *Tacrolimus 1mg Capsules*, and that the relative contract had been extended until November 2006. She said that they were the only company which quoted for the original Advert (No 209/2004) published in the Government Gazette under the usual procedure. However, subsequently, they found that the original tender was cancelled and, when an *Ex-Advert* was issued, *Vivian Corporation Ltd* were not notified. Ms Cremona insisted that the basis of their objection relied on the fact that they were not given the opportunity to quote for this medicinal product.

Ms Anna Debattista, Director GPS, replied that she could confirm that *Vivian Corporation Ltd* were the sole tenderers in the original call for advert. She declared that the appellants' offer could not be recommended for acceptance because the medicinal product was not registered.

The GPS's representative continued by saying that their recommendation for the issue of this tender as an *Ex-Advert* was accepted by the Contracts Department. She explained that an *Ex-Advert*, which is normally used to try and secure the best and cheapest products, normally is not published in the Government Gazette and, as a consequence, the Department requested relative quotes from foreign known wholesale dealers and previous local suppliers. She said that an 'open call for tenders' for medicinal products was usually issued for three years while an *Ex-Advert* was issued for one year only.

At this stage, Ms Debattista confirmed to this Board that, although suppliers were informed by e-mails, yet, through an oversight, and definitely through a genuine human error, such correspondence was sent to *Messrs V.J. Salomone Limited* instead of *Messrs Vivian Corporations Ltd*.

With regards to the registration of medicinal products, the Director GPS explained that the procedure adopted to date was that, whenever the Department issued a tender, every effort is made for the latter to be able to procure products which are registered in Malta in terms of the current legislation. However, she said that one of the clauses included in the *Medicines Act* provided that, in case that a product was not registered, taking full consideration of public health exigencies, the Director General could grant authorisation to purchase such product.

Mr Edwin Zarb, Director General, Contracts Department, testified that an *Ex-Advert* was normally issued when, for some reason or another, the original tender could not be awarded. He explained that, although it was the GPS that informed and furnished the selected suppliers with the *Ex-Advert* tender documents, such offers were received and opened at the Department of Contracts. Mr Zarb said that an *Ex-Advert* was similar to a selective call.

In her concluding remarks, Ms Cremona suggested that *Ex-Adverts* could also be included on the Department's website.

The PCAB pointed out that, in similar circumstances, the most important thing was that every potential bidder is given the chance to submit one's offer.

Ms Debattista concurred with this statement and maintained that, whilst she was generally satisfied with the level of the GPS' database, yet, if need be, it was the system which had to change.

At this stage the hearing came to a close and the PCAB members proceeded with their deliberations before reaching their decision.

This Board,

- having noted that the appellants, in terms of their 'reasoned letter of objection' dated 25 August 2006, and also through their verbal submissions presented during the public hearing held on 20.09.2006, had objected to the decision taken by the General Contracts to award the tender to Messrs P & D Pharmaceuticals Ltd;
- having taken into consideration the fact that the basis of the appellants' objection relied on the fact that they were not given the opportunity to quote for this medicinal product;
- having noted Ms Debattista's statement concerning the fact that, although suppliers were informed by e-mails, yet, through an oversight, such correspondence was sent to *Messrs V.J. Salomone Limited* instead of *Messrs Vivian Corporations Ltd*

concludes that, in the light of the above considerations, this Board upholds the appeal lodged by the appellants and that as a result, apart from nullifying the award previously given, recommends that a fresh *Ex Advert* publication should be made, this time including the appellants.

In view of the above and in terms of the Public Contracts Regulations, 2005, this Board recommends that the deposit submitted by appellants in terms of regulation 83, should be refunded.

**Alfred R Triganza**  
Chairman

**Anthony Pavia**  
Member

**Edwin Muscat**  
Member

*October 11, 2006*