

PUBLIC CONTRACTS APPEALS BOARD

Case No. 235

Adv No CT/A/012/2010; CT/2524/2009; GPS 02094T09MH

Tender for the Supply of Glyceryl Trinitrate 5mg patches

The closing date for this call for offers was 25 February 2010.

The estimated value of this tender covering 36 months was Euro 833,345.16.

Three (3) tenderers submitted their offers.

Joseph Cassar Ltd filed an objection on the 14 July 2010 against the decision taken by the Contracts Department to disqualify its offer as administratively non-compliant.

The Public Contracts Appeals Board composed of Mr Alfred Triganza as Chairman and Mr. Edwin Muscat and Mr. Carmel J Esposito as members convened a public hearing on Wednesday, 13 October 2010 to discuss this objection.

Present for the hearing were:

Joseph Cassar Ltd

Mr Emanuel Cassar	Representative
Mr George Muscat	Representative

Government Pharmaceutical Services

Ms Anne Debattista	Director
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Evaluation Committee:

Ms Miriam Dowling	Chairperson
Mr Mark Spiteri	Member

V J Salomone Pharma Ltd

Mrs Vanessa Said Salomone	Representative
Mrs Jackie Mangion	Representative

Alfred Gera & Sons Ltd

Ms Anna Curmi	Representative
Ms Christine Spiteri Parnis	Representative

Department of Contracts

Mr Francis Attard	Director General
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After the Chairman's brief introduction the appellant Company's representative was invited to explain the motives of the objection.

Mr Emanuel Cassar, representing Joseph Cassar Ltd, the appellant company, explained that, by way of a letter dated 9th July 2010, the Contracts Department informed his Company that the offer was rejected as administratively and technically non-compliant since the product was not locally registered. Mr Cassar explained that in his tender submission he had indicated that his firm was in the course of initiating the process to have the product registered with the Malta Medicines Authority.

At this point it was established that the closing date of the tender was the 25th February 2010 whereas the product was locally registered on the 19th July 2010.

Ms Anne Debattista, representing the contracting authority, remarked that, according to the tender document in question, the product had to be locally registered by the closing date of the tender. She added that, in recent calls, tenderers were even being required to submit a copy of the product registration certificate. Ms Debattista explained that the provision that existed in the previous calls for tenders whereby tenderers were allowed to obtain the local product registration within 6 weeks from the closing date of the tender had been dropped, the reason being that, over time, enough products had been locally registered for the purposes of competition. At this stage Ms Debattista referred to Annex IV 'Declaration Sheet for Medicinal Products', which, among other things, stated (at page 2) the following, namely,

"I hereby declare..... (iii) that the product being offered, and for which a sample is being submitted, is authorised under the prevailing Laws of Malta to be placed on the market in Malta for wholesale distribution and for sale or supply by other means to patients."

Mr Cassar admitted that he had overlooked the requirement that the local product registration had to be presented by the closing date of the tender but added that he did present the registration certificate issued by the authorities in Greece.

The Chairman PCAB noted that the tender document specifically stipulated that the product had to be authorised under Maltese Law and not, for example, under EU law, in which case the certificate issued in Greece could perhaps have been admissible. He added that it seemed evident that the tenderer did not possess the required local product registration at the closing date of the tender.

At this point the hearing was brought to a close.

This Board,

- having noted that the appellants, in terms of their 'reasoned letter of objection' dated 14 July 2010 and also through their verbal submissions presented during the public hearing held on 13 October 2010 had objected to the decision taken by the General Contracts Committee;
- having taken note of the appellants' representatives' and the contracting authority's counter arguments,

reached the following conclusions, namely:

1. The PCAB opines that the tender document specifically stipulated that the product had to be authorised under Maltese Law and not, for example, under EU law, in which case the certificate issued in Greece could perhaps have been admissible.
2. The PCAB feels that it was evident that the tenderer did not possess the required local product registration at the closing date of the tender.

As a consequence of (1) to (2) above this Board finds against the appellant company.

In view of the above and in terms of the Public Contracts Regulations, 2005, this Board recommends that the deposit submitted by the said appellants should not be reimbursed.

Alfred R Triganza
Chairman

Edwin Muscat
Member

Carmel J Esposito
Member

25 October 2010