

After the Chairman's brief introduction the appellant company's representative was invited to explain the motive/s of the objection.

Dr Norman Vella, obo Rodel Ltd, confirmed that the product was not locally registered by the closing date of the tender so much so that in its tender submission dated 20th January 2010 his firm had indicated that "*procedures for (product) registration in Malta have started.*"

Dr Vella explained that, by way of letter dated 22nd June 2010, the Contracts Department had informed his firm that its offer was found not compliant because the product was not locally registered.

The appellant company's representative claimed that the statement by the Contracts Department was not correct because, by the 22nd June 2010, his firm had registered the product locally as per certificate issued by the Medicines Authority dated 22nd April 2010 and that was the reason why his firm had lodged the objection.

Dr Vella also pointed out that the product offered by his firm was cheaper than the product recommended for acceptance.

Ms Anne Debattista, Director GHPS, submitted that it was mandatory for tenderers to have the product locally registered by the closing date of the tender. In line with this statement Ms Debattista quoted from Annex IV, '*Declaration Sheet for Medicinal Products*', where, *inter alia*, the 'Responsible Person' had to declare that:

"I hereby declare: (iii) that the product being offered, and for which a sample is being submitted, is authorised under 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....."

Ms Debattista furnished the following chronology of events:

- 15th December 2009
 - date tender was published
- 28th January 2010
 - closing date of tender
- 8th February 2010
 - date application for product registration was received by the MA
- 22nd April 2010
 - date licence issued by the Medicines Authority
- 15th June 2010
 - date copy of licence was emailed to Contracts Department and Contracting Authority

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 28 June 2010 and also through their verbal submissions presented during the public hearing held on 10 November 2010 had objected to the decision taken by the General Contracts Committee;
- having taken note of Dr Vella’s own admission that the product offered by his company was not locally registered by the closing date of the tender, so much so that in its tender submission dated 20th January 2010 his firm had indicated that “*procedures for (product) registration in Malta have started.*”;
- having also taken note of Dr Vella’s claim that the statement made by the Contracts Department by way of a letter dated 22nd June 2010, namely that his company’s offer was found not compliant because the product was not locally registered, was not correct because, in his opinion, by the 22nd June 2010, his firm had registered the product locally as per certificate issued by the Medicines Authority dated 22nd April 2010;
- having equally considered Dr Vella’s claim that, due to the interpretation he had given to the letter received from the Director of Contracts dated 22nd June 2010, his firm had lodged the objection assuming that the Director of Contracts was referring to the date of dispatch of letter dated 22nd June 2010 and not the closing date of the tender;
- having considered Ms Debattista’s reference to the fact that the submission of proof that a product offered for the purposes of this tender had to be locally registered by the closing date of the tender was a mandatory requirement.

reached the following conclusions, namely:

1. The PCAB expresses the view that the specifications as listed in the tender document were clear enough to avoid any misunderstandings.
2. The PCAB feels that the appellant company has acted frivolously in filing this appeal as it was more than evident that products had to be locally registered within the parameters contemplated in the tender document and not as, arbitrarily and conveniently, interpreted by the appellant company.

As a consequence of (1) and (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

17 November 2010