

## **PUBLIC CONTRACTS REVIEW BOARD**

### **Case No. 326**

#### **GHPS/586/2010; GPS/05/049/D10/SC Supply of Alcohol Swabs 3cm x 3cm**

This call for tenders was published in the Government Gazette on the 30<sup>th</sup> July 2010. The closing date for this call with an estimated value of € 13,000 was the 16<sup>th</sup> August 2010.

Four (4) tenderers submitted their offers.

V. J. Salomone Pharma Ltd filed an objection on the 16<sup>th</sup> February 2011 the decision of the Procurement and Supplies, Ministry of Health, the Elderly and Community Care, MHEC to cancel the tender as none of the offers were found compliant.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr Edwin Muscat and Mr Joseph Croker as members convened a public hearing on Monday, 12<sup>th</sup> September 2011 to discuss this objection.

#### **Present**

##### **V. J. Salomone Pharma Ltd**

Mr Christopher Treeby Ward                      Representative

##### **Procurement and Supplies, Ministry of Health, the Elderly and Community Care, (MHEC)**

Ing. Karl Farrugia                                      Chief Executive Officer

#### **Evaluation Board**

Ms Miriam Dowling	Chairperson
Dr Erika Grech	Member
Ms Debbie Xuereb	Member
Ms Astrid Zarb	Member

After the Chairman's brief introduction, the appellant company was invited to explain the motives of his company's objection.

Mr Christopher Treeby Ward, representing V. J. Salomone Pharma Ltd, the appellant company, made the following submissions:

- i. by letter dated 9<sup>th</sup> February 2011 the Ministry of Health, the Elderly and Community Care informed them that their offer was 'not technically compliant since no DH Markings were included on the sachet' and that the tender was being cancelled as all bidders were adjudicated to be non compliant;
- ii. he contested the reason for rejection of the offer arguing that the sample was submitted for the adjudicating board to evaluate whether the product was up to the specifications requested in the tender document;
- iii. the sample presented was one taken off the shelf in their stores without the DH Marking because it was not feasible for their manufacturer to furnish just one sachet with the DH Marking;
- iv. the manufacturer would have to imprint the DH Marking on a whole batch of the product which could be of up to 700,000 sachets; and
- v. in the past, they had supplied the department with up to 1 million such sachets and they were invariably marked DH.

Ing Karl Farrugia, CEO Procurement & Supplies at the Ministry of Health, the Elderly and Community Care, remarked that while he agreed with the argument put forward by the appellant company he still maintains that the adjudicating board was faced with a situation where the sample was not DH marked and there was no indication in the tender submission of the appellant company that the product would, eventually, be delivered with the requested DH marking.

In reply to an observation made by the Chairman Public Contracts Review Board, Mr Treeby Ward confirmed that they had made a declaration to abide by all the conditions and specifications of the tender document which included the condition that the product had to be delivered with the DH marking.

The Chairman Public Contracts Review Board expressed the view that it was neither fair nor reasonable to request the sample to be DH marked because only the current contractor would have been in a position to supply a sample with the DH marking whereas the other bidders were not. He added that, in terms of the Public Procurement Regulations of May 2010, the contracting authority, acting through the Contracts Department, had both the opportunity and the obligation to seek a clarification from the participating tenderer/s on certain aspects of the tender submission.

The Chairman Public Contracts Review Board also expressed his disapproval to the apparent unnecessary delay in settling this matter considering that the closing date of

the tender was the 16<sup>th</sup> August 2010, namely more than a year prior to the date of the hearing.

At this point the hearing was brought to a close.

This Board,

- having noted that the appellant's company, in terms of the reasoned letter of objection of the 16<sup>th</sup> February 2011, and through the verbal submissions made during the hearing held on the 12<sup>th</sup> September 2011, had objected against the decision of the Ministry of Health, the Elderly and Community Care, MHEC to cancel the tender as none of the offers were found compliant;
- having noted the appellant firm's representatives claims and observations regarding the fact that (a) by letter dated 9<sup>th</sup> February 2011 the Ministry of Health, the Elderly and Community Care informed them that their offer was 'not technically compliant since no DH Markings were included on the sachet' and that the tender was being cancelled as all bidders were adjudicated to be non compliant, (b) the sample was submitted for the adjudicating board to evaluate whether the product was up to the specifications requested in the tender document, (c) the sample presented was one taken off the shelf in their stores without the DH Marking because it was not feasible for their manufacturer to furnish just one sachet with the DH Marking and (d) the manufacturer would have to imprint the DH Marking on a whole batch of the product which could be of up to 700,000 sachets;
- having considered the contracting authority's representative's submissions, namely that (a) while the contracting authority agreed with the argument put forward by the appellant company, yet it still maintains that the adjudicating board was faced with a situation where the sample was not DH marked and there was no indication in the tender submission of the appellant company that the product would, eventually, be delivered with the requested DH marking and (b) they had made a declaration to abide by all the conditions and specifications of the tender document which included the condition that the product had to be delivered with the DH marking;

reached the following conclusions:

1. The Public Contracts Review Board opines that, in the circumstance, it was neither fair nor reasonable to request the sample to be DH marked because only the current contractor would have been in a position to supply a sample with the DH marking whereas the other bidders were not.
2. This Board also believes that in terms of the Public Procurement Regulations of May 2010, the contracting authority, acting through the Contracts Department, had both the opportunity and the obligation to seek a clarification from the participating tenderer/s on certain aspects of the tender submission.
3. The Public Contracts Review Board expresses its disapproval at the apparent unnecessary delay in settling this matter considering that the closing date of the

tender was the 16<sup>th</sup> August 2010, namely more than a year prior to the date of the hearing.

In view of the above this Board finds in favour of the appellant company and also recommends that, apart from being reinstated in the tendering process, the appellant company should be reimbursed the deposit paid by the latter.

Alfred R Triganza  
Chairman

Edwin Muscat  
Member

Joseph Croker  
Member

*30 September 2011*