

PUBLIC CONTRACTS REVIEW BOARD

Case No. 356

MRRA/A/180/2011

Period Contract for the Supply and Delivery of Food and Respective Accessories to cater for the feeding of the Stray Animals recovered by the Animal Ambulance run by the Animal Welfare Directorate

This call for tenders was published in the Government Gazette on 3rd June 2011. The closing date for offers was 24th June 2011.

The estimated value of this tender was € 37,870.

Four (4) tenderers submitted their offers.

Messrs Petnutrition House Ltd filed an objection on 5th August 2011 against the decision taken by the Ministry for Resources and Rural Affairs to recommend the award of tender in respect of items 1 to 4 to MRL Imports Ltd.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman and Mr Carmel Esposito and Mr Joseph Croker as members convened a meeting on Thursday 15th December 2011 to discuss this objection

Present for the hearing were:

Petnutrition House Ltd

Dr Chris Borg	Legal Adviser
Mr Matthew Wismayer	Representative

MRL Imports Ltd

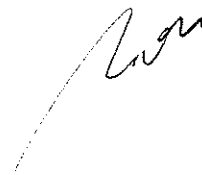
Dr John Bonello	Legal Representative
Mr Reno Baldacchino	Representative

Ministry for Resources and Rural Affairs

Ms Janice Chetcuti	Representative – Animal Welfare Directorate
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Adjudicating Board

Mr Louis Gatt	Chairman
Mr John Said	Member
Ms Carmen Micallef	Secretary



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

Dr Chris Borg, representing Petnutrition House Ltd, the appellant company, made the following submissions:

- i. by letter dated 3rd August 2011 the Ministry for Resources and Rural Affairs had informed his client that the company had been awarded items 8 and 16 whereas the rest of the items, namely 14 out of the 16 items included in the tender, were awarded to MRL Imports Ltd;
- ii. the objection referred to items 1 to 4 because these items related to dog food which would amount to about 90% of the supplies under this period contract;
- iii. reference was made to clause 8.5 of the tender document which provided as follows:-

"Another issue which is very important in regards to the nutrition of these specific animals is the source of the meat. Dog mix formulations which are being recommended in order to be chosen are meat products with a higher nutritional value. In fact the meat is to have a high percentage of clean flesh derived from slaughtered mammals limited to the part of the striate muscle which is skeletal, in the diaphragm, in the heart, or in the oesophagus without the skin, sinew, nerve and blood vessels which normally accompany the flesh. Protein levels should be in the whereabouts of 23%, which should not be plant based with a fat content minimum of 10%. A good source of pre biotics is desired along with a high presence of minerals and omega 3 and 6 for healthier coats. Biotin is also to be included in the main ingredient list for healthier coats. On the other hand a meat derivative product is usually the rendered (recycled meat), from a combination of clean flesh and skin with or without accompanying bone, derived from the part of the whole mammal or carcass. In some cases also inclusive of feathers, heads feet and entrails. The nutritional value of this meat is definitely more inferior to a formulation that declares meat ONLY. Also food is to have no artificial additives like BHA, BHT and Ethoxyquin."

- iv. considering the prices quoted by the recommended tenderer, it was highly probable that the said tenderer was not compliant with specifications indicated in the tender with the consequence that the products would be detrimental to the health of the animals in the care of the Animal Welfare Directorate;
 - v. on the other hand his client submitted products that met the high standards set out in the tender document and that would explain the difference in the prices;
- and
- vi. asked the Public Contracts Review Board to establish if the products offered by the recommended tenderer were, in fact, technically compliant.



Mr Louis Gatt, chairman of the evaluation board, remarked that:-

- a. the award criterion was the cheapest compliant tender with regard to each and every item listed in the tender;
- b. whilst none of the members sitting on the evaluation board was specialised in animal nutrition, yet the evaluation board went through the specifications and the brochures submitted by tenderers;
- c. it was noted that Clause 8.5 contained certain loose and vague terms such as '*in the whereabouts of 23%*' and '*minimum of 10%*';

and

- d. in the opinion of the board, as composed, the recommended items met the tender specifications.

Mr Matthew Wismayer, representing the appellant company, submitted that:-

- i. the tender document was quite clear with regard to the quality of the products that had to be offered, e.g.
 - a. "*food is to have no artificial additives like BHA, BHT and Ethoxyquin*"—because artificial additives rendered the product quite cheaper in price and inferior in quality;
 - b. "*Protein levels should be in the whereabouts of 23% which should not be plant based with a fat content minimum of 10%*";
 - c. the flesh had to be clean and derived from specific parts of the carcass to ensure high quality and it also had to be free from skin, sinew etc.
 - ii. if the product was derived from recycled meat it would be much cheaper in price and inferior in quality;
 - iii. the products offered by the appellant company met the formulations published in the tender specifications and, as a consequence, that reflected itself in the price quoted;
- and
- iv. on the other hand, it was highly doubtful that the products offered by the recommended tenderer could have attained the quality standards demanded by the contracting authority.

Mr Gatt remarked that the evaluation board did not go into such details as Mr Wismayer just did and he reiterated that, although the evaluation board did go through the technical specifications of the tender and brochures submitted by the bidders, the evaluation board, as composed, did not possess the specialisation to, thoroughly,



deliberate on the technical specifications. He added that the evaluation board based its decisions almost entirely on the basis of price.

Ms Janice Chetcuti, representing the Animal Welfare Directorate, stated that the tender specifications were drawn up by the Animal Welfare Directorate wherein emphasis was placed on good quality products to assist in the quick recovery of the animals in their care which, normally, were either undergoing treatment or were in a weak state of health. She stated that (a) her directorate was not involved in the adjudication of the tender (b) the department did not have staff specialised in animal nutrition.

The Chairman, Public Contracts Review Board, remarked that an adjudicating board could not carry out a proper evaluation of a tender unless any of its members was qualified to assess offers against the published specifications and, if the contracting authority lacked resources, it could engage an independent expert to advise the evaluation board.

Dr John Bonello, representing the recommended tenderer, made the following remarks:-

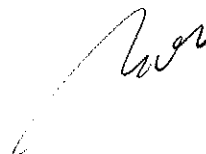
- i. the objection was limited to items 1 to 4 out of the 16 items that featured in the tender document and, hence, the hearing had to limit itself to those four items;
 - ii. the tender had to be awarded to the cheapest compliant offers and, as a consequence, once an offer met the minimum requirements set out in the tender document then the award had to be issued in favour of that offer, irrespective of whether the products offered by competitors were superior in quality or not;
 - iii. that far it had not emerged that the products offered by his client were not compliant with tender specifications, which, as already pointed out, in certain instances, were not very specific but indicated ranges;
- and
- iv. one had to keep in view that his client's submission included a declaration that the products were compliant

The Chairman, Public Contracts Review Board, remarked that the Board had to, *inter alia*, evaluate whether, as things stood, the adjudicating board was competent enough to evaluate the technical aspect of the tender. On the other hand the same Board could not take comfort from any advice given in regard by either the appellant company or the recommended tenderer, these being interested parties.

At this point the hearing was brought to a close.

This Board,

- having noted that the appellant company, in terms of the reasoned letter of objection dated 5th August 2011 and through the verbal submissions made during the hearing held



on the 15th December 2011, had objected against the decision taken by the Ministry for Resources and Rural Affairs to recommend the award of tender in respect of items 1 to 4 to MRL Imports Ltd;

- having noted the appellant firm's representatives claims and observations regarding the fact that (a) the Ministry for Resources and Rural Affairs had informed the appellant company that it had been awarded items 8 and 16 whereas the rest of the items, namely 14 out of the 16 items included in the tender, were awarded to MRL Imports Ltd, (b) the objection referred to items 1 to 4 because these items related to dog food which would amount to about 90% of the supplies under this period contract, (c) considering the prices quoted by the recommended tenderer, it was highly probable that the said tenderer was not compliant with specifications indicated in the tender (particularly clause 8.5) with the consequence that the products would be detrimental to the health of the animals in the care of the Animal Welfare Directorate, (d) the appellant company submitted products that met the high standards set out in the tender document and that would explain the difference in the prices - if the product was derived from recycled meat it would be much cheaper in price and inferior in quality and (e) the tender document was quite clear with regard to the quality of the products that had to be offered, namely (1) food is to have no artificial additives like BHA, BHT and Ethoxyquin, (2) Protein levels should be in the whereabouts of 23% which should not be plant based with a fat content minimum of 10% and (3) the flesh had to be clean and derived from specific parts of the carcass to ensure high quality and it also had to be free from skin, sinew etc;
- having considered the contracting authority's representative's submissions, namely that (a) the award criterion was the cheapest compliant tender with regard to each and every item listed in the tender, (b) whilst none of the members sitting on the evaluation board was specialised in animal nutrition, yet the evaluation board went through the specifications and the brochures submitted by tenderers, (c) it was noted that Clause 8.5 contained certain loose and vague terms such as '*in the whereabouts of 23%*' and '*minimum of 10%*', (d) in the opinion of the board, as composed, the recommended items met the tender specifications, (e) the evaluation board did not go into such details as the appellant had gone through claiming that, although the evaluation board did go through the technical specifications of the tender and brochures submitted by the bidders, the evaluation board, as composed, did not possess the specialisation to, thoroughly deliberate on the technical specifications, (f) the evaluation board based its decisions almost entirely on the basis of price, (g) Ms Janice Chetcuti, representing the Animal Welfare Directorate, stated that the tender specifications were drawn up by the Animal Welfare Directorate wherein emphasis was placed on good quality products to assist in the quick recovery of the animals in their care which, normally, were either undergoing treatment or were in a weak state of health and (h) according to Ms Chetcuti, the department did not have staff specialised in animal nutrition;
- having also considered the recommended tenderer's representative's submissions namely that (a) the objection was limited to items 1 to 4 out of the 16 items that featured in the tender document and, hence, the hearing had to limit itself to those four items, (b) the tender had to be awarded to the cheapest compliant offers and, as a consequence, once an offer met the minimum requirements set out in the tender

document then the award had to be issued in favour of that offer, irrespective of whether the products offered by competitors were superior in quality or not, (c) up to that moment it had not emerged that the products offered by the recommended tenderer were not compliant with tender specifications and (d) one had to keep in view that recommended tenderer's submission included a declaration that the products were compliant,

reached the following conclusions:

1. The Public Contracts Review Board opines that an adjudicating board cannot carry out a proper evaluation of a tender unless any of its members is qualified to assess offers against the published specifications and, if the contracting authority lacks resources, it was permissible for an independent expert to be engaged to advise the evaluation board.
2. The Public Contracts Review Board feels that, as things stood, it has to, *inter alia*, evaluate whether the adjudicating board was competent enough to evaluate the technical aspect of the tender. This Board concludes that, from the evidence given and submissions given and admissions made, it was amply clear that none of the evaluation board members was indeed qualified to professionally assess the offers submitted. It was manifested that the evaluation board based its decisions almost entirely on the basis of price. As a result, the Public Contracts Review Board is not in a position to take comfort from any advice given in regard by either the appellant company or the recommended tenderer, these being interested parties.
3. In view of (1) and (2) above this Board resolved to seek independent professional advice, acknowledging that such action would give more credibility to its ultimate decision which, for all intents and purposes, shall abide by the opinion of this purposely appointed expert and which shall also be considered binding on all parties concerned.

Following further deliberation this Board engaged the services of Ms Bernadette Mallia, Senior Customs Analyst, as an independent expert to provide this Board with her views and advice. Following a thorough analysis of the documentation provided to her by this Board Ms Mallia drew the report being reproduced hereunder in its entirety the content of which is self explanatory.



Comparative Exercise of Dog Food Submitted by Two Suppliers in relation to Tender MRRA/A/180/2011

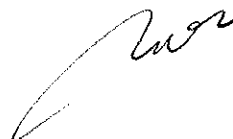
The specifications for dog food in the Tender MRRA/A/180/2011 are listed in paragraph 8.5 of the Tender Document and are summarised as follows:

1. The dog mix formulations should be meat products with a high nutritional value.
2. The meat should have a high percentage of clean flesh derived from slaughtered mammals limited to the part of the striate muscle which is skeletal, diaphragm, heart or oesophagus without the skin, sinew, nerve and blood vessels which normally accompany the flesh.
3. Protein levels should be about 23%, which should not be plant based.
4. Fat content minimum of 10%.
5. A good source of prebiotics.
6. A high presence of minerals, Omega 3 and 6.
7. The main ingredient list should contain biotin (aka Vitamin H, Vitamin B7 or CoEnzyme R).
8. Should not contain artificial additives.

The same paragraph also notes that meat derivatives originate from recycled products which have a lower nutritional value than lean meat.

The proteins in a food formulation can be of lean meat origin (highly digestible), of animal by product origin (lower digestibility) and plant origin (as low as 60 – 75% digestible). Protein determination is based on the analytical determination of the Nitrogen content of a sample. The result obtained is multiplied by a factor (6.25 in case of raw meat), to obtain an estimate of the total protein content, usually referred to as “crude protein”. This however does not differentiate between the various origins of the proteins in a formulation. Paragraph 8.5 of the tender document, however, stipulates a value of 23% protein of animal origin. **However it does not specify whether this refers to the wet (as is) or dry weight basis.**

Prebiotics are non-digestible food ingredients that stimulate the growth and/or activity of bacteria in the digestive system in ways claimed to be beneficial to health. Typically, prebiotics are carbohydrates (such as oligosaccharides), but the definition may include non-carbohydrates. The most prevalent forms of prebiotics are nutritionally classed as soluble fibre. Many forms of dietary fibres, however exhibit a certain degree of prebiotic effect. Traditional dietary sources of prebiotics include soybeans, inulin sources, raw oats, unrefined wheat and unrefined barley. The crude fibre as given in all submissions refers to the quantity of indigestible cellulose, pentosans, lignin, and other components of this type in present foods. These components have little food value but provide the bulk necessary for proper peristaltic action in the intestinal tract. The method for determining crude fibre consists basically of measuring the residue remaining after acid and basic hydrolysis (Weender analysis). It is known that the crude fibre method covers 50-80% of the cellulose, 10-50% of the lignin, and 20% of the hemicelluloses. Hence, there is no relationship between the two parameters.



Dog Food submitted by MLR Imports Ltd.

There were eight different products submitted by this tender. A summary of their components is attached as Table 1.

1. Only Item 10 Diafarm B complex supplements specified Vitamin B complex as one of its main ingredients.
2. None of the products contained any reference to additives or preservatives.
3. None of the products mentioned specifically Omega 3 and 6. However vegetable oils contain Omega 6 in variable amounts depending on type of oil. Omega 3 is found mainly in fish oil and in certain vegetable oils.
4. Items 1, 2 and 8 specify the presence of more than one mineral. Item 7 specifies only Copper.
5. Items 1 contains 21% protein which is close to the 23% protein as stipulated in the tender. However this product also contains cereals, vegetable products and yeast that all contribute to the protein content. There is no biotin listed in the ingredients, although the yeast is a source of this Vitamin. There is also a range of minerals listed. A detailed breakdown of the % protein originating from all three sources (i.e. cereals, yeast and meat) would be needed to determine the % protein originating from the meat component, as specified in the tender, is reached.
6. Item 2 has a crude protein content of 30%. However it has yeast as one of its ingredients. Since yeast contains around 50% by weight of protein, this can constitute a significant % of the crude protein content of the finished formulation. A detailed breakdown of the % protein originating from all three sources (i.e. cereals, yeast and meat) would be needed to determine whether the 23% meat protein limit as specified in the tender is reached.
7. Items 7 has no % protein in the information provided and a fat content of 4.5%. It has a moisture content of 75%. It contains cereals which may contribute a certain amount of protein and prebiotics. There is no mention of biotin or of Omega 3 and 6 in the ingredients. There is no indication of additives or preservatives.
8. Item 8 contain 81% as moisture value. The overall % of other ingredients is below the tender specifications, with a declared protein content at a level of 9.8 % and a fat content at 4.5 %. This product does not contain cereals, so prebiotics levels should be low. However it contains oils and fats, so it may contain Omega 3 and 6. There is no mention of biotin or preservatives. A range of minerals is mentioned.
9. Item 10 consisted of a formulation for substitute milk for puppies and three formulations of dietary supplements. The milk formulation had no specifications included. The specifications of the tender cannot apply to the



other three products, since these are formulated as tablets intended to supplement the dog's diet.

Conclusions

1. Item 10 refers to four items. The milk formulation has no information included. The other three items are diet supplements in tablet form. The specifications of the tender document cannot be applied to them.
2. Item 7 has incomplete product information details and could not be assessed.
3. The product information forwarded for all items were the Sceda Tecnica Prodotto (Data Sheet).
4. None of the product information sheets forwarded contained any details about the type of meat in the preparation as stipulated in Paragraph 8.5.
5. All contain meat/animal derivatives, again with no further details.
6. None of the information sheets gave a breakdown of the % protein contributed by the meat and the other ingredients.
7. Biotin was not mentioned in any of the Data Sheets, although those products that contained yeast can be assumed to contain Biotin.
8. Item 8 has an 81% moisture content which reduces the % of the other constituents. On a **dry** weight basis, the protein content would be 49% and the fat content 22.5%. Since it contains no cereals, it can be assumed that all protein is of animal origin and that it is poor in prebiotics and may also be poor in biotin (not mentioned in ingredients list). Overall, this item comes close to the tender specifications.
9. Items 1 and 2 contain the stipulated levels of protein and fats, although they do not satisfy points 4 to 6. However they both contain yeast as a source of biotin, cereals that can contain prebiotics and oils as a possible source of Omega 3 and 6. They do not contain any reference to preservatives. They could satisfy the Tender requirements if the % meat protein is obtained.



Dog Food submitted by Pet Nutrition House Ltd.

There were eight different products submitted by this tender. A summary of their components is attached as Table 2.

Valpet Dog Club Mix.

This product has a declared crude protein content of 23%. The natural sources of this protein can be the beef, chicken, maize and yeast mentioned as ingredients. It is not specified whether the beef and chicken are lean meat or meat by-products. The ingredients also include "chicken protein extracts" which is a commercial product obtained by processing meat to extract the proteins. No % content of this ingredient is mentioned, however it may contribute a significant % of the declared crude protein content. A breakdown of protein origin is required to determine each ingredient's contribution of protein.

The fat content is as per tender specifications; the wheat and chicory pulp contain prebiotics – although no details are given as regards amounts present; the fish oil is a source of Omega 3; vegetable oils do contain Omega 6 in variable amounts and certain vegetable oils contain Omega 3 as well; biotin (as Vitamin H) is included in the ingredients as well as a range of minerals. The product is declared free of BHT, BHA and Ethoxyquin as per tender specifications.

Alexan Crunchy Menu Puppy.

The protein content is declared to be 30%, i.e. above the minimum specified in the tender. The protein sources can be the chicken, fish and cereals. However the ingredients list includes sub-products of both chicken and fish. A breakdown of protein origin is required to determine each ingredient's contribution of protein. The fat content is above the minimum specified; there is no mention of biotin in the ingredients; there is also no direct reference to Omega 3 and 6 content, although the oils and fish in the formulation contain these two fatty acids; only three Vitamins and two minerals are included; no details are included about the cereals, although whole grain rice is a good source of prebiotics; the additives included are declared EC approved.

Prince Chunks in Gravy Dog Food 405 grams

Only a (partial?) data sheet was submitted for this product. The only relevant information listed meat and meat by-products, of which 6% is lamb; cereals, minerals and there Vitamins. There is not enough information to assess whether it reaches the tender specifications or not.

Prince Puppy Chicken; Prince Puppy Lamb; Prince Chunks with Chicken and Turkey; Prince Chunks with Tripe and Lamb; Prince Chunks with Beef.

All these products contain an 80% moisture value. The overall % of other ingredients is below the tender specifications, with protein content at a level of 7 – 7.5% and a fat content at 6%.



The only Vitamins listed are Vitamins D3 and E and the only mineral listed is Copper. There is no reference to Biotin content, cereals are included so prebiotics should be present; there are no oils mentioned so Omega 3 and 6 content should be low; colours and additives are declared as per EC directives;

Bayer Primo Latte Cucciolo

This is a milk formulation in powder form for bottle fed puppies. The product contains a minimum of 80% milk and milk products. It does not contain meat products. The specifications of the tender cannot be applied for this product.

Conclusions

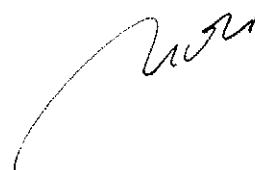
1. The product Bayer Primo Latte Cucciolo is a dried milk formulation and hence the specifications of the tender do not apply.
2. The product Prince Chunks in Gravy Dog Food 405 grams has incomplete product details and could not be assessed.
3. None of the product information sheets forwarded contained any details about the type of meat in the preparation as stipulated in Paragraph 8.5.
4. All contain meat/animal derivatives, again with no further details.
5. None of the information sheets gave a breakdown of the % protein contributed by the meat and the other ingredients.
6. The product Valpet Dog Club Mix was the only one that specifically listed biotin in the ingredients and specified the absence of BHT, BHA and Ethoxyquin. Apart from not complying to point 3 to 5 above, this product comes closest to fulfilling the required specifications.
7. The products Prince Puppy Chicken; Prince Puppy Lamb; Prince Chunks with Chicken and Turkey; Prince Chunks with Tripe and Lamb; Prince Chunks with Beef are wet food preparations and hence have a high moisture content. They all have the same declared % of contents and ingredients. On a dry weight basis, the protein content would be between 35 – 37.5% and the fat content would be 30%. This may mean that meat protein can be above 23% as specified. None satisfy the requirements for information regarding biotin content or for preservatives; the mineral mentioned is only Copper; the absence of oils or fish indicates that they can be a poor source of Omega 3 and 6.
8. The product Alexan Crunchy Menu Puppy does not comply with points 3 to 5. The absence of yeast may make it poor in biotin. However overall, it also comes close to fulfilling the Tender specifications.

Overall Conclusions regarding Tender Document and Submissions

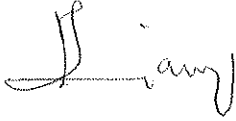
1. It is evident that the tender specifications have not been compiled in a professional manner. There was no clear threshold of % contents of the most of the desired parameters; whether the assessment should be carried on the product as is or on a dry weight basis or whether certain parameters were to be considered as optional additions or not. These ambiguities in practice precluding anyone from comparing products in an objective manner.
2. The technical data submitted did not actually contain the required information for one to make a proper assessment in relation to the specifications published in the tender. The tender required information that is not normally available on the commercial preparation, but has to be obtained specifically from the manufacturer. None of the products submitted had this information attached.
3. In view of all findings, namely (1) specifications not being to standard and (2) corresponding tender submissions falling considerably below the expectations of the intentions of the contracting authority, one should consider this appeal to be the outcome of an overall untenable procurement process thus rendering any further assessment of such tender to be devoid of scope

Bernadette Mallia

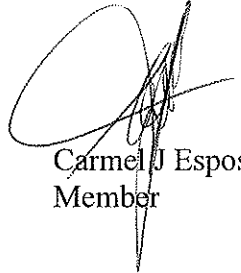
8 January 2012



In view of the above this Board finds in favour of the appellant company and recommends that this tender be reissued with clear professionally drawn up specifications. Additionally, this Board recommends that the deposit paid by the appellant company to file the objection should be reimbursed.



Alfred R Triganza
Chairman



Carmel J Esposito
Member



Joseph Croker
Member

30 January 2012