

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 577**

**CPSU/2641/2012**

Tender for the Supply of Dressing Pads 20cm x 30cm.

The tender was published on the 20<sup>th</sup> September 2012. The closing date was the 22<sup>nd</sup> October 2012.

The estimated value of the Tender was: €55,608 (Exclusive of VAT).

Six (6) bidders submitted their offers for this tender, one of them submitting two different bids.

On the 8<sup>th</sup> July 2013 Pharmafusion Limited filed an objection against its exclusion from the tender because its product was not technically compliant.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Richard A. Matrenza as members convened a hearing on Thursday 1<sup>st</sup> August 2013 to discuss the appeal.

**Present for the hearing were:**

### **Pharmafusion Limited - Appellants**

Mr Ives Pocock	Representative
Ms Giovanna Pocock	Director Pharmafusion Ltd.

### **Krypton Chemists Limited - Preferred Bidder**

Ms Lorraine Arrigo	Representative
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### **Central Procurement & Supplies Unit – Contracting Authority**

Ms Connie Miceli	Chairperson Evaluation Board
Ms Josanne Debono	Member Evaluation Board
Ms Alicia Vella Lethridge	Member Evaluation Board
Ms Miriam Wubbels	Member Evaluation Board
Ms Astrid Sammut	Representative

After a brief introduction, the Chairman invited the appellants to explain the reasons for the objection.

Mr Ives Pocock for appellants stated that appellants' bid was the cheapest and their product was up to specifications. The same product is being sold in quantities in various European Countries. Specifications only stated that the product should be highly absorbent. This could be a subjective quality while specifications in tender documents should be as detailed as necessary. Specifications should have asked for the dressings to conform to certain standards. Appellants' offer conformed to European Standards. Therefore since the dressings offered by appellants conforms to European standards and was also the cheapest, it should not have been discarded. He queried what tests were used to verify suitability of the product Pharmafusion offered, and as a result of which its bid was disqualified.

Mr Ives Pocock also complained about the time allotted to him to file this appeal.

Ms Connie Miceli explained that there was only one member of the evaluating board present.

Ms Miriam Wubbels, a member on the evaluation board said that all the samples provided by the bidders in such tenders are tested by being practically used as necessary on patients. It was found that the product offered by appellants leaked, and the wound liquid seeped right through. So it was necessary to use two dressings instead of one to dress wounds. Obviously this meant that appellants' bid would no longer be the cheapest. Furthermore in use, the dressing in question developed lumps causing discomfort to the patients. The lining of the dressing pads is meant to shield the wounds from the absorbent cotton wool, and during testing, the linings of dressing pads submitted by appellants were found to tear. Appellants' offered product was not as good as the other samples.

Mr Ives Pocock insisted that specifications should have been clearer, enabling bidders to submit the right product. He insisted that standards should have been specified and scientific testing done on the samples to see if these complied. He reiterated that the product submitted by appellants was up to standard and was compliant.

Ms Josanne Debono, member on the evaluation board stated that specifications asked that offered dressing pads should be highly absorbent which meant that they are supposed to absorb liquids and retain them. Pharmafusion's dressing pads leaked.

Ms Miriam Wubbels affirmed that the tests were conducted on real wounds on real patients who had wounds that leaked a moderate amount of blood. That dressing pads should absorb the fluids that issued from wounds.

Replying to a question from the Public Contracts Review Board, Ms Connie Miceli explained that in this kind of tender, it is normal for the present suppliers of products being tendered for, to be exempted from submitting any samples. This is for the simple reason that their product is being continually tested through normal usage on a daily basis. The present supplier had to quote the code number of his previous supply and this is checked to ensure that the same product is being offered. Other bidders are requested to submit samples, however, and these are tested in a practical way through use as necessary.

At this point the hearing was concluded.

**This Board,**

**Having noted the Appellant's objection in terms of the 'Reasoned Letter of Objection' dated 8<sup>th</sup> July 2013, had objected to the decision taken by the pertinent Authority, in that:**

- a) The Appellant's bid was discarded by the Evaluation Board of the Contracting Authority due to the fact that it was considered as technically non compliant.**
- b) In the specifications of the tender document, there were no specific standards which had to be satisfied by the tenderer.**
- c) The Appellant's product is used all over Europe and in this regard the Appellant is somewhat surprised as to how same product was considered to be technically non compliant.**
- d) The Appellant's bid was the cheapest.**
- e) The Appellant enquired as to what tests were carried out on the product to establish technical compliance.**

**Having considered the Contracting Authority's verbal submissions presented by same during the hearing held on 1<sup>st</sup> August 2013, in that:**

- a) The Evaluation Board of the Contracting Authority did carry out tests on all samples provided. In fact these tests are carried out 'Hands On' ie the efficiency and compliance of the product is tested on real patients.**
- b) The Appellant's bid was found to be technically non compliant.**
- c) It was of the utmost importance that the product had to be highly absorbent. It had to absorb liquids and retain same.**
- d) The product had to ensure the least possible discomfort to the patient.**

**Reached the following conclusions:**

- 1. It is of the utmost importance that in evaluating the tendered products, great importance be given to the quality, as this is a precaution against infections.**
- 2. It is also important to take into consideration the minimisation of discomfort to the patient. In this regard the Evaluation Board of the Contracting Authority took this issue into account.**
- 3. The tests carried out by the Evaluation Board could not have been more practical and in this aspect the Preferred Bidder's product was found to be highly technically compliant.**
- 4. Although the Preferred Bidder's offer was the second cheapest, in the long term this offer will prove to be the cheapest due to less consumption of the product itself.**

**In view of the above, this Board finds against the Appellant Company and recommends that the deposit paid by the Appellant should not be reimbursed.**

Dr. Anthony Cassar  
Chairman

Dr. Charles Cassar  
Member

Mr. Richard A. Matrenza  
Member

*3 September 2013*