



The Chairman made a brief introduction and invited appellant's representative to make his submissions.

Mr Matthew Galea on behalf of the appellant explained that appellant's tender had been disqualified because of the shelf life – appellant offered shelf life of 9 months instead of 10 months. He contended that this shelf life of 10 months does not make sense in the case of vaccination, since the expiry would be in June 2015 for the 9 month shelf life and July 2015 for the 10 month shelf life. The Influenza season is over around March and so the season would be over at the time of expiry.

Ms Connie Miceli, the Chairperson Evaluation Board on behalf of the contracting authority explained that appellant had submitted a shelf life of 9 months. The tender stipulated that any offer with a shelf life of less than 12 months had to respect the 5/6<sup>th</sup> validity which works out at 10 months. Thus appellant's tender had to be disqualified. Where pharmaceuticals are concerned the praxis is that a shelf life of 12 months has to have a validity period of 5/6. A shelf life of 24 months on the other hand has to have a validity period of 2/3. In this case the evaluation board had no choice but to reject appellant's offer. Furthermore, appellant in correspondence with the contracting authority erroneously quoted a nine month shelf life, and this could not be ignored.

Mr Matthew Galea for the appellant insisted that the tender stipulations do not make any sense. In the past, these were ignored. It is difficult for vaccine manufacturers and in Malta only two bidders go for the supply of vaccines. The product appellant submitted each year has the same expiry date in June, and this because of WHO recommendations. The vaccine is changed each year and the remaining stock has to be disposed of after June.

Ms Miceli explained that the preferred bidder declared to supply the vaccines with 10 month validity. The vaccine is issued by WHO each year and has then to be manufactured and delivered.

Dr Adrian Delia for the preferred bidder said that Article 24.41 clearly states that products having a shelf life of less than 24 months must not be more than 1/6 expired on delivery to stores. This was a mandatory eligibility criterion. The shelf life of the present product is 12 months and thus has to have 10 months remaining shelf life on delivery. The appellant is also admitting the fact that its bid was in default and so the rejection of tender must remain. Appellant had other remedies either through a pre-contractual concern or through clarifications. Appellant chose not to avail itself of these remedies. The tender could not be rectified because only clarifications are allowed.

At this point the hearing was brought to a close.

**This Board,**

**Having noted Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 29<sup>th</sup> August 2014 and also through Appellant's verbal submissions during the hearing held on 9<sup>th</sup> September 2014, in that:**

- a) Appellant contends that the reason for the disqualification of his bid, is illogical. The 'shelf life' of the vaccine offered by Appellant Company was 9 months**

instead of 10 months. Appellant claims that the vaccine 'shelf life' as offered by same would still provide the necessary required effect, during the Influenza season.

Having considered the Contracting Authority's verbal submissions during the hearing held on 9<sup>th</sup> September 2014, in that:

- a) The tender document stipulated that, offers with a 'shelf life' of less than 12 months had to satisfy the 'validity period' formula of 5/6 of its shelf life. I.e. 10 months. Appellant's submitted an offer with a 'shelf life' of 9 months.

Reached the following conclusions:

1. Tender conditions and stipulations are drawn up in a tender document, to ensure that the product being offered by the prospective bidder is up to the required international standards. Pharmaceuticals are strictly governed by principles which have been established through lengthy research carried out by the Medical Profession. The conditions and stipulations dictated in a tender document involving such products are laid out in accordance with such established and dictated principles. In this regard, this Board opines, that the Appellant Company was fully aware that, offers with a shelf life of less than 12 months had to respect and abide by the 5/6 ratio of 'Validity period'. Appellant's offer validity period was less than that of the Preferred Bidder. In fact it was 9 months against that of the Preferred Bidder's 10 months. In this regard, this Board upholds the Evaluation Board's decision to award the tender to the most advantageous offer, that is the Preferred offer's bid.
2. This Board opines, that the Appellant Company had two remedies to rectify his situation and these were
  - a) To seek clarifications prior to the closing date of the tender or
  - b) Lodge a pre contractual concern with this Board.

In actual fact, the Appellant Company did not avail itself of these remedies.

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

Dr Anthony Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Lawrence Ancilleri  
Member

16<sup>th</sup> September 2014