

PUBLIC CONTRACTS REVIEW BOARD

Case No. 809

CPSU/CPU 3227/ 2013

Tender for the Supply of Imatinib 100 mg Capsules/Film Coated Tablets.

The tender was published on the 18th October 2013. The closing date was the 18th November 2013. The estimated value of tender is €13,313.32, (Exclusive of VAT).

Two (2) offers had been received for this tender.

On the 11th February 2015 Accord Healthcare/Rodel Limited filed an objection against the decision of the Contracting Authority to cancel the tender.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a hearing on Thursday 28th May 2015 to discuss the objection.

Present for the hearing were:

Accord Healthcare/Rodel Limited:

Dr Norman Vella

Director Rodel Ltd

Central Procurement and Supplies Unit:

Ms Astrid Sammut

Chairperson Evaluation Board

Mr Sean Ryan Atkins

Member Evaluation Board

Ms Alison Brincat

Member Evaluation Board

Ms Sharon Vella

Member Evaluation Board

Ms Connie Miceli

Representative

The Chairman made a brief introduction and then asked the appellant's representative to make his submissions on the objection.

Dr Norman Vella for the appellant contended that appellant's offer had satisfied all the tender requirements and that the appellant had no control over the facts that led to the Contracting Authority to cancel the tender. He said that the estimated value of the tender had probably been erroneously arrived at and was based on another tender where appellant had quoted €9.98 per pack of 60 instead of €998 per pack of 60. The estimated value of the tender had definitely not been based on the market value of the product. Dr Norman Vella insisted that appellant's offer was the best one received for the tender and reiterated that appellant had no control over the facts that led to the cancellation.

Ms Connie Miceli on behalf of the Contracting Authority agreed with the facts as stated by Dr Norman Vella but explained that the estimated value of the tender had been assessed wrong. Since the actual value of the tender exceeded €120,000 a different procedure would have to be followed. The present tender was issued as a departmental tender while it should have been issued as a tender from the Department of Contracts and with the admission of overseas bidders. The Contracting Authority had tried to find a remedy in order to obviate the need for cancellation but had not been successful and its request for rectification had been rejected. She explained also that since the product was essential for patients another tender had been issued through the Department of Contracts and awarded for €132,930.

Dr Norman Vella insisted in filing a clarification issued in another tender and shows how the market price should be assessed. He reiterated that the appellant had no control over what led to the cancellation and should not be penalized for this. The appellant had the cheaper bid from the two bidders.

At this point the hearing was closed.

This Board,

Having noted the appellant's objection in terms of the "Reasoned Letter of Objection" dated 11th February 2015 and also through the appellant's verbal submissions during the hearing held on 28th May 2015 had objected to the decision taken by the pertinent authority in that:

- a) The appellant feels aggrieved due to the fact that although his offer was fully compliant and the cheapest, the Contracting Authority decided to cancel the tender;**
- b) The appellant also maintains that the reason for the cancellation of the tender was due to the Contracting Authority underestimating the value of the tender.**

Having considered the Contracting Authority's verbal submissions during the hearing held on the 28th May 2015, in that:

- a) The Contracting Authority confirms that the estimated value of the tender was grossly miscalculated by the same to the effect that since the realistic estimated value should have, by far, exceeded the € 120,000 mark; a totally different procedure would have to be followed.**

Reached the following conclusions:

- a) With regards to the appellant company's first grievance, this Board justifiably opines that since the estimated value of the tender was by far much lower than the realistic one, the Contracting Authority was correct in cancelling the tender since the realistic value exceeds the € 120,000 mark, hence falling under a totally different regulation of the "Public Procurement Regulations". This would not have been possible for the evaluation committee to assess the bids, when the same Contracting Authority was fully aware that the estimated value was grossly understated. In this regard, this Board opines that it was a correct, fair and transparent decision by the Contracting Authority to cancel the tender. This Board does not uphold the appellant's first grievance;**
- b) With regards to the appellant's second contention, this Board is aware of the fact that the reason for the cancellation of the tender was of no fault on the appellant's part. However, this Board justifiably opines that the "Cancellation of the Tender", was the only remedy to rectify the grossly stated estimated value of the tender, which would eventually require a more complex tender procedure in accordance with the public procurement regulations.**

In view of the above, this Board finds against the appellant company. However, due to the reasons stated above, it is recommended that the deposit paid by the appellant should be reimbursed.

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Lawrence Ancillieri
Member

2 June 2015