

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 873**

**CPSU/CPU/3164/2013**

**Tender for the Supply of Docetaxel 20mg and 80mg Vials.**

The Tender was published on the 4<sup>th</sup> October 2013. The closing date for the call was on the 4<sup>th</sup> November 2013. The estimated value of Tender is €40,000.00 (Exclusive of Vat).

Three (3) Offers had been received for this Tender.

On the 22<sup>nd</sup> September 2015 Drugsales Limited filed an objection against the decisions 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 the 19<sup>th</sup> November 2015 to discuss the objection.

Present for the hearing were:

**Drugsales Limited:**

Dr Andrea Gera de Petri  
Mr Andrew Attard Montalto

Director  
Pharmaceuticals Sales Manager

**Central Procurement and Supplies Unit:**

Ms Astrid Sammut  
Ms Sharon Vella  
Mr Joseph Xuereb

Chairperson Evaluation Board  
Member Evaluation Board  
Representative

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

Dr Andrea Gera de Petri on behalf of the Appellant contended that there had been no valid reasons to cancel the Tender. The latter could only be cancelled for the reasons specified in the Tender Document and the reason which was given to the Appellant for cancellation was not one of those listed in the Tender Document. The Contracting Authority claimed that there had been inconsistencies in the Tender specifications but failed to indicate them. Apparently through a letter of the 29<sup>th</sup> October 2015, the Contracting Authority added another reason for the rejection of Appellant's offers – that of technical non-compliance.

Dr Gera de Petri contended that the shelf-life of the product submitted by Appellant had been compliant; the manufacturer had recently managed to get a longer shelf life, while the leaflets still showed the old shorter one. Regarding the "no" to the Appellant's previous experience, this was a matter that could easily have been rectified through a clarification. He stressed that it was unfair to all the bidders to have the Tender procedure cancelled at this stage where bidders had shown their prices.

Ms Astrid Sammut on behalf of the Contracting Authority explained that the Evaluation Board had prepared two reports. In the first it had pointed out that the Appellant had put down "no" to the list of previous deliveries where it should have declared "yes" since it was not a previous supplier. This could not be rectified. The Departmental Contracts Committee had then advised the cancellation of the Tender. Following the second report it resulted that there were some discrepancies between the clauses of the Tender specifications in relation of whether there were lots or not. The Appellant's offer had also been not compliant because the total product shelf life of the product could not be confirmed *"in view that as per uploaded SPC, the total product shelf life is 2 years but as per uploaded package insert, there is stated a total shelf life of 3 years."* This meant that the offer was not technically compliant.

At this point the hearing was closed.

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**This Board,**

**Having noted the Appellant's objection, in terms of the "Reasoned Letter of Objection" dated 22 September 2015 and also through the Appellant's verbal submissions during the Public Hearing held on 19 November 2015, had objected to the decision taken by the Pertinent Authority, in that:**

**a) The Appellant contends that there were no valid reasons why the**

**Contracting Authority should cancel the Tender. In this regard, the Appellant maintains that his offer was Technically Compliant.**

- b) The Appellant claims that with regards to the declared “No” relating to previous experiences, the Contracting Authority should have sought clarifications.**

**Having considered the Contracting Authority’s “Letter of Reply” dated 30 October 2015 and also the verbal submissions during the Public Hearing held on 19 November 2015, in that:**

- a) The Contracting Authority maintains that there were valid reasons for cancelling the Tender and that these reasons were stated in the “Letter of Reply” which they had submitted;**
- b) The Contracting Authority contends that it could not ask for any clarifications regarding the Appellant’s submissions as it would amount to a rectification.**

**Reached the following conclusions:**

- 1. With regards to the Appellant’s first contention, this Board, after**

**having heard all submissions and examined the Evaluation Reports, opines that the Appellant did in fact stated “No” for the Principal Deliveries and did not upload the Document as per instructions.**

**Conditions in the Tender Document are not capriciously dictated but are required to ensure that the Contracting Authority will procure its requirements for the correct purpose. This Board opines that the documentation submitted by the Appellant Company stated “No” and therefore was not compliant in this regard.**

- 2. With regards to the Appellant’s Second Grievance, this Board opines that had the Evaluation Committee asked for clarifications regarding the “No” and the “Shelf-Life”, the same Committee would have rectified the original submitted documentation. In this regard, this Board does not uphold the Appellant’s Second Contention;**
  
- 3. On a general note, this Board would justifiably point out that this Tender was published in 2013 and since the time had elapsed, another Tender was published and awarded to another Tenderer.**

**In this regard, this Board opines that the Contracting Authority acted in a diligent and transparent manner in cancelling this Tender.**

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

Dr Anthony Cassar  
Chairperson

Dr Charles Cassar  
Member

Mr Lawrence Ancillieri  
Member

*24 November 2015*