

PUBLIC CONTRACTS REVIEW BOARD

Case 1116 – CT 2194/2017 – Tender for the Supply of Rivaroxaban 10mg Tablets

The Publication Date of the Call for Tenders was 27 October 2017 whilst the Closing Date for Call of Tenders was 30 November 2017. The Estimated Value of the Tender, (Exclusive of VAT) was € 235,600.

On 29 November 2017, VJ Salomone Pharma Limited filed a Call for Remedies Prior to the Closing Date of the Competition against the Tender issued by the Central Procurement and Supplies Unit.

On 19 December 2017, the Public Contracts Review Board composed by Dr Anthony Cassar as Chairman, Mr Lawrence Ancilleri and Mr Carmel Esposito as members convened a Public Hearing to discuss the Objection.

The Attendance for this Public Hearing was as follows:

Appellant – VJ Salomone Pharma Limited

Mr Franco Borg Milio	Representative
Ms Ilona Pirotta	Representative
Mr Christopher Treeby Ward	Representative

Contracting Authority – Central Procurement and Supplies Unit

Dr Alison Anastasi	Representative
Mr Andre Farrugia	Representative

Department of Contracts

Mr Jevon Attard	Procurement Manager
Dr Christopher Mizzi	Legal Representative

Following an introduction by The Public Contracts' Review Board Chairman, Dr Anthony Cassar, the Appellants were invited to make their submissions.

Mr Franco Borg Milio, on behalf of VJ Salomone Pharma Limited opened by saying that this Tender was issued for a product called Rivaroxaban which was an oral anticoagulant used to thin blood. The first anticoagulant was produced in the 1950s whilst the first Tender in Malta was issued in 2013. From that time onwards, there were other classes of anticoagulant which were produced and VJ Salomone Pharma Limited was representing one of these brands. The Appellants were objecting because the Tender mentioned a particular Brand.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board remarked that it was important that the Tender was open for competition.

Dr Christopher Mizzi, the Legal Representative for the Department of Contracts wanted to ask the Appellants which Tender Specification was limiting the Appellants from participating in this Tender. Subsequently, the Central Procurement and Supplies Unit have brought a witness to explain how this Tender was issued.

Mr Franco Borg Milio, representing VJ Salomone Pharma Limited replied that their main concern was the fact that the Tender was issued for the Rivaroxaban brand since it is product specific. There are other drugs belonging to this particular class which were available on the market but this Tender specifically mentioned Rivaroxaban as the brand requested by the Contracting Authority, denying other Tenders from taking part.

At this point, Ms Antonia Formosa, the Director of Pharmaceutical Affairs, holding ID Card Number 373667 M, was summoned by the Central Procurement and Supplies Unit to testify under oath before the Public Contracts Review Board.

Following Ms Formosa's testimony, the Public Hearing was closed. -The decision regarding this Objection filed by VJ Salomone Pharma Limited will be shortly transmitted to the parties concerned.

This Board,

Having noted that this Call for Remedies Prior to the Closing Date of Competition filed by VJ Salomone Pharma Limited (herein after referred to as the Appellant) on 29 November 2017, refers to the Contentions made by the latter with regards to the issue of Tender of Reference CT 2194/2017 listed as Case No 1116 in the records of the Public Contracts Review Board,

issued by the Central Procurement and Supplies Unit (herein after referred to as the Contracting Authority).

Appearing for the Appellant: Mr Franco Borg Milio

Appearing for the Contracting Authority: Dr Christopher Mizzi

Whereby, the Appellant contends that:

- a) His main objection is that the Tender Document indicated a particular Brand and in this regard, the Contracting Authority hindered free and open competition. VJ Salomone Pharma Limited maintains that there are other drugs belonging to the same group which are available on the market.**

This Board also noted the Contracting Authority's verbal submissions during the Public Hearing held on 19 December 2017, in that:

- a) The Central Procurement and Supplies Unit contends that it was not its intention to limit the scope of the competition or to obstruct the principle of Level Playing Field, but it had to follow the present list of available registered medicine. At present, the Appellant's product is**

not one of the listed registered product with the Central Procurement and Supplies Unit.

This same Board also noted the Testimony of the witness namely, Ms Antonia Formosa duly summoned by the Central Procurement and Supplies Unit.

This Board, through the Technical Witness' Testimony, was vividly explained why the Tender dictated a particular product in that, the Central Procurement and supplies Unit could only opt from the list of registered medical products available. The fact is that the product Rivaroxaban was the only product of its class to be registered with the Contracting Authority.

During the Witness' testimony, it was also made clear that once the equivalent products to Rivaroxaban are on the list of registered medicine, other equivalent products can also participate in the Call for Tenders. During the testimony, this Board was assured that there exist other equivalent products which will achieve the same objective without being detrimental to the treatment and well being of the patient.

This Board was also informed that the procedure to include other equipment products in the List of Registered Medicines can be effected without undue delay.

In this regard, this Board recommends:

- a) The cancellation of the Tender;**

- b) The issuing of a fresh Tender wherein the Technical description of the required products, will allow other equivalent products to compete and thus create a fair Level Playing Field for all suppliers of possible equivalent products to participate in this Tender.**

Dr Anthony Cassar
Chairman

Mr Lawrence Ancilleri
Member

Mr Carmel Esposito
Member

22 December 2017