

PUBLIC CONTRACTS REVIEW BOARD

Case 1136 – CFT: 020-6760/172017 – Tender for the Supply of Microporous Dressings

The publication date of the call for tenders was the 3rd October 2017 whilst the closing date of the call for tenders was the 23rd October 2017. The estimated value of the tender (exclusive of VAT) was € 36,676.49

There were nine (9) bidders on this tender.

Krypton Chemists Ltd filed an appeal on 20th January 2018 against the Contracting Authority's decision that their tender had been rejected as it was considered that their product was technically non-compliant. A deposit of €400 was paid.

On 22nd February 2018 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Mr Lawrence Ancilleri and Mr Richard A Matrenza as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellant – Krypton Chemists Ltd

Dr Danica Caruana	Legal Representative
Mr Matthew Arrigo	Representative

Contracting Authority – Central Procurement and Supplies Unit - Health

Dr Stefan Zrinzo Azzopardi	Legal Representative
Ms Marika Cutajar	Chairman Evaluation Board
Mr Patrick Ghigo	Member Evaluation Board
Ms Josette Camilleri	Member Evaluation Board
Mr Mark Zammit	Representative

After a brief introduction Dr Anthony Cassar, Chairman of the Public Contracts Review Board, invited the parties to make their submissions.

Dr Danica Caruana, Legal Representative of Krypton Chemists Ltd started by saying that the reason for her clients tender rejection could not be valid, as the product which the Contracting Authority was claiming to be non-compliant was already in use and she referred the Board to the identical technical specifications of their past tender offer in 2015. This tender referred to 10x15cm dressings on which there had been no incident reports, no complaints and no problems. Complaints had arisen on the 9x10cm dressings which they had supplied, but these had had technical specifications which were more onerous than the current tender. The product on offer was in use by another client without any problems.

Dr Stefan Zrinzo Azzopardi, Legal Representative of the Central Procurement and Supplies Unit asked to produce a witness who was involved with the use of the product in question.

Mr Paul Calleja (368361M) testified on oath that he was the Charge Nurse in the Renal Unit at Mater Dei Hospital. The dressings in question were used for patients using catheters. (He tabled photographs of catheters in use and a sample of the dressing). He said that currently they were not using 9x10cm dressings as these had caused instances of skin irritation to some patients. Management had been informed of these incidents and he tabled a report of one such incident. Currently the Hospital was using a dressing from a different supplier.

Questioned by Dr Caruana, witness stated that it was not often that patients suffered from skin infections, and in his view irritation was not caused by the use of alcohol and chloroexidine, neither was it advisable to use creams. Witness tabled another incidents report but this referred to 9x10cm dressings. He was asked to explain why in an e-mail report he had mentioned that he used a cleaning solution before applying the dressing and this had caused irritation, but confirmed that this did not happen in all cases. Witness also confirmed that anyone could suffer from allergies or have allergic reactions.

On being question by the Chairman, witness confirmed that they had had cases of allergies even after they changed over to using a product from a different supplier.

In summing up Dr Caruana re-iterated that the product being disqualified was exactly identical to the product offered in 2015 and about which there had been no problems or derogatory reports.

Dr Zrinzo Azzopardi said that the pertinent word in the tender was ‘hypo-allergenic’. The size of the product in question may be different but this tenderers’ products had been the cause of problems and the Board had no alternative but to exclude them.

The Chairman thanked both parties for their submissions and declared the hearing closed.

This Board,

Having noted this Objection filed by Krypton Chemists Limited (hereinafter referred to as the Appellant) on 20 January 2018, refers to the contentions made by the same Appellant with regards to the award of the Tender of reference CFT 020-6760/2017 listed as Case 1136 in the records of the Public Contracts Review Board, awarded by the Central Procurement and Supplies Unit (hereinafter referred to as the Contracting Authority)

Appearing for the Appellant: Dr Danica Caruana

Appearing for the Contracting Authority: Dr Stefan Zrinzo Azzopardi

Wherein the Appellants are contending that:

- a) They are disagreeing with the reasons given by the Contracting Authority for the rejection of their offer. In this regard, Krypton Chemists Limited maintain that since the product, with these particular specifications, was never used by the Contracting Authority and no samples were requested by the same, it is not correct to deem their product as technically non-compliant.**

This Board also considered the Contracting Authority’s “*Letter of Reply*” dated 30 January 2018 and its verbal submissions during the Public Hearing held on 22 February 2018, in that:

- a) The Central Procurement and Supplies Unit insist that, based on past experiences, when the product of the same Brand was applied, it caused allergies to the patients, so that the Evaluation Board had no other option but to deem the Appellants’ product as technically non-compliant.**

This same Board also noted the testimony of the witness namely, Mr Paul Calleja, Charge Nurse, Renal Unit duly summoned by the Central Procurement and Supplies Unit.

At the same instance, this Board has also taken note of the documents submitted by the Central Procurement and Supplies Unit which consisted of “*Medical Device Incident Reports – 2014*”.

This Board after having examined the relevant documentation to this appeal and heard submissions made by the interested parties, including the testimony of the technical witness, would justifiably state that, since this appeal refers to

a medical nature, it had to substantially rely on the testimony of the witness duly summoned by the Central Procurement and Supplies Unit,

1. This Board would respectfully refer to the reasons given by the Contracting Authority for the Appellants' offer rejection wherein it was stated that:

“Past incident reports give a thorough account and confirm why this product is not technically compliant. Whilst product literature highlights the importance of highly absorbent and low adherent pad, facts conclude that blood often leaks from designated pad, thus a good healing environment is not maintained. Safe and secure fixation is not ensured as these dressings very often, can be removed from the skin quite easily.”

From the above stated reasons, it is evidently clear that the Evaluation Board arrived at its deliberation, on the past performance of the same brand of the product but having different dimensions. At this stage of consideration, this Board refers to the testimony of the technical witness, in this regard:

Question:” *Dak id-dressing li ghiditilna m’ ghandkomx. X’ inhi r-raguni ghalfejn m’ ghadkomx tuzawh?”*

Reply: *“Minhabba li kien ikollna hafna irritazzjonijiet tal-ġilda u ovvjament inti, meta’ ghandek irritazzjoni tal-ġilda fejn ghandek catather hiereg minn ġol-ġisem tal-bniedem ghandek ċans kbir t’infazzjoni li tista’ twassal għal ċirkostanz li jistgħu jpoġġu l-pazjent hażin”*

Although, the interest and well-being of the patient should always come first, this Board notes that such adjudication of the Appellants’ product was carried out without requesting a sample and without carrying out trials, prior to formulating a generic assertion that the product is technically non-compliant.

At this particular stage, the Evaluation Committee should have considered the fact that, although Krypton Chemists Limited’s product represented the same brand as of the past, the dimensions were different and in this regard, this Board opines that the product offered by the Appellants for this particular tender was different, so that the decision to reject the latter’s offer was based on the assumption that, the incidents that happened in the past and of which the Appellants were aware of, will occur again by the same brand being offered yet with different dimensions.

In this regard, this Board does not uphold the reasons given by the Central Procurement and Supplies Unit for Krypton Chemists Limited's offer rejection and does not confirm that the evaluation process was carried out in a transparent manner, without having carried out trials on the Appellants' product, and without any due possible harm to the patient.

- 2. This Board was presented with an incident report dated April 2014, stating,**

“As shown in image attached, this dressing is causing erythema of surrounding exit site,”

However, it is being noted that such incident report is referring to a product having a dimension of 9x10cm. In this particular tender, the dimensions of the pad being requested are 10x15cm, which are different from those claimed to have caused skin irritation. At the same instance, this Board would, again, refer to the technical witness's testimony, in that:

Question: “*Naqblu li kellek ftit kazijiet u allahares ma kienx hekk, t’allergija? Meta qlibtu għall-prodott l-iehor, kellkom iktar kazi t’allergija? Iva jew le?*”

Reply: “*Kellna iva.*”

From the above testimony, it has been credibly established that allergies also occurred when the alternate product was administered, so that there is no tangible proof that the Appellants’ product only, was causing the allergies at the same instance, this Board was not presented with any medical evidence as to why Krypton Chemists Limited’s product was causing the allergies and at the same time, it was also credibly established that other pads of different brand were also causing the same harm.

In view of the above, this Board:

- i) is not credibly convinced that Krypton Chemists Limited’s product “*per se*” is inflicting skin irritation, apart from the established fact that the product being offered is different from that of the past;**

- ii) does not uphold the Central Procurement and Supplies Unit's decision in the award of the Tender;**
- iii) upholds Krypton Chemists Limited's grievances and recommends that the deposit paid is to be refunded;**
- iv) recommends that the Appellants' offer is to be reintegrated in the evaluation process;**
- v) recommends that the adjudication should be based on trials of the product and under the guidance of the clinicians, to ensure the safety and well-being of the patients and at the same time, arrive at a fair, just and transparent selection process.**

Dr Anthony J Cassar
Chairman

Mr Lawrence Ancilleri
Member

Mr Richard A Matrenza
Member

6th March 2018