

# **PUBLIC CONTRACTS REVIEW BOARD**

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## **Case 1166 – CFQ 021-20114/2018 - Call for Quotations for the Supply of Nutritionally Complete, Fibre Enriched, Energy Dense, Milkshake style Drink**

### **Remedies before the Closing date of a Call for Competition**

The publication date of the call for tenders was the 13<sup>th</sup> March 2018 whilst the closing date of the call for tenders was the 23<sup>rd</sup> March 2018. The estimated value of the tender (exclusive of VAT) was € 8,880.

On the 22<sup>nd</sup> March 2018, Alfred Gera & Sons Ltd filed a Call for Remedies before the Closing Date of the Competition against the Central Procurement and Supplies Unit

On 17<sup>th</sup> May 2018 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Mr Carmel Esposito and Mr Lawrence Ancilleri as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

### **Appellant – Alfred Gera & Sons Ltd**

Dr Clement Mifsud Bonnici	Legal Representative
Mr Reuben Demanuele	Representative
Ms Yvette Sciberras	Representative
Mr Etienne Seychell	Representative

### **Contracting Authority – Central Procurement and Supplies Unit – Health**

Dr Marco Woods	Legal Representative
Dr Alison Anastasi	Representative
Ms Joannah Bugeja	Representative

The Chairman of the Public Contracts Review Board, Dr Anthony Cassar, in a brief introduction requested the Appellant to make his submissions.

Dr Clement Mifsud Bonnici, Legal Representative of Alfred Gera & Sons Ltd, stated that it seemed to him as if the letter of reply from the Contracting Authority indicated that they were reviewing this tender.

Dr Marco Woods, Legal representative of the CPSU stated that on receipt of the letter of objection from the Appellants there was an internal review and the tender had been suspended. There were no consequences as a result of this action as the tender offers had not been opened.

Dr Alison Anastasi confirmed that the CPSU had not requested an extension of the closing date as it was planned to have a new cycle of offers with new specifications. The Department of Pharmaceutical Affairs had promised a review of the specifications for all nutritional products, and she confirmed that the term 'the blend of soluble and insoluble fibres' would not be used.

Dr Mifsud Bonnici said his clients would be satisfied by the assurance that products would be neutrally described with a generic terminology simply stating 'fibre'.

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

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**This Board,**

**Having noted this Call for Remedies filed by Alfred Gera & Sons Limited, (hereinafter referred to as the Appellant), prior to the Closing Date of a Call for Competition on 22 March 2018, refers to the contentions made by the same Appellant with regards to the Tender of Reference CFQ 021-20114/2018 listed as Case No 1166 in the records of the Public Contracts Review Board issued by the Central Procurement and Supplies Unit.**

**Appearing for the Appellant: Dr Clement Mifsud Bonnici**

**Whereby, the Appellant contends that:**

- a) The term, “*Blend of soluble and insoluble fibres*”, restricts the scope of competition, as it favours a particular brand of the product being requested by the Contracting Authority.

**This Board also noted the Contracting Authority’s “*Letter of Reply*” dated 5 April 2018 and its verbal submissions during the Public Hearing held on 17 May 2018, in that:**

- a) The Central Procurement and Supplies Unit confirm that upon receipt of the Appellants’ concern, they decided to review the situation so as not to restrict competition in this call for quotations.

**This Board, after having examined the relevant documentation and heard submissions made by the parties concerned, established that the Central Procurement and Supplies Unit, upon receipt of the Appellants’ concern, accepted to review the Technical Specifications of this call for quotation.**

**The Central Procurement and Supplies Unit also confirmed that the term “*Blend of Soluble and Insoluble Fibres*”, would not be included and the proposed specifications would be expressed in a generic form so as not to restrict competition or offer and give an advantage to any particular product.**

**In view of the above and the fact that the Tender had been suspended without providing for an extension for submissions, this Board:**

- i) Upholds the grievances raised by Alfred Gera & Sons Limited;**
- ii) Recommends that the Tender is to be cancelled;**
- iii) Recommends that the new Tender Document should take into consideration that the technical specifications will not limit the scope of competition, in whatsoever manner.**

Dr Anthony J Cassar  
Chairman

Mr Carmel Esposito  
Member

Mr Lawrence Ancilleri  
Member

*22<sup>nd</sup> May 2018*