

PUBLIC CONTRACTS REVIEW BOARD

Case 1278 – CT 2252/2018 – Tender for the Supply of Lot 2 Insulin Aspart 100 ml Cartridges or Insulin Lispro 100 ml Cartridges.

The publication date of the call for tenders was the 13th September 2018 whilst the closing date of the call for tenders was 16th October 2018. The estimated value of the tender (exclusive of VAT) was € 994,500.

On the 18th January 2019 Charles De Giorgio Ltd filed an appeal against the Central Procurement and Supplies Unit as the Contracting Authority objecting that their bid was found to be not the cheapest compliant. A deposit of € 4,972 was paid.

There was one (1) bidder and two (2) bids.

On 12th March 2019 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Mr Lawrence Ancilleri and Mr Carmel Esposito as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – Charles De Giorgio Ltd

Mr Mark Mallia	Representative
Ms Margot Pisani	Representative
Ms Petra Spiteri	Representative

Contracting Authority – Central Procurement and Supplies Unit

Dr Marco Woods	Legal Representative
Ms Monica Sammut	Chairperson Evaluation Committee
Ms Danika Agius Decelis	Member Evaluation Committee
Ms Edith Sciberras	Member Evaluation Committee
Dr Alison Anastasi	Member Evaluation Committee
Mr Mark Zammit	Representative

Department of Contracts

Dr Franco Agius	Legal Representative
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Dr Anthony Cassar Chairman of the Public Contracts Review Board welcomed the parties and invited them to make their submissions. He noted that the letter of objection was erroneous in the

detail of the tender on which the appeal was based. After clarification by Appellants and with the consent of the Contracting Authority it was established that the appeal referred to CT 2252/2018 Lot 2 TID 102289.

Dr Franco Agius Legal Representative of the Department of Contracts confirmed that the Contracting Authority and the Department of Contracts had no objection to the appeal being heard on correction of the TID reference number shown in the appeal letter.

Ms Margot Pisani Representative of Charles De Giorgio Ltd stated that the prefilled pens which Appellant Company had offered in their bid fulfilled the specifications and criteria set out in the tender as it included a combined cartridge and a pen. At the request of Dr Agius she confirmed that she will not be producing any witnesses.

Ms Edith Sciberras (360068M) called as a witness by the Contracting Authority testified on oath that she was a member of the evaluation committee and said that the tender specifications (1.1) asked for separate cartridges and pens. The separate pen was reusable and the cartridge could be refilled. The Appellant offered a prefilled pen as a fixed unit.

Mr Mark Zammit (425874M) called as a witness by the Contracting Authority testified on oath that he was an Advanced Pharmacy Practitioner at Mater Dei Hospital. Regarding the specifications for Lot 2, he stated that there were different types of insulin and the treatment mimicked the natural insulin production. The insulin in Lot 2 was rapid acting and the tender specified refillable reusable cartridges and a pen and it was clear that two different types of pen and cartridge were asked for.

Questioned by Dr Agius, witness stated that according to the Department of Contracts the offer by Appellant did not meet the qualifications of the tender. The advantages of one system over the other were of no relevance in terms of the tender specifications.

Ms Pisani stated that the tender documents do not indicate that the disposable pen had to be separate from the cartridge.

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

This Board,

having noted this Objection filed by Charles de Giorgio Limited (herein after referred to as the Appellants) on 18 January 2019, refers to the claims made

by the same Appellants with regard to the Tender of Reference CT 2252/2018 listed as Case No 1278 in the records of the Public Contracts Review Board, and awarded by the Central Procurement and Supplies Unit (herein after referred to as the Contracting Authority).

Appearing for the Appellants: Ms Margot Pisani

Appearing for the Contracting Authority: Dr Marco Woods

Whereby, the Appellants contend that:

- a) their offer was compliant and in this regard, their product included a combined cartridge and pen, as duly stipulated in the Tender Document. At the same instance, the Appellants maintain that the Tender Document did not specify that the pen had to be separate from the cartridge.**

This Board has also noted the Contracting Authority's 'Letter of Reply' dated 29 January 2019 and also its verbal submissions during the Public Hearing held on 12 March 2019, in that:

- 1. the Central Procurement and Supplies Unit refers to Clause 1.1 of the Technical Specifications found in the Tender Document which clearly asked for separate cartridges and pens. In this respect, the Appellants**

offered a pre-filled pen as a fixed unit, so that their offer was technically non-compliant

This same Board also noted the testimony of Mr Mark Zammit who was duly summoned by the Central Procurement and Supplies Unit.

This Board, having examined the relevant documentation to this Appeal and heard submissions made by the parties concerned, including the Testimony of the Technical Witness, opines that the only issue that deserves consideration is whether the Appellants' product was compliant or not.

- 1. This Board would respectfully refer to Section 4 – Technical Specifications Article 1.1 (Lot 2) which states the following:**

“Lot 2:

Either

Insulin Aspart 100IU/ml cartridges (Novo Rapid®)

Insulin aspart (Recombinant human insulin analogue) 100 IU/ml in 3ml cartridges for S.C injection.

Insulin injection pens, for use with the 3ml cartridges, suitable for both children and adults, which allow adjustment of dose in multiples of one unit, or if this is not possible, two different injection pens, one for adults which allows adjustment of 1 or 2 units and one for children which allows adjustments of 1 unit, must be supplied free of charge according to the demand of the Department of Health for all the period of validity of the award.

OR

Insulin Lispro 100 IU/ml cartridges

Insulin lispro (Recombinant human insulin analogue) 100IU/ml in 3ml cartridges for S.C injection.

Insulin injection pens, for use with the 3ml cartridges, suitable for both children and adults, which allow adjustment of dose in multiples of one unit, or if this is not possible, two different injection pens, one for adults which allows adjustment of 1 or 2 units and one for children which allows adjustments of 1 unit, must be supplied free of charge according to the demand of the Department of Health for all the period of validity of the award.”

The above two options dictate that two different injection pens must be supplied free of charge, thus indicating clearly that the pens must be separate from the cartridges. This Board also notes that in each option, the heading of the product is denoted as “cartridges” yet again, if the Contracting Authority requested a combined fixed pen and cartridge, same would have indicated such a requirement.

- 2. This Board would refer to the requirement heading of the Tender Document which explicitly states:**

*“Lot 2: Insulin Aspart 100/1 U/ML Cartridges or
Insulin Lispro 100/1/Uml Cartridges”*

In this regard, this Board cannot find any justifiable evidence to deem that the Tender Document was not clear in what was being requested, neither there is any evidence that the wording of the technical specifications is ambiguous, so that this same Board confirms that what was being requested was clearly stipulated in the Tender Document.

This Board would respectfully point out, that from the testimony of Mr Mark Zammit who amplified the objective of this requirement, in that, the insulin in Lot 2 was rapid acting and the Tender specified refillable/reusable cartridges and a pen.

- 3. This Board would also point out that the technical specifications are not capriciously dictated by the Contracting Authority, but are stipulated in a manner so as to achieve the intended objective of the latter. At the same instance, both the Bidder and the Contracting Authority itself must abide by the principles of equal treatment and self-limitation, so that the Evaluation Committee, in their deliberations must always take into consideration the requirements as strictly dictated in the Tender Document.**
- 4. This Board would remind the Appellants that such an issue, which is being contested, could have easily been clarified by the Contracting Authority, if the Appellants availed themselves of clarifications or a call for remedy, prior to their submissions, however this Board notes that such remedies were not availed of by the Appellants.**

In conclusion, this Board opines that:

- a) it does not find any justifiable cause or incidence to deem that the Tender Specifications were not clear enough for the Appellants to understand what was being requested;**
- b) the Tender Requirements clearly stipulated that two different types of “*Pen and Cartridge*” were asked for;**
- c) the Evaluation Committee carried out the Evaluation process in a fair, just and transparent manner.**

In view of the above, this Board,

- i) does not uphold the contentions made by Charles de Giorgio Limited;**
- ii) upholds the Central Procurement and Supplies Unit’s decision in the award of the Tender;**
- iii) directs that the deposit paid by the Appellants should not be refunded.**

Dr Anthony Cassar
Chairman

Mr Lawrence Ancilleri
Member

Mr Carmel Esposito
Member

26th March 2019