

## **PUBLIC CONTRACTS REVIEW BOARD**

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### **Case 1321 – CT 2118/2017 – Tender for the Supply, Delivery and Distribution of Diapers, Pads, Pull ups and Inco sheets for Senior Citizens and Persons with Disability**

The publication date of the call for tenders was the 26<sup>th</sup> January 2018 whilst the closing date of the call for tenders was 27<sup>th</sup> February 2018. The estimated value of the tender (exclusive of VAT) was € 4,173,657.29 split up into two lots.

On the 20<sup>th</sup> May 2019 Krypton Chemists Ltd filed an appeal against the Active Ageing and Community Care Department as the Contracting Authority objecting only in respect of Lot 2 that their offer was found to be non-compliant. A deposit of € 2625 was paid.

There were three (3) bidders.

On 5<sup>th</sup> June 2019 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Richard Matrenza as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

#### **Appellants – Krypton Chemists Ltd**

|                   |                      |
|-------------------|----------------------|
| Dr Steve Decesare | Legal Representative |
| Mr Matthew Arrigo | Representative       |

#### **Recommended Bidder – Pharma-Cos Ltd**

|                  |                      |
|------------------|----------------------|
| Dr Matthew Paris | Legal Representative |
| Mr Edward Mifsud | Representative       |
| Mr James Borg    | Representative       |

#### **Contracting Authority – Active Ageing and Community Care Department**

|                        |                             |
|------------------------|-----------------------------|
| Ms Georgina Gauci      | Member Evaluation Committee |
| Mr Joseph Delicata     | Representative              |
| Ms Bernardette Barbara | Representative              |

#### **Department of Contracts**

Dr Franco Agius

Legal Representative

Dr Anthony Cassar, Chairman of the Public Contracts Review Board, welcomed the parties and invited submissions.

Dr Franco Agius Legal Representative of the Director of Contracts said that the Contracting Authority were of the opinion that the evaluation process needed to be reviewed and were therefore seeking permission to withdraw the award recommendation.

The Chairman said that the Board accepts that the evaluation process should be reviewed completely and accedes to the request of the Department of Contracts. He thanked the parties for their attendance and declared the hearing closed.

**This Board,**

**having noted this objection filed by Krypton Chemists Limited (herein after referred to as the Appellants) on 20 May 2019, refers to the claims made by the same Appellants with regard to the tender of reference CT 2118/2017 listed as case no 1321 in the records of the Public Contracts Review Board, awarded by Active Ageing and Community Care Department. (herein after referred to as the Contracting Authority.**

**Appearing for the Appellants: Dr Steve Decesare**

**Appearing for the Contracting Authority: Ms Georgina Gauci**

**Appearing for the Department of Contracts: Dr Franco Agius**

**Whereby, the Appellants contend that:**

- a) the alleged reasons given by the Authority for the rejection of their offer for Lot no 2, are unfounded and incorrect, for the reasons being denoted in their ‘Letter of Objection’. In this respect, Appellants contend that their offer was technically compliant and should be re-integrated in the evaluation process.**

**This Board also noted the Contracting Authority’s ‘Letter of Reply’ dated 25 May 2019 and its verbal submissions during the hearing held on 5 June 2019, in that:**

- a) the Authority confirms that, after considering this appeal and after reviewing the evaluation process, it is requesting the Public Contracts Review Board to allow the Authority to withdraw the recommendation, to enable same to carry out the necessary verifications.**

**This Board was informed by the Contracting Authority, through the latter’s ‘Reasoned Letter of Reply’ dated 25 May 2019, that, the Authority:**

- a) took cognisance of this appeal;**

**b) and after reviewing the reasons given by same, for Appellants' offer rejection, opines that the evaluation process should be reviewed.**

**In view of the above, this Board,**

**i) directs that the Contracting Authority's decision in the award of the tender for Lot No 2, be cancelled;**

**ii) directs that an evaluation Committee, differently composed, will carry out the evaluation process on all the offers submitted;**

**iii) directs that Appellants' offer be re-integrated in the evaluation process;**

**iv) directs that the deposit paid by Appellants be fully refunded.**

Dr Anthony Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Richard A Matrenza  
Member

*18<sup>th</sup> June 2019*