

PUBLIC CONTRACTS REVIEW BOARD

Case 1363 – CFT 021-0538/19 – Tender for the Supply of Complete Nutritional Preparation for Children over One Year of Age

Remedy before Closing Date of a Call for Competition

The publication date of the call for tenders was the 4th June 2019 whilst the closing date was the 1st July 2019. The estimated value of the tender (exclusive of VAT) was € 129,500.

On the 27th June 2019 Associated Drug Co Ltd sought a Remedy against the Central Procurement and Supplies Unit as the Contracting Authority requesting widening of the tender specifications.

On 10th October 2019 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Carmel Esposito as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – Associated Drug Co Ltd

Mr Nicholas Falzon Representative

Contracting Authority – Central Procurement and Supplies Unit

Dr Marco Woods Legal Representative

Ms Denise Dingli Representative

Ms Joannah Bugeja Representative

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

Mr Nicholas Falzon Representative of Associated Drug Co Ltd stated that his Company through Nutricia can supply a product that can provide 1.5Kcal/ml preparation. He tabled Doc 1 - a letter from Nutricia and directed the Board's attention to paras 5 and 6 giving reasons to support the use of their product. His Company was requesting an extension of the tender to open competition to both products.

Dr Mario Caruana (584776M) called as a witness by the Public Contracts Review Board testified on oath that he was the Chief Dietician at Mater Dei Hospital. He stated that the 1Kcal/ml product was on the Formulary List and was more in use when it was required to increase the fluid intake

in children. The 1.5Kcal/ml product was bought on a one-off basis when required in the treatment of exceptional cases. It was the 1K preparation that was mainly in use.

The Chairman said that from the submissions heard it was the 1Kcal/ml product that the medical authorities required and the alternative was only bought as required in exceptional cases as it was not in the Formulary List.

He then thanked the parties for their submissions and declared the hearing closed.

End of Minutes

Decision

This Board,

Having noted this ‘Call for Remedy Prior to the Closing Date for Competition’ filed by Associated Drug Co Ltd (herein after referred to as the Appellants) on 27 June 2019, refers to the claims made by the same Appellants with regard to the tender of reference CFT 021-0538/19 listed as case No. 1363 in the records of the Public Contracts Review Board.

Appearing for the Appellants: Mr Nicholas Falzon

Appearing for the Contracting Authority: Dr Marco Woods

Whereby, the Appellants contend that:

- a) They can supply a product that can provide 1.5Kcal/ml preparation, which is superior to that requested by the Authority. In this regard,**

Appellants request that competition be more open so that they can participate with their product.

This Board also noted the Contracting Authority's 'Letter of Reply' dated 16 July 2019 and its verbal submissions during the hearing held on 10 October 2019, in that:

- a) The Authority insists that the requested product having a 1 Kcal/ml is the one that is mostly used however, it should be noted that, in exceptional cases, whenever the product of 1.5 Kcal/ml preparation was required, such product was procured.**

This same Board also noted the testimony of the witness namely:

Dr Mario Caruana Chief Dietician at Mater Dei Hospital duly summoned by the Public Contracts Review Board.

This Board, after having examined the relevant documentation to this Call for Remedy and heard submissions made by the parties concerned, including the testimony of the witness opines that, it is amply clear that the Authority issued the tender for the product that is applied and which, under the circumstances, the product consists of 1K preparation.

At the same instance, this Board was made aware that Appellants' product is hardly ever used, however, if the necessity arises same product will be procured.

In view of the above, this Board,

i) Does not uphold Appellants' concerns,

ii) Directs the Authority to continue the tendering process.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Carmel Esposito
Member

25 October 2019