

PUBLIC CONTRACTS REVIEW BOARD

Case 1315– CT 2042/2019 – Tender for the Supply of Various Blood Collection Tubes

Remedy before Closing Date of a Call for Competition

The publication date of the call for tenders was the 29th March 2019 whilst the closing date was 28th May 2019. The estimated value of the tender (exclusive of VAT) was € 1,623,036.

On the 26th April 2019 Krypton Chemists Ltd sought a Remedy against the Central Procurement and Supplies Unit as the Contracting Authority demanding a review of the latter's decision to bundle lots in a specific way.

On 28th May 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 – Krypton Chemists Ltd

Dr Steve Decesare	Legal Representative
Mr Matthew Arrigo	Representative

Contracting Authority – Central Procurement and Supplies Unit

Dr Marco Woods	Legal Representative
Ms Jacqueline Borg	Representative
Mr Kevin C Vella	Representative

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

Dr Steve Decesare Legal Representative of Krypton Chemists Ltd requested that initially the testimony of a witness be heard to establish the anomaly in the bundling of lots as proposed in the tender.

Mr Kevin Vella (351780M) called as a witness by the Appellants testified on oath that he is an Allied Health Practitioner and a Medical Laboratory Principal. He has two years experience of monitoring tenders requesting offers for blood collecting tubes and he was consulted in the formulation of the tender in this Case.

Questioned by Dr Decesare witness agreed that there were more companies offering adult collection tubes than paediatric ones which were used for babies and adults with difficult veins. This tender included paediatric tubes in all three lots

Appellants tabled documents (Doc 1) showing previous tenders for collection tubes issued by the CPSU since 2017 showing big imbalance in the quantities ordered between adult and paediatric tenders. Witness agreed that there was a limited market for paediatric tubes when his attention was directed to the disparity between the quantities of the two products.

Witness agreed that in the tender under consideration the paediatric tubes were a very minimal item and amounted to less than 1% of the procurement request. However, he maintained that there would be the loss of standardisation if the tubes were purchased from more than one manufacturer.

Dr Decesare pointed out that the reply by the Contracting Authority to Appellants request for clarification was not very helpful as all it did was to repeat that the paediatric tubes could be sourced elsewhere but did not deal with the query about the bundling of lots. Witness still seemed hesitant to accept that the proposed bundling limited competition.

The Chairman said that the amount of paediatric tubes is a minimal item in proportion to the whole tender and as drafted in lots it certainly limits competition. It would not affect the Contracting Authority if lots were separated as they would still achieve the desired result. It was the Board's view that if lots were separated there were likely to be more offers. He thanked both parties for their submissions and declared the hearing closed.

This Board,

having noted this 'Call for Remedies Prior the Closing Date of a Call for Competition' filed by Krypton Chemists Limited (herein after referred to as the Appellants with regard to the tender of reference CT 2042/2019 listed as case no 1315 in the records of the Public Contracts Review Board.

Appearing for the Appellants:

Dr Steve Decesare

Appearing for the Contracting Authority: Dr Marco Woods

Whereby, the Appellants contend that:

- a) their main concern refers to the fact that, since the tender was divided into three lots and in each lot is included ‘Paediatric Tubes’, such inclusion in each lot will debar prospective tenderers from submitting offers, as the Bidders has to quote for all the items in each lot. In this regard, Appellants contend that ‘Paediatric Tubes’ which represent a negligible and minimal quantity of each lot, should be designated under a separate lot.**

This Board also noted the Contracting Authority’s ‘Letter of Reply’ dated 8 May 2019 and its verbal submissions during the hearing held on 28 May 2019, in that:

- a) the Authority’s contention is that, the main reason why ‘Paediatric Tubes’ where included in all the lots was mainly due to standardisation purposes, as all the lots include also tubes for adults.**

This same Board also noted the testimony of the witness namely, Mr Kevin Vella – Medical Laboratory Principal 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 technical witness duly summoned, opines that the issue that merits consideration is the inclusion of ‘Paediatric Tubes’ in each lot of the tender.

- a) First and foremost, this Board would respectfully point out that the Authority has the right to determine the way the lots are bundled. At the same instance, the same Authority must also consider and ensure that, the configuration of each lot, does not, in any particular manner, hinder the open participation of Bidders, especially when each offer for each lot must include all the items requested in the particular lot of the tendering procurement.**

In this particular case, the inclusion of ‘Paediatric Tubes’, creates an element of limitation in the participation of Bidders, as the suppliers of such ‘Paediatric Tubes’ are few in number whilst the remaining components of the lots provides healthy competition.

- b) From the testimony of Mr Kevin Vella, a Medical Laboratory Principal, this Board was also informed that there were more Suppliers for the ‘Adult Collection Tubes’ in each of the three lots. This Board was also**

made aware that, the ‘Paediatric Tubes’ in each lot, represent an average of 0.8% of the procurement, which, in the opinion of this Board is minimal and insignificant.

- c) With regard to the Authority’s contention that the reason for the inclusion of ‘Paediatric Tubes’ with those of ‘Adult Tubes’ in each lot, was due to the desired standardisation, this Board acknowledges the fact that, this particular item represents a simple medical consumable which, as long as the product meets the required specifications, it will meet the objective use of such consumable without affecting the treatment and well-being of the patient. At the same instance, it will be unwise to include such a consumable as a mandatory item in each lot, thus, barring potential Bidders for the other items of the lots so that such an action would, in the end, be to the detriment of the Contracting Authority. Although it is also acknowledged that Bidders can compete by obtaining supply of ‘Paediatric Tubes’ from the limited available suppliers, such an action, in practice, especially among competing Bidders will not reap the desired results.**

4. After having considered the merit of this case, this Board concludes the following:

a) the inclusion of ‘Paediatric Tubes’ in each lot, does restrict the number of Bidders who can supply all the other items mentioned in each lot, and in this regard this Board directs that, the ‘Paediatric Tubes’ which represent, both in quantity and amount of the procurement, in each lot, a negligible factor, should be formulated under a separate lot;

b) the segregation of such ‘Paediatric Tubes’ from the present bundled lots, will not effect, in any particular way, the procurement of such a product with respect to specifications, as ‘Paediatric Tubes’ to be procured by the Authority, must comply, in all respect, with the technical data as duly dictated in the tender dossier. At the same instance, this Board takes into consideration the fact that, such a segregation of ‘Paediatric Tubes’ from the inclusion in the present lots, will not cause any discomfort to the treatment or well-being of the patient. This Board opines that, through such segregation, more prospective Bidders will be able to participate, thus yielding an added benefit to the Authority.

In view of the above, this Board,

- i) upholds Appellants' contentions,**

- ii) directs that the Contracting Authority, through a clarification note, allocate the procurement of 'Paediatric Tubes' under a separate lot, taking into consideration this Board's findings,**

- iii) directs the Authority to fix a new deadline for the submission of offers, taking into consideration a sufficient period of time to enable potential Bidders to prepare their offer.**

Dr Anthony Cassar
Chairman

Mr Lawrence Ancilleri
Member

Mr Carmel Esposito
Member

5 June 2019