

PUBLIC CONTRACTS REVIEW BOARD

RFP 004-6090/28

Request for Participation for the Provision of Third Party Temperature Controlled Storage Facilities of Pharmaceuticals between 2 Deg C and 8 Deg C for the Central Procurement and Supplies Unit

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Case 1545

DATE: 18th March 2021

This Board,

Having noted the Appeal filed by Dr Kris Borg on behalf of Unistores (Services) Limited, (hereinafter referred to as the Appellant) and the contents of the correspondence received by the Board on the 29th December 2020.

Having also noted the contents of the Central Procurement and Supplies Unit (CPSU) letter of reply received by the Board on the 11th January 2021 and filed by Dr Marco Woods;

Having taken cognisance and evaluated the witnesses/documents produced, all the acts and documentation filed, as well as the submissions made by the legal representatives of the parties.

Having noted and evaluated the minutes of the Board sittings of the 10th March 2021 hereunder re-produced:

Case 1545 – RfP 004-6090/28 – Request for Participation for the Provision of Third-Party Temperature Controlled Cold Storage Facility of Pharmaceuticals between 2° C and 8° C for the Central Procurement and Supplies Unit

The request was published on the 29th September 2020 and the closing date was the 20th October 2020.

On the 31st December 2020 Unistores (Services) Ltd (Unistores) filed an appeal against the Central Procurement and Supplies Unit (CPSU) as the Contracting Authority objecting to their disqualification on the grounds that their bid was not technically compliant.

A deposit of €400 was paid.

There were five (5) bidders.

On 10th March 2021 the Public Contracts Review Board (PCRB) composed of Dr Ian Spiteri Bailey as Chairman, Mr Lawrence Ancilleri and Mr Carmel Esposito as members convened a public virtual hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – Unistores (Service) Ltd

Dr Kris Borg	Legal Representative
Mr Tonio Ciantar	Representative

Contracting Authority – Central Procurement and Supplies Unit

Dr Marco Woods	Legal Representative
Dr Alison Anastasi	Representative
Ms Josette Sciberras	Member Evaluation Committee
Mr David Baldacchino	Member Evaluation Committee
Ms Ruth Spiteri	Secretary Evaluation Board

Dr Spiteri Bailey welcomed the parties. He noted that since this was a virtual meeting all the parties agreed to treat it as a normal hearing of the Board. He then invited submissions.

Dr Kris Borg Legal Representative for Unistores (Services) Ltd said that this appeal hinged on the effective date of the Wholesale Dealer’s Licence which was issued by the Licensing Authority on the 25th February 2021 but with an effective date of the initial inspection conducted on the 1st July 2020 and which therefore met the requirements of the tender.

Ms Ruth Spiteri Representative of the Central Procurement and Supplies Unit said that the salient point was that the Contracting Authority was still not yet in receipt of the requested licence.

Dr Marco Woods, Legal Representative for the Central Procurement and Supplies Unit said that as far as the Authority was concerned the licence was not submitted with the bid and there was no proof that it had been issued.

The Chairman said that it seems there is a situation where both parties agree that the licence had not been submitted as it was not yet available but Appellants claim that the licence was issued with retrospective effect to the date of the inspection.

Dr Woods said that the CPSU had no objection to the Appellants submitting the licence now upon which the Authority would reconsider the evaluation of the offers.

The Chairman directed Appellants to submit the copy of the licence to the Board and to the Authority and to defer this appeal for a re-evaluation to take place and for the recommendation letter to be re-issued subsequently.

P.S. Copy of the Licence submitted to the PCRB after the hearing of the 10th March 2021 is filed with the Minutes

End of Minutes

Hereby resolves:

The Board considers that the main contention in this procedure relates to the fact that whereas the appellant was informed by correspondence dated 18th December 2020 by the CPSU that its participation in the process would not progress further as the appellant had not submitted a wholesale dealer licence issued by the Medicines Authority for the Storage of Medicinal Products including Cold Chain Medicinal Products, the appellant contends that its application was in progress and the “*CPSU had been made aware from our documentation submitted that we have an ongoing process with the Medicines Authority to issue the Wholesale Dealer Licence for the storage of medicinal products including Cold Chain Medicinal Products since our submission included the acknowledgment letter from the Medicines Authority stating accordingly*”.

The Board furthermore considers that throughout the sitting held, Dr Kris Borg for appellant informed the Board and CPSU that since then the licence had been issued by the Medicines Authority, which licence was effective from the 1st July 2020 for a period of three years. The appellant, on the same day of the sitting, submitted by email a copy of the same licence.

The Board considers Dr Mark Wood's declaration to the effect that "*the CPSU had no objection to the Appellants submitting the licence now upon which the Authority would reconsider the evaluation of the offers*".

The Board,

In view of the above, concludes and decides:

- a) To order the contracting authority (CPSU) to re-assess the submission made by the Appellant in the RFP process 004-06060/28 'Request for Participation for the Provision of Third-Party Temperature Controlled Cold Storage Facility of Pharmaceuticals between 2° C and 8° C for the Central Procurement and Supplies Unit' in the light of the licence obtained by the appellant and exhibited in the records of this Appeal.

In view of the above considerations, the Board furthermore orders that the deposit paid by the appellant upon filing of this appeal should be refunded back to the same appellant.

Ian Spiteri Bailey
Chair

Lawrence Ancilleri
Member

Carmel Esposito
Member