

# **PUBLIC CONTRACTS REVIEW BOARD**

## **Case 1587 – CT2402/2020 – Tender for the Supply of a Halichondrin B Analogue**

**21<sup>st</sup> June 2021**

The Board,

Having noted the letter of objection filed by Dr Matthew Paris on behalf of DalliParis Advocates acting for and on behalf of Cherubino Ltd, (hereinafter referred to as the appellant) filed on the 1<sup>st</sup> March 2021;

Having also noted the letter of reply filed by Dr Marco Woods on behalf of Central Procurement and Supplies Unit (hereinafter referred to as the Contracting Authority) filed on the 10<sup>th</sup> March 2021;

Having taken cognisance and evaluated 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 sitting of the 17<sup>th</sup> June 2021 hereunder-reproduced.

### **Minutes**

#### **Case 1587 – CT 2402/2020. Tender for the Supply of a Halichondrin B Analogue**

The tender was published on the 14<sup>th</sup> October 2020 and the closing date was the 17<sup>th</sup> November 2020. The value of the tender was € 1,330,236.

On the 1st March 2021 Cherubino Ltd filed an appeal against Central Procurement and Supplies Unit as the Contracting Authority objecting to their decision to cancel the tender.

A deposit of € 6,651 was paid.

There was one (1) bidder.

On 17th June 2021 the Public Contracts Review Board (PCRB) composed of Mr Kenneth Swain 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:

#### **Appellant – Cherubino Ltd**

Dr Matthew Paris  
Dr Francis Cherubino

Legal Representative  
Representative

## **Contracting Authority – Central Procurement and Supplies Unit**

Dr Marco Woods	Legal Representative
Ms Monica Sammut	Representative
Ms Julia Pirotta	Representative

Mr Kenneth Swain Chairman of the Public Contracts Review Board 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 in line with Article 89 of the Public Procurement Regulations. He then asked Appellant's representative to make his submissions.

Dr Matthew Paris Legal Representative for Cherubino Ltd stated that on behalf of Appellant he requested the reason for the cancellation of the tender. The lack of a reply to the request left Appellant with no alternative except to file an appeal. Since then, the reason for the cancellation has been provided and Appellant had no intention of proceeding with the appeal which was being withdrawn with the expectation that the deposit will be fully refunded since the only avenue available to them at that time to safeguard their position was to lodge an appeal.

Dr Marco Woods Legal Representative for the Central Procurement and Supplies Unit said that at the time of the appeal the information regarding the cancellation of the tender was already in the hands of the Department of Contracts and it was their remit to communicate with the Appellant. The Authority had no objections to the refund of the deposit paid.

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

End of Minutes

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### **Hereby resolves:**

The Board refers to the minutes of the Board sitting of the 17<sup>th</sup> June 2021.

Having noted the objection filed by Cherubino Ltd (hereinafter referred to as the Appellant) on 1<sup>st</sup> March 2021, refers to the claims made by the same Appellant with regards to the tender of reference CT 2402/2020 listed as case No. 1587 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Matthew Paris

Appearing for the Contracting Authority: Dr Marco Woods

Whereby, the Appellant, in the Letter of Objection, contends that:

- a) The letter of rejection states “..... *there have been irregularities in the procedure, in particular where these have prevented fair competition*” but fails to define what are the irregularities, to whom are these attributable, what lead to this situation and who is to blame for any such irregularities;
- b) Article 272 of S.L. 601.03 notes that all tenderers are to be informed of the “*relevant reasons relating to the rejection*”. This is also clearly stated in the Standard Operating Procedures [Guidelines for Tender Evaluation Committees – January 2021] issued by the Department of Contracts.
- c) Appellant company confirms that it is fully compliant to all technical, administrative and financial requirement of the tender document, thus and thereby there are no reasons whatsoever for the rejection of the tender submitted by the Appellant company.

This Board also noted the Contracting Authority’s Reasoned Letter of Reply filed on 10<sup>th</sup> March 2021 and its verbal submission during the virtual hearing held on 17<sup>th</sup> June 2021, in that:

- a) The medicinal product which is being sought for procurement by means of the Tender in caption is new.
- b) The primary issue which resulted in the recommendation for cancellation of the Tender is the way the Tender Document was published in that the number of Vials to be administered per patient on an annual basis, or other technical parameters that would lead to the quantity of vials required was not indicated in the Technical Specifications / Tender Document.
- c) Had the actual number of vials to be administered to each patient on an annual basis been included in the Technical Specification / Tender Document this would have probably resulted in more prospective bidders competing in the said Call.
- d) The Department of Pharmaceutical Affairs has provided clarification on the technical specifications / annual consumptions and indicated that the annual consumption has been re-adjusted by a reduction as a result of a recalculation on the amounts requested. Therefore, it further results that the Tender in caption ought to be cancelled since the parameters of the Call have changed.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties, will consider Appellant’s grievances, as follows in their entirety:

- a) The Appellant company received a “Letter of Rejection” on the 19<sup>th</sup> February 2021, which within stated “..... *there have been irregularities in the procedure, in particular where these have prevented fair*

*competition*” but failed to pinpoint any specific wrongdoing or whether these related to the Appellant’s bid or otherwise;

- b) The Appellant company, through one of its representatives tried to obtain further information from the Department of Contracts, but was not provided with any;
- c) The Board notes that the only way in which the Appellant company could have obtained this information, to be able to decide whether it was worthwhile or not to appeal this tender, was through appealing in the first place, in the process having to pay the deposit for such an appeal;
- d) Once this information became available to it, it transpired to the Appellant company that an appeal was not in the best interest of the Company;
- e) This appeal could have easily been avoided if such information was provided to the Appellant company.

**In conclusion this Board;**

Having evaluated all the above and based on the above considerations, concludes and decides:

- a) The Tender be cancelled in line with Article 18.3(e) of the General Rules Governing Tenders,
- b) Directs that the deposit paid by Appellant to be reimbursed.

**Mr Kenneth Swain**  
Chairman

**Mr Lawrence Ancilleri**  
Member

**Mr Carmel Esposito**  
Member