

Public Contracts Review Board

Notre Dame Ravelin

Floriana



25/10/19

Remedy before closing date of call for Competitors.

Reference: CPSU 164048N19JP

Re; Request for Participation (Negotiation) for the supply of; Lot 1:Dabrafenib 75mg capsules Lot 2: Trametinib 2mg tablets.

By means of the present, Cherubino Limited, hereby submit a request for a remedy before the closing date of call for competitors, regarding RFP with reference CPSU 164048N19JP, namely for the "Request for Participation (Negotiation) for the supply of; Lot 1:Dabrafenib 75mg capsules Lot 2: Trametinib 2mg tablets".

As per request issued, the CPSU issued an RFP for two products to be used in combination treatments with each other. Such combination treatment is used for patients with advanced (unresectable or metastatic) melanoma with a BRAF V600 mutation.

The RFP in this respect however does not request for a call for products that are equally licenced and available in the market for this indication, as for which two or more companies may supply such products to be used in a combination treatment as requested, however goes on to request; that the two products must specifically be Dabrafenib 75mg capsules and Trametinib 2mg tablets.

The specifications do not allow for prospective alternative bidders to compete from the outset, as the way the technical specifications are stipulated limit the scope of competition. As compatible products exist in the market, of an equivalent nature, the specifications fail to denote clearly the objective and utilisation of the product, however rather dictate the ingredients alone, which favour two products of one particular brand which directly gives an advantage and sole bidding position to that one brand /supplier and this from the very start of the tendering process as stated.

The RFP at present, by means of the technical specifications, specifically eliminates fair competition and fails to provide an equal level playing field amongst competitors. The specifications as written refer to specific active ingredients, rather than to the functional equivalence and main objective of the products sought for the treatment of equally approved indications from alternative manufactures/suppliers.

In light of the above, despite the clarifications sought, namely clarification 5 dated 17/10/19, the specifications as issued are in breach of Public Procurement Regulations, EU Directives, existing legislation and jurisprudence, which all call for and enforce openness and determined competition – brand specific specifications are prohibited. Such also prohibit any limitations to deter from such competition.

Given the technical specifications to date as issued coupled with the lack of any legal position for the same, we are humbly requesting that this board kindly goes on to review the above, and upon determining cause for the establishment of our grievance, proceeds to provide a remedy before the closing date of the call for competitors, and this by directing and ordering that the specifications in this RFP be widened in such a way so as to allow for equivalent products to be quoted for by prospective and multiple bidders thus ensuring fair and equal competition.

With reservation to provide additional evidence in support of the above during the hearing.

Yours sincerely,



Dr. Francis Cherubino