



05<sup>th</sup> December 2019

Public Contracts Review Board  
Notre Dame Ravelin,  
Floriana,  
Malta.

Krypton Chemists Limited

vs

(1) Central Procurement &  
Supplies Unit; and

(2) Pharma-Cos Limited

**CPSU Reference:** CPSU153020D19JB

**Tender Name:** Tender for the Supply of 3.5ml Serum Tubes with Serum Separator and Clot Activator

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## REASONED LETTER OF REPLY

Whereas, the Central Procurement and Supplies Unit within the Ministry for Health (*hereinafter* **CPSU**) issued a call for tenders “for the supply of 3.5ml serum tubes with serum separator and Clot Activator”

Whereas, Messrs. Pharma-Cos Limited (*hereinafter* “**Respondents**”) have been identified as the cheapest compliant tenderer, and thus recommended for award;

Whereas, Messrs Krypton Chemists Limited (*hereinafter* “**Complainants**”) felt aggrieved by such a decision and submitted their reasoned letter of objection;

Whereas, Respondents are hereby submitting their reasoned letter of reply, within the required time-frame:-

1. ***Inability to prepare a proper defence***

On Monday 2<sup>nd</sup>, 2019 a request has been sent to CPSU wherein information with regards to rejection of the offer submitted by the complainants has been requested, which information has been requested in view of the ***direct and substantial*** interest of the respondent company in the proceedings;

No information whatsoever has been forthcoming, thus the respondent company is in a deficient position, both before the Public Contracts Review Board (PCRB) and [*potentially*] before the Court of Appeal;

The aforesaid does not only prejudice the position of the respondent company, but it is in defiance of article 272 of S.L. 601.03 (Public Procurement Regulation) wherein all tenderers are to be informed of the “*relevant reasons relating to the rejection*”;

2. ***Res judicata***

The complainant engages in a litany of laments with regards to the technical specifications, notably that these should be or should have been drafted in a clear and unambiguous manner;

Article 262(1)(d) of S.L. 601.03 (Public Procurement Regulation), specifically addresses any such ambiguities, which *semmi* should have been raised at a pre-tendering stage;

A pre-tendering complaint had been filed by the complainant (PCRB 1315/2019), a decision has been determined by the PCRB (05<sup>th</sup> June 2019), and no appeal has been filed with the Court of Appeal (as per article 265 of S.L. 601.03) – Thus and thereby this matter is *res judicata* and cannot in any manner be taken into account or consideration within this phase;

3. **Technical compliance – strict adherence**

Compliance to the tender specifications is not a prerogative of the tenderer – ANY and ALL tenderers should adhere to all specifications listed within the tender document, as supplemented through subsequent clarifications;

The complainant company seems to suggest that it should be given a privileged position, and this by refusing to supply documentation and information which was legitimately requested and/or procured by other tenderers;

Level playing field and transparency are mandatory public procurement principles, thus and thereby the requests by the complainant company are not only unjustified, but more importantly are in breach of public procurement obligations;

**NOWTHEREFORE, Complainants requests that:**

- i. To reject the pleas by the complainant company;
- ii. To confirm the award;

Respondents are hereby reserving the right to present further evidence, both orally or in written, during the hearing.

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Avv. Matthew Paris  
matthew@dalliparis.com



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Avv. Michele Cardinali  
michele@dalliparis.com

**Requested Testimony by:** Representative of the Evaluation committee:

To testify on this tender procedure, during all stages, including but not limited to the pre-drafting stage, drafting stage, and adjudication stage.

Representative by the foreign suppliers:

To testify and confirm that the products recommended all satisfy the technical specifications.