PUBLIC CONTRACTS REVIEW BOARD

Case 1247 – CFT 020-0877/18 –Tender for the Supply of Blood Collection Sets

The publication date of the call for tenders was the 14th August 2018 whilst the closing date of the call for tenders was 3rd September 2018. The estimated value of the tender (exclusive of VAT) was € 132,000.

On the 19th November 2018 Krypton Chemists Ltd filed an appeal against the Central Procurement Supplies Unit as the Contracting Authority objecting to being disqualified on the grounds that their offer was technically not compliant. A deposit of € 660 was paid.

There were five (5) bidders.

On 20th December 2018 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Mr Lawrence Ancilleri and Mr Richard A Matrenza as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants: Krypton Chemists Ltd

Mr Matthew Arrigo	Representative
Mr Massimo Cappelli	Representative
Ms Daniela Novotna	Representative

Contracting Authority – Central Procurement and Supplies Unit

Dr Marco Woods	Legal Representative
Ms Rita Zammit	Chairman Evaluation Committee
Ms Jacqueline Borg	Secretary Evaluation Committee
Mr Victor Bartolo	Member Evaluation Committee
Mr Stephen Decelis	Member Evaluation Board
Dr Chris Barbara	Chairman Pathology Department
Dr James Clark	Consultant
Mr Joseph Thorn	Phlebotomist
Ms Heather-Lynne Harmsworth	Senior Phlebotomist

Dr Anthony Cassar Chairman of the Public Contracts Review Board welcomed the parties and invited them to make their submissions.

Mr Matthew Arrigo, Representative of Krypton Chemists Ltd said that the reason for rejection was that the product he offered was not according to specifications – namely that the tubing was not the

correct length and the needle posed a risk of injury to the patient. In the letter of reply it was accepted by the CPSU that the tube length was correct but despite this he wished to question the person who had carried out the tests.

Mr Victor Bartolo (293162) testified on oath that he was the Advanced Allied Head Practitioner at Mater Dei Hospital Pathology Laboratory. He was a member of the Evaluation Committee but was not a phlebotomist. He was not the person who had tested the samples.

Mr Arrigo requested as a witness the person who actually carried out the tests.

Dr Marco Woods, Legal Representative of CPSU said that the person who had carried out the tests was not present.

The Chairman said that the Board upholds the request of Appellants that the person who carried out the tests should be produced. Since this obviously was not possible to be done then he adjourned the hearing till such time as the person responsible could be traced. He then declared the hearing adjourned.

SECOND HEARING

On the 14th February 2019 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Mr Lawrence Ancilleri and Mr Richard A Matrenza as members convened a public hearing to continue with this case.

The attendance for this public hearing was as follows:

Appellant – Krypton Chemists Ltd

Mr Matthew Arrigo	Representative
Mr Massimo Cappelli	Representative

Recommended Bidder – R Langenbrinck GmbH

Dr Norman Vella	Representative

Contracting Authority – Central Procurement and Supplies Unit

Dr Marco Woods	Legal Representative
Ms Rita Zammit	Chairperson Evaluation Board
Mr Victor Bartolo	Member Evaluation Board
Mr George Grech	Member Evaluation Board
Mr Stephen Decelis	Member Evaluation Board

Dr Anthony Cassar Chairman of the Public Contracts Review Board welcomed the parties and reminded them that the purpose of this second hearing was to hear the testimony of the person who had carried out the tests as decided previously.

Mr Anthony Carbonaro (549064M) called as a witness by Appellant testified on oath that he was a Nursing Officer responsible for testing products sent from the laboratory. He advised the evaluation committee on the outcome of these tests. He stated that he could not recall the date when this product was tested but he recalls that there were complaints from staff that the tubing was 'a bit too long'. The problem occurred when the needle was extracted as this 'recapping' was causing pain to the patients. This information was fed back to the laboratory.

(A discussion ensued as to whether the sample tested was the one submitted by Appellant, and a witness was called by the Board to clarify this point)

Mr George Grech (31859G) testified on oath that he was a medical laboratory technician and part of the evaluation committee. He had received the Solcare samples which could only have come from Krypton Chemists. The length of the tubing was not an issue and totally irrelevant as there was nothing wrong with it. Witness explained in detail what 'recapping' was (basically the painless extraction of the needle after taking blood). This product had been used in the past without any problems, but following instructions from the infection control department recapping had been introduced to avoid needle injury, and the product was proving difficult when a large number of patients had to be attended to. The product in itself was good but recapping was problematic as the Solcare recap mechanism was different to other brands.

In reply to questions from Mr Arrigo witness stated that the recap mechanism of Solcare products was not 100% safe for the hospital patients. Referred to Section 4 of the Technical Specifications witness agreed that the product was compliant with those specifications – however its safety locking device is different from other products – and hence the problem.

Mr Massimo Cappelli, called as a witness by Krypton Chemists testified on oath that he was the Technical Manager of Solcare for Italy and Malta and had been so for 25 years. This product was the most used device throughout the world since its launch in the second part of 2017. In 2018 over 10.5 million units had been sold and the product was fully compliant with Euro Directive 2010/52. The Company was not aware of any difficulty with activating the safety feature and what was offered complied fully with the tender requirements. What was essential was training on the launch of the product.

Dr George Grech s recalled to give further evidence said that for 38 years he was a scientist in the medical laboratory being in charge of specialists who took blood. They had used many different products and the end user generally knew how to operate a product. Mr Cappelli had demonstrated the Solcare product to the staff but during those demonstrations there were not so many patients. According to the infection control experts the product was difficult to use.

Ms Daniela Novotra, called as a witness by Krypton Chemists, after a sworn declaration, testified that she was nurse and medical teacher. She had twenty years of teaching experience abroad and some years as a phlebotomist. She had experienced no problems in using the product and there should be no issues in using it after training. There were various options on how to use the safety features, and she had not heard of any injuries, contamination or trauma suffered from the use of Solcare products which in her view were equal to any other product. It was just a question of training.

The Chairman re-iterated that nowhere throughout the hearing was it mentioned that the product is not good.

Mr Arrigo, in his closing comments, said that many hospitals were using this product – its design was well researched with markets all over Europe. It was a matter of experience, resources and training that was needed.

The Chairman thanked the parties for their submissions and declared the hearing closed

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This Board,

having noted this Objection filed by Krypton Chemists Limited, (hereinafter also referred to as the Appellants) on 19 November 2018, refer to the contentions made by the same Appellants with regards to the Tender of Reference CFT 020-0877/18 listed as Case 1247 in the records of the Public Contracts Review Board and awarded by the Central Procurement and Supplies Unit, (hereinafter also referred to as the Contracting Authority).

Appearing for the Appellants: **Mr Matthew Arrigo**

Appearing for the Contracting Authority: **Dr Marco Woods**

Whereby, the Appellants claim that:

a) **their first contention is that, one of the reasons given by the Contracting Authority, for the rejection of their offer, was that the tubing of the product offered, was too long. In this regard, the Appellants maintain that such an issue is an oversight by the Evaluation Committee as the tubing supplied is in accordance with the stipulated technical specifications;**

b) **another contention refers to the second reason given by the Contracting Authority for the Appellant's offer rejection, in that, when the needle is extracted, the "*recapping*" procedure is causing discomfort to the patient. In this respect, the Appellants insist that their product is in accordance with the technical specifications, widely used in hospitals and with some training, the end user should affirm that the needle offered has the necessary safety features as duly stipulated in the technical specifications.**

This Board has also noted the Contracting Authority's "*Reasoned Letter of Reply*" dated 14 December 2018 and also its verbal submissions during the Public Hearing held on 20 December 2018 and 14 February 2019, in that:

a) **with regard to the Appellants' first contention, the Central Procurement and Supplies Unit confirms that**

Krypton Chemists Limited's product is fully compliant, in respect of the length of the tubing;

b) **the Contracting Authority maintains that, although the Appellants' product has a safety feature, upon testing, the latter feature was not found to be practical under pressing circumstances. In this regard, the Contracting Authority's concern is the patient's well being.**

This same Board has also noted the testimony of the following witnesses:

1. **Mr Victor Bartolo, duly summoned by the Central Procurement and Supplies Unit in the first Public Hearing;**

2. **Mr Anthony Carbonaro, duly summoned by Krypton Chemists Limited in the second Public Hearing;**

3. **Dr George Grech, duly summoned by the Central Procurement and Supplies Unit in the second Public Hearing;**

4. **Mr Massimo Cappelli, duly summoned by Krypton Chemists Limited in the second Public Hearing;**

5. **Ms Daniela Novotra, duly summoned by Krypton Chemists Limited in the second Public Hearing.**

This Board held two sittings for the hearing of this Appeal. During the first sitting, it was decided that the person who carried out the trials on the product submitted by Krypton Chemists Limited had to be summoned to testify on his findings and in this respect, this Board held the second Public Hearing on 14 February 2019.

1. **This Board, having examined the relevant documentation to this Appeal and heard submissions made by the parties concerned, including the testimony of the witnesses duly summoned, opines that the issue that merits consideration is the application of the product submitted by Krypton Chemists Limited.**

   First and foremost, this Board notes that the issue of the length of the tubing has been resolved and was duly confirmed by the Contracting Authority, in that the Appellants' offer was compliant in this regard.

   This Board also notes that the Contracting Authority has also confirmed that the Appellants' product was technically compliant with the dictated specifications however, when tested, it was found to be not so efficient and

practical when it comes to the procedure of recapping. This Board was also made aware that recapping involves the painless extraction of the needle after taking blood.

2. **As can be reasonably deduced, this Appeal involves a medical issue, so that this Board had to rely substantially on the technical witness duly summoned. In this respect, this Board also took into consideration the experience of the witnesses in their medical field.**

3. **From such testimonies, it was established that the Tendered product is intended for use at Mater Dei Hospital and its utilisation is usually applied under pressure and stress to cater for the number of patients utilising this service, so that, the medical appliance has to be as efficient as possible and easily apply the recapping procedure without any injury or discomfort to the patient. From the testimony of Mr Grech, who has thirty-eight years experience in the medical laboratory at Mater Dei Hospital, it was confirmed that the end user knew how to operate the product and the demonstrations given by the Appellants were carried out when the patient numbers was not so pressing. The feedback which was received from the infection control unit confirmed that although the Appellants' product was compliant, it was not practical to apply when the demand was at its**

peak, without incurring any discomfort to the patient, due to the pressure of work.

4. **This Board is convinced that, since the Appellants' product is on the market and has been rigorously tested in other hospitals abroad, the product is fully compliant, but at the same instance, if the other competing product is more practical and user friendly when applied by medical staff under daily pressure, then the issue of the patients' well being comes into play. From the submissions made and testimony of the witnesses, this Board was vividly made aware that the product submitted by Krypton Chemists Limited, although compliant, was not so practical to be applied at Mater Dei Hospital, where the number of daily patients utilising this service is highly substantial.**

5. **This Board was also informed that the mechanism for the recapping procedure of the successful Bidder is more practical to be deployed under circumstances similar to those at Mater Dei Hospital. At the same instance, this Board opines that the Evaluation Committee has to possess the discretion to choose which product will deliver the necessary results without inflicting any discomfort to the patient. This Board has also taken into consideration the fact that, through instructions from the**

Infections Unit at Mater Dei Hospital, the adherence to this mandatory procedure must be strictly respected and applied, so that the utilisation of this medical accessory will be applied on numerous occasions daily.

In view of the above, this Board,

i) upholds the decision taken by the Central Procurement and Supplies Unit to award the contract to R Langenbrinck GmbH;

ii) does not uphold the contentions made by Krypton Chemists Limited;

iii) directs that due to the fact that the Appellants' product was also compliant, only one hundred and sixty euro (€ 160) are to be retained from the deposit paid by Krypton Chemists Limited, to cover the costs of this Appeal.

Dr Anthony Cassar	Mr Lawrence Ancilleri	Mr Richard A Matrenza
Chairman	Member	Member

26th February 2019