PUBLIC CONTRACTS REVIEW BOARD

Case No. 372

CT/2062/2011; CT/078/2011
Tender for the Supply of Natalizumab Infusion 300g

This call for tenders was published in the Government Gazette on 15th March 2011. The closing date for offers was 10th May 2011.

The estimated value of this tender was € 167,445.20

One (1) tenderer submitted their offers.

Pharma MT Ltd filed an objection on the 20 December 2011 against the decisions of the Contract Department to disqualify its offer as non-compliant and to recommend the cancellation of the call for tenders.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman and Mr Carmel Esposito and Mr Joseph Croker as members convened a meeting on Wednesday, 25th January 2012 to discuss this objection.

Pharma MT Ltd

Mr Tony Nicholl	Legal Representative

Government Health Procurement Services

Mr Karl Farrugia	Director
Ms Stephanie Abela	Procurement Manager

Evaluation Board

Ms Miriam Dowling	Chairperson
Ms Miriam Azzopardi	Member
Ms Sharon Zerafa	Member
Mr David Cordina	Secretary

After the Chairman's brief introduction, the appellant company's representative was invited to explain the motives of his company's objection.

Mr Tony Nicholl, representing Pharma MT Ltd, the appellant company, inter alia stated that:

a. by letter dated 5th August 2011 2011 the Government Health Procurement Service had informed him that his company's offer had been found technically non-compliant since "*its delivery process does not enable to supply a 50% shelf life remaining upon delivery as per appendix 1 submitted with quote. Hence not 2/3rd remaining as per tender document.*"

b. with regards to shelf life, Mr Nicholl explained that:-

- this pharmaceutical product was unique and it could be administered to rare types of multiple sclerosis patients and, in fact, in Malta there were only 4 to 6 of such patients;

- a very strict international protocol was applicable for the use of this medicine such that it was issued on a patient-named basis, i.e. it could not be put in store, and even Pharma MT Ltd had to undergo a rigorous process in order to handle this product;

- this was a very powerful medicine so much so that, due to the resultant fatalities, it had been withdrawn from the market but - quite an unusual event in the pharmaceutical sector - it was reintroduced in the market due to pressure exerted by neurologists since this medicine was the only means that could improve the quality of life and even prolong the life of a category of multiple sclerosis patients;

- the patient would be administered this medicine once a month and it was quite a painful process;

- the product was manufactured only by *Biogen Idec* and the manufacturer was not in a position to supply it with a 50% remaining shelf life due to basic aspects of production and lead time, including quarantine. Nevertheless, it was also stated that Biogen Idec would endeavour to supply Government Health Procurement Services with the latest production batch available;

- this was the first time that the Government Health Procurement Services was purchasing this product and, similarly, it was the first time that his company would be supplying the product and, as a result, his company had no details of previous principle deliveries to report

  and

- this product had a 2-year shelf life.

Ms Stephanie Abela, representing the Government Health Procurement Services, remarked that:-

a. the adjudicating board had carried out its evaluation correctly, namely the offer submitted by the appellant company was not according to tender conditions since the product could not be supplied with the requested remaining shelf life;

b. given the declarations made by the appellant company's representative, the contracting authority would have to either re-issue the tender with amended conditions or use an alternative procurement procedure other than the open tender one;

c. since mid-December 2011 the tender document regarding the supply of medicines had been amended with regard to such aspects as the shelf life and the submission samples in a way that suppliers were being given more leeway;

and

d. the estimated consumption of this product was put by the Government Health Procurement Services at 130 per annum.

At this point the hearing was brought to a close.

This Board,

- having noted that the appellant company, in terms of the reasoned letter of objection dated 10th August 2011 and through the verbal submissions made during the hearing held on the 25th January 2012, had objected against the decisions of the Government Health Procurement Services (MHEC) to disqualify its offer as non-compliant and to recommend the cancellation of the call for tenders;

- having noted the appellant firm's representatives' claims and observations regarding the fact that (a) by letter dated 5th August 2011 2011 the Government Health Procurement Service had informed him that his company's offer had been found technically non-compliant since "*its delivery process does not enable to supply a 50% shelf life remaining upon delivery as per appendix 1 submitted with quote. Hence not 2/3rd remaining as per tender document*", (b) this pharmaceutical product was unique and it could be administered to rare types of multiple sclerosis patients and, in fact, in Malta there were only 4 to 6 of such patients, (c) a very strict international protocol was applicable for the use of this medicine such that it was issued on a patient-named basis, i.e. it could not be put in store, and even Pharma MT Ltd had to undergo a rigorous process in order to handle this product, (d) this was a very powerful medicine so much so that, due to the resultant fatalities, it had been withdrawn from the market but - quite an unusual event in the pharmaceutical sector - it was reintroduced in the market due to pressure exerted by neurologists since this medicine was the only means that could improve the quality of life and even prolong the life of a category of multiple sclerosis patients, (e) the patient would be administered this medicine once a month and it was quite a painful process, (f) the product was manufactured only by *Biogen Idec* and the manufacturer was not in a position to supply it with a 50% remaining shelf life due to basic aspects of production and lead time, including quarantine, (g) Biogen Idec would endeavour to supply Government Health Procurement Services with the latest production batch available, (h) this was the first time that the Government Health

Procurement Services was purchasing this product and, similarly, it was the first time that the appellant company would be supplying the product and, as a result, the said company had no details of previous principle deliveries to report and (i) this product had a 2-year shelf life;

- having considered the contracting authority's representative's submissions, namely that (a) the adjudicating board had carried out its evaluation correctly, namely the offer submitted by the appellant company was not according to tender conditions since the product could not be supplied with the requested remaining shelf life, (b) given the declarations made by the appellant company's representative, the contracting authority would have to either re-issue the tender with amended conditions or use an alternative procurement procedure other than the open tender one, (c) since mid-December 2011 the tender document regarding the supply of medicines had been amended with regard to such aspects as the shelf life and the submission samples in a way that suppliers were being given more leeway and (d) the estimated consumption of this product was put by the Government Health Procurement Services at 130 per annum;

reached the following conclusions:

1. The Public Contracts Review Board agrees with the contracting authority namely that the offer submitted by the appellant company was not according to tender conditions since the product could not be supplied with the requested remaining shelf life.

2. The Public Contracts Review Board feels that, considering that it cannot ignore the fact that since mid-December 2011 the tender document regarding the supply of medicines had been amended - with regard to such aspects as the shelf life and the submission samples - in a way that suppliers were being given more leeway thus, possibly, enabling those tenderers that on previous occasions could have opted not to participate in view of prevailing specifications, the possibility to participate.

In view of the above this Board finds in favour of the appellant company but, considering the prevailing circumstances which transpired during the hearing, recommends that the deposit paid by the latter should be reimbursed and that, for the sake of full transparency and an equitable treatment policy, the tender should be reissued including the most recent specifications and conditions.

Alfred R Triganza
Chairman

Carmel J Esposito
Member

Joseph Croker
Member

6 February 2012