PUBLIC CONTRACTS REVIEW BOARD

Case No. 453

GHPST/157/11
Tender for the Supply of Blood Lancets

This call for tenders was published in the Government Gazette on the 25th February 2012. The closing date for this call with an estimated budget of € 79,440 was the 14th March 2012.

Twelve (12) tenderers submitted their offers.

Vitrex Medical A/S filed an objection on the 19th June 2012 against the decision taken by the Central Procurement & Supplies Unit of the Ministry for Health, the Elderly and Community Care to disqualify its offer as technically non-compliant and to recommend the award of the tender to Harley Distributors Ltd.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr Carmel Esposito and Mr Paul Mifsud as members convened a public hearing on Friday, 24th August to discuss this objection.

Present for the hearing were:

Vitrex Medical A/S

Dr Norman Vella	Representative
Mr Peter Jorgensen	Quality and System Manager

Harley Distribution Ltd – no one turned up at the hearing

Central Procurement and Supplies Section - Ministry for Health, the Elderly and Community Care

Ing. Karl Farrugia	Chief Executive Officer

Evaluation Board

Ms Miriam Dowling	Chairperson
Prof. Stephen Fava	Member
Ms M Grixti	Member
Ms E Farrugia	Member
Ms R Aquilina	Secretary

At the request of the appellant company's representative, the parties concerned raised no objection to the hearing being held in English. After the Chairman's brief introduction, the appellant company's representative was invited to explain the motives of the company's objection.

Dr Norman Vella, representing Vitrex Medical A/S Ltd, the appellant company, made the following submissions:-

i. by letter dated 13th June 2012 the contracting authority informed the appellant company that its offer was disqualified as it was considered to be technically non-compliant because the puncture made by the blood lancet offered was not deep enough on hard skin and that the tender was recommended for award to Harley Distributors Ltd;

ii. the product offered not only complied with the tender specifications but was even cheaper than the recommended offer;

and

iii. the appellant company offered a product which caused the minimal discomfort to patients with normal skin and the kind of product which was being generally sold internationally.

Mr Peter Jorgensen, Quality and Systems Manager of Vitex Medical A/S of Denmark, after presenting the Public Contracts Review Board with certificates and other documentation on the product, explained as follows:-

a. the reason given by the contracting authority for the rejection of the offer was that the puncture was not deep enough on hard skin and, as a result, it did not produce enough blood;

b. he conceded that the specific lancet offered did not produce enough blood when used on hard skin patients but the tender document did not mention that it had to be used on hard skin and the majority of patients, about 80% or so, had normal skin and it was a minority who had hard skin;

c. the tender specifications at page 30 of the tender document provided the following item descriptions, among others:-

- Single use blood lancets for collection of a drop of blood for glucose testing;

- Needle should not be less than 23 gauge width and have a depth of not more than 2.25 mm;

and

d. the lancet offered had a 26 gauge needle with a depth of 1.8 mm which fitted the tender specifications of not less than gauge 23 and a depth of not more than 2.25mm.

Prof. Stephen Fava, a member of the adjudicating board, submitted the following:-

i. it was the intention of the contracting authority to procure lancets that could be used on all patients, namely on patients having normal and hard skin;

ii. there was a substantial amount of patients that had hard skin and it was not the policy of the Ministry for Health, the Elderly and Community Care to use a type of lancet on normal skin patients and a different type of lancet on hard skin patients because staff using these lancets would end up using the wrong type of lancet on some patients with the likelihood of having to puncture his/her skin twice with different lancets to obtain the drop of blood required and so the Ministry for Health, the Elderly and Community Care wanted one type of lancet for use on all patients;

iii. whilst the tender specifications did not mention hard skin but neither did it mention normal skin, yet the specifications were such that the selected lancet would cover all patients having normal skin or hard skin;

and

iv. a field test was carried out on the sample submitted with each offer and, in the case of the lancet offered by the appellant company, the field test indicated that it did not penetrate enough in hard skin and that meant that, besides being time consuming and causing an inconvenience to patients, since one would have to press the punctured part (say the finger) to produce the desired drop of blood, a more serious concern was that it would produce an inaccurate result because by pressing the finger the drop produced would contain not only blood but also other fluids which would give an inaccurate result.

Mr Jorgensen explained that:-

a. the product offered would cause the least discomfort on the majority of patients because one did not have to, unnecessarily, make a too deep and too big a puncture on the majority of normal skin patients, including children;

b. Virtex Medical A.S. could have offered a product with a penetration of 2.25 mm;

and

c. it would be more convenient to use two lancets, one for normal skin with a penetration of up to 1.8 mm and another one for hard skin with a penetration of up to 2.4mm.

Prof. Fava reiterated that the product offered could make a 1.8 mm puncture and if used on hard skin patients it would not produce the drop of blood needed for glucose testing which was one of the criteria laid down in the tender specifications.

Dr Vella remarked that the product offered did fit the tender specifications and the issue of hard skin patients did not feature in the tender document but it surfaced only

in the letter of disqualification and that was why the need for a clarification was not felt at tender preparation stage. He added that Virtex Medical A/S offered the most widely used lancet, namely for patients with normal skin, and, clinically speaking, one could question the procurement of a lancet that catered for hard skin patients for general use thereby causing discomfort to the majority of the patients due to the excessive depth of the needle penetration. Dr Vella pointed out that other European countries made a distinction between normal and hard skin and, in this case, the contracting authority could have been more specific by mentioning use on hard skin and/or indicated a range between, say, 1.8mm and 2.25mm.

The Chairman Public Contracts Review Board made the following remarks:-

i. bidders had to satisfy the tender specifications which reflected requirements of the contracting authority;

ii. the bidder was not at liberty to depart from the tender specifications without consequences;

and

iii. prior to submitting an offer, the bidder had the opportunity to even stop a tendering process or to seek clarifications from the contracting authority on any aspect of the tender, including the technical specifications, e.g. with regard to the difference in the 1.8mm deep puncture of the product offered and the maximum depth of 2.25 mm requested and whether that would equally meet the client's requirements.

Prof. Fava explained that the published tender specifications represented a compromise between procuring a lancet that could be used on all patients with the least discomfort but at the same time ensuring the desired result, namely a good drop of blood, and other bidders did manage to submit offers that met the Ministry for Health, the Elderly and Community Care's requirements. Prof. Fava added that it was not being disputed that other countries use more than one type of lancet but the local health authorities used only one type because it was more practical.

The Chairman Public Contracts Review Board remarked that:-

a. the technical data sheet of Vitrex® Sterilance® Lite II Safety Lancet, provided by the appellant company at the hearing, indicated that Virtex provided lancets with *(1)* 1.8 mm penetration for blood glucose monitoring and *(2)* 2.4 mm penetration for thicker adult skin, which was beyond the 2.25 mm limit set in the tender document;

b. the product range of Vitrex, apparently, could only provide the 1.8 mm lancet once it did not produce a lancet with a penetration of between 1.8mm and 2.4mm when the limit set by the tender was 2.25mm;

and

c. logically, if the contracting authority's needs were met by a 1.8 mm penetration lancet then why would it ask for a maximum penetration of 2.25 mm.

Mr Jorgensen concluded that the lancet for general use had a 1.8mm penetration while the lancet for hard skin would produce a 2.4 mm or even 2.8 mm penetration.

At this point the hearing was brought to a close.

This Board,

- having noted that the appellants, in terms of their 'reasoned letter of objection' dated the 19th June 2012 and also through their verbal submissions presented during the hearing held on the 24th August 2012, had objected to the decision taken by the pertinent authorities;

- having noted all of the appellant company's representative's claims and observations, particularly, the references made to the fact that (a) by letter dated 13th June 2012 the contracting authority informed the appellant company that its offer was disqualified as it was considered to be technically non-compliant because the puncture made by the blood lancet offered was not deep enough on hard skin and that the tender was recommended for award to Harley Distributors Ltd, (b) the product offered not only complied with the tender specifications but was even cheaper than the recommended offer, (c) the appellant company offered a product which caused the minimal discomfort to patients with normal skin and the kind of product which was being generally sold internationally,(d) the reason given by the contracting authority for the rejection of the offer was that the puncture was not deep enough on hard skin and, as a result, it did not produce enough blood,(e) whilst the appellant company conceded that the specific lancet offered did not produce enough blood when used on hard skin patients yet, it was also a fact that the tender document did not mention that it had to be used on hard skin and the majority of patients, about 80% or so, had normal skin and it was a minority who had hard skin,(f) the tender specifications at page 30 of the tender document provided the following item descriptions, among others, *(1)* Single use blood lancets for collection of a drop of blood for glucose testing, *(2)* Needle should not be less than 23 gauge width and have a depth of not more than 2.25 mm, (g) the lancet offered had a 26 gauge needle with a depth of 1.8 mm which fitted the tender specifications of not less than gauge 23 and a depth of not more than 2.25mm, (h) the product offered would cause the least discomfort on the majority of patients because one did not have to, unnecessarily, make a too deep and too big a puncture on the majority of normal skin patients, including children, (i) Virtex Medical A.S. could have offered a product with a penetration of 2.25 mm, (j) it would be more convenient to use two lancets, one for normal skin with a penetration of up to 1.8 mm and another one for hard skin with a penetration of up to 2.4mm, (k) that the product offered did fit the tender specifications and the issue of hard skin patients did not feature in the tender document but it surfaced only in the letter of disqualification and that was why the need for a clarification was not felt at tender preparation stage, (l) Virtex Medical A/S offered the most widely used lancet, namely for patients with normal skin, and, clinically speaking, one could question the procurement of a lancet that catered for hard skin patients

for general use thereby causing discomfort to the majority of the patients due to the excessive depth of the needle penetration, (m) other European countries made a distinction between normal and hard skin and, in this case, the contracting authority could have been more specific by mentioning use on hard skin and/or indicated a range between, say, 1.8mm and 2.25mm and (n) the lancet for general use had a 1.8mm penetration while the lancet for hard skin would produce a 2.4 mm or even 2.8 mm penetration;

- having considered the contracting authority's representative's reference to the fact that (a) it was the intention of the contracting authority to procure lancets that could be used on all patients, namely on patients having normal and hard skin, (b) there was a substantial amount of patients that had hard skin and it was not the policy of the Ministry for Health, the Elderly and Community Care to use a type of lancet on normal skin patients and a different type of lancet on hard skin patients because staff using these lancets would end up using the wrong type of lancet on some patients with the likelihood of having to puncture his/her skin twice with different lancets to obtain the drop of blood required and so the Ministry for Health, the Elderly and Community Care wanted one type of lancet for use on all patients, (c) whilst it was true that the tender specifications did not mention neither .hard skin nor normal skin, yet the specifications were such that the selected lancet would cover all patients having normal skin or hard skin, (d) a field test was carried out on the sample submitted with each offer and, in the case of the lancet offered by the appellant company, the field test indicated that it did not penetrate enough in hard skin and that meant that, besides being time consuming and causing an inconvenience to patients, since one would have to press the punctured part (say the finger) to produce the desired drop of blood, a more serious concern was that it would produce an inaccurate result because by pressing the finger the drop produced would contain not only blood but also other fluids which would give an inaccurate result, (e) the product offered could make a 1.8 mm puncture and if used on hard skin patients it would not produce the drop of blood needed for glucose testing which was one of the criteria laid down in the tender specifications, (f) the published tender specifications represented a compromise between procuring a lancet that could be used on all patients with the least discomfort but at the same time ensuring the desired result, namely a good drop of blood, (g) other bidders did manage to submit offers that met the Ministry for Health, the Elderly and Community Care's requirements and (h) it was not being disputed that other countries use more than one type of lancet but the local health authorities used only one type because it was more practical;

reached the following conclusions, namely:

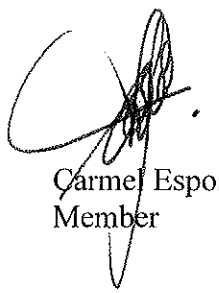
1. The Public Contracts Review Board argues that bidders had to satisfy the tender specifications which reflected requirements of the contracting authority and, as a result, they were not at liberty to depart from the tender specifications without consequences.

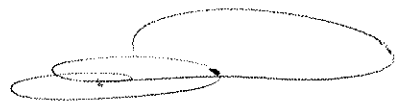
2. This Board observes that, prior to submitting an offer, the appellant company had the opportunity to even stop the tendering process or to seek clarifications from the contracting authority on any aspect of the tender, including the technical specifications, e.g. with regard to the difference in the 1.8mm deep puncture of the

product offered and the maximum depth of 2.25 mm requested and whether that would equally meet the client's requirements.

3. The Public Contracts Review Board takes full cognisance of the fact that the technical data sheet of Vitrex® Sterilance® Lite II Safety Lancet, provided by the appellant company at the hearing, indicated that Virtex provided lancets with *(1)* 1.8 mm penetration for blood glucose monitoring and *(2)* 2.4 mm penetration for thicker adult skin, which was beyond the 2.25 mm limit set in the tender document.

In view of the above, this Board finds against the appellant company and recommends that the deposit paid by the same appellant for the appeal to be lodged should not be reimbursed.





Alfred R Triganza
Chairman

Carmel Esposito
Member

Paul Mifsud
Member

10th September 2012