

## PUBLIC CONTRACTS REVIEW BOARD

Case No. 472

**GHPS/ 03.059.D.12.DC**

**Tender for the Supply of Ertapenem 1G Vials**

This call for tenders was published in the Government Gazette on the 4th May 2012. The closing date for this call with an estimated budget of € 36,907.50 was the 4th June 2012.

Three (3) tenderers submitted their offers.

Associated Drug Company Ltd filed an objection on the 14<sup>th</sup> August 2012 against the decision of the Ministry for Health, the Elderly and Community Care to disqualify its offer as administratively non-compliant and to recommend the cancellation of the tendering process.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr Carmel Esposito and Mr Joseph Croker as members convened a public hearing on Friday, 19<sup>th</sup> October 2012 to discuss this objection.

Present for the hearing were:

### **Associated Drug Company Ltd**

Ms Christina Meli Bugeja	Representative
Mr David Caruana	Representative

### **Ministry for Health, the Elderly and Community Care**

Ms Stephanie Abela	Representative
Mr Joseph Xuereb	Representative

### **Evaluation Board**

Ms Sonia Bonnici	Member
Ms Sharon Zerafa	Member
Ms Alison Brincat	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 David Caruana, representing Associated Drug Company Ltd, the appellant company, made the following submissions:

- i. by letter dated 13<sup>th</sup> August 2012 his firm was informed by the contracting authority that the offer was found to be administratively non-compliant since the list of principal deliveries of medicinal products had not been submitted and that the tender was being recommended for cancellation;
- ii. conceded that the list of principle deliveries had not been submitted with the original tender submission for the following reasons:-
  - a. his firm had only recently been appointed agent for this product and, as a result, his firm had not effected any deliveries of this medicine over the past five years;
  - b. since the only client of his firm was the Department of Health, it was safely assumed that the contracting authority already had all the information about the deliveries it had effected over the years;and
  - c. in other calls for tenders issued by the Department of Health the bidder was being asked to tick a box in the event that such bidder was a regular supplier to the Department of Health and the bidder was no longer obliged to fill in the list of principle deliveries.

The Chairman Public Contracts Review Board noted that:-

- a. the list of principal deliveries was a mandatory requirement as per clause 16.1 (b) and in respect of which no rectification was allowed but only clarifications on the submitted information;
  - b. the 'form' referred to principal deliveries of medicinal products and, since it did not refer to this particular product, the appellant company could have listed the delivery of other medicinal products;
- and
- c. it was not up to the tenderer to decide what forms to fill in or what documentation to leave out but the tenderer was obliged to provide a complete tender submission and in case such tenderer encountered any difficulties one simply had the right to ask for a clarification from the contracting authority.

At this point the hearing came to a close.



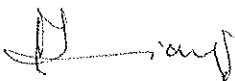
This Board,

- having noted that the appellants, in terms of their 'reasoned letter of objection' dated the 13<sup>th</sup> August 2012 and also through their verbal submissions presented during the hearing held on the 19<sup>th</sup> October 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 13<sup>th</sup> August 2012 the appellant company was informed by the contracting authority that the offer was found to be administratively non-compliant since the list of principal deliveries of medicinal products had not been submitted and that the tender was being recommended for cancellation, (b) the appellant company's representative conceded that the list of principle deliveries had not been submitted with the original tender submission for the following reasons (1) the said company had only recently been appointed agent for this product and, as a result, it had not effected any deliveries of this medicine over the past five years, (2) since the only client of the appellant company was the Department of Health, it was safely assumed that the contracting authority already had all the information about the deliveries it had effected over the years and (3) in other calls for tenders issued by the Department of Health the bidder was being asked to tick a box in the event that such bidder was a regular supplier to the Department of Health and the bidder was no longer obliged to fill in the list of principle deliveries;

reached the following conclusions, namely:

1. The Public Contracts Review Board contends that the list of principal deliveries was a mandatory requirement as per clause 16.1 (b) and in respect of which no rectification was allowed but only clarifications on the submitted information.
2. The Public Contracts Review Board argues that the 'form' referred to principal deliveries of medicinal products and, since it did not solely refer to this particular product, the appellant company could have listed the delivery of other medicinal products.
3. This Board feels that it was not up to the tenderer to decide what forms to fill in or what documentation to leave out but the tenderer was obliged to provide a complete tender submission and, in case such tenderer encountered any difficulties, one simply had the right to ask for a clarification from the contracting authority.

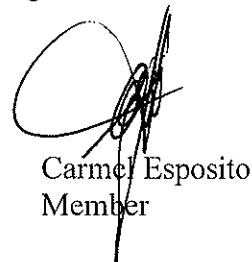
In view of the above, this Board finds against the appellant company and recommends that the deposit paid by the same appellant for the appeal to be lodged should not be reimbursed.



Alfred R Triganza  
Chairman



Joseph Croker  
Member



Carmel Esposito  
Member

26 October 2012