

**PUBLIC CONTRACTS REVIEW BOARD as successor of the
PUBLIC CONTRACTS APPEALS BOARD**

Case No. 924

CT 2033/2010

Negotiated Procedure Supply of Statin Preparations – Fluvastatin 80 mg.

The Tender was published in November 2009. The closing date was on the 18th January 2010. The estimated value of the Tender is €445,470.50.

This was a Three Package Procedure.

On the 27th January 2012 VJ Salamone Pharma Limited filed an Objection against the decision of the Contracting Authority to discard its Tender at the second package stage.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a hearing on Tuesday the 12th April 2016 to discuss the Objection.

Present for the hearing were:

VJ Salomone Pharma Limited:

Mr Michael Sultana Loporto	Representative
Dr Andrew Galea Salomone	Legal Representative
Dr Arthur Galea Salomone	Legal Representative

Cherubino Limited:

Dr Francis Cherubino	Representative
Dr Adrian Delia	Legal Representative

Central Procurement and Supplies Unit:

Ms Miriam Haiden	Evaluation Board
Mr David Baldacchino	Member Evaluation Board
Ms Sharon Vella	Member Evaluation Board
Ms Denise Dingli	Representative
Dr Stefan Zrinzo Azzopardi	Legal Representative

The Chairman explained that this Tender had started under the previous Legislation and could not be heard by the Present Board until clearance was given on the 18th March 2016 for the latter to be able to hear the case which had to be heard by the Public Contracts Appeals Board according to the Legal Notice 177/2005, which existed prior to the implementation of the present Public Procurement Regulations. He then made a brief introduction and invited the Appellant's representative to make his submissions.

Dr Stefan Zrinzo Azzopardi for the Contracting Authority however explained that the merits of the case have been exhausted due to the length of time passed between the objection filing and this Public Hearing. There were great changes in the cost of the product since the time of the issue of the Tender and this being a three package Tender, where the next step would be to open the financial packages of the bidders, would not make sense.

Both the other parties present through their respective Legal Representatives agreed on this. They understood however that the present Tender would be cancelled and re-issued and that the deposit which Appellant made when filing the Objection would also be refunded.

At this point the hearing was closed.

This “Ad Hoc” Board was constituted to hear the Appeal regarding the objection filed on CT 2033/2010 which was previously heard by the Public Contracts Appeals Board which existed prior to the implementation of the current Public Procurement Regulations.

At the opening of the Hearing, the Contracting Authority stated that the merits of the case have been exhausted, since the Tender was issued in 2010 and since then, the supply has been fully satisfied.

Both parties through their Legal Representatives agreed on this action to be taken.

In view of the above, this Board recommends that the deposit paid by the Appellant would be refunded.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

18 April 2015