PUBLIC CONTRACTS REVIEW BOARD

Case 1130 – CT 2233/2017 – Tender for the Supply of Bowel Cleansing Preparation

The publication date of the call for tenders was the 19^{th} December 2017 whilst the closing date of the call for tenders was the 23^{rd} January 2018. The estimated value of the tender (exclusive of VAT) was $\[\]$ 279,825.

Associated Drug Co Ltd filed a remedy before the closing date of a Call for Competition on the 18th January 2018 against the Contracting Authority's on the grounds that the Tender as issued was discriminatory as it was limited to one supplier

On 8th February 2018 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Carmel Esposito as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellant - Associated Drug Co Ltd

Mr Niki Falzon Representative

Contracting Authority – Central Procurement and Supplies Unit – Health

Dr Stefan Zrinzo Azzopardi Legal Representative

Ms Denise Dingli Senior Principal Health Department
Mr Neil Bugeja Pharmacist Health Department

Ms Tanya Formosa Representative Mr Mark Zammit Representative

Department of Contracts

Dr Christopher Mizzi Legal Representative

The Chairman of the Board, Dr Anthony Cassar, in a short introduction asked the parties to make their submissions.

Mr Niki Falzon, representing Associated Drug Co Ltd said that this call for remedy was in regard to sachets used prior to medical interventions. The tender specification detailed exactly all the ingredients in the exact doses of the product of one particular supplier. There are in the market other suppliers with products which serve the same purpose, albeit in different dosages. This is advantageous to the Contracting Authority as it leads to more competition and lower prices.

Dr Stefan Zrinzo Azzopardi, Legal Representative of the Contracting Authority, said that the specifications are based on the directives regarding the product's use. Following the submissions by the Appellant, the Authority explored the possibility of widening or revising the specifications. It is felt that there is room for revision and if the medical protocol allows it the specification will be widened.

	The	Chairman	thanked	the 1	parties	for	their	submis	sions	and	declare	ed the	hearing	closed
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This Board,

Having noted this call for Remedies filed before the closing date of a call for competition by Associated Drug Company Limited, (herein after referred to as the Appellant), on 18 January 2018, refers to the Contentions made by the same Appellant with regards to the Tender of Reference CT 2233/2017, listed as Case No 1130 in the records of the Public Contracts Review Board, issued by the Central Procurement and Supplies Unit, (herein after referred to as the Contracting Authority).

Appearing for the Appellant: Mr Niki Falzon

Appearing for the Contracting Authority: Dr Stefan Zrinzo Azzopardi

Dr Christopher Mizzi

Whereby, the Appellants contend that:

a) The tender specifications stipulated ingredients and the exact doses of a particular product. In this regard, the Appellants feel that such specifications will limit the scope of competition.

This board also noted the Contracting Authority's "Letter of Reply" dated 5 February 2018 and its verbal submissions during the Public Hearing held on 8 February 2018, in that:

a) The Central Procurement and Supplies Unit contends that the Tender Dossier dictated technical specifications on medical directives regarding the utilisation of the product.

This Board, after having heard the submissions made by all the parties concerned, took note of the fact that during the submissions, the Central

Procurement and Supplies Unit, although confirming that the technical

specifications were stipulated in accordance with the medical directives, feels

that there is room for revision, if the medical protocol permits.

In view of the above, this Board recommends that the Central Procurement

and Supplies Unit should do its utmost to allow equivalent products to

participate and thus eliminate or suppress any limitation to free competition.

Dr Anthony J Cassar Chairman Dr Charles Cassar Member Mr Carmel Esposito Member

13th February 2018

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