



In the Public Contracts Review Board

21st June 2023

Reply – Call for Remedies SPD3/2022/045 – Framework agreement for the provision of incontinence diapers pull ups, pads and inco-sheets for senior citizens and persons with special needs for the Ministry for Gozo

Dear Chairman and Members of the Board,

The following is the reasoned reply of the Ministry for Gozo (hereinafter referred to as ‘the Contracting Authority’) following the reasoned letter of objection lodged by Pharma-Cos Limited (hereinafter referred to as the ‘Appellant’) on the 15th June 2023.

In this reply, the Contracting Authority shall address the objection of the Appellant and shall state the grounds upon which the objection cannot be upheld by this Honourable Board.

Submissions

Whereas in its reasoned letter of objection, the Appellant based its objection on five grievances, mainly:

1. That pending the decision of the PCRB in relation to the related tender, the procedure of the tender is to be halted since Appellant’s risks are being harmed with the decision to award the Lots;
2. Pharma-Cos called upon Krypton and made reference, in particular to statements made by its representatives, which statements were not only erroneous but also allegedly made in bad faith, which are in breach of *inter alia* article 34 of Chapter 13 of the Laws of Malta;
3. That information requested by the Appellant to DOC has not been supplied by DOC until the date of submission of this appeal;
4. That the recommended tenderer must be complaint *ab initio*; and that
5. Regulatory issues have rendered this procurement unfeasible.

Now hereby, the Contracting Authority respectfully submits that:

a) As regards the first grievance presented by the Appellant, that is, that the procedures of this tender are to be halted due to the fact that the decision of the PCRB in relation to the related tender is still pending, the Contracting Authority hereby submits that as the Appellant rightly said in its objection, these two procedures are distinct and therefore one should not prejudice the other. Hence, it would not be legally correct that the present proceedings in front of the PCRB be halted in view of the pending proceedings related to the negotiated procedure;

b) As regards the second grievance of the Appellant, the Contracting Authority has nothing to do with any judicial letter filed by the Appellant against Krypton Chemists Limited and therefore it does not have any information about it. It suffices, that the Contracting Authority cannot understand how such judicial letter can form part of an objection to this appeal when the merits of the case relate to the issue of whether the Contracting Authority has adjudicated the tender correctly or not;

c) The Contracting Authority cannot also understand how the Appellant is basing as its third grievance the fact that it has allegedly sent an email dated 8th June 2023 to the DOC requesting information about details of the proposed distribution centre that could have been submitted by the recommended bidder of Lot 1 and was not supplied with such information until the date of submission of this appeal. In this respect, it is good to outline that the Contracting Authority, the Evaluation Committee and the DOC cannot divulge technical information pertaining to one's bid and therefore such information could never have been given to the Appellant notwithstanding he needed this information before the submission of his objection

d) In view of this, the fourth grievance of the Appellant does not hold water since it made in such grievance various assumptions with regards to the distribution centre that is to be provided by the recommended bidder when it does not have any information about it.

Additionally, the Contracting Authority also submits that the alleged information requested by the Appellant and the assumptions made by it, have nothing to do and do not even fall part of the tender requirements of the tender contract since there is nothing in the tender document that asks the tenderers to provide details of such distribution centre, or asks for proof of ownership of the distribution centre or asks them to declare a percentage of sub-contracting proportion, or that the bidder will reply on the capacities of third parties etc. . What the tender stipulates is that:

Clause 1.2 :

*“The place of acceptance of the supplies shall be at the Distribution Centre **which will need to be set-up** by the awarded contractor and from which the entitled persons under the Schemes mentioned above will be collecting the supplies being procured under this contract on a monthly basis”.*

And:

In Clause 1 of Section 3 of the Tender Document it is stated that:

“The successful tenderer must provide a Distribution Centre in Gozo, so that persons entitled to this service, can collect on a monthly basis, the specified items from this centre. This centre must conform to the health and safety standards and regulations of Malta. This centre must be situated in an easily accessible location, accessible by public and private transport and on the ground floor. The centre offered must be well-lit, clean and having a tiled floor. The Distribution Centre must also offer a reception area with a number of seats available in the waiting area. It is important that the supplier displays the officially approved list of the prices of the respective incontinence products at this centre.”

In other words, there is nothing in such tender document that obliges the bidders to provide any specific details of such Distribution Centre as alleged by the Appellant. In fact, the tenderer could have very well leased the property which is to serve as a distribution centre, or could have procured it in any other way. What was important in this regard was that the Distribution Centre would have been set-up once the tender was signed by the recommended bidder of Lot 1 and not the manner how it was to be procured by the tenderer.

e) Finally, with regards to the fifth grievance submitted by the Appellant, the Contracting Authority contends that as regards the division or otherwise of the Lots pertaining to this tender, it has always acted in accordance with this Honourable Board's decisions and abided with the law.

Therefore, for the reasons as above stated, the respondent Contracting Authority humbly requests that this Honourable Board should reject and dismiss all arguments submitted by the Appellant, thereby dismissing the objection *in toto* and to re-confirm the decision of the Adjudicating Board.



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