



# KRYPTON

THE MEDICAL DEVICE DISTRIBUTOR

Krypton Chemists Ltd.

Cantrija Complex, Triq it-Tarġa,

Il-Magħtab, Naxxar, NXR6613, Malta (EU)

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<http://www.kryptonchemists.com>

22 August 2023

Public Contracts Review Board  
Notre Dame Ditch  
Floriana FRN 1601  
Malta



Dear Sirs,

**Re: CFT020-3981/23 (CPSU6705/23) – Tender for the Supply of Non-Adherent Tulle Dressing Containing Silver**

I am writing to you on behalf of **Krypton Chemists Limited** which is presently lodging a pre-contractual remedy against **Lot 2** of the above-captioned tender CPSU6705/23. This application is being filed in terms of Regulation 262 of the Public Procurement Regulations, including Regulation 262(1)(a) and Regulation 262(1)(c).

The tender is split into Lots, as Lot 1: 5cm x 5cm and Lot 2: 10x10cm

In Section 3 - the Specifications Section – Lot 2: 10x10cm, there is no information on any applicable +/- tolerances being considered by the contracting authority, hence there was a need to submit the following clarification request (Annex 1):

*With reference to Lot 2, Spec No. 2.10, "Size: 10cm x 10cm", please advise if any +/- tolerances in cm are being considered whereby there are other alternatives on the market with size 10x12cm which comprise of the same intended use and equivalent functional performance. For your consideration please and if rejected, kindly confirm the clinical reason/s for such.*

The Contracting Authority replied that (Annex 1):

*Unfortunately, it is not acceptable that the product should be according to the published specification. The reason from a Clinical point of view a wound product has to be big enough to cover the entire wound/ wound bed. For this reason and also cost effectiveness this product is requested in two different sizes, to avoid wastage and/or contamination of the product. The 2 sets of measurements are intended not to overlap. That way we cover different scenarios where the product size is neither too big for a small wound or too small for a large wound. This may be more of a technical reason rather than a clinical one but the size is a "part of a set of specifications".*

## 1. Pending Clarification Response from the Contracting Authority



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The above clarification response, does not address, in full, the original clarification request submitted by the economic operator. On 10 August 2023, it was thus necessary that a further clarification request (Clarification Request No. 2) was submitted by our company in order to cover any shortcomings identified in the clarification response from the contracting authority, as enclosed in Annex 2.

The time period for lodging a Public Contractual Remedy, as per PPRs lapses on 22<sup>nd</sup> August 2023. To date, no clarification response has been received from the contracting authority, leaving us with no other option but to submit the pre-contractual remedy in subject.

## 2. Consideration for a +/- tolerance

Firstly, the clarification response from the contracting authority states that the *wound product has to be big enough to cover the wound*. This is not accurate because our clarification request refers to size 10cm x 12cm, which covers the minimum dimensions requested.

The second reason given is that the product is requested in two different sizes with two sets of measurements to prevent overlapping. Our clarification request targeted Lot 2 only and in any case, the proposed size 10x12cm does not overlap with Lot 1, Size 5x5cm.

The Contracting Authority also stated that the specifications ensure that *'the product size is neither too big for a small wound or too small for a large wound'*. However, if the product size is *'too big'*, then it can simply be cut to the size of the wound, which is after all a tender specification in Clause 2.7:

2.7	Dressing can be cut to the size of the wound	N/A	Mandatory
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Further to Spec No. 2.7, any excess can simply be cut to fit the size of the wound. In fact, the Contracting Authority admitted that there is no clinical reason not to accept our product, and that the reasons given are technical:

*This may be more of a technical reason rather than a clinical one but the size is a "part of a set of specifications".*

From our experience with public procurement processes, technical specifications must be drafted in such a way as to widen competition as much as possible, which is even beneficial to the Contracting Authority whereby it can procure an equivalent device for a cheaper price. Section 3 - the Specifications Section – Lot 2: 10x10cm, as drafted, are discriminatory and are artificially narrowing competition on the market.

Respectfully, the Contracting Authority's reasons, pending clarification response or rejection to include any tolerances, is incompatible with the general principles of public procurement.



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In conclusion, we humbly request that the Board declares

- the Clarification Response No. 2, submitted by the Contracting Authority does not address in full, the original clarification request submitted by the economic operator the decision not to allow for any +/- tolerances in cm in Clause 2.10 of the technical specifications for Lot 2 is unlawful and/or discriminatory
- to request that this clause is corrected to allow for any reasonable tolerances, including or not limited to +2cm, and to refund in full the deposit paid by Krypton Chemists Limited upon filing this application.

Yours sincerely,



Matthew Arrigo  
Director

## Clarifications

## Annex 1

**CFT: TENDER FOR THE SUPPLY OF NON-ADHERENT TULLE DRESSING CONTAINING SILVER**

## Clarifications

10  Results Per page | Displaying the 1 match.

1. Lot 2 - Spec No. 2.10

**Description for the request:** With reference to Lot 2, Spec No. 2.10, "Size: 10cm x 10cm", please advise if any +/- tolerances in cm are being considered whereby there are other alternatives on the market with size 10x12cm which comprise of the same intended use and equivalent functional performance. For your consideration please and if rejected, kindly confirm the clinical reason/s for such.

**Clarification:** Good Afternoon, Unfortunately, it is not acceptable that the product should be according to the published specification. The reason from a Clinical point of view a wound product has to be big enough to cover the entire wound/ wound bed. For this reason and also cost effectiveness this product is requested in two different sizes, to avoid wastage and/or contamination of the product. The 2 sets of measurements are intended not to overlap. That way we cover different scenarios where the product size is neither too big for a small wound or too small for a large wound. This may be more of a technical reason rather than a clinical one but the size is a "part of a set of specifications". Kind Regards,

**Attachment for the request:**

## Annex 2

10<sup>th</sup> August 2022

Tender for the supply of Non-Adherent tulle dressing containing silver

020-3981/23 (CPSU6705/23)

Clarification Request No. 2

Lot 2 - Size: 10cm x 10cm

With reference to the previous clarification response from the Contracting Authority, namely:

1. *A wound product has to be big enough to cover the entire wound/wound bed*

The clarification response received from the contracting authority does not correlate with the clarification request submitted by the economic operator since the size being referred meets the minimum dimensions and is therefore 'big enough')

2. *This product is requested in two different sizes*

Kindly note that the clarification requests submitted refers to Lot 2 only.

3. *The 2 sets of measurements are intended not to overlap*

Lot 1 refers to size 5x5cm

Lot 2 refers to size 10x10cm

For Lot 2, there are other alternatives on the market with size 10x12cm. These dimensions do not overlap any other size requested in Section 3 – Specifications and the clarification response received from the contracting authority does not correlate with the clarification request submitted by the economic operator.

4. *That way we cover the different scenarios where the product is neither too big for a small wound or too small for a large wound*

Spec No. 2.7 states that "Dressing can be cut to the size of the wound", therefore in the event that a +2cm tolerance is too big for a smaller wound, users should follow the corresponding Instructions for Use (IFU), which is also referred in Section 3 – Specifications.

5. *Part of a set of specifications*

*Such a response from the contracting authority is unacceptable and will be tackled in terms of the wider PPR on equal access and the available standardisation bodies or studies.*

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For your serious consideration please so that we may address any pending clarifications, amicably.



## Eurozone-SEPA payment

You have authorised this payment

The status for payment 03396OC01RVX is: Forward dated instruction received by bank

Pay from	KRYPTON CHEMISTS LTD MT MTHBMTCA006-050587-001 EUR
Instruction reference number	03396OC01RVX
Transaction type	Eurozone-SEPA payment
Total amount	EUR 118.00
Expected value date	Tue 22 Aug 2023 This is the date we expect to debit your account. Please ensure that the debit account has enough funds, otherwise the payment will be rejected.
Total entries	1

### Transactions

Entry	Beneficiary	Payment details	Amount (EUR)
1	Beneficiary name: Cashier Malta Government IBAN: MT55MALT011000040001EURCMG5001H Reference: PCR CPSU6705.23		118.00

Time of report: 22 Aug 2023 09:16:26 GMT