



Public Contracts Review Board
Department of Contracts
Notre Dame Ravelin
Floriana VLT2000

29 August 2023

Dear Sirs,

Re: Tender for the Supply of Disposable Sharp Containers – 11 Litres with Reference Number Cft020-0267/22 – CPSU5439/2022 (the “Tender”)

1. We have been instructed by **Krypton Chemists Limited (C 8388)** (the “Appellant”) to file an appeal in terms of Regulation 270 of the Public Procurement Regulations (the “PPR”) in connection with the above-captioned Tender.
2. On 1 March 2022, the Central Procurement and Supplies Unit (the “Contracting Authority”) published the above-captioned Tender for the supply of disposable sharp containers. The estimated procurement value for this call for Tenders was €70,000 (excluding VAT) for an estimated quantity of 18,000 units. The Tender was to be awarded to the cheapest technically and administratively compliant bid.
3. Section 3 – Specifications of the Tender required that the product offered by bidders would satisfy, amongst others, the following technical specifications:

2.0	Technical specifications		
2.1	Must fully comply with the full ISO 23907 standard. documentation to this effect must be provided with the submission	N/A	Mandatory
2.2	Includes a handle as well as a lid that seals and locks after use	N/A	Mandatory

4. On 22 March 2022, the Appellant submitted its bid for this Tender along with 7 other economic operators.

Bidder	TID	Financial Offer (€)
O.K. LTD	170915	36180.00
IHD Health Corporation	170891	59400.00
IHD Health Corporation	170779	59400.00
Cherubino Ltd.	170870	69724.80
Jamesco Trading Co Ltd	170286	71460.00
KRYPTON CHEMISTS LTD	170533	75600.00
E.J. BUSUTTIL LIMITED	170745	77148.00
Exportera Trading	170959	85470.00

E.J. BUSUTTIL LIMITED	170746	87552.00
Pharma-Cos Limited	170894	111600.00

5. On 21 August 2023, the Appellant received a letter of rejection (attached and marked as "Document KCL1") from the Contracting Authority whereby it was informed that its bid was being rejected on the basis that such bid was not technically compliant.

In the same letter, the Contracting Authority informed the Appellant that the Tender was being recommended for award to Pharma-Cos Limited (the "Recommended Bidder"). The Recommended Bidder submitted the most expensive financial offer for this Tender.

6. The reason for technical non-compliance was: "*Samples received and reviewed. Not compliant with specifications as the large lid does not seal and lock*".
7. The Appellant is aggrieved by the Contracting Authority's decision of 21 August 2023 and this for the following reasons.
8. The Appellant submits that the product proposed in its bid complies with ISO 23907 and applicable laws and regulations, and therefore, the product's lid will seal and lock when permanently closed. This is clearly and unambiguously stated in the technical literature submitted by the Appellant in its bid.

For the avoidance of doubt, the technical literature submitted by the Appellant with its bid is strictly confidential and it is not to be disclosed to any party or entity other than this Honourable Board.


9. The Appellant further submits that the evaluation committee should have been able to achieve the seal and lock after use by following the product's instructions for use to the letter. This shall be proven during proceedings.

THEREFORE, in view of the above and for other reasons that may be brought in due course at law, the Appellant humbly requests that this Public Contracts Review Board:

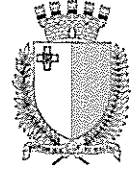
- a. declares that the Contracting Authority's decision of 21 August 2023 is wrong and/or unlawful;
- b. consequently, quashes the Contracting Authority's decision of 21 August 2023;
- c. orders the refund of the deposit paid to the Appellant;

subject to any declaration or order as it deems fit and opportune.

Yours sincerely,
Ganado Advocates


Dr. Clement Mifsud-Bonnici
(cmfsudb@ganado.com)


Dr. Calvin Calleja
(ccalleja@ganado.com)



CFT Reference: Cft020-0267/22 – CPSU5439/2022

Date: 21st August, 2023

Messrs KRYPTON CHEMISTS LTD

Re: TENDER FOR THE SUPPLY DISPOSABLE SHARP CONTAINER -11 LITRES

Reference is made to your offer made in respect to the abovementioned tender.

The Departmental Contracts Committee (DCC) - Ministry for Health has accepted the recommendation of the Evaluation Committee, to reject the offer submitted by your organisation for the tender in caption.

Reason for Rejection: Samples received and reviewed. Not compliant with specifications as the large lid does not seal and lock.

For your information the Evaluation Committee recommended that the contract should be awarded to Pharma-Cos Limited at pack of 20 units is at €124.

If you intend to object to this decision, the Public Procurement Regulations allow for an official objection which in this case has to be lodged electronically with the Public Contracts Review Board by sending an email on: info.pcrb@gov.mt by noon of 31st August, 2023 against a deposit of €560.

Payments are to be made through bank transfer in terms of the following details:

Name of Account Holder	Cashier Malta Government
Name of Bank	Central Bank of Malta
Address of Bank	Castille Place, Valletta
Account Number	40001EUR-CMG5-001-H
BIC	MALT MT MT
IBAN Code	MT55MALT011000040001EURCMG5001H
Bank Code	01100

The official schedule can be accessed on the website: www.etenders.gov.mt.

Although we have not been able to make use of your services on this occasion, I trust that you will continue to take an active interest in our initiatives.

Yours sincerely

Marika Cutajar

Chairperson
Evaluation Committee



Eurozone-SEPA payment

You have authorised this payment

The status for payment 26076OJ00J3B is: Forward dated instruction received by bank

Pay from	KRYPTON CHEMISTS LTD MT MTHBMTCA006-050587-001 EUR
Instruction reference number	26076OJ00J3B
Transaction type	Eurozone-SEPA payment
Total amount	EUR 560.00
Expected value date	Tue 29 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: CPSU5439.2022		560.00

Time of report: 29 Aug 2023 04:27:42 GMT