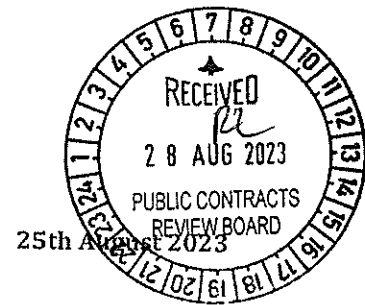


IN THE PUBLIC CONTRACTS REVIEW BOARD



Re: Cft020-3981/23 (CPSU6705/23) Lot 2 - Tender for the Supply of Non-Adherent Tulle Dressing Containing Silver 10cm x 10cm

Reply of the **Central Procurement and Supplies Unit (CPSU)** on behalf of the Department of Health to the reasoned application lodged by Krypton Chemists Ltd (the applicant) in terms of regulation 262 of the Public Procurement regulations (PPR) in relation to the specifications of the call for tenders in caption.

On the 8th of August 2023 a call for tenders for the for the Supply of Non-Adherent Tulle Dressing Containing Silver was published, with 2 separate lots, one for dressings of size 5x5cm and a second lot of dressings size 10x10cm;

During the clarification period the applicant submitted a request for clarification, asking if plus or minus tolerance is being considered as there are alternatives of size 10x12cm. Applicant also asked for reasons if request is rejected.

CPSU answered that: *"Unfortunately, it is not acceptable [and] that the product should be according to the published specifications. The reasons from a clinical point of view a wound product has to be big enough to cover the entire 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"*

Applicant submitted further requests for clarifications which have not yet been answered and also filed its application before this Honourable Board arguing that a +/- tolerance should have been included in the specifications.

CPSU humbly disagrees and is filing the below submissions.

Submissions:

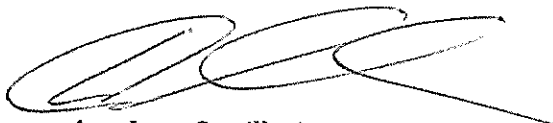
1. CPSU submits that the applicant's claim that the specifications are artificially narrowing competition is unfounded in fact and at law;
2. CPSU submits that in purchasing any product, but especially medical devices which come in sizes, a line has to be drawn somewhere and is drawn at a point in all similar tenders;
3. Such limit should not be considered as a limitation but an indication of the exigencies of the contracting authority;

4. As explained its clarification reply the contracting authority is seeking to purchase dressing in 2 sizes 5x5 and 10x10, to cater for different situations and to that these dressing sizes do not overlap;
5. The applicant requested the contracting authority to consider a plus or minus tolerance. Such a tolerance, let's use the example of 2 centimetres plus or minus in both lots, could lead to a 7cm dressing in the first lot and an 8cm dressing in the second lot which would lead to the procurement of almost identical dressing sizes despite the contracting authority's intentions of having 2 different sizes. In anticipation to an argument that the contracting authority should have included plus tolerance only, if this was of 2cm, this could still lead to potentially a 7cm and a 10cm, which is still not what the contracting authority was after;
6. Moreover, what the applicant is requesting is an ad hoc specification for its product. If the Contracting authority permitted a 10%/1cm plus or minus tolerance, the applicant's product would evidently still not be up to the requested size requirement. If the contracting authority allowed for a 20%/2cm increase tolerance, suppliers of different larger size dressing could potentially object claiming discrimination in their product's regard;
7. The contracting authority's main argument is therefore that a line should be drawn somewhere and drawing a line is not artificial narrowing of competition, now discrimination of any kind. The drawn line the natural condition imposed by a contracting authority in order to procure what it needs;
8. In conclusion, CPSU submits that the sizes chosen are standard sizes and do give room for a competitive process, as always was the case in previous calls with the same sizes.

For the above reasons and submissions which will be further explained and evidenced during the sitting, CPSU humbly requests that the application ought to be rejected and the tender document confirmed as published.

CPSU reserves the right to make additional submissions, orally or in writing and to present evidence to sustain its position.

With Respect.



Avv. Leon Camilleri
leon@360legalmalta.com
204/3 Old Bakery Street
Valletta