



04th September 2023

Public Contracts Review Board
Notre Dame Ravelin,
Floriana,
Malta

Krypton Chemists Limited [C-8388]

vs

[1] Central Procurement & Supplies Unit; and

[2] Pharma-Cos Limited [C-2804]

CPSU 5439/2022

Tender Name: Tender for the supply of disposable sharp containers – 11 litres

LETTER OF REPLY

Whereas, the Central Procurement & Supplies Unit (*hereinafter* **CPSU**) issued a call for tenders for the supply of disposable sharp containers – 11 litres

Whereas, Messrs. Pharma-Cos Limited (*hereinafter* "**recommended bidder**") were recommended for award by virtue of a letter dated 21st August 2023;

Whereas, by means of a letter dated 29th August 2023, Krypton Chemists Limited (*hereinafter* "**appellants**") filed an objection with the Public Contracts Review Board (*hereinafter* "**PCRB**");

Whereas the recommended bidder is submitting its reply, in accordance with article 276[c] of the public procurement regulations (*hereinafter* "**PPR**");

1. **Preliminary**

- 1.1 By virtue of a letter dated 04th September 2023, CPSU had been requested to provide the information in relation to the brand, make and model number submitted by Krypton Chemists Limited;
- 1.2 By the date of submission of this reply, the information requested has not been provided, and thereby PCRB is hereby being requested to render an interlocutory decree, through which and on the basis of *inter alia* article 40 of the Public Procurement Regulations [PPR], CPSU is ordered to provide the requested information to the recommended bidder;

2. **Mandatory requirement**

- 2.1 Through section 3 of the tender document [Specifications], the contracting authority made it clear that:

2.2	Includes a handle as well as a lid that seals and locks after use	N/A	Mandatory
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- 2.2 Whilst the recommended bidder has no access or visibility to the bid of the appellant company, in accordance with article 39 of the PPR, all bidders are to be treated equally and in a transparent manner – thus the samples [as produced by the tenderers] were all analysed and evaluated in accordance with the same technical specifications;
- 2.3 The appellant seems to suggest that the ISO certification should be deemed as sufficient to satisfy the requirement – this suggestion is erroneous because of the following:

FIRSTLY ISO certification provides documentary evidence that the product on offer is compliant with certain standards, however it is the sample analysis which provides the appropriate review and subsequent compliance with the tender requirements;

SECONDLY ISO certification provided was to ascertain compliance with provision 2.1 of Section 3 [Specifications], whilst the rejection was related to provision 2.2 Section 3 [Specifications];



THIRDLY The discrepancy between the technical literature and the sample review has been a subject previously determined decisions of the PCRB, and sample analysis has been determined as an accepted method to certify compliance [or otherwise] with tender requirements;

3 Doctrine of self-limitation

3.1 The doctrine of self-limitation is an important public procurement principle which has been referred to by this honourable Board on various occasions, which seeks to ensure that tenderers are adjudged only on the basis of conditions stipulated within the tender document, this will ensure predictability and transparency;

3.2 In the recent PCRB decision with number Case 1665 of 2021 [27th December 2021], this Honourable Board held that:

'This Board opines that the Evaluation Committee did not observe the principle of Self-Limitation when it deemed the Appellant's offer as technically non-compliant when it adjudged the equipment of the Appellant company on issues not included within the Tender Dossier'

3.3 In view of the above, if the evaluation committee had to decide otherwise, it would infringe this doctrine, as it would be determining an evaluation based on specifications and conditions not contemplated within the tender document;



NOWTHEREFORE, whilst reserving the right to put forward further submissions and this in view of the lack of information available to Pharma-Cos Limited, the recommended bidder is hereby requesting the PCRB to reject the appeal filed by the appellant.

A handwritten signature in black ink, appearing to read 'M. Paris', is written over a faint, dotted-line signature.

Dr Matthew Paris LL.D
matthew@dalliparis.com

- Requested Testimony by:** (i) Representative of the Evaluation committee:
(ii) Representative of the Appellant company:
(iii) Representative of the Recommended bidder/Supplier: