

IN THE PUBLIC CONTRACTS REVIEW BOARD

4th September 2023

Re: 082- Objection- Cft020-0267/22-CPSU5439/2022-Tender for the Supply of Disposable Sharp Containers- 11 Litres.

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 objector).

On the 1st of March 2022 a call for tenders for the supply of Disposable Sharp Containers- 11 Litres was issued.

A number of bids were submitted and a recommendation was made in favour of the offer made by Pharma-Cos Ltd (Recommended bidder) being the cheapest priced offer satisfying the administrative and technical criteria, by means of a letter dated 21st August 2023;

The Objector's offer was rejected due to not being technically compliant. The reason given was the below:

"Samples recieved and reviewed. Not compliant to specifications as large lid does not seal and lock."

The objector felt aggrieved with the decision of the evaluation committee and filed its objection claiming that its product does satisfy the technical criteria of the tender.

CPSU humbly disagrees with the objection and is presenting the below submissions:

Submissions

1. CPSU submits that after sample testing it was found that the product offered was not effective for its purpose and did not seal and lock as requested;
2. The fact that the product conforms with a particular ISO standard does not automatically mean that the product is compliant with the tender specifications. Sample testing serves to determine whether the product is adequate for the required purpose or not;
3. As will be further explained and testified during the sitting, the product was tested by Ms. Deborah Maria Xuereb, Advanced Practice Nurse with vast experience who found the product not as effective as it should be in relation to the lock and seal;
4. CPSU submits that sample testing has been long recognised by this Honourable Board as one of the most effective methods of evaluation. The below are 2 examples from numerous decisions where sampling was instrumental for a proper, correct and fair evaluation process:



Case 1804 - Most relevant to this, was the demonstration provided by Mr Jesmond Seychell, which proved without a shadow of a doubt that the offer as submitted by the Preferred Bidder, was compatible with the requirements and objectives of the tender procedure. Also, a high number of samples were tested during the evaluation stage.

Case 1660 - The Fact that; 1) Ms Wubbels has 30 years experience in the field including 10 years in tissue viability, 2) the samples were tested in different scenarios, removed any subjectivity

5. Moreover, CPSU submits that the fact that the product will be used by end users in hospitals and clinics, there is no better sample testing than by the users themselves;

CPSU is hereby reserving its right to present evidence both written and orally to substantiate their submissions in relation to this objection and to present further submissions orally and in writing if authorised by this Honourable Board.

In view of the above, the objection lodged by the Objector ought to be rejected in full, whilst the decision of the Contracting Authority and the Evaluation Board confirmed, and the relevant deposit forfeited.

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