



13 November 2023

Public Contracts Review Board
Notre Dame Ditch
Floriana FRN 1601
Malta

Dear sirs

Re: Negotiated Procedure for the Supply, Delivery and Distribution of Incontinence Products for Senior Citizens and Persons with Disabilities in Malta – AACC – Ref. NP14/2023 (“Negotiated Procedure”)

1. We have been instructed by **Krypton Chemists Limited (C8933)** (the “**Claimant**”) to lodge an application in terms of Regulation 270 of the Public Procurement Regulations in connection with the above-captioned Negotiated Procedure.
2. The Claimant is aggrieved by the Contracting Authority’s decision to resort to a negotiated procedure without prior publication and to award the Negotiated Procedure to Pharma-Cos Limited (the “**Incumbent Contractor**”). The Claimant is further aggrieved by the Contracting Authority’s failure to disclose the Requested Information (as defined below).

A. Background

3. The Incumbent Contractor, is the incumbent supplier of the subject-matter of the Negotiated Procedure following an open procurement procedure issued on 26 January 2018: CT2118/2017 *Tender for the Supply, Delivery and Distribution of Diapers, Pads, Pull ups and Inco sheets for Senior Citizens and Persons with Disability* (the “**2018 Tender**”).
4. The 2018 Tender was awarded to the Incumbent Contractor on 16 July 2020 (after no less than 2 rounds of appeal proceedings brought by the Claimant were exhausted).¹ The financial value of the 2018 Tender, exclusive of variations, was €4,530,432.36.

The duration of the 2018 Tender was for a 3-year period which has lapsed around 16 July 2023.

5. On 11 August 2023, the Contracting Authority issued CT2238/2023 *Tender for the Supply, Delivery and Distribution and Incontinence Products for Senior Citizens and persons with Disabilities in Malta* (the “**2023 Tender**”). The Contracting Authority replied to all requests for clarification made by interested economic operators.

¹ *Krypton Chemists Limited vs Director of Contracts et*, Court of Appeal (4 March 2019) [Ref. 336/2018]; Case 1321 *Krypton Chemists Limited vs Director of Contracts et*, Public Contracts Review Board (18 June 2019).

6. The 2023 Tender was set to close on 30 October 2023. The deadline for any economic operator to lodge an application in terms of Regulation 262 of the Public Procurement Regulations had expired.
7. But, the 2023 Tender was suspended by the Department of Contracts after the Incumbent Contractor requested, without any basis at law, the issue of a precautionary warrant of prohibitory injunction on 12 October 2023 (the "**injunction**").²
8. Unbeknownst to the Claimant, on the same day, and on 12 October 2023, the Contracting Authority invited (presumably, exclusively) the Incumbent Contractor to participate in the Negotiated Procedure.
9. Separately, a few days later on 17 October 2023, the Department of Contracts suspended the 2023 Tender due to the Injunction by extending the closing date of the 2023 Tender to 30 November 2023.
10. Following the extension of the closing date of the 2023 Tender, the Incumbent Contractor then voluntarily withdrew the Injunction on 18 October 2023—just on the eve of the scheduled hearing before the First Hall Civil Court.
11. On 20 October 2023, the Incumbent Contractor filed an application in terms of Regulation 262 of the Public Procurement Regulations with the intention of stalling the 2023 Tender.
12. The Incumbent Contractor's application in terms of Regulation 262 of the PPR is pending before this Honourable Board.
13. Around this time, the Claimant, out of pure coincidence, learnt of this Negotiated Procedure through ePPS. The Claimant was not invited to this Negotiated Procedure, and therefore, the Claimant has no information about it other than what appeared publicly on ePPS.³
14. On 24 October 2023, and after just learning of this Negotiated Procedure, the Claimant wrote to the Contracting Authority soliciting it:
 - a. not to award the Negotiated Procedure to the Incumbent Contractor; and rather
 - b. to issue an Urgent Request for Quotations for the supplies subject-matter of the Negotiated Procedure open to any eligible economic operators on the market, until the 2023 Tender is adjudicated.
15. The Contracting Authority never answered the Claimant's letter of 24 October 2023.
16. On 2 November 2023, the Contracting Authority issued a decision recommending the award of the Negotiated Procedure to the Incumbent Contractor ('**Exhibit KCL-1**') by accepting its financial offer of **€2,850,000**.

² *Pharma-cos Limited vs Direttur Generali tal-Kuntratti et noe*, First Hall Civil Court [Ref. 1960 / 2023 /1].

³ Exhibit KCL-2.

The Contracting Authority communicated this decision by issuing a notice purporting to be a voluntary ex-ante transparency notice and put the market on notice that any appeals in terms of Regulation 270 of the PPR ought to be filed by 13 November 2023.

17. The Claimant was not notified of this decision. The Claimant learnt about this decision, again coincidentally, by checking on ePPS.
18. On 7 November 2023, the Claimant wrote again to the Contracting Authority and put it on notice of its intention to challenge the Negotiated Procedure and the recommended award of the Negotiated Procedure to the Incumbent Contractor.

The Claimant also requested the disclosure of the following information and, or documentation:

- a. whether the Contracting Authority has obtained the approval of the Director of Contracts prior to the issue of the Negotiated Procedure in terms of Regulation 150 of the PPR, and if so, to disclose the duly substantiated request submitted in terms of Regulation 150(2) of the same PPR;
- b. on which ground permitted by Regulation 153 of the PPR has the Contracting Authority relied on to issue the Negotiated Procedure, and, the reasons for doing so;
- c. the procurement documentation of the Negotiated Procedure, including, the Financial Bid Form template;
- d. the brand and model of the products offered by the Incumbent Contractor in its bid;

by Wednesday 8 November 2023 at 12:00 (CET) (the '**Requested Information**').

19. On 8 November 2023, the Contracting Authority did reply to the Claimant and stated that it will provide the information requested by end of business on 9 November 2023.
 20. The Contracting Authority did not provide the requested information by 9 November 2023.
 21. To date, and as of filing, the Claimant remains without the information and documentation requested.
 22. The Claimant is aggrieved by the decisions and conduct taken by the Contracting Authority with respect to this Negotiated Procedure.
- B. First Ground of Appeal: The Contracting Authority could not award the Negotiated Procedure to the Incumbent Contractor**
23. The Claimant submits that the Contracting Authority is recommending the award of this Negotiated Procedure to the Incumbent Contractor without this being permissible at law.

24. That the Negotiated Procedure could have been awarded without prior publication in terms of Regulations 150 *et seq.* of the PPR which require:
- a. The Director General (Contracts)'s prior approval to use the negotiated procedure without prior publication. This approval must be requested and provided in writing **in advance**. The Contracting Authority must have sent a duly substantiated request to substantiate the need to use this procedure.
- and
- b. That one of the grounds provided for in Regulation 153 of the PPR for the use of the negotiated procedure without prior publication subsists.

25. The Claimant submits that according to Regulation 150(1) of PPR, the prior approval of the Director General (Contracts) must have been obtained for the use of a negotiated procedure without prior publication, and, that it is practice, that the Director General's prior approval is also obtained prior to the award of any public contract pursuant to negotiated procedure.

This is not just a formalistic tick-the-box exercise. It is an approval which is required as a matter of law; *ad validitatem*.

26. The Claimant submits that it has no evidence in hand, at the date of filing of this application, that this prior approval was duly obtained. On this basis, the Claimant is assuming that such a prior approval was *not* obtained since, as shall be explained in the subsequent paragraph, any such request (if made at all) could not have substantiated the use of the negotiated procedure without prior publication.
27. The Claimant has gone through each ground exhaustively listed in Regulation 153 of the PPR (in the case of public supply contracts) and none of those grounds exist in the case of the Negotiated Procedure:
- a. Regulation 153(a) is inapplicable because the 2018 Tender was awarded according to law and no other open or restricted procedure was issued since then.
 - b. Regulation 153(b) is inapplicable since competition in the market for the supply of the subject-matter of the Negotiated Procedure is plenty and immediately available.
 - c. Regulation 153(c) is inapplicable since there is evidently no case of extreme urgency as contemplated in the law—which as this Honourable Board is aware, has been interpreted restrictively by jurisprudence of the Courts of Justice of the European Union. It is opportune to raise, at this early stage, that urgency caused by the contracting authority's negligence or delay to issue a new tender does not qualify as "extreme urgency".

Further, this "extreme urgency" cannot be caused by the very same Incumbent Contractor, and conversely, the Incumbent Contractor cannot benefit from its deliberate actions to stall the 2023 Tender—*ex turpi causa non oritur* and, or *fraus omnia corrumpit*.

- d. Regulation 153(d) is inapplicable since the products subject-matter of the Negotiated Procedure are off-the-shelf products and definitely not "manufactured purely for the purpose of research, experimentation, study or development".
 - e. Regulation 153(e) is inapplicable because there is no existing contract, the 2018 Tender has lapsed, and in any case, there is no case of "*incompatibility or disproportionate technical difficulties in operation and maintenance*".
 - f. Regulation 153(f) is inapplicable because the products subject-matter of the Negotiated Procedure are not quoted or purchased on a "commodity market".
 - g. Regulation 154(g) is inapplicable since the Incumbent Contractor is not, according to the Claimant's knowledge, in winding-up or similar procedure.
28. Further, the "voluntary ex-ante transparency notice" purportedly uploaded on ePPS by the Contracting Authority is not valid given that it does not comply with the standard form and does not provide the minimum information a VEAT notice should disclose. The notice should also have been published on the Official Journal of the European Union.
29. Therefore, and on this basis, the Contracting Authority had no basis or grounds to recommend the award the Negotiated Procedure to the Contract Beneficiary by way of a "negotiated procedure without prior publication" in accordance with law.
- C. Second Ground of Appeal: The Contracting Authority has not used the VEAT notice mandatorily required by law**
30. The Claimant submits that the Contracting Authority has failed to use the VEAT notice mandatorily required by law.
31. Article 3a of the Remedies Directive provides:

Content of a notice for voluntary ex ante transparency

The notice referred to in the second indent of Article 2d(4), the format of which shall be adopted by the Commission in accordance with the advisory procedure referred to in Article 3b(2), shall contain the following information:

- (a) the name and contact details of the contracting authority;*
- (b) a description of the object of the contract;*
- (c) a justification of the decision of the contracting authority to award the contract without prior publication of a contract notice in the Official Journal of the European Union;*
- (d) the name and contact details of the economic operator in favour of whom a contract award decision has been taken; and*
- (e) where appropriate, any other information deemed useful by the contracting authority*

32. The standard form is attached to this application as Exhibit KCL-3.
33. The "voluntary ex-ante transparency notice" purportedly uploaded on ePPS by the Contracting Authority is not valid given that it does not comply with the standard form and does not provide the minimum information a VEAT notice should disclose.
34. Further, the notice should also have been published on the Official Journal of the European Union. The Claimant has found no such notice published on the OJEU.

D. Third Ground of Appeal: The Contracting Authority has not disclosed the Requested Information

35. The Claimant submits that the Contracting Authority has breached its duty at law to disclose the Requested Information, and consequently, the Claimant's right to an effective judicial protection is breached.
36. The requested disclosures are necessary to ensure the efficacy of the remedies framework provided in the PPR to which the Claimant is entitled. The Claimant must be aware of this documentation and/or information to be able to effectively scrutinise the Contracting Authority's decisions and conduct.
37. The Requested Information simply do not (and cannot) constitute commercially sensitive information or a trade secret which may prejudice the legitimate commercial interests of the Incumbent Contractor, if disclosed.
38. This Requested Information is essential for the Claimant to determine whether to lodge an appeal with this Honourable Board against the Contracting Authority's decision to issue the Negotiated Procedure and to award the same to the Incumbent Contractor and whether to raise additional grounds of appeal.
39. The fact that the Claimant has absolutely no information about the Negotiated Procedure has the effect of impeding or even in this case, preventing, the effective use of its remedies.
40. In the absence of sufficient information enabling it to ascertain whether the decisions and conduct of the Contracting Authority are vitiated by errors or unlawfulness, the Claimant cannot rely on its right in terms of law to an effective review.
41. Without the Requested Information, the Claimant being effectively deprived of its right to lodge a substantive objection in terms of the PPR against the Contracting Authority's decisions and conduct.
42. Therefore, apart from requesting this Honourable Board to order the Contracting Authority to disclose the Requested Information, the Claimant is hereby fully reserving its right to raise additional grounds of appeal in light of such disclosure.

E. Interim Measure: The Contracting Authority should procure from multiple suppliers

43. The Claimant understands that the Contracting Authority cannot end up without stock of the products subject-matter of the 2023 Tender. But the Claimant disagrees that the

Contracting Authority should procure such products without a competitive process from the Incumbent Contractor who is stalling the 2023 Tender.

44. To this end, the Claimant demands that this Honourable Board, by way of an interim measure in terms of Regulation 90(4) of the PPR, orders the Contracting Authority to purchase the products subject-matter of the 2023 Tender following a competitive process.
45. The Incumbent Contractor cannot be allowed to remain the incumbent and exclusive supplier to the Contracting Authority; this would distort the market and give economic advantage, in the form of EU State aid, to the Incumbent Contractor on the eve of the 2023 Tender.

THEREFORE, the Claimant humbly demands that this Honourable Board should:

- (a) by way of an interim measure in terms of Regulation 90(4) of the PPR, order that the Contracting Authority takes all steps necessary to purchase the products subject-matter of the Negotiated Procedure following a competitive process;
- (b) declare that the Contracting Authority has breached its duties at law towards the Claimant to disclose the Requested Information;
- (c) order the Contracting Authority to disclose the Requested Information to the Claimant;
- (d) declare that the issue of the Negotiated Procedure is wrong and, or illegal;
- (e) declare that the Contracting Authority's recommendation of the Negotiated Procedure to the Incumbent Contractor is wrong and, or illegal;
- (f) cancel and revoke the Negotiated Procedure and, or the proposed award of the Negotiated Procedure to the Incumbent Contractor;
- (g) order the refund of the deposit paid by the Claimant;

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

Yours sincerely,
Ganado Advocates


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Date: 02nd November 2023

In terms of Regulations/Clauses 270-276 of Part IX of L.N 352 of 2016, the public is hereby notified that the following award will be made as indicated below:

Advert No	Subject	Decision		Recommended Tenderer	Estimated Potential cost excl. VAT
		Award	Cancellation		
NP14/2023	Negotiated Procedure for the Supply, delivery and distribution of Incontinence Products for Senior Citizens and Persons with Disabilities in Malta - AACC	Yes	No	Pharma-Cos Ltd	€2.850.000.00

****Notification****

This direct award is subject to a "voluntary Ex-Ante Transparency Notice" (VEAT Notice) where economic operators have the opportunity to challenge the decision of the award. In view of this a minimum 10-day standstill period, that is till Monday 13th November 2023, before the contract is awarded must be observed.

Mary Grace Balzan
 Procurement Manager 1
 Active Ageing & Community Care


FOR HEAD OF CONTRACTING AUTHORITY

Opened Tender Details

CFT TITLE: **Negotiated Procedure for the Supply, Delivery and Distribution of Incontinence Products for Senior Citizens and Persons with Disabilities in Malta - AACC (Status: Evaluation)**

CFT CA UNIQUE ID: NP14/2023

NUMBER OF ENVELOPES: 1

DATE OF PUBLICATION/INVITATION: 12/10/2023 09:06

CLOSING DATE: 19/10/2023 09:30

OPENING DATE: 19/10/2023 10:00

SORT: ENVELOPE (A-Z) ▾

Single	Pharma-Cos Limited	199828	60.26
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Voluntary ex ante transparency notice

- Directive 2014/23/EU
- Directive 2014/24/EU
- Directive 2014/25/EU
- Directive 2009/81/EC

This notice aims at providing voluntary prior transparency as referred to in Article 2d(4) of Directives 89/665/EEC and 92/13/EEC on remedies, and Article 60(4) of Directive 2009/81/EC.

Section I: Contracting authority/entity

I.1) Name and addresses

Official name:		National registration number: ²	
Postal address:			
Town:	NUTS code:	Postal code:	Country:
Contact person:		Telephone:	
E-mail:		Fax:	
Internet address(es)			
Main address: (URL)			
Address of the buyer profile: (URL)			

I.4) Type of the contracting authority (in the case of a notice published by a contracting authority)

<input type="radio"/> Ministry or any other national or federal authority, including their regional or local subdivisions	<input type="radio"/> Regional or local agency/office
<input type="radio"/> National or federal agency/office	<input type="radio"/> Body governed by public law
<input type="radio"/> Regional or local authority	<input type="radio"/> European institution/agency or international organisation
	<input type="radio"/> Other type:

I.5) Main activity (in the case of a notice published by a contracting authority)

<input type="radio"/> General public services	<input type="radio"/> Housing and community amenities
<input type="radio"/> Defence	<input type="radio"/> Social protection
<input type="radio"/> Public order and safety	<input type="radio"/> Recreation, culture and religion
<input type="radio"/> Environment	<input type="radio"/> Education
<input type="radio"/> Economic and financial affairs	<input type="radio"/> Other activity:
<input type="radio"/> Health	

I.6) Main activity (in the case of a notice published by a contracting entity)

<input type="radio"/> Production, transport and distribution of gas and heat	<input type="radio"/> Railway services
<input type="radio"/> Electricity	<input type="radio"/> Urban railway, tramway, trolleybus or bus services
<input type="radio"/> Extraction of gas and oil	<input type="radio"/> Port-related activities
<input type="radio"/> Exploration and extraction of coal and other solid fuels	<input type="radio"/> Airport-related activities
<input type="radio"/> Water	<input type="radio"/> Other activity:
<input type="radio"/> Postal services	

Section II: Object

II.1) Scope of the procurement

II.1.1) Title:	Reference number: ²
II.1.2) Main CPV code: [] [] [] [] [] [] [] [] Supplementary CPV code: ^{1,2} [] [] [] []	
II.1.3) Type of contract <input type="radio"/> Works <input type="radio"/> Supplies <input type="radio"/> Services	
II.1.4) Short description:	
II.1.6) Information about lots This contract is divided into lots <input type="radio"/> yes <input type="radio"/> no	
II.1.7) Total value of the procurement (excluding VAT) Value: [] (Please give the total value of the procurement. For information about individual contracts, please use section V) or Lowest offer: [] / Highest offer: [] taken into consideration Currency: [] [] [] (for framework agreements – total maximum value for their entire duration) (for contracts based on framework agreements, if required – value of contract(s) not included in previous contract award notices)	

II.2) Description¹

II.2.1) Title: ²	Lot No: ²
II.2.2) Additional CPV code(s) ² Main CPV code: ¹ [] [] [] [] [] [] [] [] Supplementary CPV code: ^{1,2} [] [] [] []	
II.2.3) Place of performance NUTS code: ¹ [] [] [] [] [] [] Main site or place of performance:	
II.2.4) Description of the procurement: (nature and quantity of works, supplies or services)	
II.2.5) Award criteria ⁸ (Directive 2014/24/EU / Directive 2014/25/EU) <input type="checkbox"/> Quality criterion – Name: / Weighting: ^{1,2,20} <input type="radio"/> Cost criterion – Name: / Weighting: ^{1,20} <input type="radio"/> Price – Weighting: ²¹ (Directive 2014/23/EU) Criterion: ¹ (award criteria should be given in descending order of importance) (Directive 2009/81/EC) <input type="radio"/> Lowest price <input type="radio"/> The most economically advantageous tender in terms of Criterion: / Weighting: ¹	
II.2.11) Information about options Options <input type="radio"/> yes <input type="radio"/> no Description of options:	
II.2.13) Information about European Union funds The procurement is related to a project and/or programme financed by European Union funds <input type="radio"/> yes <input type="radio"/> no Identification of the project:	
II.2.14) Additional information:	

Section V: Award of contract/concession ¹

Contract No: [] Lot No: ²[] Title:

V.2) Award of contract/concession

V.2.1) Date of conclusion of the contract/concession award decision: (dd/mm/yyyy)			
V.2.2) Information about tenders			
The contract has been awarded to a group of economic operators <input type="radio"/> yes <input type="radio"/> no			
V.2.3) Name and address of the contractor/concessionaire ¹			
Official name:			National registration number: ²
Postal address:			
Town:	NUTS code:	Postal code:	Country:
E-mail:			Telephone:
Internet address: (URL)			Fax:
The contractor/concessionaire will be an SME <input type="radio"/> yes <input type="radio"/> no (SME – as defined in Commission Recommendation 2003/361/EC)			
V.2.4) Information on value of the contract/lot/concession (excluding VAT)			
Initial estimated total value of the contract/lot/concession: ² []			
Total value of the contract/lot/concession: []			
or			
Lowest offer [] / Highest offer [] taken into consideration			
Currency: [] [] []			
for framework agreements – total maximum value for this lot			
for contracts based on framework agreements, if required – value of contract(s) for this lot not included in previous contract award notices			
V.2.5) Information about subcontracting ³			
<input type="checkbox"/> The contract/lot/concession is likely to be subcontracted			
Value or proportion likely to be subcontracted to third parties ⁴			
Value excluding VAT: [] Currency: [] [] []			
Proportion: []%			
Short description of the part of the contract to be subcontracted:			
(Only in the case of a notice covered by Directive 2009/81/EC)			
<input type="checkbox"/> All or certain subcontracts will be awarded through a competitive procedure (see Title III of Directive 2009/81/EC)			
<input type="checkbox"/> A share of the contract will be subcontracted through a competitive procedure (see Title III of Directive 2009/81/EC)			
Minimum percentage: [] / Maximum percentage: []			
(The maximum percentage may not exceed 30 % of the value of the contract)			

Section VI: Complementary information

VI.3) Additional information: ²

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VI.4) Procedures for review

VI.4.1) Review body		
Official name:		
Postal address:		
Town:	Postal code:	Country:
E-mail:	Telephone:	
Internet address: (URL)	Fax:	
VI.4.2) Body responsible for mediation procedures ²		
Official name:		
Postal address:		
Town:	Postal code:	Country:
E-mail:	Telephone:	
Internet address: (URL)	Fax:	
VI.4.3) Review procedure		
Precise information on deadline(s) for review procedures:		
VI.4.4) Service from which information about the review procedure may be obtained ²		
Official name:		
Postal address:		
Town:	Postal code:	Country:
E-mail:	Telephone:	
Internet address: (URL)	Fax:	

VI.5) Date of dispatch of this notice: (dd/mm/yyyy)

It is the contracting authority's/contracting entity's responsibility to ensure compliance with European Union law and any applicable laws.

¹ please repeat as many times as needed

² if applicable

⁴ if this information is known

⁸ optional information

²⁰ importance may be given instead of weighting

²¹ importance may be given instead of weighting; if price is the only award criterion, weighting is not used

Annex D1 – General procurement

Justification for the award of the contract without prior publication of a call for competition in the Official Journal of the European Union

Directive 2014/24/EU

(please select the relevant option and provide an explanation)

- 1. Justification for the choice of the negotiated procedure without prior publication of a call for competition in accordance with Article 32 of Directive 2014/24/EU**
- No tenders or no suitable tenders/requests to participate in response to
 - open procedure
 - restricted procedure
 - The products involved are manufactured purely for the purpose of research, experiment, study or development under the conditions stated in the directive (for supplies only)
 - The works, supplies or services can be provided only by a particular economic operator for the following reason:
 - absence of competition for technical reasons
 - procurement aiming at the creation or acquisition of a unique work of art or artistic performance
 - protection of exclusive rights, including intellectual property rights
 - Extreme urgency brought about by events unforeseeable for the contracting authority and in accordance with the strict conditions stated in the directive
 - Additional deliveries by the original supplier ordered under the strict conditions stated in the directive
 - New works/services, constituting a repetition of existing works/services and ordered in accordance with the strict conditions stated in the directive
 - Service contract to be awarded to the winner or one of winners under the rules of a design contest
 - Procurement of supplies quoted and purchased on a commodity market
 - Purchase of supplies or services on particularly advantageous terms
 - from a supplier which is definitively winding up its business activities
 - from the liquidator in an insolvency procedure, an arrangement with creditors or a similar procedure under national laws and regulations
- 2. Other justification for the award of the contract without prior publication of a call for competition in the Official Journal of the European Union**
- The procurement falls outside the scope of application of the directive

3. Explanation

Please explain in a clear and comprehensive manner why the award of the contract without prior publication in the Official Journal of the European Union is lawful, by stating the relevant facts and, as appropriate, the conclusions of law in accordance with the directive: (500 words maximum)

Annex D2 – Utilities

Justification for the award of the contract without prior publication of a call for competition in the Official Journal of the European Union

Directive 2014/25/EU

(please select the relevant option and provide an explanation)

- 1. Justification for the choice of the negotiated procedure without prior publication of a call for competition in accordance with Article 50 of Directive 2014/25/EU**
- No tenders or no suitable tenders/requests to participate in response to a procedure with prior call for competition
 - The contract involved is purely for the purpose of research, experiment, study or development under the conditions stated in the directive
 - The works, supplies or services can be provided only by a particular economic operator for the following reason:
 - absence of competition for technical reasons
 - procurement aiming at the creation or acquisition of a unique work of art or artistic performance
 - protection of exclusive rights, including intellectual property rights
 - Extreme urgency brought about by events unforeseeable for the contracting entity and in accordance with the strict conditions stated in the directive
 - Additional deliveries by the original supplier ordered under the strict conditions stated in the directive
 - New works/services, constituting a repetition of existing works/services and ordered in accordance with the strict conditions stated in the directive
 - Service contract to be awarded to the winner or one of winners under the rules of a design contest
 - Procurement of supplies quoted and purchased on a commodity market
 - Purchase of supplies or services on particularly advantageous terms
 - from a supplier which is definitively winding up its business activities
 - from the liquidator in an insolvency procedure, an arrangement with creditors or a similar procedure under national laws and regulations
 - Bargain purchase taking advantage of a particularly advantageous opportunity available for a very short time at a price considerably lower than market prices
- 2. Other justification for the award of the contract without prior publication of a call for competition in the Official Journal of the European Union**
- The procurement falls outside the scope of application of the directive

3. Explanation

Please explain in a clear and comprehensive manner why the award of the contract without prior publication in the Official Journal of the European Union is lawful, by stating the relevant facts and, as appropriate, the conclusions of law in accordance with the directive: (500 words maximum)

Annex D3 – Defence and security

Justification for the award of the contract without prior publication of a call for competition in the Official Journal of the European Union

Directive 2009/81/EC

(please select the relevant option and provide an explanation)

1. Justification for the choice of the negotiated procedure without publication of a call for competition in accordance with Article 28 of Directive 2009/81/EC

- No tenders or no suitable tenders/requests to participate in response to
 - restricted procedure
 - negotiated procedure with prior publication of a contract notice
 - competitive dialogue
- The contract concerns research and development services other than those referred to in Article 13 of Directive 2009/81/EC (for services and supplies only)
- The products involved are manufactured purely for the purpose of research, experiment, study or development under the conditions stated in the directive (for services and supplies only)
- All tenders submitted in reply to a restricted procedure, negotiated procedure with prior publication of a contract notice or competitive dialogue were irregular or unacceptable. Only those tenderers were included in the negotiations which have satisfied the qualitative selection criteria
- The works, supplies or services can be provided only by a particular economic operator for the following reason:
 - absence of competition for technical reasons
 - protection of exclusive rights including intellectual property rights
- The periods for the restricted procedure and the negotiated procedure with prior publication of a contract notice are incompatible with the urgency resulting from a crisis
- Extreme urgency brought about by events unforeseeable by the contracting authority/entity and in accordance with the strict conditions stated in the directive
- Additional deliveries by the original supplier ordered under the strict conditions stated in the directive
- New works/services, constituting a repetition of existing works/services and ordered in accordance with the strict conditions stated in the directive
- Procurement of supplies quoted and purchased on a commodity market
- Purchase of supplies or services on particularly advantageous terms
 - from a supplier which is definitively winding up its business activities
 - from the liquidator in an insolvency procedure, an arrangement with creditors or a similar procedure under national laws and regulations
- Contract related to the provision of air and maritime transport services for the armed forces of a Member State deployed or to be deployed abroad, under the strict conditions stated in the directive

2. Other justification for the award of the contract without prior publication of a call for competition in the Official Journal of the European Union

- The contract has as its object services listed in Annex II B to the directive
- The procurement falls outside the scope of application of the directive

3. Explanation

Please explain in a clear and comprehensive manner why the award of the contract without prior publication in the Official Journal of the European Union is lawful, by stating the relevant facts and, as appropriate, the conclusions of law in accordance with the directive. (500 words maximum)

Annex D4 – Concession

Justification for the award of the concession without prior publication of a concession notice in the Official Journal of the European Union

Directive 2014/23/EU

(please select the relevant option and provide an explanation)

1. Justification for the award of the concession without publication of a concession notice in accordance with Article 31(4) and (5) of Directive 2014/23/EU

No applications, no tenders or no suitable tenders/applications in response to a prior concession award procedure

The works or services can be provided only by a particular economic operator for the following reason:

- concession aiming at the creation or acquisition of a unique work of art or artistic performance
- absence of competition for technical reasons
- existence of an exclusive right
- protection of intellectual property rights and exclusive rights other than those defined in point (10) of Article 5 of the directive

2. Other justification for the award of the concession without prior publication of a concession notice in the Official Journal of the European Union

The procurement falls outside the scope of application of the directive

3. Explanation

Please explain in a clear and comprehensive manner why the award of the contract without prior publication in the Official Journal of the European Union is lawful, by stating the relevant facts and, as appropriate, the conclusions of law in accordance with the directive: (500 words maximum)



Eurozone-SEPA payment

You have authorised this payment

The status for payment 47156QM016MF is: Forward dated instruction received by bank

Pay from	KRYPTON CHEMISTS LTD MT MTHBMTCA006-050587-001 EUR
Instruction reference number	47156QM016MF
Transaction type	Eurozone-SEPA payment
Total amount	EUR 14,250.00
Expected value date	Mon 13 Nov 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: NP14/2023		14,250.00

Time of report: 12 Nov 2023 11:07:12 GMT