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Public Contracts Review Board
Notre Dame Ravelin
Floriana VLT2000
Malta

27 November 2023

Dear Sirs,

Re: Tender for the Supply of Pneumococcal Polysaccharide Conjugate Vaccines – Ref. CT2333/2023 (the "Tender")

1. We have been instructed by **VIVIAN Corporation Limited (C68)**, in its capacity as an interested party (the '**Interested Party**'), to lodge the present reply in response to the application filed by Associated Drug Company Limited (the '**Appellant**') in relation to Lot 1 of the Tender.

2. The Interested Party submits that the application filed by the Appellant is unfounded on the merits and this for the following reasons.

3. In many ways, the Appellant's application runs contrary to the objectives of the public procurement legislative framework *inter alia* Regulation 262 of the PPR. Rather than opening the technical specifications to allow for more competition, the Appellant is attempting to engineer a "contradiction" in the tender conditions to close competition and to make sure that its product is the only one admitted to this race.

4. First, there is no contradiction, as submitted by the Appellant, in the tender conditions. The Tender clearly requires, as a minimum, a 10-valent pneumococcal polysaccharide conjugate vaccine for Lot 1:

    a. Section 1 – Instructions to Tenderers, 1. General Provisions, Clause 1.1:

1.1 The subject of this tender is the supply of Pneumococcal Polysaccharide Conjugate Vaccines for a period of 36 months with an option for a further extension of 6 months.

Estimated Quantity: Lot 1 - Pneumococcal Polysaccharide Conjugate Vaccines (adsorbed) at least 10-valent - 42,000 units.

    b. Section 3 – Specifications/Terms of Reference (Note 3), 1.1 Product Specifications Lot 1:

Item reference in Section 3 - the Specifications Section	
Item Name and description:	Pneumococcal polysaccharide conjugate vaccine (adsorbed) at least 10-valent
S-Code:	IPV075

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c. Section 3 – Specifications/Terms of Reference [Note 3], 1.1 Product Specifications Lot 1:

2.0	**Technical specifications:**		
2.1	Pneumococcal polysaccharide conjugate vaccine (adsorbed),	NA	Mandatory
2.2	at least 10-valent,	NA	Mandatory

In question 3 in Clarification Note 3, an economic operator, presumably the Appellant, asked the contracting authority to "*specify which guidelines have been taken into consideration for the specifications of Lot 1 and Lot 2*". The Contracting Authority replied by that guidelines issued by CDC and EMA were duly considered.

The term "consideration" connotes that the guidelines were "thought about" when the technical specifications were drafted by the Contracting Authority. The Contracting Authority may have taken on board some of those guidelines when drafting the technical specifications, but it was well within its discretion when it decided not to.

The Contracting Authority did not say, in the Tender, that the vaccine to be offered under Lot 1 needs to comply or to conform with CDC guidelines.

As such, the CDC guidelines are not part of the technical specifications for Lot 1 of the Tender.

Therefore, there is no case of "*error [...] of a particular term or clause*" in the Tender in terms of Regulation 262(1)(d) of the PPR, as the Appellant alleges in its second requested relief.

5. Second, the Tender, as drafted, is compliant with the PPR and the general principles of public procurement law: promotion of genuine competition, equal treatment and transparency.

The technical specifications for Lot 1, in particular, the minimum specification for "*at least 10-valent*" is fair, open and non-discriminatory.

The Appellant's product, which is a 15 valent vaccine, is not excluded by the technical specifications for Lot 1. Therefore, there is no case of "*clauses [..] which are proven to be impossible to perform*" in terms of Regulation 262(1)(a) of the PPR, as the Appellant alleges in its first requested relief.

Rather, the Appellant is seeking to change the technical specifications for Lot 1 such that it excludes *other* vaccines from Lot 1, and thereby, artificially narrowing competition and unduly favouring its product.

6. Third, as shall be shown during the proceedings, this Honourable Board, and the Court of Appeal, has already rejected similar applications in the past, in part, for the reasons aforesaid.

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THEREFORE, for the above-mentioned reasons and for other reasons which may be brought during the proceedings, the Interested Party respectfully submits that this Honourable Board ought to reject the Appellant's application.

Yours sincerely,
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