

## No. 9

Belshaw Limited - Complainant

Vs

Regional Health Directorate, Ghana Health Service - Respondent

### Tender:

*Complaint on Lot No. 3 for the supply of 40,000 gallons of bleach over a 1-year period (Contract No. GAR.GHS/GD/002/10)*

### **Brief Facts:**

The Complainant, Belshaw Ltd. (*Complainant*) participated in a Tender by the Greater Accra Regional Health Directorate and quoted for Lot 3, which was for the supply of 40,000 gallons of bleach over a twelve month period, among other Lots.

The Greater Accra Regional Health Directorate of the Ghana Health Service (*Respondent*) informed the Complainant that its Tender for Lot 3 was unresponsive because the sample submitted did not conform to specifications set out in the Tender document. An active chlorine test conducted by the Food & Drugs Board (FDB) on bleach samples submitted by the Respondent as part of the tender process, indicated that the sample from Belshaw Ltd. contained 2.5%W/V Active chlorine which fell well below the required specification of 5.5% W/V Active chlorine.

The Complaint petitioned against the Respondent's decision based on a separate active Chlorine Test result that the Complainant had independently obtained from the Ghana Standards Board (GSB). This test result indicated that, that sample contained available Chlorine of 8.20%, a level well above the required specification of 5.5% W/V Active Chlorine stated in the Tender Document.

In its petition, the Complainant sought cancellation of the contract awarded to the winning tenderer, arguing that the award had been wrongly based on laboratory test results from the FDB instead of the GSB. Complainant further requested that an order be made for repeat testing of the tender samples by another independent institution, to determine which sample best met the specifications indicated in the Tender Documents, to ensure fairness in the procurement process.

### **ISSUES:**

The Authority reviewed supporting documents submitted by both the Complainant and the Respondent and held the following views:

1. That the Respondent had not erred in awarding the contract to the winning Tenderer. Expecting an average of 5.5% in the chlorine test, Respondent decided to choose a sample with a chlorine content that was closer to the advertised specification.
2. The general principle that where a sample test is contested, a neutral person must undertake testing was noted. The discrepancy between the two test results - FDB (2.5%W/V Active chlorine) and GSB (8.26% W/V Active Chlorine) was wide, thereby creating some doubt as to the integrity of the various samples tested. Issuing an order for re-testing by a neutral and independent body presumed that the same chlorine samples presented at the tender would be available for the re-testing. There was no guarantee that the original samples had been properly preserved.

3. It could not be easily determined whether the sample submitted by the Complainant directly to the Ghana Standards Board (GSB) for testing was the same chlorine sample submitted in the tender process. The Authority was of the opinion that it was the Purchaser's prerogative to submit samples for testing.
4. It was further noted that the time lapse of eighteen (18) days between the FDB test results (23<sup>rd</sup> July 2010) and the GSB test results (4<sup>th</sup> August 2010) compounded matters. The difference in sample testing dates raised doubts on whether it was the same sample submitted in both cases for testing. In any case, for purposes of reliability the FDB testing should be preferred since it was undertaken on a more comparative basis – two liquids labeled A & B were tested, as opposed to the GSB testing carried out on only one liquid sample submitted by the Complainant.
5. In considering the issue whether the Greater Accra Regional Health Directorate should be guided by GSB or FDB results, it was explained that the GSB tested locally manufactured liquid chemicals whilst the FDB tested imported ones.
6. The Authority agreed that the tender process seemed to have been duly conducted and awarded.

**DECISION:**

1. From the foregoing, it was decided that the award to the winning tenderer should stand, on the basis of the FDB Certification.

The award could not be disturbed because the Respondent clearly submitted two samples for testing, at an earlier date, whereas the Complainant submitted one liquid sample at a later date directly to the GSB for testing, thereby making it difficult to ascertain the exact source and concentration of samples.

2. There should be better defined procedures between the requesting and testing agencies when conducting sample testing. Time must also be allowed for challenge of test results. Samples presented should be strictly preserved.