

# **PUBLIC CONTRACTS REVIEW BOARD**

## **Case 1844 – CfT/020-1174/22 – CPSU 6997/22 – Supplies – Tender for the Supply of Automated Filling Sets and High Pressure Patient Connecting Lines**

**29<sup>th</sup> March 2023**

The Board,

Having noted the letter of objection filed by Dr Clement Mifsud Bonnici and Dr Calvin Calleja on behalf of Ganado Advocates acting for and on behalf of Suratek Limited, (hereinafter referred to as the appellant) filed on the 16<sup>th</sup> January 2023;

Having also noted the letter of reply filed by Dr Leon Camilleri acting for Central Procurement and Supplies Unit (hereinafter referred to as the Contracting Authority) filed on the 23<sup>rd</sup> January 2023;

Having heard and evaluated the testimony of the witness Mr Edmond Balzan (Member of the Evaluation Committee) as summoned by Dr Calvin Calleja acting for Suratek Limited;

Having heard and evaluated the testimony of the witness Mr Martoine Farrugia (Radiographer at Mater Dei Hospital) as summoned by Dr Calvin Calleja acting for Suratek Limited;

Having heard and evaluated the testimony of the witness Mr Ulrich Anderson (Representative of Novamed – supplier of Suratek Limited) as summoned by Dr Calvin Calleja acting for Suratek Limited;

Having heard and evaluated the testimony of the witness Mr Edmond Balzan (Member of the Evaluation Committee) as summoned by Dr Leon Camilleri acting for Central Procurement and Supplies Unit;

Having heard and evaluated the testimony of the witness Mr Martoine Farrugia (Radiographer at Mater Dei Hospital) as summoned by Dr Leon Camilleri acting for Central Procurement and Supplies Unit;

Having taken cognisance and evaluated all the acts and documentation filed, as well as the submissions made by representatives of the parties;

Having noted and evaluated the minutes of the Board sittings of the 2<sup>nd</sup> February 2023 and 23<sup>rd</sup> March 2023 hereunder-reproduced.

### **Minutes**

#### **Case 1844 – CfT/020-1174/22 – Supplies – Tender for the Supply of Automated Filling Sets and High-Pressure Patient Connecting Lines**

The tender was issued on the 30<sup>th</sup> September 2022 and the closing date was the 21<sup>st</sup> October 2022. The estimated value of the tender excluding VAT, was € 64,650.

On the 16<sup>th</sup> January 2023 Suratek Ltd filed an appeal against the Central Procurement and Supplies Unit as the Contracting Authority objecting to their disqualification on the grounds that the

Contracting Authority had failed to provide information to which the Appellant was entitled according to Regulation 40(2) of the Public Procurement Regulations.

A deposit of € 400 was paid.

There were three (3) bids.

On the 2<sup>nd</sup> February 2023 the Public Contracts Review Board composed of Mr Kenneth Swain as Chairman, Ms Stephanie Scicluna Laiviera and Dr Vincent Micallef as members convened a public virtual hearing to consider the appeal.

The attendance for this public hearing was as follows:

**Appellant – Suratek Ltd**

Dr Clement Mifsud Bonnici	Legal Representative
Dr Calvin Calleja	Legal Representative
Mr Kevin Galea	Representative
Ms Annabelle Bartolo	Representative
Ms Roberta Attard	Representative

**Contracting Authority – Central Procurement and Supplies Unit**

Dr Leon Camilleri	Legal Representative
Ms Marika Cutajar	Chairperson Evaluation Committee
Mr Edmond Balzan	Evaluator

**Preferred Bidder – Prohealth Ltd**

Mr Mark Bondin	Representative
Ms May Schembri	Representative

Mr Kenneth Swain Chairman of the Public Contracts Review Board welcomed the parties. He then noted that this was an unusual appeal based on the fact that requested information, which parties are entitled to, had not been provided on time. Had the request been dealt with in time unnecessary appeals could have been avoided.

Dr Clement Mifsud Bonnici Legal Representative for Suratek Ltd proposed that the points raised with the PCRb that morning (Note dated 2<sup>nd</sup> February 2023) are investigated by the CPSU and a time limit imposed to deal with the points raised and then the Appeal dealt with.

Dr Leon Camilleri Legal Representative for the CPSU accepted that the information requested was provided late. The CPSU does not object to the proposal that Appellant be given time to deal with the points raised.

After a short recess the Chairman stated that bearing in mind the fact that the Appellant had not been provided with information that it was entitled to within the statutory time limit to enable it to submit an appeal, the Board accepts that this same Contracting Authority, as well as the preferred bidder, will have a set number of days to prepare their counter submissions within the context that it was only today that the Appellant could state its objections. The Contracting Authority and the preferred bidder have until Wednesday 8<sup>th</sup> February 2023 to submit their replies and this hearing is being adjourned to the 2<sup>nd</sup> March 2023 at 9.00am.

The Chairman thanked the parties and declared the hearing adjourned.

End of Minutes

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## **SECOND HEARING**

On the 23<sup>rd</sup> March 2023 the Public Contracts Review Board composed of Mr Kenneth Swain as Chairman, Ms Stephanie Scicluna Laiviera and Dr Vincent Micallef as members convened a public hearing to consider further this appeal.

The attendance for this public hearing was as follows:

### **Appellant – Suratek Ltd**

Dr Calvin Calleja	Legal Representative
Mr Kevin Galea	Representative
Ms Annabelle Bartolo	Representative

### **Contracting Authority – Central Procurement and Supplies Unit**

Dr Leon Camilleri	Legal Representative
Ms Marika Cutajar	Chairperson Evaluation Committee
Mr Edmond Balzan	Evaluator
Ms Josette Camilleri	Evaluator

### **Preferred Bidder – Prohealth Ltd**

Dr Alessandro Lia	Legal Representative
Mr Jason Busuttil	Representative

Mr Kenneth Swain Chairman of the Public Contracts Review Board welcomed the parties and invited submissions.

Dr Calvin Calleja Legal Representative for Suratek Ltd said that there were two items covered in the tender – the filling sets and the connecting lines and Appellant had two grievances viz that the filling sets did not contain a filter and that the filling sets and the connecting lines are not originating from the same manufacturer and therefore it is not certain if they marry up properly which could lead to the risk of cross contamination.

Dr Camilleri on behalf of the CPSU said that the samples had been evaluated and as indicated the filter was available. The tender did not have a criterion that the components had to be from the same manufacturer and as long as they were compatible it did not matter.

Dr Calleja requested that witnesses be heard.

Mr Edmond Balzan (472665M) called to testify by the Appellant stated on oath that he was one of the Evaluators. He stated that the sample provided [demonstrated] met the technical specifications and had been checked by the end-user. A filter of the correct size was included and it was confirmed that there is no chance of cross contamination.

Mr Martoine Farrugia (223471M) called to testify by the Appellant stated on oath that he is a Radiographer at Mater Dei Hospital, had written the tender specifications and was the end-user of the equipment. He explained that the filter prevents cross contamination and there was no need for a second filter as this could lead to breakages. . The normal practice was to test samples over a period of one week

Questioned by Dr Camilleri witness said that several samples were requested and he had tested the samples personally over one week.

In reply to a question from Dr Lia witness said that the Leur lock joins the two components and locks without any difficulty [demonstrated] .

Replying to a question from Dr Calleja witness said that Prohealth had submitted 24 samples. No samples were requested from Suratek as their product was in use at the hospital for eight years.

Mr Ulrich Anderson (DL 31704945) called to testify by the Appellant stated on oath that he is the owner of Novamed, an inventor and manufacturer of the product offered by Suratek. By means of a sample he demonstrated the valves and operation of his product. It had extra precautions to ensure that that there were no risks when the injectors were used more often than once. He explained that the system can take a pressure of 325 psi. The equipment consisted of a single unit with no risk of cross contamination but it should not be used with products from other manufacturers as it was not compatible with other brands since this made it difficult to assess liability if something went wrong.

Questioned by Dr Camilleri witness stated that this was the only product on the market that can take pressure of 325 psi.

In reply to a question from Dr Lia witness said that he was aware of who had been awarded the tender.

Mr Edmond Balzan (472665M) called to testify by the Contracting Authority stated on oath that the second grievance was inapt as the single use of the product prevented this. He again demonstrated the locking procedure which had been tested under 200 psi conditions.

In reply to a question by Dr Calleja witness said that the only contamination that could happen was if certain parts such as the lock were touched by hand.

Witness confirmed to Dr Lia that the lock illustrated in Doc SL3 shown to him by Dr Calleja was the very same one demonstrated earlier.

Mr Martoine Farrugia (223471M) called as a witness by the Contracting Authority testified on oath that there cannot be cross contamination as the product was sterile and changed after every single use. The lock was very effective and safe [demonstrated].

Questioned by Dr Calleja witness said that contamination and cross contamination were different matters. The one way filter stops the chance of the fluid going back.

This concluded the testimonies.

Dr Calleja said that on the first grievance the technical specifications requested a filter able to withstand a pressure of 300 psi. This had to be before the airlock and was not present in the product offered by the preferred bidder. Mr Anderson in his testimony stated that this was to be found in the equipment offered by the Appellant but not in that of the preferred bidder. . The product being offered is made up of different brands with the ensuing risk of being unable to identify liability if something goes wrong. The preferred bidder's product was tested only for cross contamination but

not for contamination. There are risks to the patients' safety and reference is made to PCRB Cases 1057 and 1163 in this regard.

Dr Lia said that the tender title is clear that it requests two items – the quantities required are also different (page 3 of the tender document). Again in page 18 of the technical specifications the two items are distinct. The appeal is precisely that the preferred bidder has offered exactly that. Suratek offered one product and hence are not compliant. If Appellant was not happy with the terms of the tender there were other remedies that could have been used. The complaint about the filter seems to have been abandoned and the complaint now is that the equipment is in two parts. Evidence has been provided that the locking mechanism is very safe and both grievances have been contradicted. The preferred bidder is fully compliant.

Dr Camilleri said that the tender document is sovereign in what is to be offered. The preferred bidder provided a filter and equipment in two parts. No claim has been made that Suratek equipment is not good but Prohealth made a better offer with a compliant system. Testimony has been given that the contamination factor is not a fact. Sourcing from only one supplier restricts competition.

Dr Calleja said that in PCRB Case 1519 the complaint was about the combination of different lots – in this case the tender was not split into lots and had to be evaluated on one single product.

There being no further submissions the Chairman thanked the parties and declared the hearing concluded.

End of Minutes

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**Hereby resolves:**

The Board refers to the minutes of the Board sittings of the 2<sup>nd</sup> February 2023 and 23<sup>rd</sup> March 2023.

Having noted the objection filed by Suratek Limited (hereinafter referred to as the Appellant) on 16<sup>th</sup> January 2023, refers to the claims made by the same Appellant with regard to the tender of reference CFT/020-1174/22 – CPSU 6697/22 listed as case No. 1844 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Clement Mifsud Bonnici & Dr Calvin Calleja

Appearing for the Contracting Authority: Dr Leon Camilleri

Appearing for the Preferred Bidder: Dr Alessandro Lia

Whereby, the Appellant contends that:

- a) On 6 January 2023, the Appellant received a letter of rejection from the Contracting Authority whereby it was informed that its offer was being rejected in spite of being administratively and technically compliant since a cheaper offer had been identified and recommended. In the same letter, the Contracting Authority informed the Appellant that the Tender was being recommended for award to ProHealth Limited (C18246) (the "Recommended Bidder").
- b) On the same day, which is on 6 January 2022, the Appellant submitted a request to the Contracting Authority for the disclosure of the brand or manufacturer, and the model number, of the automated filling sets and the patient connecting lines offered by the Recommended Bidder (the "Requested Information").
- c) On the same day, a representative for the Contracting Authority acknowledged receipt of the Appellant's request and confirmed that the Contracting Authority was "checking internally on it and it will be followed up".
- d) However, in spite of repeated reminders on 10 January 2023 and 11 January 2023, the Contracting Authority has yet to reply to the Appellant's request for the disclosure of information which is essential for the Appellant to determine whether to exercise recourse to its legal and judicial remedies in terms of law.
- e) The Requested Information does not constitute any commercial sensitivity or a trade secret which, if disclosed, may prejudice the legitimate commercial interests of the Recommended Bidder.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 23<sup>rd</sup> January 2023 and its verbal submission during the hearings held on 2<sup>nd</sup> February 2023 and 23<sup>rd</sup> March 2023, in that:

- a) A request for the disclose of the brand/manufacturer and model of the products was made by the objector: An answer was not given within the 10 day objection period by CPSU.
- b) CPSU therefore disclosed the requested information in their reply to the appeal.
- c) With regards to the standstill period and the objector's faculty of lodging a fresh appeal, CPSU submits that it shall follow any direction by this honourable board.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties including the testimony of the witnesses duly summoned, will now consider Appellant's grievances.

- a) Initially, this Board will analyse and decide on the Appellant's first grievance, i.e. the alleged non-compliance of the preferred bidder in relation to the particle filter as requested in Clause 2.1.5 of Section 3 of the Tender dossier.

During the testimony under oath of both Mr Edmond Balzan and Mr Martoine Farrugia a demonstration has been performed on how the 'filling set' together with the 'patient line' are to be

used. Specific emphasis was placed on filter within the product of the preferred bidder. It was ascertained, also through reference to the literature submitted that the product of the preferred bidder, sufficiently meets the requirements of Clause 2.1.5 of Section 3 of the Tender dossier. Moreover, the samples requested were used over a period of one week with no complications encountered.

Hence, this Board does not uphold the Appellant's first grievance.

- b) Finally, this Board will delve into the second grievance of the appellant, i.e. 'filling sets' and 'connecting lines' are not of the same manufacturer.

With regards to this second grievance, this Board will again refer to the testimonies under oath of both Mr Edmond Balzan and Mr Martoine Farrugia. It was ascertained, by a specific demonstration, that these are single use products, which are sterile and changed after every single use.

The tender dossier nowhere made any reference to the fact that these two (2) parts, i.e. 'filling sets' and 'connecting lines' are to be produced by the same manufacturer. If these two parts meet the technical specifications, there should be no restrictions and/ or risks as is being advocated by the appellant. Such technical issue, if anything should have been treated by a call for remedies application in accordance with regulation 262 of the Public Procurement Regulations.

Hence, this Board does not uphold the Appellant's second grievance.

### **The Board,**

Having evaluated all the above and based on the above considerations, concludes and decides:

- a) Does not uphold Appellant's Letter of Objection and contentions,
- b) Upholds the Contracting Authority's decision in the recommendation for the award of the tender,
- c) Directs that the deposit paid by Appellant not to be reimbursed.

**Mr Kenneth Swain**  
Chairman

**Dr Vincent Micallef**  
Member

**Ms Stephanie Scicluna Laiviera**  
Member