

19th June 2023

**The Secretary**  
**Public Contracts Review Board**  
**Notre Dame Revlin**  
**Floriana VLT 2000**



**Tender for the Supply, Installation and Commissioning of a Dual-Energy CT Scan at SVP Long-Term Care Facility - Reference No. CT2385/2021 (the 'Tender').**

We write to you for and on behalf of St Vincent de Paul Long Term Care Facility (hereinafter the 'Contracting Authority') in connection with the above captioned Tender, and particularly with reference to the second objection filed by Suratek Limited (C-44989) dated 9th June 2023, (hereinafter the 'Appellant'), in order to submit a Reasoned Reply thereto.

The Appellant is once again objecting to the Second Recommendation dated 30th May 2023, which recommended the Bidder Triomed Ltd to be awarded the tender, and this on the basis that, despite the fact that the this honourable board has already pronounced itself in Decision No. 1740 of 2022, by virtue of which it ordered the Contracting Authority to re-evaluate all the bids in the tender through a newly constituted Evaluation Committee, the same Contracting Authority failed to take into considerations this honourable board's findings.

The Contracting Authority is rebutting this objection and the arguments stipulated therein will be addressed in this reply.

1. In view of the fact that many of the factual and legal arguments have already been exhausted in the initial proceedings which led to Decision 1740 of 2022, the Contracting Authority shall not be delving into what has already been submitted before this honourable board. Therefore, the Contracting Authority shall directly address the grievances raised by objector.

2. In its decision of the 29th November 2022, this honourable board, decided *inter alia*:
  - d) To order the contracting authority to re-evaluate all the bids<sup>1</sup> received in the tender through a newly constituted Evaluation Committee composed of members which were not involved in the original Evaluation Committee whilst also taking into consideration this Board's findings.
3. Following such decision, the Contracting Authority had indeed, appointed a newly constituted evaluation committee composed of new members, to re-evaluate all the bids which were submitted. It is very pertinent to note that, at no stage did this honourable board exclude the Recommended Bidder from the evaluation, and thus, rightly so, the newly constituted evaluation committee re-evaluated all offers by considering also the offer of the Recommended Bidder. In other words, the Board was placing all parties in the position they were prior to the evaluation, as if the evaluation process were to be carried out anew.
4. Additionally, the Board did not (and indeed, could not) replace the discretion of the evaluation committee. What it did (and could) do was to make its observations, and direct the newly constituted evaluation committee to take them into account when carrying out its exercise. As will be proven during the present proceedings, the newly constituted evaluation committee has indeed considered the findings of this honourable board in Decision 1740 of 2022.
5. However, following the re-evaluation of the bids, and having given due and lengthy consideration to the concerns previously raised by the Board, the tender evaluation committee ('TEC'), once again decided that the offer of the recommended bidder was compliant with the tender specifications and, given that such bid was the cheapest, the TEC recommended that such tender should once again be awarded to the Recommended Bidder.

---

<sup>1</sup> Emphasis added

6. In essence, the main bone of contention of both the Decision of the PCRB and the present proceedings, is whether the Recommended Bidder's offer was compliant, particularly with Specifications 1.1 and 2.20.2 of the Tender Specifications which are being reproduced below:

*1.1 This CT full-body scanner shall function primarily for low-dose general and specialised CT applications including CT brain, Thorax, Abdo & Pelvis and extremities. In view of this, a fast 360° gantry rotation time shall be required.*

...

*2.20.2. "The bidder should include the full dual energy software available at the time of bidding, including (but not limited to) composition analysis software (to evaluate composition of renal calculi etc), dual energy lung perfusion software enabling perfusion mapping, dual energy metal artefact reduction software, and virtual unenhanced series from enhanced CT."*

7. In this regard, the Contracting Authority submits that after re-evaluating all bids, including that of the Recommended Bidder, the latter's bid was deemed to be compliant even with the above-mentioned requirements.
8. According to the literature submitted by the Recommended bidder, together with further clarifications which were requested by the TEC even in the re-evaluation process, the offer does indeed satisfy such requirements in that, the model offered by Triomed Ltd does qualify as a full body scanner. Moreover, the software offered by the Recommended Bidder is able to perform dual energy lung perfusion analysis, metal artifact reduction and virtual unenhanced scans which thus make the offer compliant.
9. Also, it is important to note that, although the model offered by the recommended bidder is incapable of doing dual energy *full* lung perfusion mapping (since such model is only able to perform a 4cm segment of dual energy lung perfusion), it was still deemed to be compliant since *full* dual

energy lung perfusion mapping was not a requirement in the tender dossier, but more generally, that the model shall be able to perform dual energy lung perfusion mapping, thus making the offer of the recommended bidder compliant.

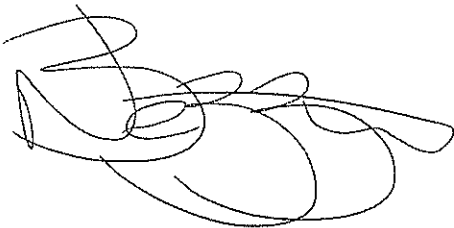
10. If the objector's argument is taken to its logical conclusion, it would imply that the TEC would be forced to decide against its own findings and against its own technical evaluation. This would make a sham out of the evaluation, turning it into a mere rubber-stamping exercise. This certainly cannot be considered acceptable.
11. With respect to compliance to the technical specifications, jurisprudence maintains that courts cannot and do not have the competence to review or re-evaluate what has already been evaluated by an evaluation board composed of experts in the relative field who, following an evaluation of the submissions made, deem that an offer is technically compliant with the tender specifications<sup>2</sup>. By extension, this honourable board cannot replace the TEC function in evaluating the technical aspect of the offers submitted against the requirements of the tender document.
12. It is therefore submitted that once the TEC concluded that the model offered by the Recommended Bidder was compliant with the tender's technical specifications (after having been re-evaluated, taking into due account the concerns raised by the Board), and since the Recommended Bidder's (compliant) offer was the cheapest offer submitted, the evaluation committee was correct in recommending the tender to be awarded to the Triomed Limited. Indeed, it had no other option but to do so.

THEREFORE, in view of the above and for other reasons that may be adduced at law at the sitting to be set by this Board, the Respondent Contracting Authority humbly requests that this Board, save for any other declaration, order or decree it may deem fit:

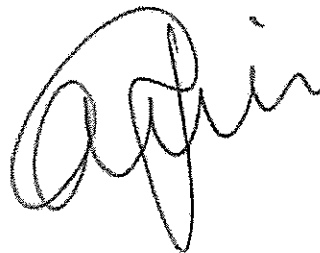
---

<sup>2</sup> Per L-Onor Imhallel Edwina Grima – LABO-PHARM LTD vs Id-Direttur tal-Kuntratti et (59/2012)

- a. Declare the applicant's objection as unfounded both at law and in fact and consequently rejects the objection;
- b. Confirms the decision recommending the award of the tender to Triomed Limited;
- c. Rejects the applicant's request to be refunded in full the deposit paid upon filing of the application.

A handwritten signature in black ink, appearing to be 'Noel Bezzina', written in a cursive style with some overlapping loops.

**Av. Noel Bezzina**

A handwritten signature in black ink, appearing to be 'Joe Camilleri', written in a cursive style with a large initial 'J'.

**Av Joe Camilleri**