DR. ROBERT GALEA

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ADVOCATE

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LETTER OF OBJECTION OF PROCARE LTD (C 71386)

25h April 2024

RE: CfT reference – CFT009-4326/23 (CPSU 1401/23)

Tender ID – 201318

Tender for the Supply of Over Bed Tables

Dear Sir,

By means of this present letter ProCare Ltd (C 71386) [hereinafter referred to as 'the Objector'], of 42, Carmelina Court, No. 5, Triq E. B. Vella, Mosta, whilst making reference to the above captioned call for tenders, is hereby submitting a formal objection in relation to the same tender, more specifically in relation to the Decision dated 16h April 2024 (vide Doc A), whereby the Contracting Authority, namely Central Procurement and Supplies Unit [hereinafter referred to as the 'CPSU'] indicated that it was considering the proposal submitted by the Objector as not being technically compliant, and further specified that the main reason for the rejection was the following:

> Reasons for rejection: Clause *No: 2.2 (table shall tilt at an angle of at least 30 degrees) - bidder did not specify table tilt in the filled in TO and this was also not provided in the technical documentation – Note 3. Re spec No: 2.6 (The over bed table is to be able to withstand a total load of 25Kg or greater) – although that the bidder answered with YES to this query in the submitted TO and referred to the provided documentation, the latter does not indicate carrying capacity of the proposed unit. Since technical documentation falls under Note 3, no rectifications are allowed.*

Whereas the Objector feels aggrieved by this decision, and its grievances, which are clear and manifest, consist of the following.

1. *About the factual incorrectness of the reason given*

Whereas the technical offer submitted by the Objector together with its offer is being attached and marked as Doc B1, together with literature attached thereto, marked as Doc B2. From the appealed decision, it results that the first clause on which the rejection is being based is the one marked as 2.2 in the document consisting of the technical offer. For ease of reference this is being reproduced below:

Spec No	Description of Specifications as required by the Contracting Authority	Unit of Parameter	Contracting Authority Requirement	Confirmation by Tenderer that Model Offered Complies with requirements (Yes/No)	Details on the Offer's specifications for the respective requisite	Reference in the technical literature where this is being stated/shown (if applicable)
2.2	The overbed surface shall also be required to tilt to an angle of at least 30°.	N A	Mandatory	Yes	Table plate can be tilted. the table top is equipped with a prevent strip, to prevent things from falling	See attached docs

Whereas from the above it is clear that the in no manner did the request for offers require the bidder to indicate the specific angle of tilt, but merely that it was capable of tilting to an angle of at least 30 degrees. So much is the case, that the manner in which the document was drawn up was such that it could be filled with a mere 'Yes or No'. In no section of the technical offer requirements is it indicated that the actual angle of tilt the table was capable of reaching was to be indicated – it was merely required that it be confirmed that the table was capable of tilting to at least 30 degrees, which requirement was duly addressed.

Whereas the second clause on which the rejection is being based is the one marked as 2.6 in the document consisting of the technical offer. For ease of reference this is being reproduced below:

Spec No	Description of Specifications as required by the Contracting Authority	Unit of Parameter	Contracting Authority Requirement	Confirmation by Tenderer that Model Offered Complies with requirements (Yes/No)	Details on the Offer's specifications for the respective requisite	Reference in the technical literature where this is being stated/shown (if applicable)
2.6	The over bed table is to be able to withstand a total load of 25Kg or greater	N A	Mandatory	Yes	Yes	See attached docs

Whereas from the above it is clear that the in no manner did the request for offers require the bidder to indicate the maximum load that could be withstood by the table, but merely that it was capable of withstanding a total load of 25Kg or greater. So much is the case, that the manner in which the document was drawn up was such that it could be filled with a mere 'Yes or No'. The same reason stated above with respect to clause 2.2 applies to this point as well.

Whereas simply put, this reason is indicating that the CPSU is alleging that the offer made included items which do not live up to the specifications required in the tender dossier, when this is clearly not the case, as will be expounded hereunder and on this basis, such allegation is being refuted by the Objector, and this on the following grounds.

2. *About the allegation that no rectifications are allowed*

Whereas, without prejudice to the above, the reason for rejection states "Since technical documentation falls under Note 3, no rectifications are allowed". Whereas this is a wrong interpretation of the tender dossier, not that any interpretation is at all necessary.

Whereas in this regard reference is to be made to Page 5 of the tender dossier (Doc C) which reads as follows:

(ii) Literature as per Form marked 'Literature List' to be submitted with the Technical offer at tendering stage. The scope of the literature is to corroborate a fully compliant technical offer (Note 2.

Whereas in turn, this refers to 'Note 2', which states as follows:

2 Tenderers will be requested to either clarify/rectify any incorrect and/or incomplete documentation and/or submit any missing documents within five (5) working days from notification

All Rectifications are free of charge

Whereas in this regard, therefore, without prejudice to the foregoing, if the Evaluation Comittee deemed the literature as not being sufficient for the purposes of the offer, it should ahve requested a 'clarification / rectification' of the same in terms of the above. Note 2 actually imposes an obligation on the Contracting Authority to request such clarification as it specifically states *"Tenderers **will be requested** to either clarify/rectify any incorrect and/or incomplete documentation"* (added emphasis). In this regard it must be noted that the term 'will' imposes a positive obligation on the contracting authority to actually request such rectification if it deems it necessary – it is duty bound to do so in order to be deemed to be respecting the terms of the request for offers as laid down in the tender dossier.

Whereas in view of this, the reason given is outright incorrect, and does not, in itself, respect the conditions on which it is supposed to have been based. It was the Contracting Authority that did not respect the terms of the tender, and not the Objector.

Whereas in view of the above reasons, and in view of the reasons which will result during the course of these proceedings, such decision is clearly unfounded, and the Objector is of the humble opinion that it should be quashed.

3. ***About the fact that the Contracting Authority acted ultra vires***

Whereas, without prejudice to the foregoing, this grievance logically follows the last preceding grievance in that for the same reasons expounded above, it transpires that the tender document did not confer upon the Contracting Authority the right to reject offers that were indeed technically compliant, and consequently, in rejecting a technically compliant offer, the Contracting Authority went beyond the discretional parameters established in the tender

document. This is a flagrant breach of the principles of natural justice, and even on this basis, the objector humbly submits that the decision in question should be quashed.

4. *About the fact that the Contracting Authority changed the evaluation criteria and technical specifications while deciding on the Objector's offer*

Whereas as can be seen from the rejection decision, the basis of the decision was that (1) the angle was not specified, that (2) the maximal loading was not specified and that (3) allegedly the literature regarding such matters could not be rectified. The Contracting Authority in this case opted to change the terms of the tender ex post facto since (1) the specific angles reached were never required, (2) the maximal loading was never requested and (3) the dossier clearly specifies that the Contracting Authority is to be request for a rectification of documentation if it deems this to be necessary.

Whereas this can only mean one thing; that the adjudication criteria and even the specifications were being changed ex post facto by the Contracting Authority.

Whereas it is not up to the Contracting Authority to make changes to the specifications of a tender at the point when the same is supposed to be subject to adjudication, and consequently the same Contracting Authority acted ultra vires in the determination of the present process.

Whereas, without prejudice to the above, as will be proven in the course of these proceedings, the Objectors has in the past participated in and been awarded various tenders on the basis of specifications being exactly identical to those subject of these proceedings, and there were never any conditions which were introduced by the same Contracting Authority in the course of the adjudication process and which departed from the criteria set in the dossier. Clearly, during the adjudication process, the Specifications as they emanate from the request for offers were ignored, and instead replaced by other criteria which the Contracting Authority deemed fit to

apply, rendering the process leading to the exclusion of the Objector ultra vires and therefore null and void.

5. *About the obligation to give reasons for decisions*

Whereas one of the very basic principles regulating the process where discretion is exercised and consequently a decision given – as is the present case – is the principle of natural justice calling for giving reasons for decisions. This principle of a fundamental nature in the proper exercise of a discretionary power would require that any decision is supported by a line of reasoning which would indicate how that decision was actually reached.

Whereas in this case, there is a manifest and unequivocal breach of this principle since the reasons are to serve as a logical explanation of the decision. Such reasons should follow a logical path, culminating in the decision itself. However, as indicated above, the reasons given are factually incorrect (as indicated in the grievances raised supra) and do not follow a logical course. In view of such failures, the reasons given for refusal fall short of the quality that reasons should have in order to truly qualify as reasons for the purposes of law.

Whereas in view of the above, one cannot conclude that the decision was reached in a manner whereby the logical reasoning leading to the decision could be traced, and consequently, the decision is to be considered as being in breach of the principles of natural justice and thus, the Objector humbly submits, is subject to being quashed.

6. *About the obligation to exercise discretion in a just and proper manner*

Whereas furthermore, the principles of natural justice dictate that if there is a discretion that is to be exercised, this must be exercised in an informed and just manner in order to lead to an equitable, just, logical and predictable outcome. Justice must not only be done, but it must also be seen to be done, and the circumstances of the present case do not give much comfort to such a principle which is at the very basis of the rule of law. The existence of discretion brings along

the duty to actually (i) exercise such discretion and (ii) to exercise it in a just and informed manner. In this case, the Objector humbly submits that (i) the approach taken in arriving at the decisions and (ii) the decisions themselves, clearly indicate that the discretion that had to be exercised by the Contracting Authority was not exercised in a proper manner, as the decisions do not follow in a logical manner the facts that were available to the Contracting Authority during the adjudication process and procedure was not followed. Consequently, the decisions are not intelligible and cannot be traced back logically to the facts upon which they were supposed to have been based.

7. *About the fact that the Contracting Authority did not act according to procedure*

Whereas moreover the Objector humbly submits that in the event that the above grievances / submissions are not upheld, the Board should also consider whether the Contracting Authority and / or the Evaluation Panel acted according to the rules and regulations governing this particular procedure.

In view of the above, the Objector is hereby humbly requesting:

1. That the decision dated 16th April 2024, whereby it was decided that the Objector's offer is rejected, be annulled, quashed, revoked and cancelled; and

2. That the offer submitted by the Objector with respect to the call for offers in question is accepted; and

3. That subordinately, in the event that the above requests are not acceded to, that the whole process be declared null and void.

Av. Robert Galea
Dr. Robert Galea LL.B., LL.D., Dip. Tax
ADVOCATE
91B, Mile End Street
Hamrun, HMR 1715
Malta

CENTRAL PROCUREMENT & SUPPLIES UNIT
MINISTRY FOR HEALTH & ACTIVE AGEING
UB002, Industrial Estate, San Gwann - SGN3000
Tel: (+356) 2540 4000; E-mail: info.cpsu@gov.mt

Doc A.

Date: 16th April, 2024.

CFT Reference: CFT009-4326/23 (CPSU1401/23)

Tender ID: 201318

Messrs: ProCare Ltd.

Dear Sir/Madam, reference is made to the publication with the following caption:

TENDER FOR THE SUPPLY OF OVER BED TABLES

Thank you for participating in the above-mentioned procurement procedure. However, this Entity regrets to inform you that the procurement proposal submitted by your company was not technically compliant. The main reason/s why your procurement proposal was non-compliant is/are as follows:

Reason/s for rejection: Clause *No: 2.2 (table shall tilt at an angle of at least 30 degrees) - bidder did not specify table tilt in the filled in TO and this was also not provided in the technical documentation – Note 3. Re spec No: 2.6 (The over bed table is to be able to withstand a total load of 25Kg or greater) – although that the bidder answered with YES to this query in the submitted TO and referred to the provided documentation, the latter does not indicate carrying capacity of the proposed unit. Since technical documentation falls under Note 3, no rectifications are allowed.*

The procurement was recommended for award to Messrs **EuroPharma Ltd.** for the amount of **€15,274.00 excluding VAT**, this being the cheapest priced offer satisfying the administrative and technical criteria.

If you intend to object to this decision, the Public Procurement Regulations allow for an official objection which in this case must be lodged electronically with the Public Contracts Review Board, by sending an email on: info.porb@gov.mt by noon of Friday, 26th April, 2024 against a deposit as stipulated in the published schedule.

Payments are to be made through bank transfer in terms of the following details:

Name of Account Holder	Central Malta Government
Name of Bank	Central Bank of Malta
Address of Bank	Castille Place, Valletta
Castille Place, Valletta	[illegible]
BIC	MALT MT MT
IBAN Code	[illegible]
Bank Code	[illegible]

The official 'recommendation for award' schedule can be accessed on the website: www.etenders.gov.mt. In addition, the said schedule can also be accessed on the CPSU website.

Although we have not been able to make use of your services on this occasion, I trust that you will continue to take an active interest in our initiatives.

Yours sincerely

Oriana Jo Magro
f/Evaluation Committee

Doc 31.

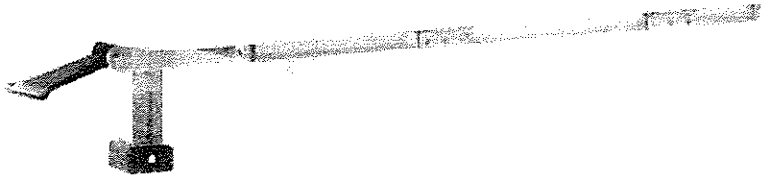
Item reference in Section 4 - the Specifications Section	
Tender for the Supply of Over Bed Tables for various wards at RHKG and GGH	
Code No: 1HFB120	
	Brand:Jiangsu Siakang Medical Equipment Co., ltd.
	Model Number:SKH201-4
	Catalogue Reference: Overbed table

Spec No	Description of Specifications as required by the Contracting Authority	Unit of Parameter	Contracting Authority Requirement	Confirmation by Tenderer that Model Offered Complies with requirements (Yes/No)	Details on the Offer's specifications for the respective requisite	Reference in the technical literature where this is being stated/shown (if applicable)
1.0	**Functional Specification:**					
1.1	The over bed table is required to allow the patient to eat his/her meals when on the beds in a supine or fowler position.	N/A	Mandatory	Yes	Over bed table	See attached docs
2.0	**Technical Specifications**					
2.1	The over bed table is to have a tabletop surface having an overall area of 850mm ±50mm by 400mm±50mm or greater. The surface is to be flat and is to incorporate no protruding inset beads.	N/A	Mandatory	Yes	940mm x 410mm	See attached docs
2.2	The overbed surface shall also be required to tilt to an angle of at least 30^0.	N/A	Mandatory	Yes	Table plate can be tilted: the table top is equipped with a prevent strip. to prevent things from falling	See attached docs
2.3	The over bed table is to be height adjustable varying between 760mm ±100mm (lower level) or less and 1000mm ±100mm (upper level) or greater.	N/A	Mandatory	Yes	Lower level 840mm and upper level 1140mm	See attached docs
2.4	The table top shall be adjusted by the operator by making use of one single hand only. If for any reason the height of the table top requires two hands, as a manual threaded knob is required to secure the height of the table top, this shall not be considered acceptable for the scope of this tender.	N/A	Mandatory	Yes	Controlled by handle – aluminium alloy air spring adjustable height via handle control	See attached docs
2.5	The table is to be placed on four anti-static castor wheels.	N/A	Mandatory	Yes	Easy to install. more stable and firmer. with	See attached docs

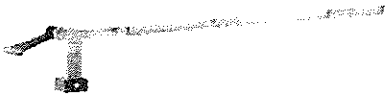
Spec No	Description of Specifications as required by the Contracting Authority	Unit of Parameter	Contracting Authority Requirement	Confirmation by Tenderer that Model Offered Complies with requirements (Yes/No)	Details on the Offer's specifications for the respective requisite	Reference in the technical literature where this is being stated/shown (if applicable)
					brake. 4 superior wheels castors	
2.6	The over bed table is to be able to withstand a total load of 25Kg or greater.	N/A	Mandatory	Yes	Yes	See attached docs
2.7	The colour schemes of the over bed tables are to match the colour schemes of the bed. Failure to submit such colour schemes will lead to the indisputable refusal of the offer. The Government following endorsement of the Contract agreement by the Contracting Authority, will choose colour schemes.	N/A	Mandatory	Yes. bed tables may be sprayed in all RAL colours. Kindly specify RAL colour required upon order.	Wooden colour MDF table top, PVC wrapped edge, with rounded corners	See attached docs
2.8	The material of the frame is to be made of durable epoxy coating or any other type of resilient synthetic material, capable of resisting chemical disinfection and mechanical shocks. The over bed table surface is to be made of Class I fire retardant laminate material, colour coded accordingly.	N/A	Mandatory	Yes	MDF board table and powder coated, epoxy coated steel frame	See attached docs
2.9	The over bed table is to include an easily accessible mechanical release to lower and raise the table accordingly to the patients' requisites.	N/A	Mandatory	Yes	Controlled by handle – aluminium alloy air spring adjustable height via handle control	See attached docs
2.10	The over bed table stand base is to be designed as a wide U-shaped (and not a narrow U-Shape) design, in order to increase the versatility of the table, to be used comfortably by the patient, both on beds and chairs accordingly.	N/A	Mandatory	Yes	'U' type table base, can be used in combination with bedside tables	See attached docs
3.0	**Power Requirement:**					
3.1	N/A	N/A	N/A	na		
4.0	**Accessories & Consumables:**					
4.1	N/A	N/A	N/A	na		

Doc 32.

OVERBED TABLE



SKH201-4



- Size (L×W×H) [illegible]

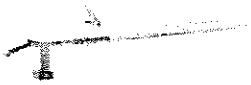
☑ Castor 4pcs

Material general

[illegible]

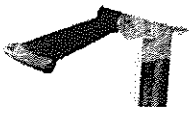
Countertop structure

MDF table top, PVC wrapped edge, table plate can be tilted, the table top with a brace is stronger, prevent things from falling.



Height adjustment

Aluminum alloy air spring adjustable height, handle control.

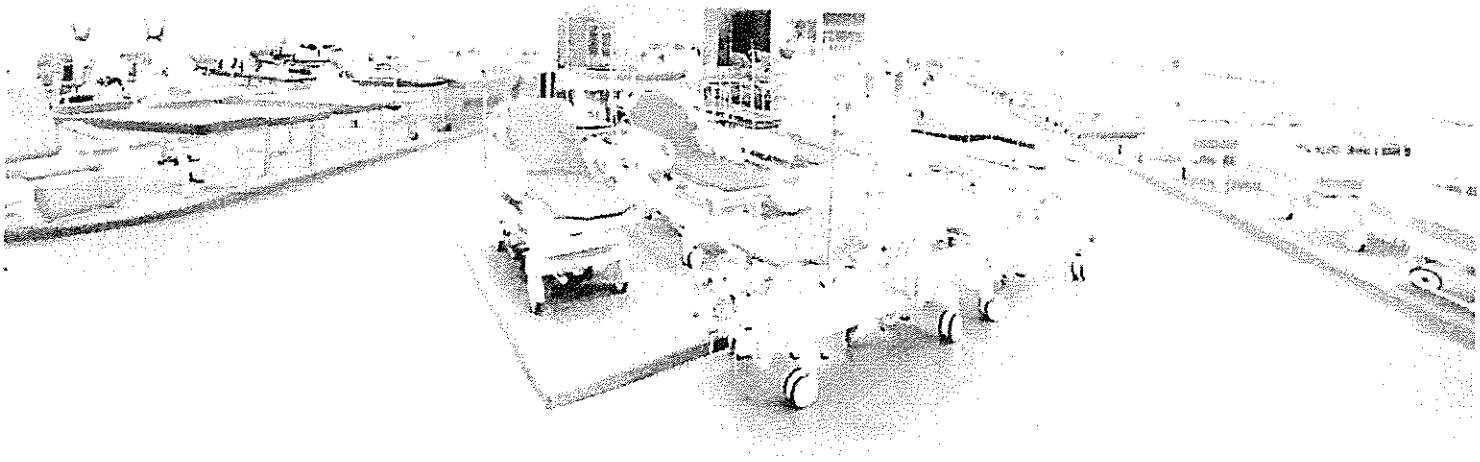


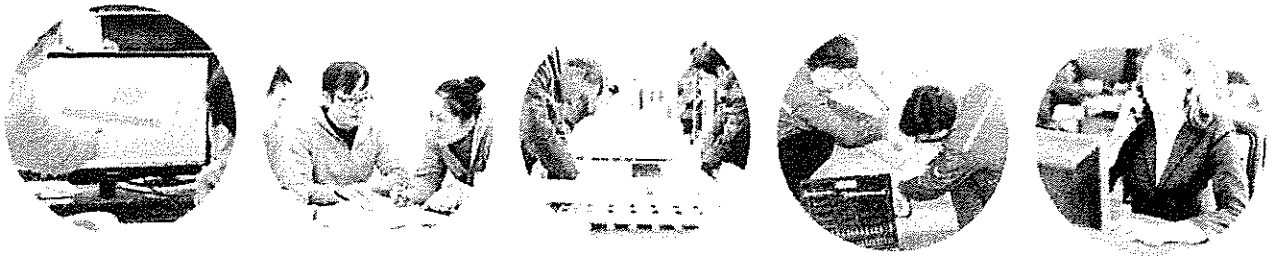
"U" type table base

U type base is made of powder coated steel, can be used in combination with [illegible] cabinets.

Superior casters

Easy to install, more stable and strong, with brake.





Doc C.

(C) Specifications

(i) Tenderer's Technical Offer in response to specifications to be submitted online through the prescribed Tender Response Format and by using the Tender Preparation Tool provided. (Note 3)

Key Experts Form, the Statement of Availability Form, the Self-declaration form for Key Experts (relating to public employees) and CVs (Note 3) **Not applicable for this publication.**

Tenderer's Technical Offer (Note 3)

(ii) **Literature** as per Form marked 'Literature List' to be submitted with the Technical offer at tendering stage. The scope of the literature is to corroborate a fully compliant technical offer. (Note 2)

(iii) **Samples** as per Form marked 'Sample List' may be requested during the adjudication stage to supplement the technical offer submitted. If requested, the Samples must be submitted within 10 working days of being notified to do so. (Note 3) If Samples are not submitted within the specified timeframe, offer will not be considered further

(D) Financial Offer

(i) A financial offer calculated on the basis of **Delivered Duty Paid (DDP)** [2010] **(Grand Total)** for the supplies tendered as per Tender Response Format [inclusive of spare parts/after-sales services/maintenance/training as applicable]. (Note 2)

(ii) A filled-in Financial Bid Form as per Tender Response Format (Note 3)

In case of any discrepancy the xml tender structure shall prevail.

This condition shall not apply to financial bid forms constituted of a Bill of Quantities (BoQ), or financial bid forms where the total can be arithmetically worked out and/or corrected if, as, and when necessary / applicable.

Notes to Clause 5:

1. *Not applicable for departmental tenders.*

2. *Tenderers will be requested to either clarify/rectify any incorrect and/or incomplete documentation, and/or submit any missing documents within five (5) working days from notification*

All Rectifications are free of charge.

3. *No rectification shall be allowed. Only clarifications on the submitted information may be requested. Tenderers will be requested to clarify the submitted information within five (5) working days from notification.*

Requests for Clarifications and/or Rectifications concerning a previous request dealing with the same shortcoming shall not be entertained.

6. Criteria for Award

6.1 The sole award criterion will be the price. The contract will be awarded to the tenderer submitting the cheapest priced offer satisfying the administrative and technical criteria

BOV Bank of Valletta

Bank of Valletta p.l.c
Registration Number: C 2833
Registered Office: 58 Zachary Street, Valletta VLT 1130 - Malta

Pay third party

Printed by: Mr. Pierre Calleja
Printed on: 26/04/2024 - 08:14
Document ID: 19892983

Transaction details

Payer's name:	PROCARE LTD
Beneficiary name:	Cashier Malta Government
Relation:	Technical Services
Reason:	Other
Payment details:	Deposit for Objection reference CFT009.4326.23 CPSU1401.23
Currency:	EUR - Euro
Beneficiary IBAN/Account:	MT55MALT011000040001EURCMG5001H
Beneficiary IBAN/Account type:	Valid IBAN of country - Malta
Bank name:	Other bank
Bank address / Bank's BIC:	Let the bank apply the beneficiary bank BIC
Beneficiary address:	No
From account:	4002355137 6 (EUR)
Charges should be paid by:	Shared - I pay BOV charges; Cashier Malta Government pays the beneficiary bank charges
Amount:	EUR 400.00
BOV to transfer the money:	as soon as possible
Receiving bank to get the money as:	normal priority payment
Saved template:	no

Additional information

Credit amount:	EUR 400.00
Debited amount (excluding charges):	EUR 400.00
Estimated amount to be withdrawn from account:	EUR 401.00
Transaction charge:	EUR 1.00

Transaction result

Status:	Your instructions have been processed successfully.
Transaction ID:	141982816