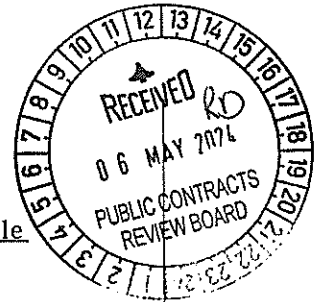


IN THE PUBLIC CONTRACTS REVIEW BOARD

6<sup>th</sup> May 2024



**Re: Objection 445 CT2323/2023- Tender for the Supply of Sterile Disposable Urinometer with Urine Collection Bag**

Reply of the Central Procurement and Supplies Unit (CPSU) on behalf of the Department of Health to the reasoned application lodged by Reactilab Ltd (the objector).

On the 26<sup>th</sup> October 2023 a call for tenders for the supply of Sterile Disposable Urinometer with urine collection bag was issued.

14 bids were submitted and a recommendation was made in favour of the offer made by Drugsales Ltd (Recommended bidder) with tender identification number 202945 being the cheapest priced offer satisfying the administrative and technical criteria;

Both offers submitted by the Objector were rejected. The offer bearing Tender Identification number 203030 was rejected due to the selection of a cheaper compliant offer whilst the offer bearing tender identification number 203032 was rejected on the basis of technical compliance, with the reason given being the below:

*Not accepted. Samples when tested by speciality nurses was found that they have a flow problem from the connecting tube to the measuring chamber. Urine does not flow freely but has to be milked out especially with oliguric patients. Since samples falls under note 3, they are not rectifiable. Based on this non-compliance with the specified criteria, we cannot recommend the samples for further evaluation, and they do not meet the standards necessary for our procurement needs.*

The objector felt aggrieved with the decision of the evaluation committee and filed its objection based on 2 grievances.

CPSU humbly disagrees with the grievances raised and is hereby replying in the same order of the grievances raised.

**Submissions**

**Preliminary**

1. The Objector did specify in its letter objection, the tender number of the offer it is appealing on, and has attached 2 letters of rejection to its objection letter. From the reproduced reason of rejection and the grievances in the letter of Objection, CPSU understands that the objection has been filed in relation to TID 203032, however CPSU reserves the right to make additional submissions in case any other grievances/grounds of appeal are raised;

**On the First Grievance - Misinterpretation of Product Functionality**

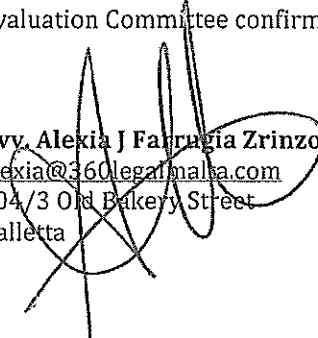
2. In its first grievance the objector implied that the flow problem which the contracting authority mentions in its reason for refusal is some sort of manual adjustment function, purported as an added benefit to the device;
3. CPSU rebuts to the claims and reiterates its position that the product offered by the Objector is not fit for its purpose and is unsafe for the patient as the urine does not flow freely from the connecting tube to the measuring chamber;
4. The fact that the urine does not freely from the tube to the measuring chamber is a clear indication that the device does not meet the minimum requirements of its intended and is not safe for the patients as will be explained during an eventual hearing;
5. This is clearly demonstrated from the photo (attached as Dok CPSU1) and the video (attached as CPSU 2) being presented with this letter of reply.
6. For these reasons this first grievance is to be rejected;


**On the Second Grievance – Inconsistent Evaluation Criteria**

7. The Objector in this second grievance states that CPSU is limiting competition as it is not allowing products with equal or equivalent solutions to those defined in the technical specifications, in breach of regulation 53(6) and (9) of the Public Procurement Regulations;
8. CPSU rebuts to this grievance since this is not a matter of equal solutions but a matter of a product which following sample testing resulted to be faulty and not fit for its intended purpose, since the urine is not flowing properly as it should flow from the connecting tube to the measuring chamber, as already stated in the reply to the first grievance and as will be better demonstrated during the sitting;
9. The aim and scope of sample testing is for the contracting authority to verify what is on paper in the product literature and to assess in relation to its call and specifications. The contracting authority should not be forced to buy a product which did not satisfy any of these criteria during sample testing;
10. For the above reasons and submissions, this second grievance ought to be rejected

CPSU hereby reserves its right to present further evidence and submissions both written and orally to further substantiate their reply in relation to the said application throughout the hearings.

In view of the above, the objection ought to be rejected in full, whilst the decision of the Evaluation Committee confirmed, and the relevant deposit forfeited.

  
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