

## **PUBLIC CONTRACTS REVIEW BOARD**

### **Case 1799 – CPSU 5554/22 – Tender for the Supply of 23G Blood Collection Sets with Pre-attached Holders**

**23<sup>rd</sup> November, 2022**

The tender was issued on the 29<sup>th</sup> March 2022 and the closing date was the 26<sup>th</sup> April 2022. The estimated value of the tender, excluding VAT, was € 50,240.

On the 29<sup>th</sup> August 2022 Prohealth Ltd filed an appeal against the Central Procurement and Supplies Unit as the Contracting Authority objecting to their disqualification on the grounds that their bid was not technically compliant.

A deposit of € 400 was paid.

There were three (3) bids.

On the 13th October 2022 the Public Contracts Review Board composed of Dr Charles Cassar, as Chairman, Mr Lawrence Ancilleri and Dr Vincent Micallef as members convened a virtual public hearing to consider the appeal.

The attendance for this public hearing was as follows:

#### **Appellant – Prohealth Ltd**

Dr Alessandro Lia  
Mr Mark Bondin

Legal Representative  
Representative

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

Dr Alexia Farrugia Zrinzo  
Dr Leon Camilleri  
Ms Marika Cutajar  
Ms Josianne Grima  
Ms Claudia Attard  
Mr Patrick Ghigo  
Ms Jacqueline Borg

Legal Representative  
Legal Representative  
Chairperson Evaluation Committee  
Evaluator  
Evaluator  
Evaluator  
Representative

#### **Preferred Bidder – Europharma Ltd**

Mr Michael Peresso  
Mr Alex Fenech

Representative  
Representative

Dr Charles Cassar Deputy Chairman of the Public Contracts Review Board welcomed the parties and invited submissions.

Dr Alessandro Lia Legal Representative for Prohealth Ltd requested the hearing of witnesses prior to making submissions.

Ms Claudia Attard (172773M) called as a witness by the Appellant testified on oath that she was an Evaluator and is employed as a Phlebotomist. She detailed the names of the other evaluators and stated that the product in question was tested by the Tender Evaluation Committee (TEC). She said that she was not aware of the decision taken in June 2021 regarding the product offered by Prohealth (objection to this question by Dr Camilleri) and this was the first time that she was testing this equipment.

Dr Lia pointed out that the next witness called was no longer present as he had to leave the hearing due to work commitment and asked for a deferment.

The Chairman thanked the parties for their understanding and declared the hearing deferred to the 15<sup>th</sup> November 2022 at 9.00am.

End of Minutes

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## **SECOND HEARING**

On the 15<sup>th</sup> November 2022 the Public Contracts Review Board composed of Dr Charles Cassar as Chairman, Mr Lawrence Ancilleri and Dr Vincent Micallef as members convened a public hearing to further consider this appeal.

The attendance for this public meeting was as follows:

### **Appellant – Prohealth Ltd**

Dr Alessandro Lia	Legal Representative
Mr Mark Bondin	Representative

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

Dr Alexia Farrugia Zrinzo	Legal Representative
Dr Leon Camilleri	Legal Representative
Ms Rita Zammit	Chairperson Evaluation Committee
Ms Josianne Grima	Evaluator
Ms Claudia Attard	Evaluator
Mr Patrick Ghigo	Evaluator
Ms Jacqueline Borg	Representative

### **Preferred Bidder – Europharma Ltd**

Mr Alex Fenech	Representative
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Dr Charles Cassar Deputy Chairman of the Public Contracts Review Board welcomed the parties and invited submissions reminding the hearing that Dr Lia was on the point of summoning a further witness.

Mr Paul Calleja (230779M) called to testify virtually by Prohealth Ltd testified on oath that he is a nurse of some twenty years' experience lately in a home for the elderly. He stated that he used the product regularly and had given testimony previously on a similar product. He did not agree with the decision of the Contracting Authority as the product performed perfectly if one used it correctly – there was none of the problems mentioned in the Authority's letter and there was no need to hold the tube down to operate the product. [Witness demonstrated the use of the product on screen].

Ms Claudia Attard (172773M) called to testify by the Authority stated on oath that she is a Senior Phlebotomist with 26 years nursing experience eight of them in her present role. The Evaluators had tested the samples of the product supplied.[On a prosthetic arm witness demonstrated three times how the device was used in practice and indicated where it failed to meet the standard expected]. The primary consideration, said the witness was the patient's safety and comfort and the product offered by this bidder needed pressure to be used to function properly. It was a matter of either the needle remaining exposed or alternately using pressure to extract it.

In reply to questions from Dr Lia witness said that she had seen both the Instructions for Use (IfU) and the video provided by Appellant and said that it was not safe or practical to use the needle as stated in the IfU.

Questioned by Dr Leon Camilleri Legal Representative for the Central Procurement and Supplies Unit (CPSU) witness stated that if the device was used as shown in the video, pressure had to be used in either method used. The product had been tested 20 times to ensure that the findings were certain.

Witness assured the Chairman that the product of the other bidders had been similarly tested.

This concluded the testimonies.

Dr Lia on behalf of the Appellant said that the crucial point had already been decided in PCRB Case 1579 involving the same product but in a different size; 21G instead of 23G in this case. In that case Mr Calleja also testified and the Board decided there was no lack of safety. The decision by the CPSU did not deal with the points raised in the appeal but decided to deal with the aspects of safety which are not included in the tender dossier. There was no element of leeway in evaluating a tender and different opinions have been expressed on the use of the product and the grievances of the Appellant should be upheld.

The method shown by witness Ms Attard today was not that shown in the IfU and holding the needle down does not necessarily mean that pressure is being exerted on the patient. The CPSU is using a subjective way to refuse the offer and the Board cannot overturn their previous decision which was based on an exactly similar case.

Dr Camilleri said that the Board is not bound by previous decisions as each evaluation is treated on its fresh merits, otherwise there would be no point to any further appeals. The size of the product is different and the evaluation is different – the previous decision was that

different views had been expressed and therefore it was sent for re-evaluation. In Case 1579 there was no proof provided that the product was approved and refusal was on a different reason. The claim that the procedure outlined in the IfU and the video was not followed is not sustainable as these do not show the difficulties encountered when actually using the device. The product had been tested over twenty times and resulted in an outcome different to that indicated in the manufacturer's video. In today's demonstration it was made clear that pressure had to be used to release the needle – it is not a matter of choice.

The experience of the two witnesses, said Dr Camilleri, does not match neither does the spread of use. The safety of the user should also be considered as much as that of the patient especially bearing in mind the vulnerability of some of the latter. The Authority insists on the best products for its patients. The TEC reason for refusal was totally in line with the technical specifications. The result of testing of samples is paramount to the IfUs and videos.

Dr Lia said that the product of the rejected bidder does not mean that there is a danger to the patient – this product is used internationally with no problems. In Case 1579 the claim that the product was not suitable was rejected.

Dr Camilleri noted that the CE mark on a product does not necessarily mean compliance. The TEC had to abide by transparency and equal treatment.

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

End of Minutes

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This Board,

Having noted this objection filed by the Appellant – Prohealth Ltd., (herein after referred to as the appellant) on 29/08/2022, refers to the claims made by the same appellant regarding the Tender listed as case No.1799 in the records of the Public Contracts Review Board.

Whereby, the appellant mainly contends that: -

- A) The product offered by them is stable, safe, and easy to use
- B) . The decision by the CPSU did not deal with the points raised in the appeal but decided to deal with the aspects of patient's safety which are not included in the tender dossier
- C). There was no element of leeway in evaluating the tender and different opinions have been expressed on the use of the product.

Whereby, the CPSU referred to as the Contracting Authority in

their letter of reply filed on 6<sup>th</sup> Sept 2022 and in their submissions contended that

A) The product had been tested over twenty times by the end-users and resulted in an outcome different to that indicated in the manufacturer's video or in the Instructions for Use.

B) In the demonstration carried out at this hearing it was evident to the Board that pressure had to be used to release the needle requiring the use of both hands – it is not a matter of choice.

Having noted and evaluated all the documentation filed as well as the submissions made including the testimony of witnesses and the Minutes of the Board sittings of the 13<sup>th</sup> October 2022 and 15<sup>th</sup> November 2022 hereabove reproduced.

The Board,

noted that, despite the fact that both parties have produced divergent expert opinion, CPSU physically displayed on a prosthetic arm the problems encountered in the use and application of the needle offered by the Appellant, in which demonstration the Board noticed that an element of pressure exertion was used in the extraction of the needle.

The Board therefore concludes and decides that:

- a) Does not uphold the Appellant's Letter of objection.
- b) Upholds the Contracting Authority's decision.
- c) Directs that the deposit not to be reimbursed

**Dr Charles Cassar**  
**Chairman**

**Dr Vincent Micallef**  
**Member**

**Mr Lawrence Ancilleri**  
**Member**