

# **PUBLIC CONTRACTS REVIEW BOARD**

## **Case 2181 – CFT021-3527/25 CPSU5787/2025 – Supplies – Tender for the Supply of Proton Pump Inhibitor for Administration via a Stomach Tube**

**12<sup>th</sup> November 2025**

The Board,

Having noted the letter of objection filed by Mr Damian Stellini acting for and on behalf JV Healthcare Limited, (hereinafter referred to as the appellant) filed on the 22<sup>nd</sup> September 2025;

Having also noted the letter of reply filed by Dr Alexia Farrugia Zrinzo and Dr Leon Camilleri acting for the Central Procurement and Supplies Unit (hereinafter referred to as the Contracting Authority) filed on the 2<sup>nd</sup> October 2025;

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 sitting of the 5<sup>th</sup> November 2025 hereunder-reproduced;

### **Minutes**

#### **598 – CFT021-3527/25 – CPSU 5787/2025 – Supplies – Supply of Proton Pump Inhibitor for Administration**

The Tender was issued on the 13<sup>th</sup> May, 2025 and the closing date was 23<sup>rd</sup> June 2025

The estimated value of the tender excluding VAT. was 55,635.00 Euro

On the 22<sup>nd</sup> September 2025 JV Healthcare Limited Filed a Notice of Objection against the Central Procurement and Supplies Unit (CSPU) – the Contracting Authority and the Department of Contracts for the cancellation of the tender as the bidder did not accept the revised price after a clarification re the Financial Bid Form.

On the 5<sup>th</sup> November 2025 the Public Contracts Review Board (PCRB) composed of Mr Kenneth Swain as Chairman, Dr Ana Thomas and Dr Maria Cardona as members convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

#### **Appellant – JV Healthcare Limited.**

Mr Damian Stellini

Director

Ms Roberta Cachia

Company Representative

## **Contracting Authority – Central Procurement and Supplies Unit (CPSU)**

Dr Leon Camilleri	Legal Representative
Dr Alexia Farrugia Zrinzo	Legal Representative
Mr Daniel De Gaetano	Chairman
Ms Anna Ellul	Evaluator

### **Department of Contracts**

Dr Audrey Buttigieg Vella

### **Opening Statements**

Mr Kenneth Swain, Chairman of the Public Contracts Review Board, welcomed the parties present, namely the Appellant, JV Healthcare Limited and the Contracting Authority, the Central Procurement and Supplies Unit (CSPU) and invited the participants to initiate their initial submissions

### **Initial Submissions**

#### **Initial Submissions by Mr Damian Stellini for the Appellant**

Mr Stellini explained that his legal representative was indisposed and he was going to present the appeal instead in his capacity as the director of JV Healthcare.

Mr Stellini stated that in his appeal he considers that this is a case of misunderstanding due to the fact that the way the pricing structure in the tendering procedure was formulated to give the bidding price was lately changed and this gave rise to a certain amount of ambiguity.

He emphasized that one finds in the first two columns of the tendering document the title “Price per Pack including Taxes etc.” and Ms Cachia the representative of the JV Healthcare wrote down the total of “Price per Pack.” but for the first year and the second year. In fact, she took all the packets of the first year and all the packets of the second year and the total came to the amount of 49,641.44 Euro.

Mr Stellini said that the CPSU and rightly so, asked for a clarification where it wanted to clarify if the offered price was correct. At this stage Mr Stellini stated that JV Healthcare thought that the clarification addressing the two columns and referring to the first and second year concerned the pricing of single packs.

Mr Stellini explained that the appellants answer involved a division and the total amount remained the same while the CPSU corrected the price itself and instead of dividing it multiplied the two columns with the result that the answer came to the ridiculous figure running into millions.

Mr Stellini emphasized that JV Healthcare did not agree with this total and as a result it wrote the correct one - that is that of 94,621.44 Euro.

He continued that JV Healthcare cannot understand why after clarifying what was requested by the CPSU and the total remained the same, the answer was judged to be unsatisfactory.

At this stage the Chairman invited the representatives of the CSPU to address their initial submission.

### **Initial Submission by Dr Leon Camilleri acting for the CPSU**

Dr Camilleri started his submission by stating that while he sympathized with the appellant for its possible mistake, he referred to decisions by the PCRB where it is clearly stated that Public Tender Procedures are governed by strict rules. In fact, Dr Camilleri emphasized the fact that once the General Rules Governing Tenders provide for arithmetical corrections at specific instances, the evaluation Committee cannot avoid these rules in order to make bidders compliant.

In this case Dr Camilleri explained that the total offer given was according to the wishes of the bidder but the unit price was too big. He continued the appellant is stating that his given price was for one year but if the present board examines carefully the financial bid form, it is clear that the tender is asking for a price per pack. These are standard formulae and he cannot understand why price per pack was understood by the appellant as price per year. He continued that price per pack is the cost incurred by the Contracting Authority.

Dr Camilleri explained that according to the General Rules the Contracting authority could ask for an arithmetical correction and also states that “where there is a discrepancy unit price and the total amount derived from the multiplication of the unit price and the quantity, the unit price as quoted will prevail.”

Dr Camilleri explained that the CPSU took the unit price, multiplied it by the quantity and the enormous sum was the result. Following this it asked for a clarification and the appellant said no.

Dr Camilleri continued that the CSPU is insisting that the financial bid form couldn't be submitted again as in fact that is what the bidder did, and since this falls under Note 3 only an arithmetical correction can be made in the parameters of the GRGT. Hence the EC could only refuse the bidder's offer since it is governed by the principles of self-limitation and equal treatment.

At this stage the Chairman declared that there were no contestations about the facts and the clear submissions presented and asked if there were any more final submissions to be made by the appellant.

### **Final statements by Mr Stellini.**

Mr Stellini insisted that his proofs lay in the financial bid form itself

Mr Stellini addressed two issues. In the first place he referred to an ambiguous formula which was lately changed and in which although in the column we find written “price per pack” and “1<sup>st</sup> year and 2<sup>nd</sup> year,” one and the appellant understood that it referred to all the packs of the of the first year and all the packs of the second year.

In the second issue he reiterated that if according to Dr Camilleri the Contracting Authority gives the right to the evaluating committee the chance for an arithmetical evaluation or correction, that correction would have been obvious if it stated that one must do the total divided by the amount which is written in the first column, therefore the exact amount would be reached.

Mr Stellini ended by stating that the grid was not clear.

### **Final statements by Dr Camilleri**

Dr Camilleri stated that if there were any unclear issues the appellant should have made use of his rights according to Regulation 262 to ask for a clarification where one finds remedies if the appellant is not satisfied by the answer.

Dr Camilleri emphasized that the Tender was clear and the Contracting Authority was even flexible enough to ask the appellant to give the unit price for the first year and the second year thus catering for any changes in prices.

### **Final statements and References to court cases by Dr Farrugia Zrinzo**

Dr Farrugia Zrinzo referred to the following cases and appeal all dealing with pricing and arithmetic correction issues.

Namely:

1. Case 1745 – XWM 67/01/22 – Works Tender for the Embellishment of Are Surrounding the Xarolla Mill, Zurrieq
2. PCRB - Appeal Reference number 2170

Tender Reference No CT2022/2025 - “Works Tender for the Restoration of the Back Elevation of St. Nicholas Curtain Wall etc

3. Case No 2078 – CFT 009-3622/24 - (CPSU 0743/24) – “Supplies Tender – Tender for the Supply of Vinyl Coated Gypsum Tiles.

Dr Farrugia Zrinzo ended her submission by stating that the appellant made a fatal mistake and quoted another decision from Karta Converters Ltd vs Dipartiment tal-Kuntratti, decided on 27th May 2015, where it was stated “Ma jistax illum is-socjeta appellant tissana dan l-izball fatali taghha ghaliex kien jispetta lilha li tottempra ruhha mad-dettami tas-sejha bhala a reasonably well informed and normally diligent tenderer.”

At this stage the Chairman stated that the board has all the necessary information about the appeal and is in a position to make the necessary deliberations to reach a decision which will be communicated to all parties in a short time.

He thanked all those present and declared the session as closed.

End of Minutes

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**Hereby resolves:**

The Board refers to the minutes of the Board sitting of the 5<sup>th</sup> November 2025.

Having noted the objection filed by JV Healthcare Limited (hereinafter referred to as the Appellant) on 22<sup>nd</sup> September 2025, refers to the claims made by the same Appellant with regards to the tender of reference CFT021-3527/25 CPSU5787/2025 listed as case No. 2181 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Mr Damian Stellini

Appearing for the Contracting Authority: Dr Leon Camilleri & Dr Alexia Farrugia Zrinzo

Whereby, the Appellant contends that:

- a) It is stated that this tender is being cancelled as the bidder did not accept the revised price after a clarification re the Financial Bid Form. On our submission of tender, we had uploaded the total price per annum instead of the price per pack per annum and this summed up to €94,621.44. Upon clarification CPSU asked us to confirm that the price per pack will be that of €22.96 per 28 units, amounting to a total of €94,621.44. We confirmed this on a new Financial Bid Form and also uploaded this new FBF confirming the price per pack as per CPSU's instructions. We confirmed that the total value of the tender remained unchanged - to that of €94,621.44.
- b) This was not the first time a clarification of this sort was sent to us by other procurement officers and a new FBF was uploaded when required. This being said, we were never disqualified from any of these tenders and none of these tenders were cancelled for such reason. You may wish to note that no product details or pricing was changed upon this clarification ... just a confirmation of the price per pack which was already available on our initial financial bid form.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 2<sup>nd</sup> October 2025 and its verbal submission during the hearing held on 5<sup>th</sup> November 2025, in that:

- a) The objector filed its financial bid form with its initial offer indicating the amount of €94,621.44 as the total price, however the unit price indicated was that of €47,310.72. The tender was for 115,392 units and the pack offered by the objector contained 28 units per pack, meaning that the objector had to deliver 4,121.14 packs to meet the tender quantity requested. The amount of packs required at €47,310.72 amount to €194,974,235.7942857.

- b) The General Rules Governing Tenders provide in paragraph 17 that: *“17.1 Admissible tenders will be checked for arithmetical errors by the Evaluation Committee. Without prejudice to other arithmetical errors which may be identified, the following errors will be corrected as follows: (...) (b) where there is a discrepancy between a unit price and the total amount derived from the multiplication of the unit price and the quantity, the unit price as quoted will prevail;”*
- c) The same General Rules Governing Tenders go on to state that: *“17.3 The amount stated in the tender will be adjusted by the Evaluation Committee in the event of error, and the tenderer will be bound by that adjusted amount. In this regard, the Evaluation Committee shall communicate the revised price to the tenderer through a confirmation request via the ePPS. If the tenderer does not accept the adjustment within five (5) working days, his/ her tender will be rejected and his tender guarantee forfeited (if applicable).”*
- d) The objector did not accept the adjusted amount and instead submitted a new financial bid form with a revised unit price and retaining the total price indicated in the initial financial bid form. In accordance to the above cited regulations, this is not permissible and could not be done.
- e) The General Rules Governing Tenders also state clearly that: *No rectifications shall be allowed in respect of the documentation as accompanied by Note 3 in Clause 5 of the Instructions to Tenderers. Only clarifications on the submitted information in respect of the latter may be eventually requested.*
- f) The financial bid form is a note 3 document and thus no rectification could be done. Unlike what has been suggested in the letter of objection by the objector where it states that a clarification would have been sufficient, what the objector intended to do is to rectify the unit price. This is certain and evident as the objector submitted a new amended financial bid form when a request to confirm the corrected grand total was sent.
- g) The evaluation committee was bound to conduct the evaluation process in full observance to the general rule governing tenders and this to safeguard the basic principles of public procurement, namely those of self limitation and equal treatment of economic operators. In view of these obligations the evaluation committee could only declare the objector’s offer as non compliant.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties, will now consider Appellant’s grievances.

- a) The essence of this appeal lies in whether the Appellant’s conduct, consisting of the submission of a revised Financial Bid Form in response to a clarification request issued by the Contracting Authority, constitutes an admissible clarification or, rather, an impermissible rectification prohibited under the terms of the tender.
- b) The Board notes at the outset that the Financial Bid Form forms part of the documentation expressly falling within the ambit of *Note 3*, wherein rectifications are categorically excluded and only clarifications of information already submitted may be sought or accepted. This limitation is clear, unequivocal, and leaves no discretion to the Contracting Authority or to this Board to extend

its scope by interpretation. Moreover, the Board notes that the Financial Bid Form was unambiguously drafted and was clear in its requirements.

- c) It is equally undisputed that, instead of merely confirming or explaining the figures already submitted, the Appellant proceeded to resubmit a modified Financial Bid Form containing an altered unit rate. Such an action, by its very nature, constitutes a rectification of a material element of the tender, rather than a clarification within the meaning of *Note 3*.
- d) While the Board takes note that the Appellant's actions may have been taken in good faith and without any intention to distort competition, the principle of *self-limitation* obliges both the Evaluation Committee and this Board to apply the tender rules as they stand. The clear terms of *Note 3* do not admit of any interpretative flexibility permitting post-submission alterations to a core financial document.
- e) Moreover, the principle of *equal treatment* requires that all tenderers be assessed under the same conditions. To allow one tenderer to modify a financial element after submission would undermine the transparency and fairness of the procedure and would offend this fundamental principle of procurement law.
- f) In light of the foregoing, the Board finds that the Contracting Authority acted correctly in determining that the Appellant's submission amounted to a rectification falling outside the permissible scope of *Note 3*. The disqualification of the Appellant's offer was therefore both legally and procedurally sound.

Accordingly, having given due consideration to all written and oral submissions, the Board finds both in fact and in law that the Contracting Authority acted in full conformity with the tender terms, the applicable procurement regulations, and the governing principles of equal treatment and transparency.

Whilst the Board regrets the circumstances leading to the Appellant's disqualification, the tender rules are clear, unequivocal, and leave no room for discretion or interpretative flexibility.

The appeal is, therefore, unfounded and the Board does not uphold the Appellant's 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 cancellation of the tender,
- c) Directs that the deposit paid by Appellant not to be reimbursed.

**Mr Kenneth Swain**  
Chairman

**Dr Ana Thomas**  
Member

**Dr Maria Cardona**  
Member