



IN THE PUBLIC CONTRACTS REVIEW BOARD

25th June 2026

Re: Objection 681 – CPSU5245/26 – Tender for the Supply of Disposable Temperature Probe Covers

Reply of the **Central Procurement and Supplies Unit (CPSU)** on behalf of the Department of Health as the Contracting authority to the reasoned application lodged by **Drugsales Limited (the Objector)**.

A call for tenders for the Supply of Disposable Temperature Probe Covers was issued by CPSU on the 20th of February 2026.

A number of bids were submitted and following an evaluation process the tender was recommended for award to **Europharma Ltd (the recommended bidder)**.

The objector's offer was not recommended for award since there was a cheaper compliant offer.

The Objector filed an objection based on 5 grounds of appeal.

CPSU humbly disagrees with the grievances raised and is hereby presenting its reply.

Submissions

On the First Grievance: Lack of Demonstrable Evidence of identical Performance, and obligations

1. In its first Grievance the objector states that the literature of the recommended product which is available in the public domain does not state that the offered product has identical performance to the original Welch Allyn probe cover, does not provide a comparative clinical validation, comparative accuracy testing and equivalence study or any performance data.
2. CPSU respectfully submit that the above are not the requisites of the tender. The tender clearly pointed out limited and clear specifications which are the below:

1.0	Functional specifications:	
1.1	To prevent cross contamination	N/A
2.0	Technical specifications:	
2.1	Must fit Welch Allyn Electronic Thermometer (item code WA-05031-110 or equivalent)	N/A
2.2	Female luer	N/A
2.3	Equivalent probe covers should have identical performance as the original product	N/A

3. The bidder had to prove, that the product offer prevents cross contamination, fits the Welch Allyn Electronic Thermometer, is a female luer, and if the product is not of the Welch Allyn brand, should provide identical performance to probe covers of the Welch Allyn brand.
4. The above were all satisfied by the recommended bidder and thus there was no reason to reject the offer.
5. The product was tested by the evaluation committee and when compared to products of the Welch Allyn brand it was concluded that these give identical performance.
6. This was confirmed by the literature and also by sample testing which is an integral part of the evaluation process.
7. For these reasons this grievance ought to be rejected in full.

On the Second Ground of Appeal – Insufficient Sample testing to establish identical performance

8. The objector argues that testing of 10 samples is not sufficient to test equivalent performance.
9. The Contracting Authority submits that sample testing is within its discretion and its professionals test the samples in a way they deem appropriate for the particular product which will be purchased. The absence of an established sample testing criteria, gives the contracting authority this discretion to test the samples in the manner it deems most appropriate in the context of their use and functionality.
10. The General Rules Governing Tenders provide in clause 16.3 that:

Wherever applicable in the procurement documents, and also in terms of Regulation 12 (1) (b) of S.L. 601.03, tenderers may be requested to submit samples so that the Evaluation Committee will corroborate the technical compliance of the offers received. In case of different options provided by the same bidder, respective samples for respective offers should be provided as requested. Without prejudice to the possibility of requesting clarifications, where the samples do not corroborate the offer submitted, the tenderer shall be disqualified.
11. This method of sample testing used, that is comparing of results, is in the opinion of CPSU a very reasonable way of testing.
12. CPSU also submits that if the objector is of the opinion that there should have been a detailed sample testing protocol, this opinion should have been there from the beginning i.e. from when the tender was published and not from when its offer was rejected!;
13. The Objector was well aware from the outset that only 10 samples would be requested;

14. This objection for lack of sample testing protocol or the argument that 10 samples are not enough, should have been brought up during the applicable time frame for the filing of an action in terms of regulation 262 of the Public Procurement Regulations before the closing time for the submission of offers. Once this time frame lapsed there is a *juris et de juris* presumption that the specifications as published have been accepted and thus whoever submits an offer should observe such specifications.

15. The objector also had ample time to ask for clarifications on sample testing as per procurement procedure however chose not to do so.

16. This has been also the position taken by our Court of Appeal. In fact in the decision of the 10th of January 2023 in the names **All Clean Services Limited v. Ministeru għall-Edukazzjoni et**, the Court states that:

7. Din il-Qorti taqbel ma' dak li osserva l-Bord li kull min kien interessat, jekk ma kienx jaqbel ma' xi kundizzjoni fis-sejha, skont ir-Regolamenti applikabbli, seta' agixxa, bil-mezzi li jagħtuh l-istess Regolamenti, biex jipprova jimpunja dik jew dawk il-kundizzjonijiet. Mhux leċitu li l-oblatur iħalli l-proċess għaddej, u wara, jekk jitlef il-kuntratt, jallega li kundizzjoni fis-sejha ma kellhiex tkun hemm għax "kompletament irrilevanti".

8. Hu veru li l-kundizzjonijiet tax-xogħol tal-ħaddiema huma regolati b'ligijiet oħra, u hemm regolamenti li jagħtu poter lill-awtorità kompetenti tissindika fuq dawk il-kundizzjonijiet, però, dan kien ikun argument li kellu jitressaq fl-istadju preparatorju għall-proċess tal-għażla tal-oblatur preferut. Jekk ir-rekwizit ta' ftehim kollettiv huwa parti mill-kundizzjonijiet li kellhom jiġu sodisfatti minn kull oblatur, is-soċjetà appellanti kellha taderixxi ruħha ma' dak rikjest. Din il-Qorti osservat diversi drabi li dak rikjest fid-dokumenti tas-sejha għall-offerti jridu jiġu kollha sodisfatti. (Added emphasis)

17. Similarly, in the decision of the Court of Appeal in the names **Vassallo Builders Ltd v. Wasteserv Malta Ltd** et decided on the 6th of May 2025 it was stated that:

... jekk VBL dehrilha li r-rekwizit inkwistjoni kien illegali, hija setgħet tattakka dak il-kriterju fl-istadju ta' qabel l-għeluq tas-sottomissjoni tal-offerti, u dan bil-mod kif imsemmi f'Regolament 262 Regolamenti dwar l-Akkwist Pubbliku. La hija naqset milli tagħmel hekk, u s-sejha għall-offerti kienet tobbligaha tressaq kopja tal-«Final or Provisional Acceptance Certificate or equivalent», mela allura, VBL kienet marbuta li tressaq tali dokumentazzjoni, anke jekk dehrilha li dik id-dokumentazzjoni ma kinitx meħtieġa minhabba s-setgħat tal-kumitat tal-evalwazzjoni li jwettaq ilverifiki kollha meħtieġa, jew inkella għaliex dak il-kumitat seta' jsib linformazzjoni minn fuq l-internet. (Added emphasis)

18. For these reason as will be further substantiated during the sitting, this first ground of objection should be rejected.

On the Third Ground of Appeal – Breach of Transparency and Equal Treatment Principles.

19. The objector in this ground of objection argues that if compliance to identical performance was determined having documentary evidence, this would be a breach of transparency and equal treatment of bidders.
20. This grievance apart from being factually and legally incorrect, is also hypothetical.
21. The specifications were simple and clear and the recommended bidder submitted both literature and samples for the evaluation committee to do the evaluation.
22. The evaluation committee performs the evaluation on the basis of the technical offer form submitted, the literature submitted and the testing of samples. As long as the recommended bidder fulfils all the minimum requirements of the tender, its offer would be compliant.
23. The objector cannot expect that more onerous literature is submitted other than that fulfilling the minimum tender requirements.
24. The evaluation committee submits that the evaluation process was done in full adherence to the general principles of public procurement including equal treatment of bidders, transparency and self-limitation.
25. For these reasons, CPSU submit that this third ground of appeal should also be rejected.

On the Fourt Ground of Appeal – Clinical importance of Accurate temperature Measurements

26. The Objector emphasizes on the importance of accurate temperature measurement.
27. The evaluation committee is aware of the importance of this and confirms that adequate testing was done.
28. For this reason this second grievance ought to be rejected as well

On the fifth Grievance: Manufacturer Instructions for use explicitly warn against use of non-OEM probe covers.

29. The objector submits that the manufacturer of the Welch Allyn Electronic Thermometer warns against the use of original Welch Allyn probe covers.
30. CPSU submits that this grievance cannot be raised at this stage of the evaluation process since it is a grievance which of its nature could have been raised in terms of regulation 262 of the Public Procurement Regulations. CPSU refers to paragraphs 16 and 17 of this reply which shall apply to this grievance as well.
31. Without prejudice to the above, CPSU respectfully submits, that no manufacturer will tell you to buy consumables from his competitors.

32. CPSU is duty bound by the principles of fair and open competition to consider equivalent products on the market to ensure fair competition.

33. For these reasons this fifth grievance ought to be rejected in full as well.

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

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

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