

# PUBLIC CONTRACTS REVIEW BOARD

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## Case 1168 – CT 2299/2017 - Tender for the Supply of Alcohol Surface Wipes

### Remedies before the Closing date of a Call for Competition

The publication date of the call for tenders was the 9<sup>th</sup> March 2018 whilst the closing date of the call for tenders was the 12<sup>th</sup> April 2018. The estimated value of the tender (exclusive of VAT) was € 242,507.76

On the 1<sup>st</sup> April 2018, Cherubino Ltd filed a Call for Remedies before the Closing Date of the Competition against the Central Procurement and Supplies Unit

On 22<sup>nd</sup> May 2018 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Carmel Esposito as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

### Appellant – Cherubino Ltd

Dr Danica Caruana	Legal Representative
Dr Francis Cherubino	Representative
Mr Paul Calleja	Representative

### Contracting Authority – Central Procurement and Supplies Unit (Health)

Dr Stefan Zrinzo Azzopardi	Legal Representative
Dr Alison Anastasi	Assistant Director
Prof Michael Borg	Representative
Ms Marika Cutajar	Principal
Ms Josette Camilleri	Pharmacist Technician

Dr Anthony Cassar, Chairman of the Public Contracts Review Board, welcomed the parties and invited the Appellants to make their submissions.

Dr Danica Caruana, Legal Representative for Cherubino Ltd, said that remedy was being sought because the technical specifications as drafted in this tender document can be met by only one product provided by one company (Medival) that was currently providing this product to the Ministry for Health. This product was an ‘off the shelf’ product and there were other products on the market that served the same purpose. However, the way the specifications had been grouped in the tender could only be met by one product as not all producers could meet all the specifications.

Prof Michael Borg (292163M) testified on oath that he was the Head of the Infection Control Department at Mater Dei Hospital. He gave an explanation of the product and its uses – basically it was wipes soaked in alcohol used to disinfect surfaces. This product had been in use for some time, and the only difference from past tenders was that this time the tender specified the size of the wipes. The specifications were determined by the end-use requirements. Witness stated that his concern was not which companies offered the product but in the product itself and patients safety.

The Chairman intervened to point out that the Board wants to determine if there is a preference in specifications favouring particular brands and if this limits competition and he asked Appellants to indicate which specifications were not being met.

Dr Caruana indicated that, as an example, the 70% alcohol specification in the tender does not allow any leeway, not even +/- minute variations.

Prof Borg, continuing his evidence, said that specifications were defined by medical knowledge on infection control. If it could be proven scientifically that a slight variation in specifications made no difference then such variations were acceptable.

Dr Stefan Zrinzo Azzopardi, Legal Representative for the CPSU mentioned that the specifications published by the CPSU were dictated by professionals, and had to be adhered to as they affected patients care.

The Chairman stated that it was important to give an opportunity to other bidders but the CPSU had to be assured that products gave the same end result. Similar products giving the same result should be acceptable, and he suggested that the Contracting Authority issued clarifications that similar products are acceptable. He thanked the parties for their submissions and declared the hearing closed.

**This Board,**

**Having noted this Call for Remedies filed by Cherubino Limited, (hereinafter referred to as the Appellants), prior to the Closing Date of Call for Competition on 1<sup>st</sup> April 2018, refers to the contentions made by the same Appellants with regards to the award of Tender of Reference CT 2299/2017 listed as Case No 1168 in the records of the Public Contracts Review Board issued by the Central Procurement and Supplies Unit, (hereinafter referred to as the Contracting Authority).**

**Appearing for the Appellants: Dr Danica Caruana**

**Appearing for the Contracting Authority: Dr Stefan Zrinzo Azzopardi**

**Whereby, the Appellants contend that:**

- a) The way that the Technical Specifications of the product are formulated, favour a particular type of Brand. In this regard, the Appellants are insisting that there are other products on the market, having different ingredients of the specifications but which render the same objective.**

**This Board also noted the Contracting Authority’s “*Letter of Reply*” dated 23 April 2018 and its verbal submissions during the Public Hearing held on 22 May 2018, in that:**

- a) The Central Procurement and Supplies Unit maintains that the Technical Specifications of the product were formulated on medical advice and contrary to what the Appellants are alleging, there are various suppliers who can participate in the Tender.**

**This same Board also considered the testimony of the witness, namely, Prof Michael Borg, Head of Infection Control, Mater Dei Hospital, duly summoned by the Central Procurement and Supplies Unit.**

**This Board, after having examined the relevant documentation to this concern and heard submissions made by the parties concerned, including the testimony of the witness, namely Prof Michael Borg, opines that, in matters of medical issues, the Central Procurement and Supplies Unit is always restricted to the advice given by the professional staff and in this regard, this Board has to rely substantially on the testimony of medical professionals.**

**In this particular case, the Appellants indicate a specific technical specification involving a 70% alcohol ingredient through which a restriction**

**of competition will be created. In this regard, this Board would point out that although medical products are somewhat specific in their application, the principles of Public Procurement must always be respected so that the Technical Specifications should follow the following directives:**

- Be precise in the way they describe the requirements;**
- Be easily understood by the prospective Bidders;**
- Have clearly defined, achievable and measurable objectives;**
- Not mention any brand names or requirements which limit the competition or if brands are monitored, include the term “*or equivalent*”;**
- Provide sufficient detailed information that allows Bidders to submit realistic offers.**

**From the testimony of Prof Borg, this Board was informed that provided the product being offered, in this particular case, wipes, do render the desired effect, there should be no strict adherence to a particular percentage or dictated ingredient and in this regard a degree of tolerance should be allowed in the specifications. At the same instance, this Board would emphasize that all the Technical Specifications should allow for the participation of other products which although they do not strictly adhere to the dictated specifications so indicated in the Tender Document, they do render the same**

**objective, in this particular case, hygienic wipes to be used at the Infections Control Department at Mater Dei Hospital. Finally, this Board would emphasize that the well being of the patient must always be taken into consideration.**

**In view of the above, this Board**

**a) Recommends that, through a Clarification Note, the Central Procurement and Supplies Unit should include:**

**i) A Margin of tolerance on any specific Technical Specification;**

**ii) Include in the Technical Specifications the term “*or equivalent*”;**

**iii) Avoid, as much as possible, any Technical Specifications which might limit the scope of competition.**

Dr Anthony J Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Carmel Esposito  
Member

*29<sup>th</sup> May 2018*