

## **PUBLIC CONTRACTS REVIEW BOARD**

### **Case 1364– CT 2300/2018 – Tender for the Supply of Cleaning Sanitizing Wipes 20x25cm**

The publication date of the tender was the 21<sup>st</sup> November 2018 whilst the closing date was the 10th January 2019. The estimated value of the tender (exclusive of VAT) was € 449,600.

On the 15<sup>th</sup> July 2019 Medina Healthcare Ltd filed an appeal against the Central Procurement and Supplies Unit as the Contracting Authority on the grounds that their bid was rejected as it was considered not according to specifications and therefore technically non-compliant. A deposit of € 2,248 was paid.

There were four (4) bidders.

On 8<sup>th</sup> October 2019 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:

#### **Appellants – Medina Healthcare Ltd**

Dr Frank Testa	Legal Representative
Mr John Soler	Representative

#### **Recommended Bidder – ProHealth Ltd**

Dr Alessandro Lia	Legal Representative
Mr Andrew Paris	Representative
Ms May Schembri	Representative

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

Dr Marco Woods	Legal Representative
Ms Marika Cutajar	Chairperson Evaluation Committee
Mr Edmond Balzan	Member Evaluation Committee

#### **Department of Contracts**

Dr Franco Agius	Legal Representative
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Dr Anthony Cassar, Chairman of the Public Contracts Review Board, welcomed the parties and invited submissions.

Dr Franco Agius Legal Representative of the Department of Contracts said that that he was making a specific request to the Public Contracts Review Board to seek permission to recall the recommendation of the Contracting Authority and re-open the evaluation.

Dr Frank Testa Legal Representative for Medina Healthcare Ltd said that Appellants acquiesced to the request of the Department of Contracts.

Dr Alessandro Lia Legal Representative for ProHealth Ltd stated it was not the prerogative of the Director of Contracts to request a re-evaluation. The first step was for the PCRB to investigate the case and decide if there is scope for re-evaluation.

Dr Agius pointed out that according to regulation 15 of the Public Procurement Regulations the Director of Contracts has the right to decide and if it is felt that there is room for re-evaluation due to an error it should not endorse that error – so he is formally asking the PCRB to withdraw the Authority’s decision.

Dr Testa said that they were merely seeking a re-evaluation in an effort to save the tender.

Dr Lia said that regulation 15 dealt with cancellation of a tender not re-evaluation. The Director of Contracts was requesting the PCRB to order a re-evaluation without hearing the case.

Dr Franco Agius (496577M) called as a witness by the PCRB testified on oath that the Director of Contracts intends to set up a new evaluation committee as certain details in the offer were not taken into consideration.

Questioned by Dr Lia witness stated that he had personally seen the offers and was aware of the error, which fact had been verified by the Director of Contracts.

Dr Lia stated that the Board does not know of the Director of Contract’s input in this matter – it is merely being stated that there is an error without any proof that it is so. The Board should hear the appeal and submissions and then decide if the decision should be re-evaluated if it actually transpires that there was an error. The PCRB cannot have the comfort to confirm the request without knowing the reason. The only proof that will stand up is through the testimony of the evaluator – otherwise there is no comfort for the Board.

Dr Agius stated that he was not 100% assured that the appeal was justified - however the Department was comfortable that an error exists and it is obliged not to persist in error and wants to ensure that the process is correctly carried out. It is the Director of Contracts that makes the final decision not the evaluation committee.

The Chairman stated that all reports were available to the Board and he assured all parties that they will be minutely examined before a decision is made.

He then thanked the parties for their submissions and declared the hearing closed.

End of Minutes

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## **Decision**

**This Board,**

**having noted this objection filed by Medina Healthcare Ltd (herein after referred to as the Appellants) on 15 July 2019, refers to the claims made by the same Appellants with regard to the tender of reference CT 2300/2018 listed as case No. 1364 in the records of the Public Contracts Review Board, awarded by Central Procurement and Supplies Unit (herein after referred to as the Contracting Authority.**

**Appearing for the Appellants: Dr Frank Testa**

**Appearing for the Contracting Authority: Dr Marco Woods**

**Appearing for the Department of Contracts: Dr Franco Agius**

**Whereby, the Appellants contend that:**

- a) They feel aggrieved by the Authority's alleged claims that their product does not conform with the stipulated technical specifications. In this regard, Appellants maintain that, their product can be utilised without gloves and is subject to equivalent recommendations with regard to safety in the utilisation of protective equipment.**

**This Board also noted the Contracting Authority’s ‘Letter of Reply’ dated 23 September 2019 and its verbal submissions during the hearing held on 10 October 2019, in that:**

- a) The Authority contends that there exist doubts whether the Evaluation Committee took all the documentation submitted by bidders, into consideration during its evaluation process. In this regard, it is hereby requested to review the evaluation process in more detail.**

**This same Board also noted the testimony of the witness namely:**

**Dr Franco Agius duly summoned by the Public Contracts Review Board.**

**This Board noted carefully the Contracting Authority’s request to recall the recommendation and re-open the evaluation process. At the same instance, prior to deliberating on the merit of the case, this Board had to establish whether such a request could be justifiably supported by concrete and credible evidence that, there existed an error in the evaluation process.**

- 1. In this regard, this Board after having examined the relevant documentation and the evaluation report opines that, during the evaluation process, the Committee failed to take into consideration the complete documentation submitted and this Board also notes that the**

**Evaluation Committee consisted of one evaluator only; which issue is totally unacceptable to this Board.**

- 2. This Board noted that the Authority is not requesting cancellation of the tender but rather to recall the recommendation of the Contracting Authority and re-open the evaluation process. In this respect, the Board would respectfully refer to article 15 of the Public Procurement Regulations which states that:**

*“15. (1) the Director has the right to cancel the award of a contract at any time during a call for tenders or quotations even after the recommended bidder has been decreed and the time establish to file an appeal before the Public Contracts Review Board has lapsed, if it found that such a contract has been awarded either in breach of these regulations or the award has been made in such a way as to discriminate between economic operators”.*

**It must be pointed out that, it is the duty and obligation of the Director of Contracts to cancel the procurement procedure in cases where, there seems to exist doubt as to whether the evaluation process of the particular procurement was carried out after the full and complete submissions of a particular bidder were scrupulously scrutinised.**

**3. In this particular case, the Authority is requesting a re-evaluation process and this Board cannot but accede to this request, as it is also the duty and obligation of this Board to ensure that, a proper evaluation process of all the offers has been carried out, after the Evaluation Committee has examined and assessed all the documentation submitted by bidders.**

**In conclusion, this Board opines that:**

- a) The composition of the Evaluation Committee consisted of one evaluator only and such a situation is not acceptable to this Board.**
- b) The sole evaluator had relied on other expertise not indicated in the evaluation report.**
- c) Not all documentations submitted by bidders were taken into consideration during the evaluation process.**

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

- i) Cancels the Authority's decision in the award of the tender,**

**ii) upholds the Authority's request to carry out a re-evaluation process,**

**iii) directs the Authority to appoint a new Evaluation Committee composed of not less than two members technically knowledgeable in such procurement.**

**iv) directs that the deposit paid by Appellant should be fully reimbursed.**

Dr Anthony Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Carmel Esposito  
Member

*25 October 2019*