

# **PUBLIC CONTRACTS REVIEW BOARD**

## **Case 1667 – CFT020-0708/21 – CPSU2152/21 – Tender for the Supply of Disposable Suction Liners**

**10<sup>th</sup> January 2022**

The Board,

Having noted the letter of objection filed by Mr Jason Busuttil for and on behalf of Prohealth Limited, (hereinafter referred to as the appellant) filed on the 14<sup>th</sup> December 2021;

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 20<sup>th</sup> December 2021;

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 6<sup>th</sup> January 2022 hereunder-reproduced;

### **Minutes**

#### **Case 1667 – CFT 020-0708/21 – Tender for the Supply of Disposable Suction Liners**

The tender was issued on the 13<sup>th</sup> August 2021 and the closing date was the 6<sup>th</sup> September 2021. The value of the tender, excluding VAT, was € 60,381.60.

On the 14<sup>th</sup> December 2021 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 deemed not technically compliant.

A deposit of € 400 was paid.

There were four (4) bidders.

On the 6<sup>th</sup> January 2022 the Public Contracts Review Board composed of Mr Kenneth Swain as Chairman, Dr Charles Cassar and Ms Stephanie Scicluna Laiviera as members convened a public virtual hearing to consider the appeal.

The attendance for this public hearing was as follows:

#### **Appellant – Prohealth Ltd**

Dr Alessandro Lia  
Mr Jason Busuttil

Legal Representative  
Representative

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

Dr Leon Camilleri	Legal Representative
Mr Edmond Balzan	Member Evaluation Committee
Ms Josette Camilleri	Secretary Evaluation Committee

## **Preferred Bidder – Technoline Ltd**

Ms Damaris Lofaro	Representative
Mr Alan Mizzi	Representative

Mr Kenneth Swain Chairman of the Public Contracts Review Board welcomed the parties. He noted that since this was a virtual meeting all the parties agreed to treat it as a normal hearing of the Board in line with Article 89 of the Public Procurement Regulations. He then invited submissions noting that the Contracting Authority had proposed a re-evaluation of the tender.

Dr Alessandro Lia legal Representative for Prohealth Ltd stated that there is no point in making any submissions as Appellant accepts the offer of a re-evaluation.

Dr Camilleri Legal Representative for the Contracting Authority merely confirmed that he was relying on his written submissions.

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

End of Minutes

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### **Hereby resolves:**

The Board refers to the minutes of the Board sitting of the 6th January 2022.

Having noted the objection filed by Prohealth Limited (hereinafter referred to as the Appellant) on 14<sup>th</sup> December 2021, refers to the claims made by the same Appellant with regards to the tender of reference CfT020-0708/21 – CPSU2152/21 as case No. 1667 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Alessandro Lia

Appearing for the Contracting Authority: Dr Leon Camilleri

Whereby, the Appellant contends that:

- a) The Contracting Authority states that the sole reason for declaring Prohealth as technically non-compliant was the following:

*“Not accepted. Not according to specs. Similar item when tested was found that when suction Liner is full to 1900 mls, it is very difficult to remove liner from container with the risk of liner braking up and splashing staff. In my opinion, these suction liners are not suitable, especially in emergency procedures where you need change liner quickly”*

It is therefore understood that the Contracting Authority is claiming that the product offered by Prohealth is non-compliant, and not in accordance with specification on account based on evaluation of a 'similar' product and therefore implying that the samples Prohealth have submitted were not in fact evaluated and tested but decision has been taken based on testing similar products. Also, we highlight the last sentence of the reason for rejection which starts with the claim *“in my opinion”* clearly stating that the decision of rejection was based on an opinion and not on factual findings.

The Contracting Authority is exercising an element of subjectivity which goes beyond what is permitted in the relative procurement procedure and in accordance with the applicable award criterion.

This Board also noted the Contracting Authority’s Reasoned Letter of Reply filed on 20<sup>th</sup> December 2021 and its verbal submission during the virtual hearing held on 6<sup>th</sup> January 2022, in that:

- a) Following further investigations, for the avoidance of any doubt and in the best interests of all parties and a transparent procurement process, CPSU agrees that the tender is re-evaluated by a newly appointed evaluation committee and the samples are tested by new end users

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

- a) That the Contracting Authority exercised an element of subjectivity which goes beyond what is permitted when it used, as a sample, a ‘similar’ product to that of the Appellant.
- b) That the Contracting Authority is itself agreeing to a re-evaluation of the bid through a newly appointed evaluation committee.

Therefore, this Board accedes to the grievances of the Appellant.

**The Board,**

Having evaluated all the above and based on the above considerations, concludes and decides:

- a) To uphold the Appellant's concerns and grievances;
- b) To cancel the 'Notice of Award' letter dated 3<sup>rd</sup> December 2021;
- c) To cancel the Letters of Rejection dated 3<sup>rd</sup> December 2021 sent to Prohealth Limited;
- d) To order the contracting authority to re-evaluate the bid received from Prohealth Limited in the tender through a newly constituted Evaluation Committee composed of members which were not involved in the original Evaluation Committee, whilst also taking into consideration this Board's findings;
- e) after taking all due consideration of the circumstances and outcome of this Letter of Objection, directs that the deposit be refunded to the Appellant.

**Mr Kenneth Swain**  
Chairman

**Dr Charles Cassar**  
Member

**Ms Stephanie Scicluna Laiviera**  
Member