



In the Public Contracts Review Board

In the matter relating to RfQ 009-6055/21:

OK Medical Limited

versus

Central Procurement and Supplies Unit

**APPLICATION of OK Medical Limited**

1. That we are instructed by OK Medical (Registration Number C-79739) (the '**Appellant**') to file the present application in response to the reasoned letter of reply lodged by the Central Procurement and Supplies Unit (the '**Contracting Authority**') on 3 December 2021.
2. That the Appellant raised a number of grievances concerning the technical non-compliance of CAIRE New Life Intensity 10, that is, the product submitted by Sidroc Services Ltd (Registration Number C-59456) (the '**Successful Bidder**') presumably for the Type 2 Oxygen Concentrators.

In particular, the Appellant alleges that the sound level of this model is 58dBA and therefore exceeds the maximum sound level threshold of 50dBA (+- 5dBA) requested by condition 2.6 of the RfQ in question, and which condition was confirmed in subsequent clarifications issued by the Contracting Authority itself.

3. That in paragraph 15 of its reply, the Contracting Authority indicated that the Type 2 model submitted by the Successful Bidder has a maximum threshold of 55dBA and therefore in conformity with the technical specifications requested.
4. That according to the meticulous market research conducted by the Appellant, and on the basis of publically accessible information, the maximum sound level threshold of the Type 2 model submitted by the Successful Bidder is 58dBA which falls short, or rather exceeds, the permissible level imposed by the RfQ and subsequent clarifications.
5. That in view of the foregoing, the Appellant humbly requests this Honourable Board to instruct the Contracting Authority to disclose the specific document from which the sound level conformity of the Type 2 model submitted by the Successful Bidder arises, and to make such specific document available to the Appellant.
6. That the requested disclosure does not constitute confidential information in terms of Regulation 40(2) of the Public Procurement Regulations (Subsidiary Legislation 601.03 of the Laws of Malta), specifically since it is '*technical information which is already made available in public*'.
7. That the fact that such requested disclosure does not constitute confidential information is further substantiated by the fact that the Type 2 model in question is being offered by the Successful Bidder, and there is therefore unequivocal public interest in disclosing the technical compliance or otherwise of the product being procured.

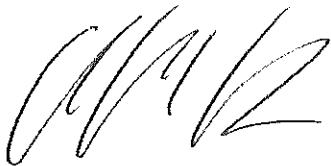
8. That furthermore, the technical compliance of the Type 2 model of the Successful Bidder with the maximum sound level threshold requested constitutes one of the Appellant's grounds of objection.

If the market research carried out by the Appellant is not correct on the maximum sound level threshold, and if the Type 2 model technically compliant in this respect, then the Appellant will have no choice but to re-evaluate its position at law and withdraw its ground of appeal only insofar as the maximum sound level threshold of the Type 2 model in question is concerned.

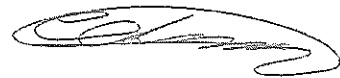
THEREFORE, in view of the above and for other reasons that may be adduced at law at the sitting to be set by the Public Contracts Review Board, the Appellant humbly submits that the same Board should, subject to any declaration or order that it deems fit and opportune:

- (a) instruct the Central Procurement and Supplies Unit as the Contracting Authority to disclose to this Honourable Board the specific document which confirms the technical compliance of the CAIRE New Life Intensity 10 insofar as the maximum sound level threshold is concerned; and
- (b) make this specific document available to the Appellant to substantiate or otherwise re-evaluate its appeal specifically in respect of the maximum sound level threshold.

Yours sincerely,  
Ganado Advocates



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