



**Public Contracts Review Board
Department of Contracts
Notre Dame Ravelin
Floriana VLT2000**

15 February 2021

Dear Chairman,

Re: Tender for the Supply of Qty One (1) Goal Directed Therapy Inline Perfusion Monitoring System for Cardiac Surgical Applications at Mater Dei Hospital – Ref. CFT009-0534-20 (CPSU1901-2018) (the 'Tender').

1. We have been instructed by **Evolve Limited (C38907)** (the "Appellant") to lodge an appeal in terms of Regulation 270 of the Public Procurement Regulations ("PPR")¹ in connection with the above-captioned Tender.
2. The respondent Central Procurement and Supplies Unit ("CPSU") issued the Tender on 15 May 2020. This Tender is for the award of a public supply contract for one Goal Directed Therapy Inline Perfusion Monitoring System for Cardiac Surgical Applications. The duration of this public contract is set at 6 weeks being the time-limit for delivery of the supply from the date of execution of the public contract;² but the contractor was to provide a 2 year warranty in terms of Article 32 of the Special Conditions.
3. The tender submission deadline was 4 June 2020.
4. During the period for the submission of requests for clarifications by bidders, the following request was submitted:

With respect to requirements 5.1.15 through to 5.1.19 requesting full pricing for all possible spare parts and a full technical training for the Customer's Biomedical Technicians, kindly note that in this case once the equipment is highly specialized, the manufacturer has mandated that any service interventions must be carried out by fully trained and authorized personnel and only after they have gained several hundred hours of service experience which will not be the case in situations where technicians might be looking after one unit in an isolated market. This has been determined in the interest of patient safety and in view of the fact that miniscule changes to the operational capacity and accuracy of the system may result in patient injury. Therefore, would it be acceptable for a bidder to omit the requested details and pricing however quote pricing related to different servicing and maintenance packages?

¹ Subsidiary Legislation 601.03 of the Laws of Malta.

² Clause 1.2, page 4 of the Tender Dossier.

End user training will still be given while the operators and their biomedical engineers will also be trained to perform first line support on the equipment.

to which CPSU responded:

This would be considered acceptable.

5. Two bids were submitted by the Appellant and Technolne Limited (the "Recommended Bidder") as per opened tender details:

CFI Title: TENDER FOR THE SUPPLY OF QTY ONE (1) GOAL DIRECTED THERAPY INLINE PERFUSION MONITORING SYSTEM FOR CARDIAC SURGICAL APPLICATIONS AT MATER DEI HOSPITAL (CFI CA Unique ID: CFI00R-0334-20 (CPSU1901-2019)) (Status: Evaluation)			
Number of Envelopes:		1	
Date of Publication/Installation:		15/05/2020 10:00	
Closing Date:		04/06/2020 09:30	
Opening Date:		04/06/2020 10:00	
Envelope	EO Name	Tender ID	Financial Value (EUR)
Single	Evolve Ltd	133279	128549.64
Single	Technolne Ltd	133251	130000.00

6. Around August 2020, CPSU requested the following clarification from the Appellant:

With reference to your offer, in order to allow the adjudication committee to evaluate further your offer, kindly provide clarifications to the following query on your offer:

With reference to the tender pre-closing "Clarification Request and Reply" sent on 22nd May 2020, can you please explain what exactly is being offered, and at what cost, vis-a-vis the requested yearly maintenance of the equipment being offered. Are the Spare Parts required included in these costs?

Kindly submit your replies by Thursday, 13th August 2020.

Please note that this is being requested without any commitment whatsoever on behalf of the government. Should you have any further queries do not hesitate to contact us.

The Appellant replied as follows:

The item quoted by Evolve Ltd comes with a full 24 months warranty covering any faulty parts and labour as per tender clause 5.1.8.2, including also accidental damage. The maintenance will be carried out by qualified Spectrum Medical Specialist on this line, in accordance to the clarification raised. The total costs shown in the Financial bid Form is inclusive of the full 24 months warranty as described above.

For the avoidance of doubt, this was the one and only request for clarification or rectification issued by the evaluation committee towards the Appellant.

7. On 5 February 2021, CPSU issued a notice recommending the award of the Tender to the Recommended Bidder for the financial offer of €135,900.56 (see **Document EL1**). This price of €135,900.56 is higher from the Recommended Bidder's financial offer disclosed in the opened tender details of €130,000.
8. On the same day, 5 February 2021, the Appellant received a letter of rejection from CPSU stating that it was recommended that the Tender is to be awarded to the Recommended Bidder and that the Appellant's "offer is technically compliant, but it is not the cheapest one" (see **Document EL2**). No further details or information were provided on this letter of rejection.
9. **As a matter of fact, the financial offer submitted by the Appellant was cheaper than the Recommended Bidder's financial offer; whether one takes into account that disclosed in the opened tender details or that disclosed in the letter of rejection. Therefore, and on the basis that the Appellant's offer was technically compliant, the Tender should have been awarded to the Appellant.**
10. On the following day, 6 February 2021, the Appellant immediately pointed out this fact to CPSU and requested an explanation as to the findings of the evaluation committee. The Appellant followed up with another reminder on 11 February 2021.
11. On 12 February 2021, CPSU explained to the Appellant that:

Further to your email below, kindly note that as per information provided by the evaluation committee, during the evaluation process an arithmetic correction was sent to both bidders through a clarification request (through EPPS).

Once the arithmetic correction was confirmed by each of the respective bidders, the total price of offer was adjusted accordingly. Thus following these adjustments as a result of the Arithmetic Correction, the offer submitted by Evolve Ltd. was the second cheapest offer in the Final Ranking.

Economic Operator Organisations	T/P receipt ID	Total Price in € excluding VAT (ORIGINAL OFFER)	Total Price in € excluding VAT (AFTER ARITHMETIC CORRECTION)	Ranking
Technoline Ltd	133351	130,000.00	135,900.56	1
Evolve Ltd	133579	128,549.84	136,535.70	2

12. The Appellant is aggrieved by CPSU's decision of 5 February 2021 and this for the following reasons:
13. First, the evaluation committee's unilateral "arithmetical correction" of the financial offer submitted by the Appellant is in breach of the tender specifications and the general principles of public procurement, specifically, equal treatment, transparency,

and self-limitation. The financial offer is a Note 3 matter according to the tender specifications, and therefore, only clarifications may be sought by the evaluation committee and that committee definitely cannot "correct" financial offers submitted by bidder unilaterally and at its discretion.

The evaluation committee for reasons which were not explained to the Appellant decided to ignore the GRAND TOTAL inputted by the Appellant in the financial bid form and to take into account another figure altogether and this contrary to the law and the tender specifications.

14. Second, and even if an arithmetical correction was required (which is contested), the evaluation committee blatantly disregarded the set procedure in Article 17 of the General Rules Governing Tenders for such corrections. The evaluation committee was obliged to inform the Appellant which was the basis for the arithmetical correction in terms of Article 17.1 of the General Rules Governing Tenders and further the same committee was to communicate the revised price to the Appellant in terms of Article 17.2 of the same General Rules. Neither were done, and therefore, on this basis only the evaluation process of the financial offers is to be done afresh.
15. Third, CPSU is in breach of its obligation to provide an adequate "summary of relevant reasons relating to the rejection of the tender" in violation of Regulation 272 of the PPR. This obligation was not only breached in the letter of rejection, which was at best telegraphic, but also in the email sent on 12 February 2021, which again does not explain why and how the arithmetical correction was made.
16. In this regard, the Appellant refers to C-406/08 *Uniplex (UK) Ltd* (28 January 2010) which held:

29. In that regard, it should be recalled that Article 1(1) of Directive 89/665 requires Member States to guarantee that unlawful decisions of contracting authorities can be subjected to effective review which is as swift as possible (Universale-Bau and Others, paragraph 74).

*30. However, the fact that a candidate or tenderer learns that its application or tender has been rejected does not place it in a position effectively to bring proceedings. **Such information is insufficient to enable the candidate or tenderer to establish whether there has been any illegality which might form the subject-matter of proceedings.***

*31. **It is only once a concerned candidate or tenderer has been informed of the reasons for its elimination from the public procurement procedure that it may come to an informed view as to whether there has been an infringement of the applicable provisions and as to the appropriateness of bringing proceedings.***

32. It follows that the objective laid down in Article 1(1) of Directive 89/665 of guaranteeing effective procedures for review of infringements of the provisions applicable in the field of public procurement can be realised only if the periods laid down for bringing such proceedings start to run only from the date on which the claimant knew, or ought to have known, of the alleged

infringement of those provisions (see, to that effect, Universale-Bau and Others, paragraph 78).

The law and the jurisprudence clearly requires that a rejected bidder is informed of the reasons for the rejection and that the reasons enable that rejected bidder to form a view as to whether there has been an infringement of the applicable provisions and as to the appropriateness of bringing proceedings.

17. As a result of the CPSU's failures at law, the Appellant was not in a position to form a view as to whether there has been an infringement of the tender specifications and law and as to the appropriateness of bringing these proceedings.

THEREFORE, for the above-mentioned reasons and for other reasons which will be brought during the proceedings, the Appellant respectfully demands that this Board, save for any declaration, order or decree that it deems fit in the circumstances:

- a. declares that CPSU's decision of 5 February 2021 was wrong and/or contrary to law and quashes the same decision;
- b. orders that the evaluation process of the financial bids submitted by the Appellant and the Recommended Bidder is done afresh;
- c. give any and all necessary directions to the CPSU on the interpretation and application of the Tender;
- d. order the refund of the deposit paid by the Appellant upon filing of this appeal.

Yours sincerely,
Ganado Advocates


Dr. Clement Mifsud-Bonnici
(cmifsudb@ganado.com)


Dr. Calvin Calleja
(ccalleja@ganado.com)

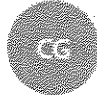
You will find an appeal filed on behalf of Evolve Limited.

You will find proof of payment below too.

Regards,

X

- €600



To Cashier Malta Government

Mon, 16 Feb. 08:49

Reference

Tender reference number: CFT009-0534-20 (Tender ID: 133579)

Status ⓘ Pending

Amount €600

Transfer fee ⓘ No fee

Created by Manuel Chetcuti

To Cashier Malta Government

Account type Business

BIC MALTMTMTXXX

IBAN MT55 MALT 0110 0004 0001 EURC MG50 01H

Clement Mifsud-Bonnici

Senior Associate



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LinkedIn profile

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DOCUMENT EL1

CENTRAL PROCUREMENT & SUPPLIES UNIT
MINISTRY FOR HEALTH
UB002 San Gwann Industrial Estate, San Gwann. SGN3000
Tel: (+356) 2540 4000 E-mail: info.cpsu@gov.mt



Date: 5th February 2021

The Departmental Contracts Committee (DCC) - Ministry for Health has agreed to the following Recommendations made by the Evaluation Committees.

Advert No.	Subject	Decision Award / Cancelled	Recommended Tenderer	Price – Excluding VAT	Deposit
CFT009-0534-20	TENDER FOR THE SUPPLY OF QTY ONE (1) GOAL DIRECTED THERAPY INLINE PERFUSION MONITORING SYSTEM FOR CARDIAC SURGICAL APPLICATIONS AT MATER DEI HOSPITAL	Award	Technoline Ltd	€135,900.56	€600

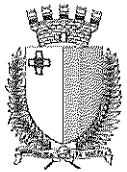
Tenderers are informed that any objection to the decisions listed above must reach Public Contract Review Board (PCRB), Notre Dame Ditch, Floriana, by not later than **Monday, 15th February 2021** or ten (10) calendar days from the date of notification to the respective bidder. Objections must be accompanied by a deposit to the amount indicated against each advert; otherwise they will not be considered. Tenderers are to note that this information does not imply any obligations on the part of the Government to actually implement any of the decision indicated.

f/Central Procurement and Supplies Unit

Stephen Mercieca
Technical Purchasing Officer
Procurement Section
Central Procurement and Supplies Unit



CENTRAL PROCUREMENT & SUPPLIES UNIT
MINISTRY FOR HEALTH
UB002 San Gwann Industrial Estate, San Gwann. SGN3000
Tel: (+356) 2540 4000 E-mail: info.cpsu@gov.mt



Tender Reference No: CFT009-0534-20
File No: CPSU1901-2018
Tender ID: 133579

5th February 2021

Evolve Ltd

Dear Sir,

TENDER FOR THE SUPPLY OF QTY ONE (1) GOAL DIRECTED THERAPY INLINE PERFUSION MONITORING SYSTEM FOR CARDIAC SURGICAL APPLICATIONS AT MATER DEI HOSPITAL

Thank you for participating in the above-mentioned tender procedure. However, I am to inform you that the Evaluation Committee has recommended that this tender is to be awarded to Technoline Ltd for the amount of €135,900.56

Your Offer has been rejected for the following reasons:

Your offer is technically compliant, but it is not the cheapest one.

If you intend to object to this decision, the Regulations allow for an official objection which in this case has to be lodged by noon of **Monday, 15th February 2021**, against a deposit of €600.

Although we have not been able to make use of your services on this occasion, I trust that you will continue to take an active interest in our initiatives.

Yours sincerely

Stephen Mercieca
Central Procurement & Supplies Unit

Clement Mifsud Bonnici

Subject: FW: e-Tendering CFT Automated Notification - [CFT:6493725, Cft CA Unique ID: CFT009-0534-20 (CPSU1901-2018)] Announce Disqualification Results

From: Xuereb Joseph M at CPS-Health <joseph.m.xuereb@gov.mt>

Sent: Friday, February 12, 2021 4:49 PM

To: Farrugia Karl at CPS-Health; Mark Mizzi

Cc: Adrian Balghy; Anastasi Alison at CPS-Health; Clement Mifsud Bonnici; Christopher Busuttil; Avv. Alexia J Farrugia Zrinzo - 360 Legal; Marco Woods

Subject: RE: e-Tendering CFT Automated Notification - [CFT:6493725, Cft CA Unique ID: CFT009-0534-20 (CPSU1901-2018)] Announce Disqualification Results

This email is coming from outside our organisation Ensure the sender email is correct..

Dear Mr. Mizzi,

Further to your email below, kindly note that as per information provided by the evaluation committee, during the evaluation process an arithmetic correction was sent to both bidders through a clarification request (through EPPS).

Once the arithmetic correction was confirmed by each of the respective bidders, the total price of offer was adjusted accordingly. Thus following these adjustments as a result of the Arithmetic Correction, the offer submitted by Evolve Ltd. was the second cheapest offer in the Final Ranking.

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Technoline Ltd	133351	130,000.00	135,900.56	1
Evolve Ltd	133579	128,549.84	136,535.70	2

Thanks and regards

joseph

Joseph Xuereb

Sen. Principal
Central Procurement Unit
Health-Central Procurement and Supplies

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<https://health.gov.mt> | www.publicservice.gov.mt | fb.com/servizzpubbliku

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MINISTRY FOR HEALTH
CENTRAL PROCUREMENT AND SUPPLIES UNIT,
SAN GWANN INDUSTRIAL ESTATE,
SAN GWANN, MALTA

From: Farrugia Karl at CPS-Health <karl.farrugia@gov.mt>

Sent: Thursday, 11 February 2021 08:55

To: Xuereb Joseph M at CPS-Health <joseph.m.xuereb@gov.mt>

Cc: Mark Mizzi <mmizzi@evolveltd.eu>; Adrian Balghy <abalghy@evolveltd.eu>; Anastasi Alison at CPS-Health <alison.anastasi@gov.mt>; Clement Mifsud Bonnici <cmifsudb@ganado.com>; Christopher Busuttil <cbusuttil@evolveltd.eu>; Avv. Alexia J Farrugia Zrinzo - 360 Legal <alexia@360legalmalta.com>; Marco Woods <marco@360legalmalta.com>

Subject: Re: e-Tendering CFT Automated Notification - [CFT:6493725, Cft CA Unique ID: CFT009-0534-20 (CPSU1901-2018)] Announce Disqualification Results

Joseph please look into this matter and kindly advise.

Kindest regards,

Karl

Ing Karl Farrugia | Managing Director

**Sourcing & Supply Chain Management
Health Department - Ministry for Health (MfH)**

Central Procurement and Supplies Unit (CPSU)
UB002 San Gwann Industrial Estate
San Gwann (SGN 3000) | Malta

e: karl.farrugia@gov.mt m: +356 79469637 t: 25454105 /25924105



From: Mark Mizzi <mmizzi@evolveltd.eu>

Date: Thursday, 11 February 2021 at 08:53

To: Anastasi Alison at MHEC-DPPM <alison.anastasi@gov.mt>, Farrugia Karl at CPS-Health <karl.farrugia@gov.mt>

Cc: Adrian Balghy <abalghy@evolveltd.eu>, Clement Mifsud Bonnici <cmifsudb@ganado.com>, Christopher Busuttil <cbusuttil@evolveltd.eu>

Subject: FW: e-Tendering CFT Automated Notification - [CFT:6493725, CFT CA Unique ID: CFT009-0534-20 (CPSU1901-2018)] Announce Disqualification Results

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URGENT

Dear Karl and Alison,

Up to date we are still without a reply.

We are still waiting to try and understand from where did these figures come when it is clear as crystal that our total cost is cheaper according to the schedule of prices. (as per link below)

We need to understand prior to considering whether it is a case to lodge an objection or not which if this is a mistake, will result in waste of time and money to all stakeholders.

The dead-line to lodge an objection is next Monday and today is Thursday and we are still without an answer.

We appreciate if you look into this matter please in the interest of everyone.

Kind regards,

Mark

Dear Karl and Alison,

With reference to the below email received yesterday Friday 5th and the attached rejection letter stating that our offer has been rejected since we were not cheaper, can someone please explain why this is so when this does not tally with the schedule of prices shown on the closing date of the tender.
Please find below the link to the epps page showing this. The schedule clearly indicates that we are cheaper in price.

<https://www.etenders.gov.mt/epps/eawarding/showDetailsOpenedTender.do?resourceId=6493725>

Also the price indicated of euro 135,900.56 does not show at all in the schedule of prices. Can someone give us an explanation to this please.

Kind regards,

Mark

Mark Mizzi

Division Manager – Medical & Diagnostics Sales



Scientific Workspaces
Design | Equip | Train | Maintain

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M: (+356) 9946 9919
45, Gwann Mamo Street
Luqa, MALTA
evolveid.eu

From: malta-eproc-noreply@eurodyn.com <malta-eproc-noreply@eurodyn.com>

Sent: Friday, February 5, 2021 6:09:09 PM

To: malta-eproc-noreply@eurodyn.com <malta-eproc-noreply@eurodyn.com>

Subject: e-Tendering CFT Automated Notification - [CFT:6493725, CFT CA Unique ID: CFT009-0534-20 (CPSU1901-2018)] Announce Disqualification Results

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e-Tendering Platform - Announce Results

Notification: Announcement of Results

Your organisation has been unsuccessful for the Call for Tenders with title 'TENDER FOR THE SUPPLY OF QTY ONE (1) GOAL DIRECTED THERAPY INLINE PERFUSION MONITORING SYSTEM FOR CARDIAC SURGICAL APPLICATIONS AT MATER DEI HOSPITAL' and CFT CA Unique ID 'CFT009-0534-20 (CPSU1901-2018)', as per the below details.

Kindly refer to the attached

IMPORTANT: All actions within the e-Tendering Platform will be recorded for auditing purposes. This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the system manager. This message contains confidential information and is intended only for the individual named. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. If you have received this e-mail by mistake delete this e-mail from your system. If you are not the intended recipient you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited.

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