

## INDEPENDENT REVIEW PANEL

In the matter of:

**Health Focus Ltd**

**(Applicant)**

**v/s**

**Ministry of Health and Quality of Life**

**(Respondent)**

**(Cause No. 05/14/IRP)**

### **Decision**

#### **A. Background**

1. On 04 September 2013, the Ministry of Health and Quality of Life using the Open National Bidding Method invited bids for the “*Procurement of Glucosemeters and Test Strips for determination of glucose in blood*” (Procurement Ref. No.: OAB MHPQ/MDIS/2013/Q10). The deadline for the submission of bids was 16 October 2013 up to 13.30 hours at the Ministry of Health and Quality of Life and the public opening of bids received was scheduled for the same day at 13.45 hours.

The estimated cost of the project was MUR28.5 million and it included an allowance of 10% for unforeseen increase in prices. Following clarifications request from prospective bidders, one addendum was issued on 07 October 2013.

2. Nineteen bids were received by the deadline for the submission of bids. The names of the bidders together with their bid amount as read out at the public opening were as follows:

**Independent Review Panel – Decision No. 06/14**

<b>Bidder No.</b>	<b>Bidder</b>	<b>Bid Amount (Rs)</b>
1.	<i>Pharmacie Nouvelle Ltd</i>	16,027,800.00
2.	<i>Harel Mallac Healthcare Ltd</i>	10,140,400.00
3.	<i>Brightspark Co Ltd</i>	13,946,980.00
4.	<i>Azur Medical Ltd</i>	16,246,000.00
5.	<i>VNS Diagnosticss Ltd</i>	18,885,000.00
6.	<i>Chemical &amp; Technical Suppliers (I.O.) Ltd</i>	27,800,000.00
7.	<i>Topline (Mtius) Ltd</i>	18,950,000.00
8.	<i>Emmanuel Trading Services</i>	17,572,000.00
9.	<i>Rose Hill Pharma Ltd</i>	8,760,000.00
10.	<i>Health Focus Ltd – Offer 1</i>	13,980,000.00
10.	<i>Health Focus Ltd – Offer 2</i>	17,505,000.00
10.	<i>Health Focus Ltd – Offer 3</i>	17,508,000.00
11.	<i>Gi's Pharma Ltée – Offer 1(a)</i>	9,534,955.50
11.	<i>Gi's Pharma Ltée – Offer 1(b)</i>	9,932,245.31
11.	<i>Gi's Pharma Ltée – Offer 2</i>	13,772,713.50
11.	<i>Gi's Pharma Ltée – Offer 3(a)</i>	15,097,012.88
11.	<i>Gi's Pharma Ltée – Offer 3(b)</i>	15,891,592.50
12.	<i>Editions de L'Ocean Indien</i>	9,600,000.00
13.	<i>Ducray Lenoir Ltd</i>	7,320,000.00
14.	<i>Advanced Healthcare Ltd</i>	16,950,000.00
15.	<i>Biswal Trading Ltd</i>	6,674,000.00
16.	<i>Hemascia Ltd</i>	9,980,000.00
17.	<i>Proximed Ltd</i>	15,210,000.00
18.	<i>Parapro Ltd</i>	10,140,000.00
19	<i>IBL Healthactiv</i>	32,250,000.00

The Public Body appointed a seven-member Bid Evaluation Committee to evaluate the nineteen bids received and it held nine meetings during the period 05 November 2013 – 17 December 2013. The Bid Evaluation Committee at paragraph 15 of its report dated 17 December 2013 recommended that “*the contract be awarded to the lowest evaluated and complying bidder as follows:*”

<b>Item No.</b>	<b>Bid No.</b>	<b>Bidder</b>	<b>Quantity</b>	<b>Amount (Rs)</b>
1.	1.	<i>Pharmacie Nouvelle Ltd</i>	2,000 units Glucosemeters	Free of Charge
2.	1.	<i>Pharmacie Nouvelle Ltd</i>	60,000 boxes test strips x 50 units unfoiled	16,027,800.00

- Pursuant to Section 40(3) of the Public Procurement Act 2006, the Public Body informed the selected bidder and the unsuccessful bidders of the outcome of the evaluation exercise on 04 February 2014. On 05 February 2014, Health Focus Ltd as an aggrieved bidder challenged the decision of the Public Body. The Public Body replied to the challenge on 07 February 2014 and explained to the bidder why its bid had not been retained. The aggrieved bidder still dissatisfied with the

decision of the Public Body submitted an Application for Review to the Panel on 13 February 2014.

4. All parties concerned were informed about the Application for Review on 14 February 2014. Pursuant to Section 45(4) of the Public Procurement Act 2006, the Panel suspended the procurement proceedings until the appeal was heard and determined. The Public Body on 20 February 2014 submitted its comments on the Application for Review.

A hearing was held on 06 March 2014.

## **B. Grounds for Review**

The Grounds for Review are as follows:

- “1. *The Public Body was wrong not to award the procurement contract to the Applicant in as much as:*
  - (i) *the Applicant’s bid was considerably lower than the bid of successful bidder; and*
  - (ii) *the Applicant’s bid was compliant with all the specifications of the Bidding Documents and was technically responsive.*
2. *The Public Body was wrong to reject the bid of the Applicant’s glucosemeter on the ground that same was not for testing on newborns in as much as:*
  - (a) *it was not a requirement under the Bidding Document that the product be used for testing on newborns; and*
  - (b) *the Applicant’s glucosemeter can in fact be used for testing on newborns within a haematocrit range of 15-65%*
3. *The Public Body erred in holding that the Applicant did not mention the humidity for the test strips when, in truth and in fact, the Applicant provided all required specifications as per the Bidding Documents.”*

## **C. The Evaluation Process**

1. The Public Body set up a Bid Evaluation Committee which comprised of seven members to evaluate the nineteen bids received by the deadline for the submission of bids. The Bid Evaluation Committee submitted its Bid Evaluation Report on 17 December 2013.

2. Prior to undertaking an in-depth analysis of the bids, the Bid Evaluation Committee checked whether the bids received satisfied the mandatory requirements as per the provisions of the bidding documents. Two of the bids, namely from VNS Diagnostics Ltd and Rose Hill Pharma Ltd, were rejected as they failed to comply with the mandatory requirement of ITB 20.1 (a) of the Bidding Data Sheet which refers to manufacturer's authorisation. The bids of the two bidders were not retained for technical appraisal.
  
3. The Bid Evaluation Committee then proceeded with the technical evaluation whereby the retained bids were examined as per the specifications stipulated at Section V – Schedule of Requirements of the bidding documents (page 52-53). The bids of the following bidders were rejected by the Bid Evaluation Committee for the reasons specified in the remarks column in the table below:

<b>Bidder No.</b>	<b>Bidder</b>	<b>Remarks</b>
2.	Harel Mallac Healthcare Ltd	Non-compliance with Line Item No. 1(m).
3.	Brightspark Co Ltd	Non-compliance with Line Item No. 1(f), 1(h), 1(k), 1(m), 1(n) and 2(a).
4.	Azur Medical Ltd	Non-compliance with Line Item No. 1(b), 1(c), 1(g) and 1(m).
6.	Chemical & Technical Suppliers (I.O.) Ltd	Non-compliance with Line Item No. 1(b), 1(c), 1(g), 1(h), 1(m) and 1(p).
7.	Topline (Mtius) Ltd	Non-compliance with Line Item No. 1(b), 1(c), 1(h), 1(m), 1(n), 1(o) and 2(a).
8.	Emmanuel Trading Services	Non-compliance with Line Item No. 1(h), 1(m) and 2(a).
10.	Health Focus Ltd – Offer 1	Non-compliance with Line Item No. 1(b) and 2(a).
10.	Health Focus Ltd – Offer 2	Non-compliance with Line Item No. 1(c), 1(d), 1(h) and 1(k).
10.	Health Focus Ltd – Offer 3	Non-compliance with Line Item No. 1(b), 1(c), 1(g), 1(j) and 1(m).
11.	Gi's Pharma Ltée – Offer 1(a)	Non-compliance with Line Item No. 1(b), 1(g), 1(m) and 2(a).
11.	Gi's Pharma Ltée – Offer 1(b)	Non-compliance with Line Item No. 1(b), 1(g), 1(m) and 2(a).
11.	Gi's Pharma Ltée – Offer 2	Non-compliance with Line Item No. 1(g) and 2(a).
11.	Gi's Pharma Ltée – Offer 3(a)	Non-compliance with Line Item No. 1(c) and 2(a).
11.	Gi's Pharma Ltée – Offer 3(b)	Non-compliance with Line Item No. 1(c) and 2(a).
12.	Editions de L'Ocean Indien	Non-compliance with Line Item No. 1(b), 1(h), 1(m), 1(n) and 1(p).
13.	Ducray Lenoir Ltd	Non-compliance with Line Item No. 1(b), 1(n) and 2(a).

15.	Biswal Trading Ltd	Non-compliance with Line Item No. 1(b), 1(i), 1(m) and 1(p).
16.	Hemascia Ltd	Non-compliance with Line Item No. 1(b), 1(c), 1(g) and 1(m).
17.	Proximed Ltd	Non-compliance with Line Item No. 1(h).
18.	Parapro Ltd	Non-compliance with Line Item No. 1(b), 1(c), 1(m) and 2(a).
19	IBL Healthactiv	Non-compliance with Line Item No. 1(b) and 2(a).

The Bid Evaluation Committee considered that the bids of the following two bidders were technically responsive and were qualified for clinical evaluation:

<i>Bidder No.</i>	<i>Bidder</i>
<i>1.</i>	<i>Pharmacie Nouvelle Ltd</i>
<i>14.</i>	<i>Advanced Healthcare Ltd</i>

4. The Glucosemeters (item 1) and Test Strips (item 2) proposed by Bidders No. 1 and 14 were field tested and the clinical evaluation was held on 26 November 2013 at Victoria Hospital on both items. Following the clinical evaluation exercise, both bidders were found to be substantially responsive.
5. The Bid Evaluation Committee then carried out an arithmetical check of the bids of the two responsive bidders and ranked the bids of the two bidders accordingly. The Bid Evaluation concluded that the “*the lowest evaluated bid for items 1 to 2 is as follows:*”

<i>Item No.</i>	<i>Bid No.</i>	<i>Bidder</i>	<i>Amount (Rs)</i>	<i>Remarks</i>
<i>1.&amp; 2</i>	<i>1.</i>	<i>Pharmacie Nouvelle Ltd</i>	<i>16,027,800.00</i>	<i>Lowest evaluated responsive offer</i> ”

#### **D. Submissions and Findings**

1. Mr. Muhammad R. C. Uteem of Counsel for the aggrieved bidder submitted that the Public Body should have explicitly specified in the Bidding Documents that the Glucosemeter is intended to be used in Neonatal Unit. According to him, the Line Item No 1(b) of the Specifications (page 52 of the bidding documents) “*Compatible for use in all units of the health institutions*” does not indicate that Glucosemeters will be used on neonates. He argued that a Glucosemeter with a haematocrit range of 15-65%, as proposed by the aggrieved bidder, can be used on neonates.

He also submitted to the Panel a document, *510(k) Substantial Equivalence Determination Decision Summary Assay and Instrument Combination Template*, which was included in the bid of the bidder. He referred to page 5 of this document wherein it is stated that the “*Test strip stability was assessed in real-time and accelerated studies. The testing supported the claimed shelf life of 12 months when stores at 4-30° C with relative humidity of 5-90%*”. The counsel submitted to the Panel the Owner’s Booklet of the Freestyle Freedom Lite Glucosemeter which was submitted by the aggrieved bidder in its bid. He stated that page 34 of the booklet indicates that the *Operating relative humidity is 5% to 90% (non-condensing)*.

2. Dr. (Miss) N. Joonas and Dr. (Mrs.) V. Poorun representatives of the Ministry of Health and Quality of Life explained that it is clear through the specifications stipulated at page 52 and page 53 of the bidding documents the Glucosemeters and Test Strips will be used in Neonatal Unit. They confirmed at the hearing that the products proposed by the selected bidder can be used on neonates. For Dr. (Mrs.) V. Poorun a Glucosemeter with a haematocrit range of 15-65% does not imply that it can be used on neonates as a newborn may have higher haematocrit. On that issue Dr. (Miss) N. Joonas submitted that the humidity of the Test Strip proposed by the aggrieved bidder was not specified in the product’s box.
2. Line Item No. 1(b), 1(n) and 2(a) of the *List of Goods with description & specifications and Delivery Schedule* are as follows:
  - 1(b) “*Compatible for use in all units of the health institution*”
  - 1(n) “*Operating temperature 15-40°C and humidity up to 85%*”
  - 2(a) “*Test strips Storage temperature: 15-30°C and humidity up to 85%*”
3. The aggrieved bidder produced the Owner’s Booklet of the Glucosemeter in its bid and same was submitted at the hearing of 06 March 2014. Page 34 of the booklet indicates that the operating relative humidity and operating temperature of the Glucosemeter is 5% to 90% and 4° to 40°C respectively. Thus, the bidder complies with Line Item No. 1(n) of the specifications.
4. The *Freestyle Lite Blood Glucose Test Strips – Product Information* was enclosed in the box of the Test Strips and it indicates that the strips should be stored “*at room temperature between 4°C to 30°C (40°F to 86°F)*”. However, the percentage of humidity as required by Line Item No. 2(a) is not indicated in this document.

ITB 12.1(h)(a) of the Bidding Data Sheet required a bidder to submit “*Relevant reports of certificates certifying that Glucosemeters have been evaluated and cleared by FDA-USA or MHRA-UK or ISO15197*”. In relation to this ITB, the bidder submitted a document, *510(k) Substantial Equivalence Determination Decision Summary Assay and Instrument Combination Template*, issued by the Food and Drug Agency (FDA) of the United States of America in its bid and at page 5 of this document it is stated that:

*“Test strip stability was assessed in real-time and accelerated studies. The testing supported the claimed shelf life of 12 months when stores at 4-30° C with relative humidity of 5-90%”*

It is not disputed that the *product information* document submitted by the aggrieved bidder does not mention the humidity percentage of the strips. However, the Panel is of the view that the Public Body could have sought clarifications from the bidder (if deemed necessary) with respect to the humidity percentage as the FDA document which was required by the mandatory requirement ITB 12.1(h)(a) indicates the humidity level.

5. The aggrieved bidder stated in its Application for Review that “*the Applicant’s glucosemeter can in fact be used for testing on newborns within a haematocrit range of 15-65%”*.

At page 1 of the Owner’s Booklet Freestyle Freedom Lite Glucosemeter it is stated that “*It is not intended for the diagnosis of or screening for diabetes mellitus, and it is not intended for use on neonates or arterial blood*”. It is, thus, undisputed that the product proposed by the aggrieved bidder cannot be used on neonates. The representatives of the Public Body explained at the hearing that the Line Item No. 1(b) of the specifications includes the neonates unit.

In the light of the explanations provided by the two representatives of the Public Body the Panel considers that the specification for the Line Item No. 1(b) is not ambiguous. The aggrieved bidder has proposed a product which does not meet the mandatory requirement of Line Item No. 1(b).

Based on all the above, the Panel finds no merit in this application which is accordingly set aside.

**(Dr. M. Allybokus)**  
***Chairperson***

**(H. D. Vellien)**

***Member***

**(Mrs. E. Hanoomanjee)**

***Member***

**Dated 14 March 2014**