



Grant Agreement no.: 688878

**Minutes of the ANTI-SUPERBUGS PCP Tendering Board's Proposal of Exclusion of the bidder eResult SRL
and the Final Ranking Proposal of the phase "Call for Tender" remote meeting**

File number: 3020170339

Date: 19.12.2019

GENERAL INFORMATION:

- **Procedure:** Pre-Commercial Public Procurement
- **Tender budget:** 2,848,450.41 € (VAT excluded)
- **Maximum budget in the Phase "Call for Tender":** No monetary compensation at this stage
- **Date of publication of the Tender Announcement:** In the Public Contracts Platform website of the Government of Catalonia, 8 of July at 11.20 AM CET;
- **Last date for the submission of bids:** 28 of October at 13.00 CET

MEMBERS OF THE TENDERING BOARD

President: Miquel Argenter Giralt

Secretary: Ferran Trullàs Vila

Other members: Pau Aguilar Sánchez (on behalf of the Intervenció General de la Generalitat de Catalunya), Nieves Clara Aparicio Cervantes (on behalf of the Legal Department of the Department of Health of the Generalitat de Catalunya), Petra Thurmann (on behalf of HELIOS), Esteve Picola (on behalf of FMT), Cristina Grau (on behalf ICO/VINCat), Tina Boersma (on behalf UKA), Dipak Patel (on behalf STH) and Elena Mengon (on behalf PAT).

Alternates: Holger Raphael (on behalf of HELIOS), Joan de Ignacio-Simó (on behalf of FMT), Marisa Martínez Muñoz (on behalf of ICO/VINCat), Liz Pryde (on behalf of STH) and Ricardo Farina (on behalf of PAT).

(19.12.2019) Minutes of the ANTI-SUPERBUGS PCP Tendering Board's Proposal of Exclusion of the bidder eResult SRL and the Final Ranking Proposal of the phase "Call for Tender" remote Meeting



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DEVELOPMENT OF THE SESSION

The Tendering Boarding takes place by means of a remote meeting.

By email sent on 19th December, the secretary of the Tendering Board invites the members of the Tendering Board to review and either approve or reject, by means of a voting mechanism included in the email, the following points:

- (1) the proposal of exclusion of the bidder eResult SRL based on the description of the issues observed in the financial bid submitted by eResult SRL to the Phase “Call for Tender”; and
- (2) the final ranking proposal of the bids submitted to the Phase “Call for Tender” based on the final assessment and scoring of the technical offers (Envelope B), the financial proposals (Envelope C) and the reports (made by the Experts Board); and
- (3) the request to the four Bidders which have obtained the higher scoring in the ranking to submit the documentation necessary to sign the Framework Agreement and specified in the Sections 4.2.3.3, 4.2.3.4, 4.2.3.5 and 4.2.3.6 of the Request for Tender

The Tendering Board votes are as follows:

- **X** votes approving (1) the proposal of exclusion of the bidder eResult SRL and (2) the final ranking proposal and (3) request to the four Bidders which have obtained the higher scoring in the ranking to submit the documentation necessary to sign the Framework Agreement and specified in the Sections 4.2.3.3, 4.2.3.4, 4.2.3.5 and 4.2.3.6 of the Request for Tender
- **Y** votes rejecting (1) the proposal of exclusion of the bidder eResult SRL and (2) the final ranking proposal and (3) request to the four Bidders which have obtained the higher scoring in the ranking to submit the documentation necessary to sign the Framework Agreement and specified in the Sections 4.2.3.3, 4.2.3.4, 4.2.3.5 and 4.2.3.6 of the Request for Tender



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PROPOSAL OF EXCLUSION OF THE BIDDER eResult SRL

Reviewing the financial proposal and automatic awarding criteria included in Envelope C, opened in public session on December 2, 2019, the following issues regarding the bid submitted by **eResult SRL** were observed:

1. The bid lacks of the necessary information that shall be included in the FORM C according to the Request for Tender.

Pursuant to Section 4.2.1.4 of the Request for Tender, following, the FORM C included in ANNEX III the financial offer shall specify *“the necessary **financial compensation** derived by the allocation of ownership of the IPRs generated during the PCP to the Bidder, or by giving an absolute value for the price reduction between the price offered in the tender compared to the exclusive development price, **which shall be greater than 0** (i.e. the price that would have been quoted were IPR ownership to be transferred to the procurers) in order **to ensure compliance with the EU R&D&I state aid framework** (please see Section 1.3.3 of this RFT). The financial compensation for IPRs must reflect the market value of the benefits received (i.e. the opportunity that the IPRs offer for commercial exploitation) and the risks assumed by the contractor (e.g. the cost of maintaining IPRs and bringing the products onto the market)”*.

Pursuant to Section 1.3.3 of the Request for Tender, *“the procurement does not constitute state aid under the EU state aid rules because it follows an open, transparent, competitive procedure with risk- and benefit-sharing at market price. (The division of all rights and obligations (including IPRs) and all award criteria for all phases are published at the outset; the PCP is limited to R&D services and clearly separated from any potential follow-up PPI procurements; PCP contractors are not given any preferential treatment in a subsequent procurement for provision of the final products or services on a commercial scale.) For more information, see ‘innovation procurement’ and ‘links to regional policy’ in the Participant Portal Online Manual”*.

However, **the bid of eResult SRL has left in blank the section of the FORM C provided to include the Financial Compensation**, which is necessary to ensure the lack of state aids.

2. The bid does not provide for a Financial Compensation greater than 0 that ensures the compliance with the EU R&D&I state aid framework, as required in the Request for Tender.

Pursuant to Section 4.2.1.4 of the Request for Tender, the Financial Compensation is an estimation of the absolute value of the price reduction that has been applied to the exclusive development price in order to calculate the price offered in the tender. That Financial Compensation refers therefore to the price reduced by the bidder for retaining the IPRs. According to the Tender requirements, this Financial Compensation shall be greater than 0 in order to ensure that the awarding of the contract at that price would not be considered as state aid, pursuant to the EU R&D&I framework.



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Considering that the Financial Compensation has been left blank, its value could be deduced with certainty by calculating the difference between the "*exclusive development price*" (Market Price in FORM C) and "*the price offered in the tender*" (Actual Price in FORM C). However the value provided by eResult SRL for both categories is the same, and therefore, the Financial Compensation is necessarily 0, which would imply the existence of a state aid.

Since this Financial Compensation is not greater than 0, **the bid of eResult SRL does not comply with the requirements of Section 4.2.1.4.**

3. The Financial Compensation cannot be clarified nor corrected without implying a substantial modification of the bid.

Considering the abovementioned, the only way to correct the missing Financial Compensation in order to make it compliant with the Request for Tender would be to modify either the Market Price or the Actual Price provided in the offer.

Accordingly, providing eResult SRL the possibility to correct the bid would imply the **substantial modification of the bid after it has been submitted**, which would be in frontal contradiction to the principles of immutability of the offer and equal treatment between bidders, since the non-compliance with the tender requirements of the bid eResult SRL is attributable solely to their failure to exercise due diligence in the drafting of their bid, to which they, like other bidders, are subject (Judgement of the TJUE of 29 march 2012 in Case C-599/2010).

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FINAL RANKING PROPOSAL

In agreement with the final assessment and scoring of the technical offers (Envelope B) and the financial proposals (Envelope C) and the approval of the proposal of exclusion of the bidder eResult SRL, the final ranking proposal is as follows:

			Technical feasibility <div>ASB Volatile organic compounds detector MUST DETECT the contaminations/ colonisations from Clostridium difficile spores and/or microorganism (spore detection is considered of higher priority)</div> <div>ASB Volatile organic compounds detector MUST DETECT the contaminations/ colonisations from Klebsiella pneumoniae OR/AND ASB Volatile organic compounds detector MUST DETECT the contaminations/ colonisations from MRSA</div> <div>TECHNICAL/PERFORMANCE INDICATORS</div> <div>ASB Volatile organic compounds detector COULD DETECT the contaminations/ colonisations from Clostridium difficile Spores, Toxins A and B, and Binary toxin (transferase)</div> <div>ASB Volatile organic compounds detector COULD DETECT the contaminations/ colonisations from Klebsiella pneumoniae Carbapenem & ESBL production</div> <div>ASB Volatile organic compounds detector COULD DETECT the contaminations/ colonisations from any additional Gram-negative pathogen or any additional resistance</div> <div>ASB ICT Solution COULD detect nucleic acid-based detection of the target microorganisms using non-invasive sampling</div> <div>ASB MUST comprise a local Surveillance & Infection Control System of the target microorganism(s) able to store all the data and to export data sets</div> <div>ASB MUST comprise an interoperability engine</div> <div>ASB MUST comprise an alert system engine (it generates alerts, based on the information retrieved by the screening device, to be sent to the HIS/LIS/EHR/users and it interoperates with existing technologies/products/platforms/systems/developments capable to assess the risks of infection (if any))</div> <div>ASB COULD comprise existing technologies/products/platforms/systems/developments capable to assess the risks of infection</div>											Quality Plan	Business model & Plan	Financial feasibility	Further Content (IPRs, ethics & security issues and % of R&D)	Envelope B - Technical Offer (up to 90 points)	Envelope C - Financial Offer (up to 10 points)	TOTAL (up to 100 points)
1	Tech4care SRL	66,55	14,58	13,33	14,19	0,61	0,61	0,86	0,50	4,72	8,50	7,78	0,86	4,31	3,89	3,61	1,89	80,24	9,13	89,37
2	CULTURE (Bahia-Gradient-INL)	49,86	11,25	12,50	4,11	0,03	0,11	0,25	0,00	4,17	8,50	8,00	0,94	4,58	4,58	4,58	1,89	65,50	10,00	75,50
3	BUGWATCHER	47,27	8,75	10,00	13,00	0,00	0,00	0,00	0,42	4,72	5,75	4,22	0,42	4,58	4,58	4,03	1,83	62,30	8,88	71,19
4	ABS-IMS ²	37,20	8,33	10,42	5,87	0,03	0,00	0,17	0,00	2,78	4,25	4,89	0,47	2,64	2,22	1,94	1,17	45,17	9,11	54,28



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REQUEST TO THE FOUR BIDDERS WHICH HAVE OBTAINED THE HIGHER SCORING IN THE RANKING TO SUBMIT THE DOCUMENTATION NECESSARY TO SIGN THE FRAMEWORK AGREEMENT AND SPECIFIED IN THE SECTIONS 4.2.3.3, 4.2.3.4, 4.2.3.5 AND 4.2.3.6 OF THE REQUEST FOR TENDER

In accordance with the section 3.1.2.2 and 4.2.3 of the Request for Tender, the Technical Offer Assessment Report and The Final Ranking Scoring table, the Tendering Board:

- proposes the exclusion of the bid eResult SRL and hereby submits this decision to the legal representative of the Contracting Authority; and
- approves the final ranking proposal; and
- requests to the four Bidders which have obtained the higher scoring in the ranking to submit the evidence on the technical ability and economical soundness and the administrative documents necessary to sign a contract with Spanish public administration as well as the statements provided under Sections 3.2.3.1 and 3.3.2.1 in case of Consortia or Subcontractors:
 - Tech5care SRL (total points: 89,37)
 - CULTURE (Bahia-Gradient- INL) (total points 75,50)
 - BUGWATCHER (total points 71,19)
 - ABS-IMS² (total points 54,28)

In accordance with the section 3.3.3.2 of the Request for Tender, decisions taken with regard to the selection of Bidders may be challenged by means of an administrative remedy ("recurs d'alçada") before the Head of the Health Department of the Government of Catalonia ("Consellera de Salut de la Generalitat de Catalunya") within a period of one month upon the formal notification of this communication.

These minutes of the meeting are drawn up and signed by the secretary of the Tendering Board with the acknowledgement of the President.



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Miquel Argenter	Ferran Trullàs
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