



<b>FILE NOTE</b>			
Matter name	APC Prosthetics Pty Ltd - Collective Bargaining Notification - CB00140		
Topic	Meeting with NSW Health (target) to discuss the above notification		
ACCC parties	Richard Chadwick, Sharon Clancy, Trent Glover, Jasmine Tan		
TRACKIT No	40339	File No.	C2010/98
Health Support Services (NSW Health) parties	Robert Lagaida (Director, Operations and Support) Rodney Wilson (Manager, Tendering and eBusiness) Christopher Sequeira (Principal Tendering Officer) Michelle Tan (Tendering Officer) (Bronwyn Scott) Manager, EnableNSW	Note book Ref.	
	Kathy McCosker (Senior Project Officer, EnableNSW) Anna Frazer (Prosthetic and Orthotic Advisor, EnableNSW)	Date / Time:	19/01/2010 11:30hrs
Phone to <input type="checkbox"/>	Phone from <input type="checkbox"/>	Meeting <input checked="" type="checkbox"/>	Other <input type="checkbox"/>

Prepared by Jasmine Tan

## RECORD OF MEETING

ACCC attendees explained the collective bargaining process, including the limited timeframe involved, and explained that the ACCC is seeking an oral submission from NSW Health.

The following issues were discussed.

- NSW Health submits that any collective bargaining arrangement that affects a competitive process to determine the efficient provision of prosthetic services is not in the interests of the NSW public. This is the first competitive tender process ever run for prosthetic services in NSW.
- NSW Health understands that the collective bargaining group wants to reach an agreement on specified price caps and then submit separate tenders. This undermines the tender process. NSW Health is very concerned about possible collusion by the collective bargaining group in the tender process. NSW Health elected to run a tender process because there are a number of potential suppliers.
- NSW Health cannot depart from the tender process as this may compromise the integrity of the request for tender (RFT). Under the rules of the tender process, NSW Health cannot provide to one tenderer or group of tenderers information that it does not provide to all prospective tenderers. NSW Health cannot negotiate with prospective tenderers during a tender process, whether individually or as a collective.

- NSWH is open to discussions after the RFT has closed (or after the tender process is complete, depending on the outcome of the RFT).
- The services to be provided under the Mechanical Interim Limb Program (MILP) (the subject of the RFT) are essentially new additional services which were recently piloted in NSW. While interim prosthetic services are currently available in some public clinics in NSW, they are not available at all clinics. Where interim prosthetic services are currently available, there is no formal contract between NSWH and the prosthetics service provider. Interim prosthetic services are considered to improve patient outcomes and the MILP aims to ensure best practice prosthetic services are available consistently across NSW.
- Other prosthetic services provided to patients (such as prostheses other than interim and first definitive prostheses) are not currently subject to tender. Rather, in order to provide services in NSW, prosthetic service providers must be accredited by NSWH. The accreditation process involves an assessment of the applicant's qualifications, skills and facilities.
- Patients choose their prosthetic service provider. Historically, the prosthetic service provider chosen to supply a patient's interim prosthesis has continued to supply subsequent prostheses to the patient. Under the new arrangements, the patient may choose a different provider for subsequent limbs if the initial provider is not conveniently located.
- The providers of interim prosthetic services are the same as the suppliers of other prosthetic services. The services to be provided under the MILP represent a portion of the total business of the prosthetic service providers. NSWH submits there are 6 existing providers that could potentially supply the required services to NSWH. Interest was also shown from prospective new entrants at the industry forum.
- The RFT is intended to establish a panel of prosthetic service providers. There is no limit on the number of parties that can be on the panel. It is possible to have only one service provider on the panel, but this is unlikely at this stage.
- The annual value of the contract is \$1 – 1.2 million (this figure includes both labour and component, however components are outside the scope of the tender and the value of labour alone is \$500-600K a year). The tender covers production time only and components are paid for separately.
- While NSWH runs many tender processes, the current tender for the MILP is the first tender for prosthetic services.
- At the information session with possible tenderers prior to the opening of the RFT, NSWH explained the aim of the RFT was to provide the best services to amputees in the shortest timeframes but also to ensure the viability of providers, all within a limited budget.

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▪ NSWH noted that the models used to calculate the costs of prosthetic services are out of date. For example, the Schedule of Hours (SOH) contained in APC's supporting submission (the

Supporting Submission) was last amended in 1993. NSWH submits that the SOH provided by APC does not reflect current actual manufacturing time. Technological advances and improved manufacturing techniques have reduced the time required to produce prostheses.

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Under the tender process, tenderers may submit a non-conforming offer if it is accompanied by a conforming offer. However, NSWH may choose not to consider the non-conforming offer and only consider the conforming offer. NSWH will create a preference list of tenders. NSWH will approach tenderers about their conforming and/or non-conforming bids if it is interested. Tenderers may withdraw their bids at any time until a contract for provision of service is signed.

- NSWH expects that tenderers will submit varying offers.

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There is currently a nation-wide shortage of prosthetists. However, prosthetists may be sourced from overseas. There is currently no reported shortage of technicians in Australia and technicians are responsible for between 50-60 per cent of the manufacturing of a prosthesis.

- NSWH noted the following corrections to APC's supporting submission:
  - (i) Point 2 at page 5 of the submission is incorrect. In 2002, prosthetic service providers, including members of the collective bargaining group, withdrew their services after a dispute about the price offered by NSWH (\$84). In November 2002, the service providers later agreed to a rate of \$90 per hour, backdated to 1 July 2002, and they then resumed services. A further increase to \$92.31 per hour occurred in January 2003. In addition to this rate increase, an incentive payment of \$2.49 was also paid from 1 February 2003, thereby increasing the effective hourly rate to \$94.80 per hour.
  - (ii) Although APC claims that Suppliers provide services to approximately 7,500 amputees across NSW (page 8), approximately 2,500 public patients are serviced in any one year.
  - (iii) The public services provided through NSWH account for 80 per cent of all amputees, not 85 per cent, as claimed on page 3 of the Supporting Submission.
  - (iv) Gait training for amputees is predominantly carried out by a physiotherapist, not a prosthetist. The RFT requires no additional mobilisation training other than what would normally be provided by prosthetists which includes teaching the consumer how to don and doff their prosthesis and safe use of their prosthesis.

- (v) Response times referred to on page 7 of APC's supporting submission are consistent with current practise.
- (vi) NSWHI noted in the RFT that pre-amputation visits are not a necessity.
- (vii) Prosthetists in NSW do not fit rigid removable dressings (RRDs), as claimed on page 2 of the Supporting Submission.
- (viii) Diagnostic sockets are not normally required for an interim prosthesis.
- (ix) A patient normally requires two sockets in the first 18 months of treatment, not three, as claimed by APC.

**End of record.**