## Case 1295 – CT2024/2018 – Tender for the Supply of Various Ventilator Units for the ITU Department at Mater Dei Hospital over a period of Two Years.

### Remedy before Closing Date of a Call for Competition

The publication date of the call for tenders was the  $16^{\text{th}}$  January 2019 whilst the closing date was the  $26^{\text{th}}$  March 2019. The estimated value of the tender (exclusive of VAT) was  $\notin$  762,711.86.

On the 25<sup>th</sup> February 2019 Cherubino Ltd sought a Remedy against the Department of Contracts on behalf of the Central Procurement and Supplies Unit as the Contracting Authority on the grounds that the tender limited fair competition for bidders.

On 25<sup>th</sup> June 2019 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Richard Matrenza as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

#### **Appellants – Cherubino Ltd**

Mr Paul Calleja

Representative

#### **Contracting Authority – Central Procurement and Supplies Unit**

Dr Marco Woods	Legal Representative
Mr Peter Pace	Representative

Dr Anthony Cassar, Chairman of the Public Contracts Review Board, welcomed the parties and observed that there appeared to be agreement that Appellants' offer did in the main meet the tender specifications.

After minor submissions by Mr. Paul Calleja Legal Representative of Cherubino Ltd and the testimony of Engineer Chris Attard Montalto (260567M) it was agreed with regard to Clinical Specifications Clauses A2.1.26.1.5 and B2.1.20.2.1.5 that if the offer is in the range of between 0 and 60 litres per minute, or better, it would meet the tender specifications.

With regard to General Condition Clauses A2.1.26.1.1 and A 6.10 and B6.10 it was agreed that a clarification will be issued changing the words 'equipment in caption' to 'medical equipment'.

The Chairman thanked the parties for their co-operation and declared the hearing closed.

This Board,

having noted this call for remedy prior the closing date of competition filed by Cherubino Limited (herein after referred to as the Appellants) on 25 February 2019, refers to the claims made by the same Appellants with regard to the tender of reference Ct 2024/2018 listed as case no 1295 in the records of the Public Contracts Review Board.

Appearing for the Appellants:Mr Paul CallejaAppearing for the Contracting Authority:Dr Marco Woods

Whereby, the Appellants contend:

- a) that items A2.1.26.1.5 and item B2.1.20.2.1.5 are somewhat restrictive and will limit the scope of competition;
- b) Appellants also maintain that items A.2.1.26.1.1 and items A6.10 and B6.10 need amending, as the wording does in fact, deter competitors from participating.

This Board also noted the Contracting Authority's 'Letter of Reply' dated 10 March 2019 and its verbal submissions during the hearings held on 9 April 2019, 16 April 2019 and 27 June 2019 in that:

a) the Authority contends that the tender and clarifications as published, do not, in whatsoever manner, preclude Bidders from participating.

This same Board also noted the testimony of the witness namely Engineer Chris Attard Montalto duly summoned by the Public Contracts Review Board.

This Board convened three hearings in order to treat Appellants' concerns and during the third hearing, consensus was reached between the Contracting Authority and Appellants in that, there existed certain clauses in the tender document which precluded a major participation in this particular tender.

In this regard, this Board after having examined the relevant documentation to this call and hard submissions made by the parties concerned arrived at the following conclusions:

- a) Appellants' offer specifications in relation to Clauses A2.1.26.1.5 and B2.1.20.2.1.5 do satisfy the requirements as stipulated in the technical specifications of the tender document;
- b) directs the Authority to issue, by way of a clarification note, an amendment to clause A2.1.26.1.1 to read as follows:

A2.1.26.1.1	High pressure	when the airway pressure	cm H20	10 to 105
	Limit	exceeds the alarm threshold		or better

# c) Directs the Authority to issue, by way of a clarification note, an amendment to clauses A6.10 and B6.10 to read as follows:

B6.10	The manufacturer is required to submit documented		
	proof, that the firm has a minimum track record of		
	manufacturing medical equipment for at least	N/A	Mandatory
	20 years. Failing this offer will be refused irrevocably.		

In view of the above, this Board,

- i) upholds Appellants' contentions;
- ii) directs the Authority to issue the clarification notes as instructed above and to resume the tendering process.

Dr Anthony Cassar Chairman Dr Charles Cassar Member Mr Richard Matrenza Member

2 July 2019