#### PUBLIC CONTRACTS REVIEW BOARD

Case 1388 – CFT 019-0896-19– Tender for the Supply of Qty Six (6) Portable Flexible Nasopharyngeal Endoscope with Integrated Monitor for the ENT Department at Mater Dei Hospital

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

The publication date of the call for tenders was the  $20^{th}$  September 2019 whilst the closing date was the 10th October 2019. The estimated value of the tender (exclusive of VAT) was  $\in 68,220.34$ 

On the 9th October 2019 Cherubino Ltd sought a Remedy against the Central Procurement and Supplies Unit as the Contracting Authority because they felt aggrieved by the tender specifications.

On 26<sup>th</sup> November 2019 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

# **Appellants – Cherubino Ltd**

Dr Francis Cherubino Legal Representative

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

Dr Marco Woods Legal Representative

Mr Stephen Mercieca Representative

Dr Anthony Cassar, Chairman of the Public Contracts Review Board, welcomed the parties and invited submissions.

Dr Francis Cherubino Legal Representative for Cherubino Ltd said that the point of this remedy was to clarify what the tender exactly requires as the specifications are confusing. The tender seems to be asking for both a portable and a fixed unit endoscope at the same time. Section 2 of the tender documents in 2.1.1 to 2.1.3 indicate a portable unit, as does item 3.1 which refers to batteries for the use of the unit. However section 2.7 requests that the unit must also be capable of being attached to existing light sources. This is where the confusion lies as a portable unit which is battery operated cannot be aligned to a light source which is integrated in the unit. It is not possible to offer the product as the tender requests.

Eng Chris Attard Montalto (260567M) called as a witness by the Public Contracts Review Board testified on oath that he is the Director of Medical Apparatus at Mater Dei Hospital. He stated that the Hospital required flexible, portable, stand alone endoscopes which ideally could be connected to existing light sources, as the light source gives clearer pictures. In view of the Appellants explanation that flexible units cannot be operated by aligning them to a light source he was prepared to waiver the requirements of section 2.7 in the tender document through the issue of a clarification note.

The Chairman noted this point made by the Contracting Authority thanked the parties for their submissions and declared the hearing closed.

**End of Minutes** 

#### Decision

This Board,

having noted this 'Call for Remedy Prior to the Closing Date of a Call for Competition' filed by Cherubino Ltd (herein after referred to as the Appellants) on 9 October 2019, refers to the claims made by the same Appellants with regard to the tender of reference CFT 019-0896-19 listed as case No. 1388 in the records of the Public Contacts Review Board.

**Appearing for the Appellants:** Dr Francis Cherubino

**Appearing for the Contracting Authority: Dr Marco Woods** 

Whereby, the Appellants contend that:

a) Their main concern refers to the fact that, clauses 2.1.1, 2.1.3 of section 2 and article 3.1 denote a portable unit. At the same instance,

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section 2.7 stipulates that the unit must be capable of being attached to existing light source units. In this respect, Appellants maintain that clause 2.7 creates a confusion in that, battery operated units are not aligned to another source of light which is contained in the unit itself.

This Board also noted the Contracting Authority's 'Letter of Reply' dated 31 October 2019 and its verbal submissions during the hearing held on 26 November 2019, in that:

a) The Authority's objective in the procurement of this product, was to acquire a flexible, portable, stand alone unit which would preferably have the facility to be connected to other existing light sources for the attainment of better images.

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, after having examined the relevant documentation to this 'Call for Remedy' and heard submissions made by the parties concerned, including the testimony of witness duly summoned, opines that the issue that merits consideration is the inclusion of clause 2.7 of section 4 of the tender document.

1. This Board would respectfully refer to item 2.7 and 3.1 of the technical specifications wherein it is being stipulated the following:

"	2.7	The Flexible Naso-Pharyngoscope Unit shall also be capable of being attached to various endoscopy light sources that are available from all suppliers that include, but are not limited to Pentax, Olympus, Karl Storz, Richard Wolf, Tekno, etc.		Mandatory	
	3.1	The Portable Light Source and Monitor shall both be battery Operated	N/A	Mandatory	,

The above-mentioned clauses stipulate that the unit must be capable of being connected to other light source units and at the same instance, that unit must be battery operated to make same portable.

2. From credible submissions made by Appellants, this Board was made aware of the fact that the light source of such units cannot be capable of being connected to other different 'Light Sources' brands. In this regard, this Board is comfortably assured that clause 2.7 does, in fact, create confusion and at the same instance sufficient evidence was provided to prove such a fact.

3. From the testimony of the witness namely, Engineer Chris Attard Montalto, this Board was informed that the authority was willing to cancel article 2.7 of the technical specifications, in view of Appellants vivid explanations given during the hearing.

In conclusion, this Board opines that:

- a) Clause 2.7 of the technical specifications of the tender document is somewhat confusing.
- b) The non-inclusion of clause 2.7 of the technical specifications will not affect the treatment to the patient.

In view of the above, this Board,

- i. upholds Appellants' concerns,
- ii. directs the Authority to cancel clause 2.7 of the technical specifications, through a clarification note,

iii.	directs that th	e closing	ll for tende	for tenders be 23 December 2019.			
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3 Dece	ember 2019						