Case No. 3

Contract: CT 2308/2002 – Supply of Monofilament Knitted Polypropylene Mesh

The call for offers, with an estimated value of Lm 29,060, covering a period of three years, was published in the Government Gazette on the 11th June 2002 following a request received by the Director of Contracts from the Government Pharmaceutical Services.

Nine offers were received with the cheapest offer being submitted by Messrs. Michele Peresso Ltd. for a global CIF price including relative charges of Lm 15,510.78. This offer was followed by the one submitted by Messrs. Krypton Chemists Ltd.'s which amounted to Lm 16,372.49. Other offers were received from Messrs. Pharma-Cos Ltd. (2), Techno Pharma Ltd. (2), Associated Equipment Ltd., E.J.Busuttil Ltd., A.M. Mangion Ltd.

Apart from price considerations, the Adjudication Panel, which was made up of Mrs. M. Dowling (Chairperson) and Messrs. M. Schembri (Consultant), M. Debono (Nursing Officer in charge of MOT) and C. Chetcuti (Senior Pharmacist Technician) respectively acting as the other members, delved on other factors, predominantly quality and acceptance by end users. Whilst agreeing on the factual price submission that, undoubtedly, placed the offer submitted by Messrs. Michele Peresso as the cheapest, yet when it came to sample evaluation, it transpired that Messrs. Peresso's sample was not sufficiently rigid in all directions and therefore was not usable for the purposes it was intended. As a consequence it was rejected. On the other hand, the sample submitted by Messrs. Krypton Chemists was according to so-called end user recommendation. As a result of such conclusions, on the 23rd October 2003, the Adjudication Panel formally recommended the acceptance of the offer submitted by Messrs. Krypton Chemists.

Following publication of such recommendations Messrs. Michele Peresso Ltd. filed an objection with the Director of Contracts on 11th December 2002.

The Public Contracts Appeals Board met on 4th June 2003 to discuss the issues raised by complainant. Mr. A. Triganza chaired proceedings accompanied by Messrs. A. Pavia and E. Muscat who formed the other Board members.

During the hearing the Health Department was represented by Mr. D.Gatt (Consultant Surgeon), Mr. M. Bonanno (Nursing Officer) and Mrs. M. Dowling (Chairperson, Procurement Committee). Mr. E. Peresso and Mr. M. Peresso spoke on behalf of Messrs. Michele Peresso Ltd. whilst Ms. L. Arrigo attended on behalf of Krypton Chemists Ltd.

Mr. E. Peresso claimed that the basis of his objections focused on the following points, namely:

a. the offer submitted by Messrs. Peresso was cheaper than the one ultimately recommended by adjudication Panel;

b. the product offered by his principals, Cousin Biotech (France), complies with specifications

c. the product his firm was offering had the endorsement of high profile hospitals and respected surgeons

d. Biotech's product has to date been widely exported to many countries including Spain, Belgium, Germany, Italy, Denmark, Greece, England, Japan, Australia, South Africa, South America and the Middle East.

Mr. Gatt opined in his personal professional capacity that although the price of Messrs. Michele Peresso's offer was the cheapest, yet the quality of the mesh being offered was different from that currently in use at St. Luke's Hospital. On the contrary, this was not the case with the quality of samples submitted by Messrs. Krypton Chemists. Mr. Gatt confirmed that, in direct agreement with the view expressed by fellow professional colleagues, one can clearly see that the sample of the mesh:

a. being used at the hospital returned to its former size and kept its plain presentation even after having been subjected to tension in any direction,

b. offered by Messrs. Michele Peresso reacted differently when stretched longitudinally by curling back to its original shape and size without maintaining the original plain presentation.

The Consultant Surgeon concluded by placing major emphasis on the fact that all fellow colleagues analyzing quality of samples submitted had expressed their deep concern about using the mesh offered by Michele Peresso Limited. These contend that the fact that this mesh curls back after stretching will probably cause pain and irritation of the tissues of the patients.

In view of all this preoccupation, end users feel strongly that it is not simply a question of adherence to specifications and having the cheapest prices as end users have to primarily consider the extent of comfort that a surgeon feels when using the product. Surgeons argue that their major responsibility is above all towards their patients.

A second hearing was necessary as the Board felt that the request submitted by Messrs. Peresso to bring over a representative of their foreign principal to provide further information about their product was justified. As a result on the 25th June 2003 a second hearing session was held and this time Ms. C. Chetcuti (Health Department), Mr. M. Vella (Michele Peresso Ltd.), Mr. F. Lecocq (Cousin Biotech) and Ms. P. Engerer (Krypton Chemists) joined in the proceedings.

In his intervention Mr. Lecocq explained that his company specializes in the manufacture of polypropylene mesh for surgical use. The type of mesh offered for this tender is coded as P1 and is suitable for use both in laparoscopic as well as open surgery. Products marketed by his company were widely marketed all over the world with very good results. Different types of mesh are usually used in different countries with each country having a tendency to use a particular type of mesh rather than another.

For example, he mentioned that the P3 type indicated during the first sitting as being preferable with Maltese surgeons is widely used in Italian hospitals. It all boils down to preference of end user relating to rigidity as against flexibility of product. The price factor does not alter between one option and another.

Upon the insistence of Mr. E. Peresso as to whether the product submitted by his Company's supplier is according to specifications, Mr. Bonanno replied in the affirmative. Yet, the latter stated that specifications purposely failed to indicate if the requested mesh was to be of the rigid or the flexible type. The Nursing Officer claimed that this was done so that no one would state that the call for offers was issued in a way that it would favour one offer from another.

Having taken full regard as to the arguments raised throughout the hearing sessions, the Board concluded that:

a. it is a fact that the offer submitted by Messrs. Peresso was the cheapest;
b. the Adjudicating Panel consider all offers to be compliant to specifications;
c. there is widespread consensus amongst the end users that the latter would object to use the mesh offered by Messrs. Peresso's principals on any of their patients;
d. it cannot see any reason why the Government should pay approximately Lm 16,000 for something which is very likely to be shelved due to such product being rejected by end-users;

thus, the Board feels that it is left with little alternative but to ensure that justice be done by instructing the Director of Contracts to reject the offers and direct the pertinent Department to re-issue the tender again, this time with a more detailed specification as regards items like flexibility of use and other matters which may influence subjective opinions even though, theoretically, an offer could still be termed to be compliant to specifications. The Board also resolved that participation in the tender shall be restricted to the nine tenderers who had originally submitted an offer.

The Board also feels that Messrs. Peresso should be refunded the amount of Lm 290 (Two Hundred and Ninety Maltese Liri) representing the money deposited to enable the said Company to file the objection.

Alfred R. Triganza	**Anthony Pavia**	**Edwin Muscat**
Chairman	**Board Member**	**Board Member**

Date : 21.07.2003