

Dr Christopher Mizzi, the Legal Representative for the Department of Contracts declared that there were technical people from the Central Procurement and Supplies Unit present who were involved in the compilation of the Tender Document who will be available for questioning if needed.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board, found no Objection on the matter and proceeded by inviting the Appellant to make his submissions.

Dr Francis Cherubino, representing Cherubino Limited said that they had to make this Call for Remedy prior to the Closing Date of Competition since the Technical Specifications in the Tender Document limited the products to be offered to those coming from one single company only. The Tender was issued in three lots which were separate from each other. A Clarification was issued for Lots 1 and 2. Dr Cherubino referred to Article 1.1 from Section 4 of the Tender Document which *inter alia* stated that,

“For Lots 1 and 2 Only: The Contract shall be awarded on a pay-per-use basis as is already established with other similar contracts related to the provision of medical consumables.”

Dr Cherubino continued by saying that the way which Lot 2 was issued, the specs in Clauses 2.040 and 2.041 were specific since there is only one manufacturer in the market for these. If there were products which for a particular reason had to come from a certain manufacturer, the Appellants were requesting that these will get out of the Tender and issued in a separate Lot so that everybody can participate.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board asked whether there was somebody from the Contracting Authority who can be brought in for further questioning on the matter.

At this point, Mr Stanley Iles, an Operating Theatre Manager at Mater Dei Hospital, holding ID Card Number 463763 M was summoned by the Chairman of the Public Contracts Review Board to testify under oath, before the latter.

Following Mr Iles’ testimony, the Public Hearing was adjourned to Tuesday 5 December at 11:30 where all parties will review their position with regards to the Tender Document and the testimony of the same Witness.

Dr Christopher Mizzi, the Legal Representative for the Department of Contracts said that in view of the Testimony made by Mr Stanley Iles in the previous Public Hearing before the Public Contracts Review Board, both the Department of Contracts and the Central Procurement and Supplies Unit agreed that the Tender will have to be cancelled and re-issued once again.

Dr Francis Cherubino, representing Cherubino Limited requested the Central Procurement and Supplies Unit to consider also Clauses 2.040 and 2.041 which were mentioned in the discussion.

Dr Christopher Mizzi, the Legal Representative for the Department of Contracts replied that the re-assessment was going to be made for the whole Tender.

At this point, the Public Hearing was adjourned.

This Board,

Having noted this Call for Remedies before the Closing Date of Competition filed by Cherubino Limited (herein after referred to as the Appellant) on 16 October 2017, refers to the Contentions made by the latter with regards to the Tender of Reference CT 2136/2017 listed as Case No 1101 in the records of the Public Contracts Review Board, issued by the Central Procurement and Supplies Unit (herein after referred to as the Contracting Authority).

Appearing for the Appellant: Dr Francis Cherubino

Appearing for the Contracting Authority: Dr Christopher Mizzi

Dr Stefan Zrinzo Azzopardi

Whereby, the Appellant contends that:

- a) **His main concern is that in the Tender Document, there are products in the Tender Specifications, which will limit the scope of fair competition. In this regard, the Appellant referred to Lot 2 with particular reference to Clauses 2.040 and 2.041 wherein the specified products can only be supplied by one manufacturer.**

This Board also noted the Contracting Authority's "*Letter of Reply*" dated 1 November 2017 and its verbal submissions during the Public Hearings held on 14 November 2017 and 5 December 2017, in that:

- a) **The Central Procurement and Supplies Unit maintains that the specifications dictated in the Tender Document were construed in conformity with the standards and characteristics of the requirements for the medical interventions taking into account the patients' safety.**

This Board, after having heard the submissions made by both parties concerned, was informed by the Contracting Authority, during the Second Sitting held on 5 December 2017, that the Tender is being cancelled and a

new one will be issued, taking into consideration the concerns raised by Cherubino Limited into account and thus ensuring that fair competition and Bidder participation was not limited in any way. In this regard, this Board upholds the Central Procurement and Supplies Unit's decision to cancel the tender.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Carmel Esposito
Member

12 December 2017