

Case No. 2

Contract: CT 2752/2001 – Supply, Installation and Commissioning of One Gas Chromatography/Mass Spectrometer for the Pathology Department

This contract, with an estimated value of Lm 45,000 was issued following a request received by the Director of Contracts in December 2001 from the Foundation for Medical Services.

An Adjudication Panel was appointed and this was made up of Drs. J. Deguara and M. Sammut, Engineers C. Attard Motalto and K. Farrugia from FMS respectively, as well as Mr. N. Ciantar (Medical Laboratory Services).

Four offers were received with the best two being submitted by two local representatives of the same foreign principal, Varian BV Netherlands. Messrs. Attard & Co. Ltd. and Cherubino Ltd., the local representatives, offered to supply, install and commission the spectrometer for the Pathology Department for a price of Lm 39,973.65 and Lm 50,868.49 respectively.

Both offers were considered technically and operationally acceptable but due to the price factor, the adjudication board decided on 08.04.2002 to formally recommend the offer supplied by Messrs. Attard & Co. Ltd. which was formally approved by the Foundation for Medical Services during a Finance & Operations Committee Meeting held on 14.06.2002

On the 21st June, 2002, the Foundation for Medical Services wrote to Messrs. Attard seeking a confirmation from the latter's principals as to whether these were in a position to extend the validity of the offer up to 24.07.2002. The latter replied negatively.

Messrs. Cherubino Ltd. were requested on the 07.08.2002 to confirm whether their principals were in a position to extend the validity of their offer up to the 18.10.2002 specifically stating "The above is being asked with no commitment whatsoever on the part of the Government and/or the Foundation for Medical Services". Messrs. Cherubino confirmed in writing to the Foundation the willingness of their principals to extend validity that same day by return fax transmission.

Following receipt of the said confirmation for extension of validity, the Finance & Operations Committee of the Foundation, in a paper signed by Engineers Attard Motalto and Farrugia respectively, on 08.08.2002, confirmed Messrs. Attard & Co. Ltd.'s principals unwillingness to extend validity. Furthermore, it was also confirmed that, in view of the fact that the second cheapest offer submitted by Messrs. Cherubino Ltd. was exactly similar to that of Messrs. Atard & Co., the Medical Equipment Section was recommending Messrs. Cherubino's offer.

A further extension for validity was requested by the Foundation. Messrs. Cherubino agreed to extend validity in line with the Foundation's request up to 14.02.2003.

In a letter dated 25.02.2003 and addressed to the Director of Contracts, the Foundation's CEO stated that

- a. at the time the tender was being considered, the tenders received for the supply of Medical Equipment for Mater Dei Hospital were also being adjudicated;
- b. the award of the tender for the supply of the chromatograph was necessary due to the fact that the adjudication process of the main medical equipment tender was taking longer than anticipated;
- c. another reason why this tender (CT 2752/2001) was delayed was the fact that funds for the purchase of medical equipment were exhausted.

- d. presently, the position is that no funds are available to procure medical equipment for use at St. Luke's Hospital out of the Mater Dei Hospital Funds.

The Foundation's CEO ended this letter by recommending that, in view of the above all tenders be refused.

Following receipt of this request the General Contracts Committee agreed on 04.03.2003 to cancel this tender and to consequently reject all tenders submitted.

On being informed about the Committee's decision, Messrs. Cherubino Ltd. decided to file an objection with the Director of Contracts on 06.03.03.

The Public Contracts Appeals Board presided by Mr. Alfred Triganza acting as Chairman was convened on Wednesday, 11.06.2003 to discuss this objection. Messrs. Anthony Pavia and Maurice Cauchi were the other Board members. Also present were Mr. Alfred Bonello (Department of Contracts), Dr. Marcello Basile Cherubino (Cherubino Ltd.) and Ing. Chris Attard Montalto (Foundation for Medical Services).

Both Ing. Attard Montalto and Dr. Basile Cherubino confirmed the chronology of events as stated above.

During his intervention, Dr. Basile Cherubino, wanted to place major emphasis on the fact that whilst it was evidently clear that his offer was the cheapest, yet, despite agreeing to various requests by the Foundation to seek confirmation from his principals for the extension of the validity of the offer, his Company was informed that all offers in this particular tender had been rejected.

Dr. Basile Cherubino stated that he was personally surprised by this decision as it seems that the Director of the Foundation for Medical Services knew all the time that no funds were available even though he was asking for extension of validity of offer.

Mr. Bonello, intervened by quoting clause 5 of the general Tender document which specifically states:

"The Government reserves the right to accept or reject, wholly or in part, any of the tenders, received, or to divide the service among two or more contractors."

The hearing came to a close and the Board met to discuss the issues raised during the said hearing.

Whilst acknowledging

- a. the presence of clause 5 of the general tender document referred to by Mr. Bonello
- b. the fact that the request for extension of validity of offers in no way binds the Government or the Foundation for Medical Services

yet, one has to consider also Messrs. Cherubino's principal's constant willingness to collaborate with the Foundation in the latter's request for extension of validity of date of offer.

Consequently, the Board has decided to comply with the General Contracts Committee's decision to reject all tenders. However, the Board also feels that Messrs. Cherubino should be refunded the amount of Lm 450 (Four Hundred Maltese Liri) representing the money deposited to enable the said Company to file the objection.

Alfred R. Triganza
Chairman

Anthony Pavia
Board Member

Maurice Cauchi
Board Member