

Case No. 15

Contract: CT/WSC/T/27/2002 – Tender for the supply, installation and commissioning of Multi-Terminal Hand recognition System

The Public Contracts Appeals Board, constituted of Mr. A. Triganza, who chaired the proceedings, and Messrs. A. Pavia and E. Muscat (Board Members), met to consider the appeal on the 3rd December 2003, the 28th January 2004 and 12th May 2004.

The call for offers, with an estimated value of Lm 45,000 was published in the Government Gazette between 21.06.2002 and 19.07.2002 with the closing date being finally extended to the 20th August 2002.

Tenders were received from seven companies, two of which included an alternative offer.

Following the necessary adjustments in prices, corrected as explained in Section 1.15 of the Adjudication Report “to adjust for some discrepancies within the tenders”, the cheapest offer ended up being the one submitted by Messrs. AIS (Option 1) for a global price of Lm 8,728.50. The other offers included the ones submitted by Messrs. J. Grima & Co. Ltd. (Lm 8,811.76); AIS (Option 2) (Lm 9,476.00); Databyte Computer Services Ltd (Lm 12,073.45); Dakar Systems (Lm 13,850.30); Megabyte Ltd (Lm 21,929.00); Alberta F&S (Option 2) (Lm 22,550.00) and Alberta F&S (Option 1) (Lm 26,575.00).

The Adjudication Panel was made up of Mr Antoine Galea (Financial Controller) who acted as Chairman whilst Ing. Antoine Psaila and Mr Anthony Camilleri were the other members.

According to the adjudication report dated 26.06.2003 the cheapest overall offer was that submitted by tenderer Messrs. Advanced Industrial Systems Limited, an offer which was however, not considered by the Adjudication Board to be up to the required specification in that it failed to meet paragraph 6.13 (*Method of Adjudication*) of the tender specifications. As a consequence, the Board decided not to consider further this offer.

According to the Adjudication Board, the first tender that was compliant to specifications was the one submitted by Messrs. Dakar Systems Ltd, originally the fifth cheapest.

Following the publication of such recommendations Messrs. Advanced Industrial Systems Limited filed an objection with the Director of Contracts on 28th July 2003.

The following persons attended all or at least any one of the public hearing sessions:

Water Services Corporation

Ing. Anthony Rizzo – Chief Executive
Dr Nicolette Cassar (Legal Representative)
Mr Antoine Galea (Chairman – Adjudication Board)
Ing. Antoine Psaila (Member – Adjudication Board)
Mr Anthony Camilleri CPO (Member – Adjudication Board)

Advanced Industrial System Ltd

Ing. Mario Schembri (Managing Director)
Mr Kevin Schembri
Ms Odette Schembri

Dakar Software Systems

Mr David Schranz (Managing Director)
Mr Reuben Vella
Mr Godfrey Farrugia

Other Witness:

Prof. Robert Ghirlando (Ex-Enemalta Chairman)
Ing. R. Azzopardi (Enemalta)
Mr David Schranz (Dakar Software Systems)
Mr Tarcisio Mifsud (Financial Controller, Enemalta)
Mr France Muscat (IT Manager, Malta Shipyards)
Mr Victor Mifsud (Project and Systems Manager, Malta Shipyards)
Mr Martin Bajada (Technical & Information Technology Forensic Consultant)

Ing. Mario Schembri, representing AIS Ltd, gave an overview of the tender. He said that this project consisted of three main deliverables, namely:

- i. **Hand Reader Terminals (clocks)**
Only five terminals were requested in the original tender documents. Eventually, this quantity is expected to increase to fifty (maximum).
- ii. **A Time and Hand Reader Software.**
The system had to have the ability:-
 - (a) to collect information from these hand reader terminals *and*
 - (b) to work out the number of hours worked;
- iii. **A Time and Attendance Software**
This had to be seamlessly integrated with the Hand Reader Terminals as well as the existing Payroll and HR Software.

He said that their major objection was based on the Adjudication Board's report as far as their offer was concerned. He alleged that its comments and conclusions contained various inaccuracies.

Mr Schembri said that in the '*Major qualifications*', the Board did not mention the strongholds of AIS. He stated that it was the only company in Malta that was

officially recognised as the 'Authorised Reseller' for these hand reader terminals and the only Certified Repair Centre in the Mediterranean. Also, he said that AIS had been installing these type of systems since 1994, and that at present they had about 100 different installations and over 20,000 employees who every morning clocked on their hand reader terminals.

With regard to '**Experience**', wherein it was stated that '*AIS Ltd. carried out a number of hand reader installations. Details of references were not provided*', he said that it was not true that references were not provided. He exhibited a list of all their clients who used Hand Recognition System installed by AIS including two particular references, namely Enemalta Corporation and the Malta Drydocks (MDD).

As far as '**Notes and comments**', listed hereunder were concerned, Mr. Schembri said that:

Re Point 1: the tender document did not specify that terms of payments were required. They set payment terms in the absence of any.

Re Point 2: contrary to what was stated in the report, training course details were given in the bills of quantities wherein it was indicated that they were offering 10 sessions of 2 hours each.

Re Point 3: the number of 6 hour battery backup against Item 1 was a type written mistake. In fact in para. 5.8 of AIS's official offer relating to **Power Supply** (page 14) it was stated that '*the readers will be backed by an 8 hour battery backup supply*'.

Re Point 4: in their proposal they included the price for 12-month maintenance and support service under **Service Contract** which amounted to Lm1,275 for 150 hours of maintenance service.

Re Point 5: it was not AIS which indicated that the HR software was not installed but the tender documents since on page 8 item 5.10 – **Software Interfacing** it was stated that '*It is our (WSC) intention to replace existing leave management software with the Dakar Human Resources software*'. Following this they requested to carry out a site visit and WSC had the payroll software installed which they did not find any difficulty to integrate with. It was confirmed that if the HR software was of the same structure as the payroll, they would not find any problems to integrate with it.

Re Point 6: they had a dictionary that had the ability to integrate with their system.

Re Point 7: when the system was being installed, Enemalta engaged Ms Anna Darmanin (Personnel Manager). One of her tasks was to help the contractor integrate the system. However, she had to resign as Enemalta Management boycotted and completely isolated her. Notwithstanding this, the system was installed and was still being used by the employees who were punching on their system. . Then, Mr. Schembri quoted from Ing. R. Azzopardi's letter dated 8 August 2003, in which he confirmed that '*the time and attendance system has*

also been integrated with other modules, and data is exported into third party databases used for our Human Resources information systems'. He added that every year Enemalta renewed the maintenance contracts. As a result, he did not understand how it was stated that 'Enemalta had bitter experience mainly on the interfacing of the system offered by AIS with Enemalta payroll and HR software, which are of DAKAR Systems.'

Re Point 8: although paragraph 6.13 of the tender specifications requested that *'References of successfully completed similar projects in Malta (minimum 2) must include availability of such companies for site visits by WSC personnel at any time during the adjudication stage'*, AIS did not have the opportunity to present their system at the Malta Drydocks which had a similar system integrated with DAKAR software payroll and the human resources system. It was also pointed out that the system used at the Westin Dragonara is another system which they integrated with DAKAR software. Apart from this, their system was integrated with various other companies that provided payroll and human resources systems, such as Malta International Airport and Tumas Group.

As regards the warranty clause, in the report it was stated that AIS did not give them the three-year warranty period as requested. Mr Schembri stated that they offered twelve-month warranty and gave them an extended warranty.

In her intervention on behalf of the Water Services Corporation (WSC), Dr Nicolette Cassar insisted that WSC wanted a system which integrated with their system as specified in page 1 **Item 2.0 Scope of Works** - point no 3 - which stated that the tenderer was expected to *'carry out any programming and configuration of hand reader software to integrate with the existing Payroll and HR software.'* She said that WSC wanted references to determine how it was capable to integrate its system in other companies. She confirmed that AIS submitted two references as requested, namely Enemalta and MDD. However, she claimed that, although the system was working, when they held meetings with Enemalta to enquire about their experience with AIS, it resulted that it was not integrated. She said that although Enemalta insisted for an integrated system, such integration never materialised. With regard to the period of guarantee, she said that such warranty was not according to specs because AIS offered only one year guarantee with an extension for 3 years and at a price.

Then, Mr Schembri quoted from Ing. R. Azzopardi's letter dated 8 August 2003, *'As part of the same project, Advanced Industrial System Ltd. supplied Enemalta Corporation with a Time and Attendance Database Management System, which processes the data, collected from the Hand Recognition terminals into various Time and Attendance Reports. The Time and Attendance System has also been integrated with other modules, and data is exported into third party databases used for our Human Resources Information systems.'*

Mr Rizzo confirmed that this was what they required but he said that facts were completely different. The main issue was the linking and integration. Mr Rizzo said

that when they visited Enemalta, which had many systems similar to WSC, they categorically told them that their system was not integrated.

During Prof. Robert Ghirlando's (ex Chairman, Enemalta Corporation) testimony he declared that they had problems with the integration of the hand recognition system provided by AIS. Also, he said that at first they had support services problems but afterwards things improved. They had spent a lot of money and so this justified the pressure put on AIS to implement the system. It cost about Lm70,000. He said that Enemalta had a Dakar System and the problem was that technically the integration could not be done because the information on the database of the palm reader system could not be transferred to DAKAR System.

During Profs Ghirlando's testimony, Mr Schembri reiterated that they had problems because the organisation did not accept the system, there was resistance to change and because of internal management and administrative problems. He insisted that although MDD had the Dakar System, it worked. Also, he said that the DAKAR System was more expensive.

On the other hand Mr Rizzo remarked that once the first reference failed they did not feel the need to go to MDD. He said that when an Enemalta employee punched, the system did not provide a hardcopy receipt, which was still being done manually. He insisted that WSC wanted a complete and seamless integration with their existing payroll and human resources information system.

Ing. Ray Azzopardi, Assistant Human Resources Manager (Enemalta), confirmed the contents of the letter dated 8 August 2003. When asked to declare whether Enemalta's system was integrated, the reply given was in the negative. He said that the system was a stand-alone one. Records of vacation leave, sick leave and so forth were kept on a different program and that the software thereof was made in-house. When asked by Dr Nicolette Cassar to explain why he said that the system was '*integrated with other modules*', he replied that it was not software-integrated. Ing Ray Azzopardi declared that the server was overloaded and was slow to retrieve data.

Mr Rizzo quoted from Minutes of Meeting held at Enemalta Corporation on 7 March 2003 which confirmed that the integration with payroll and human resources was not carried out and that the database was slow.

Mr David Schranz, Managing Director, *Dakar Software Systems*, stated that there was not even one site where they had installed a system which was not integrated with theirs. They specialised on a whole, complete and integrated software solution, that is, from employees' punching till the issue of payslip. AIS was not capable to issue a payslip. He said that they created an employee only once in payroll/human resources and that no export, import or intermediate files were required. They offered a one-stop-shop system. There was not even a single installation in Malta with a DAKAR System which had a seamless integration with their product and which did not need their intervention for integration. This was due to the fact that their data was completely encrypted for security purposes.

Mr Schembri requested that they should be given access to DAKAR databases so that they could build their system therein and use such databases since they had the software and hardware to meet WSC needs.

He also said that MDD system, which had a Dakar System, was more similar to WSC system since it used the same software that was being offered to WSC. He said that the most advanced system they had was at MDD, which was the same system they were recommending to WSC. MDD had remote sites within the same organisation namely, Manoel Island and Malta Shipbuilding. The administration office of the MDD was remotely connected with the punching stations. Mr Schembri added that it was being given the impression that AIS was not capable of integrating the systems. He invited WSC to go to MDD because they had a seamless integration system which had similar software.

During the second hearing session, Mr. Rizzo reiterated that AIS' system did not satisfy WSC's needs as it did not meet specifications. The Time and Attendance System offered by AIS did not satisfy the tender conditions since it could not be integrated seamlessly with the existing Payroll and Human Resources Software. They wanted a system which could be updated automatically without any human intervention. He said that when they inspected Enemalta's system, which was one of the references provided by AIS itself, it resulted that it was not integrated seamlessly.

Mr Rizzo drew the Appeals Board's attention to the fact that following the first session, he received a telephone call from Mr Schembri during which conversation the latter asked him if it was possible to arrange something or to reconsider the position. However, Mr Rizzo reminded him that in view of the appeal he could not consider anything and that the matter should be discussed before the Board. Mr Schembri clarified that, in view of the fact both companies (AIS and WSC) worked together and the fact that they commissioned a system which was critical to them, they did not want that such an issue would jeopardise their good working relationship.

Then, Mr Rizzo said that AIS offered a Hand Recognition System using the Handkey II hand reader which was an Access Control Reader and not a Time & Attendance Terminal. He tabled two brochures to prove his point. Also, he claimed that the former system did not support internet. These statements were categorically denied by Mr Schembri who stressed that the specifications of both systems were identical and that both supported internet. He explained that one system was marketed and not designed for security and access control application and the other for time and attendance purposes. He said that in Malta the Handkey II was used as Time and Attendance.

Mr Tarcisio Mifsud (Enemalta Corporation) admitted that, from his experience, such contracts never met expectations. He said that the hand readers and Time and Attendance (T & A) software were purchased from AIS while the Payroll software was procured from Dakar. Mr Mifsud said that when they bought the T & A software, it was believed that their wages software would turn out to be compatible with this system. He added that the system still required extensive manual intervention.

With regard to the HR System, Mr Mifsud said that he was not in a position to comment. At this point, Mr M Schembri intervened and claimed that Enemalta's HR System was developed in-house, the T & A system was integrated with the HR

System and that the major problem was the integration of the HR System with the Wages System.

During his cross-examination, Mr Mifsud confirmed that AIS' system was not seamlessly integrated since it required manual intervention. He said that every morning, when workers punched, the HR had to send a person to check who was present or absent. However, he declared that he could not tell whose fault it was that the system did not work. All he knew was that they started with a contract that was supposed to cost so much and then, due to the need of additional software and programmes, Enemalta ended by spending much more. He said that, as far as he was aware, it was thought that such a system would cater for the whole Corporation and not for one user only.

Mr Mifsud contended that there was manual intervention due to the system and not due to resistance to change or because of internal management/administrative problems between the Wages Department and the Human Resources. However, Mr Schembri emphasised that anything Enemalta requested for integration was delivered successfully.

At this point Ing. Rizzo made reference to the minutes of meeting held on 7 March 2003 wherein it was indicated that the Time and Attendance was not integrated with the Payroll and Human Resources and that they had to enter data manually in the payroll software and HR software. Thus, he could not understand how the supplier was stating that the system at Enemalta was integrated. Nonetheless, Ing Schembri insisted that the integration of the system was accomplished as far as Enemalta requested it to be. He added that the information collected by the hand readers was used by the HR and T&A and that they were integrated. He said that irrespective of what was stated about Enemalta's system, the case at Malta Drydocks was completely different.

Both Mr Victor Mifsud and Mr Francis Muscat (Malta Shipyards) confirmed that their system was supplied, installed and commissioned by AIS Ltd. It was stated that 32 Hand Recognition terminals were installed at 8 different sites, namely Cospicua Drydocks for the industrial grades (2) and at the principal gates (2), Malta Shipbuilding (2), Manoel Island Yacht Yard (1) and Ricasoli Tank Cleaning Farm (1). The shipyards depended on automated Time and Attendance Systems based on Hand Recognition Technology to manage the attendance of their workforce. Mr Mifsud stated that after the merger of the Malta Drydocks and the Malta Shipbuilding, the systems at both yards were easily integrated without any problems.

Then they gave technical information of how integration among the systems was carried out. The Time and Attendance system transferred data collected from the Hand Recognition terminals to the Dakar payroll system. The Time and Attendance was also integrated with Human Resources system which used Visual Personnel Software. This software was widely used in Europe and was relatively cheap. Leave information which was kept on the Human Resources system, was exported to the Time and Attendance database every evening. It was confirmed that AIS system could be interfaced with other different software applications and that when they had to change requirements, it was flexible enough to meet their needs.

Mr V Mifsud declared that the Time and Attendance system distributed information automatically to all departments/centres electronically by e-mail. Since the introduction of the Automated Time and Attendance system they were in a position to develop Management Reports for decision-making.

In reply to a specific question regarding seamless integration, Mr Mifsud stated that for them it was seamless because although the Time & Attendance, Human Resources and Payroll had three different and separate databases (AIS, Visual Personnel and Dakar respectively), data flew smoothly from one system to another automatically. They were satisfied with the system because only by exception human intervention was needed.

When Mr Mifsud was asked about the function of the Handkey II reader, he replied that the Access Control Reader and the Time & Attendance Terminal had the same function.

In his concluding submission, Ing Schembri said that the system at Enemalta was installed as required, that is, T&A system was integrated with the HR system automatically while manual intervention was required for the Payroll. From Mr Tarcisio Mifsud's testimony, it was established that it was not AIS's fault that they did not manage to interface the T&A with HR and payroll software. On the other hand the IT and the Project & Systems Managers at the Malta Shipyards were more than happy with AIS system. In fact, it was confirmed that the T & A system was integrated seamlessly with the HR and Payroll. The process from punching till the issue of payslip was all done automatically. The reporting system helped in the financial operation and management decisions. He declared that AIS specialised in system integration because the systems they offered could be interfaced with a number of software applications, were flexible and could be changed to meet requirements.

He said that another point that had to be taken into consideration was the significant difference between the prices of the two offers, namely Dakar at Lm 13,850 and AIS (inclusive of the three year warranty) at Lm 7,500.

With regard to the brochures exhibited about the hand readers, Ing Schembri said that they were different for marketing purposes only. He contended that the Handkey II had two functions, namely, Time and Attendance Terminal and Access Control Reader.

Ing. Schembri concluded by stating that, once their offer met WSC requirements and specifications and was significantly cheaper, the Appeals Board should reconsider the decision taken by the Contracts Committee and award the contract to AIS Ltd.

Dr N. Cassar, representing WSC, in her final submission, mentioned the references provided by AIS Ltd. She said that they required two references so that one would corroborate with the other. She said that they could not understand why they included Enemalta as one of their references taking into account the fact that despite repeated attempts they did not succeed to implement the interfacing with their HR and payroll software. She added that when WSC inspected Enemalta's system in operation it was found that their system was not integrated seamlessly and that extensive manual intervention was necessary. Thus, it resulted that one of the references provided by

AIS itself was completely contrary to what WSC required. WSC's engineers were convinced that, in view of the specifications included in the tender submission, the system offered by AIS would not reach the concept of seamless integration. She added that it was the bitter experience with Enemalta that lead WSC not to consider the award of contract to AIS.

As regards the warranty clause, Dr N Cassar said that relative cost should have been included in the lump sum.

After hearing the final submissions, the Appeals Board ruled that in view of the outcome of these proceedings, it intended to appoint an independent IT Expert to analyse the tender documents prepared by the WSC and the tender documentation by AIS Ltd in order to establish and confirm whether (a) AIS Ltd's offer was compliant with the tender's specifications and (b) the system offered by AIS Ltd could be integrated seamlessly with the payroll and Human Resources software modules. The IT Expert's technical report would subsequently be referred to the parties concern for their comments.

Following receipt of credentials of a couple of experts, the Public Contracts Appeals Board on the 26th March 2004 formally appointed Mr Martin Bajada, FIAP (Technical & Information Technology Forensic Consultant) to write this report ensuring that the latter will be given access to all relevant documentation.

Mr Bajada submitted his findings to the PCAB and the latter forwarded a copy to all parties concerned giving these a week to view and formally comment on Mr Bajada's report.

Following receipt by this Board of the comments made in connection with the submission of Mr Bajada's report, it was decided to reconvene the hearing once again in order to give everyone the opportunity to ask all pertinent questions and raise any comment deemed apposite to the hearing procedure. Such hearing took place on May 12, 2004 where this time Mr Bajada joined the proceedings and gave evidence under oath apart from making himself available for cross-examination by interested parties.

The Chairman, Public Contracts Appeals Board opened the meeting by stating that in accordance with the terms agreed upon by the parties concerned during the public hearing session of 28th January 2004, appointed an independent person to draw up a report with the following terms of reference:

- (i) To analyse the tender documents prepared by the Water Services Corporation (WSC):
- (ii) To analyse the tender documentation submitted by Advanced Industrial Systems Ltd (AIS Ltd) in conjunction with the said tender document prepared by WSC; and
- (iii) To establish and confirm whether (a) AIS Ltd's offer was compliant with the tender's specifications and (b) the system offered by AIS Ltd could be integrated seamlessly with the Payroll and Human Resources software modules.

The Chairman informed those present that this Board decided to appoint Mr Martin Bajada because from the CV submitted and Declaration made (dated 16.02.04), he was considered to be competent enough to do the job.

A copy of Mr Bajada's report was forwarded to the parties concerned for their comments. WSC and AIS submitted their comments on 28th and 29th April 2004 respectively. The Board found it necessary to call another public hearing because AIS alleged that Mr Bajada went beyond his terms of reference. Nevertheless, it was at this stage that the Chairman PCAB emphasised the fact that this Board would only abide by its terms of reference and that any comments made beyond the Board's terms of reference would definitely not have conditioned its decision. He said that the Board called this meeting so that, for fairness sake, if such comments were made, they could be rebutted and/or confronted by the parties concerned.

Mr Bajada took the stand and commenced by saying that he first read the tender document and marked a number of documents related to this tender. Then he was given copies of all the documentation requested and analysed them. He felt that throughout these documents the WSC repeatedly highlighted the need to have a seamless integration and in subsequent communication they even gave a wider definition of this clause.

Mr Bajada said that he did not find any deficiencies in Dakar or AIS systems. His terms of reference were to analyse all the documentation and to give an opinion. He said that he had 10 years experience in similar court cases.

With regard to WSC's tender document, Mr Bajada stated that they made it clear from the outset that they wanted a seamless integration system and that any intervention had to be automatic without any other means or process for integration. WSC requested that all necessary information had to flow constantly through the Payroll and Human Resources System by using one seamless integration system.

As regards the AIS's tender document, Mr Bajada said that the issue regarding the import and export of data and functioning of the system had been raised in all the correspondence exchanged between AIS and WSC and also during a meeting held between WSC and AIS. In actual fact, the WSC had specifically asked AIS as to whether the integration could be carried out by manual data entry and file export method, to which AIS replied in the affirmative. In other correspondence AIS stated that the integration could only be accomplished by means of import and export of ASCII files. This meant that the import was not going to be seamless since it required manual intervention.

With regard to the third point, Mr Bajada said that he was of the opinion that, for the purpose of seamless integration, AIS's offer was not compliant to tender conditions which specified that the hand reader system had to be integrated with the Payroll and Human Resources Systems. He made it clear that during his analysis he did not go into the merit as to whether AIS' or Dakar's system was good or not.

Mr. Schembri argued that with regard to what was allegedly stated by Mr Bajada, namely that their system could not be integrated seamlessly with the software system available at WSC, he reiterated that his Company could do such similar seamless integration as a fallback situation. He proceeded by stating that on page 15 of their

tender document it was specifically indicated that they could do the seamless integration. He added that in the previous session, it was established that Malta Drydocks' system was integrated seamlessly. He said that although all systems were theoretically open, they could not gain access to those systems where, for commercial reasons, databases were protected by passwords. So what they were stating was that, in the prevailing circumstances, they could do it by other means. However, provided that the system was accessible and not protected by password/s, the need to resort to the import and export of files was irrelevant. In their proposal it was indicated that their system could write directly in the Payroll and Human Resources databases, which was similar to the systems introduced in other places. He said that once these places did not have the problem of password protection, their system could be integrated seamlessly.

When Mr Bajada made reference to Section 5.10 Software Interfacing wherein it was stated that *“text files will then be imported by your existing Payroll system”* which meant that they were passing the system, Mr Schembri rebutted this argument by quoting from the same section wherein it was stated that:

“ if your HRIS uses an open database, a data transfer module already developed by AIS can read the HIRS tables directly and write the relevant data into TimeIT database.”

With regard to the number of documents and minutes of meeting mentioned by Mr Bajada, Mr Schembri contended that they did not have a copy thereof and so they could not state in which context the questions were asked and answered. He reiterated that Mr Bajada was not allowed to analyse such internal documentation since according to his terms of reference he should have analysed only the WSC tender documents/specifications and AIS' offer. However, the Chairman PCAB stated that it was important for the Board to determine whether any clarifications to the original tender document were requested, since then, if this was the case, they would be considered as forming part of the tender document. Mr Schembri immediately declared that this was not the case. On the other hand Mr Bajada said that this Board had given him access to all files and relevant documents. He added that the meeting was held specifically to discuss the seamless integration of a contract between WSC and AIS. Mr Schembri intervened by stated that the meeting was held after the submission of their offer and before the award of contract. It was confirmed that nothing was changed from the tender document. Mr Bajada stated that it was evident that further clarification was requested because the person who analysed AIS tender document felt that there was not enough information. More correspondence was required particularly on the seamless integration and more than one meeting was held apart from the sight visit. He declared that he based his conclusion on all documentation examined, including a diskette containing information on database by DAKAR which was submitted after the closure of tendering process. Mr Schembri intervened and stated that following this they confirmed that they could integrate the system seamlessly. However, Mr Bajada insisted that this could not be done unless import is done *via* ASCII files. Mr Schembri replied by quoting from page 11 of the Mr Bajada's report wherein AIS stated that:

“Alternatively our system can also read and write directly from the Payroll and Human Resources database, provided these are not encrypted, open and support ODBC connectivity.”

Mr Bajada insisted that during the meeting AIS confirmed that they could not do it seamlessly.

Mr Schembri replied by stating that the emphasis was being made on that point to disqualify them and the other point which qualified them was not being mentioned. Mr Bajada replied that in his report he made reference to all points mentioned in the documents. He declared that his interpretation was simple, that is, AIS' system was seamless provided that it was *“not encrypted, open and support ODBC connectivity.”* In the minutes of meeting held between AIS and WSC it was stated that when Mr Antoine Galea (WSC) requested AIS to give details on the interfacing with the Dakar, they replied that *“2 options are possible, i.e. manual data entry and file export method. Dakar was a non-open database and therefore it is not possible to interface automatically to Dakar payroll.”* Mr Bajada clarified that he could have either reported on all existing documentation or analysed and reported on all the software, hardware and integration. He said that the Board had told him to base his report on the first option. He insisted that in his report he made reference to all existing documentation and minutes where seamless integration was mentioned.

Dr Nicolette Cassar, representing the WSC, stated that they concurred with the contents and conclusions of the report which was drawn up by a neutral technical person appointed by the Board.

Mr Rizzo said that they agree with Mr Bajada's findings and conclusions as stated in their letter dated 28 April 2004 since they were already aware of such documentation when they drew up their adjudication report. Also, it was a confirmation that they had followed the appropriate procedures as far as the analysis and adjudication of the tenders was concerned.

When AIS' representatives were asked whether they could confirm the contents of Min 35 which was drawn up by Mr Antoine Psaila, Mr Schembri replied that they could confirm that Dakar was a non-open system. He confirmed that they could integrate seamlessly with Dakar system provided that it was open.

When Mr Schembri asked WSC to confirm whether Dakar system was open as requested in the specifications of Payroll and Human Resources tenders, Mr Rizzo replied the AIS were allowed to inspect their system and gave them all requested information, including Dakar data dictionary which was made available on a floppy diskette. AIS claimed that it only contained the structure files that were not encrypted. Mr Pavia stated that it should be Dakar who could confirm whether they had a password and if they were prepared to give it. Mr Bajada said that the question whether the system was open or not was completely a different issue and it could not be taken on face value. Mr Rizzo claimed that they had Dakar Payroll and Human Resources (which was purchased but not yet installed) Systems and that in their tender documents they clearly indicated that they wanted a system which could be integrated seamlessly with them.

When asked by the Chairman whether it was pertinent to state that AIS's system matched this criterion, Mr Bajada stated that, more for security reasons or to control potential users rather than for commercial interests, no company would permit their

database to remain open and be accessible to everybody. Unfortunately, in this case, Dakar was one of the tenderers.

Mr Pavia recalled that, if he were not mistaken, Mr Schranz (DAKAR) had stated that although their system was encrypted they were prepared to give their password for accessibility. When asked by Mr Pavia to state whether, in such instances, it would be possible for AIS' system to integrate seamlessly with Dakar Payroll and HR System, Mr Bajada replied that no software would permit accessibility but, in the prevailing circumstances, once both companies were commercial and operating in the same market, it was in their interest that their systems were compatible and that they collaborated with each other.

Moreover, Mr Bajada said that, according to documents available, although AIS were stating that they could integrate seamlessly, Enemalta were in total disaccord with this claim. On the other hand, Mr Schembri pointed out that this was completely contrary to what was stated by Malta Drydocks.

Mr Bajada said that even if Dakar were to give the password, he could not guarantee that the systems would be seamless because one needed to do a lot of testing and trials first. He said that for any digital system, forensically, it was a non-destructive exercise because before embarking on a project one should keep a backup so that, in case of any damage/fault, one could restore it.

Mr Schembri concluded by stating that the point at issue was to determine whether there was any encryption or password. He said that if there were no commercial barriers AIS's system should not find any difficulty for it to integrate with the Payroll and HR Systems.

Following further analysis of the submissions made during the three public hearings held at that stage, the Public Contracts Appeals Board felt that throughout its deliberations there were still a few of the issues which needed further clarification. However, whilst initially the Board decided to try to elucidate itself on a few grey areas by means of formal correspondence with interested parties, yet it seemed obvious that the necessary clarifications had to be sought through another formal public hearing session. By doing so this Board preferred that such points would be clarified in the presence of all interested parties with anyone left at liberty to express any views in regard.

Consequently, this hearing was held within a reasonably short time in order not to prolong proceedings unduly.

Mr. Antoine Galea confirmed that due to the fact that Dakar had an advantage over the other contenders, the adjudication board gave AIS all necessary information and accessibility to ascertain a level playing field as far as seamless integration was concerned. The Board also gave AIS the concession to see Dakar's Payroll and HR systems giving them in the process access to life data. Mr Galea reiterated that the way specifications were drawn up did not preclude any competitor from tendering and that whoever was entrusted with writing the pertinent specifications always had his employer's best interest at heart.

With regards to the issue of integration with the Dakar Payroll and HR Systems, which were “non-open”, Mr Galea said that Dakar gave the necessary access when this was requested. However, when he was asked to state whether the said access (a.k.a the ‘activation key’ or ‘password’) was available or given on request, he said that he believed that in order for all to be ethically correct it is imperative for such access to be given in order to guarantee a level playing field. He proceeded by emphatically stating that should there have been any chance of such thing not happening he would have had no qualms in not tolerating such scenario going as far as resigning from his post.

On his part, Mr David Schranz declared that he did not find any objection to give the necessary access as he argues that, nowadays, there were enough tools available to enable anyone technically-oriented to integrate with the software, the latter being simply a digital data structured in particular format. He contended that if AIS had enough technical knowledge they could integrate with their software without the need of their intervention. In fact there were other companies who integrated with their software in other places of work. However, he said that, from a user point of view, AIS needed to know how the system worked in order to integrate seamlessly.

He said that the WSC had full access to the system because they had the password and the same user had access to switch on or off the encryption. Due to this reasoning, Mr Schranz argued that it is the Corporation that will ultimately decide as to whether such system will be encrypted. Here, Mr Rizzo declared that they would give access to that whichever company would be awarded the contract.

In his final intervention, Mr Schembri stated that most of the queries raised were based on the seamless integration with the existing Payroll and HR Systems at the WSC. He said that it was not true that his Company could integrate seamlessly with the Payroll and HR software module in view of the fact that Dakar was a *non-open* system. He proceeded by stating that should his Company be denied access, it would not be possible to integrate seamlessly. However, what his Company had stated all along was the fact that they had an alternative proposal to seamless integration in case they were not given access.

Finally, Mr Bajada said that what was stated during the hearing regarding the activation key concerning the encryption of the database was completely different from what he was requested to examine. He was of the opinion that, as far as seamless integration was concerned, salient technical information was lacking in the tender documents. He said that there could be a remote but realistic possibility that if Dakar were to someday decide to upgrade the system AIS would not be in a position to integrate automatically. However, Mr Bajada also pointed out that the onus of such upgrade requirement remained solely within the Corporation’s discretion.

Having considered all that was submitted and argued the Public Contracts Appeals Board:

- a. feels that during the adjudication process the WSC gave all the necessary information and was also willing to share and exchange data with Messrs AIS Limited even though this may have been at the time construed by at least a few members to be of a highly confidential nature and this in order to ensure a level playing field amongst tenderers;

- b. notes that Dakar Software Systems has already demonstrated its willingness to collaborate with third parties by allowing accessibility to the latter in order to ensure functionality and smooth integration of systems admitting in the process that it would be naïve in today's software development environment to restrict extent of collaboration considering the high possibility of third parties still gaining access anyhow;
- c. notes that Dakar Software Systems argues that it is ultimately the WSC which holds the key to accessibility even though this claim was somehow contradicted by the technical expert (Mr. Bajada) who stated that software developers could still, eventually, potentially prohibit access through, say, upgrade of systems. Yet, Mr. Bajada reiterated that seamless integration is guaranteed should all parties collaborate.
- d. notes that whilst the technical expert argues that the tender document did not include sufficient technical information to guarantee seamless integration, in his report, Mr Bajada also stated that his interpretation was simple, that is, AIS' system was seamless provided that the system provided by Dakar to WSC was "*not encrypted*".
- e. takes into consideration the fact that the Malta Drydocks were completely satisfied with the integration achieved between the AIS product and the Dakar software. The lack of similar success in the case of Enemalta could be due to extraneous factors which might have negatively effected the level of integration as required by the Water Services Corporation.

As a consequence, The Public Contracts Appeals Board considers that the objection raised by AIS Limited is justified. AIS Limited should find no problem with the integration of the system as once accessibility is guaranteed then there is no particular reason to technically question the validity of the appellant's offer.

Hence, this Board finds in favour of appellant.

Furthermore, the Public Contracts Appeals Board recommends that the appellant should be reimbursed the deposit paid when filing the said objection.

Alfred R. Triganza
Chairman

Anthony Pavia
Board Member

Edwin Muscat
Board Member

Date: 15.06.2004