

PUBLIC CONTRACTS APPEALS BOARD

Case No. 59

RE: CT 2114/2005 – Advert No 201/2005 - Tender for the Procurement of New Equipment for the Public Health Laboratory of Malta (Lot 3)

This call for tenders, published in the Maltese Government Gazette on 14.06.2005 was issued by the Contracts Department following a request transmitted to the latter by the Department of Health.

The closing date for this call for offers with a global estimated value of contract being Euro 60,000 (approximately Lm 25,000) was 09.08.2005.

An Evaluation Board consisting of Messrs.

Dr Natasha Azzopardi Muscat	- Chairperson
Mr Paul Bezzina	- Secretary
Ms Rose Schembri	- Member
Mr Albert Gambin	- Member
Mr Jesmond Farrugia	- Member

was appointed to analyse a total of three (3) offers submitted by different tenderers.

Following receipt dated 25.11.2005 of a formal notification from the DG (Contracts) whereby they were informed that 'all submitted tenders for Lot 3, including' their 'own have been adjudicated as technically non-compliant' Messrs International Medical Services & Supplies Co. Ltd (I.M.S.S Co. Ltd) acting on behalf of Angelantoni Industrie SpA filed an objection on 30.11.2005.

The Public Contracts Appeals Board (PCAB) made up of Mr Alfred Triganza (Chairman) with Mr Anthony Pavia and Mr Edwin Muscat, respectively, acting as members, convened a public hearing on 25.01.2006 to discuss this objection.

Present for the hearing were:

I.M.S.S. Co Ltd obo Angelantoni Industrie SpA

Mr Emanuel J Borg	– Managing Director
Mr Noel Pace	– Technical Manager

Ministry of Health

Mr Joseph Galea (B.Com)

Evaluation Committee

Dr Natasha Azzopardi Muscat	– Chairperson
Mr Paul Bezzina	– Secretary

Ms Rose Schembri	– Member
Mr Albert Gambin	– Member
Mr Jesmond Farrugia	- Member

In their opening statement the representative of *Messrs International Medical Services & Supplies Co. Ltd* (I.M.S.S Co Ltd), acting on behalf of *Angelantoni Industrie SpA*, gave a brief overview as to what prompted them to file the said objection.

Mr Emanuel Borg, Managing Director I.M.S.S. Co Ltd, stated that they lodged their objection because, contrary to what was communicated to them, they were of the opinion that they were in compliance with technical specifications. Furthermore, he said that they had replied to all the clarifications as required by the Evaluation Committee. However, Mr Borg did not exclude the possibility that there could have been some misunderstanding with regards to specific matters relating to their offer.

The appellants' representative said that, in reply to the Evaluation Committee's clarifications, Angelantoni Industrie SpA (i) certified that the safety Herasafe KS 12 was Class II B2, (ii) confirmed that the unit could take *formalin* to disinfect the HEPA filter and (iii) confirmed that the unit was supplied with two extractor fans. However, he alleged that the clarifications requested on the latter two points might not have been clear. Mr Borg explained that their foreign principals asked the Evaluation Committee to discuss the matter regarding extractors with the local representatives to ensure that what would ultimately be provided would meet their specific requirements.

Dr Azzopardi Muscat, Chairperson of the Evaluation Committee, said that during the evaluation process it was noted that some of the items offered by Angelantoni Industrie SpA did not meet certain specifications. She explained that they could have discarded their offer but they decided to seek clarifications to ensure that what was offered met their requirements. However, unfortunately, the replies given were still not satisfactory. Furthermore, she said that at that stage they were not in a position to comply with the Angelantoni Industrie SpA's request to enter into discussion with their local dealer I.M.S.S. Co Ltd.

On cross-examination, Mr Jesmond Farrugia, a member of the Evaluation Committee, confirmed that one of the clarifications dealt with the *formalin vaporiser* which, in spite of the fact that it was specifically requested in the specifications, was not offered. He said that appellants offered an alternative method of sterilisation which was UV irradiation. When they enquired whether this system could replace the *formalin vaporiser* the reply given did not satisfy their requirements.

With regard to the extractor fans, Mr Farrugia said that, when they sought clarification thereon, Angelantoni Industrie SpA referred them to their local dealer I.M.S.S. Co. Ltd to discuss the matter with them.

As regards the other issue mentioned by Mr Borg in his opening statement, Mr Farrugia said that in the tender they specified that the cabinet had to be Class 11 B2 because this was a total exhaust system. He maintained that in their reply Angelantoni Industrie SpA

declared that *'The total exhaust can not be offered from our side.'* He confirmed that even the literature submitted indicated that it was not total exhaust.

Replying to Mr Farrugia's testimony, Mr Borg claimed that their principals told them that the product they offered was Class B2 and that it was total exhaust 100%. Dr Azzopardi Muscat rebutted by stating that the tenderer's literature and catalogues clearly indicated otherwise.

At this point, Mr Noel Pace, also representing I.M.S.S. Co. Ltd., tabled a document which contained the relevant literature and which he claimed was submitted to the Department of Health. On examining this document, Mr Farrugia pointed out that the design demonstrated that it was not *total exhaust* type because some of the air was re-filtered into the cabinet.

In her concluding remarks, Dr Azzopardi Muscat reiterated that when they examined the literature they could have discarded the offer but, in spite of the clarifications sought, they were still not in a position to award the tender because the suppliers were out of specifications.

At this stage, the public hearing was brought to a close and the PCAB proceeded with its deliberations before reaching its decision.

This Board,

- having noted that the appellants, in terms of their 'reasoned letter of objection' dated 30th November, 2005, and also through their verbal submissions presented during the public hearing held on the 25th January, 2006, had objected to the decision taken by the General Contracts Committee communicated to them in terms of the letter dated 25th November, 2005, informing them that the tender submitted by them was not in compliance with technical specifications;
- having established that, in Mr Borg's own admission, certain clarifications submitted by them may not have been clear;
- having ascertained that the Evaluation Committee not only ensured a level playing field but instead of discarding their offer, the Committee decided to seek clarifications to do away with any doubt that what was offered by Messrs I.M.S.S Co. Ltd. met their requirements;
- having heard and examined appellants' arguments for insisting that their tender fully met the tender specifications and having heard Committee members explaining in detail, under oath, how appellants did not offer what was required or specified in the Tender Document (e.g. 'formalin vaporiser' and the 'Class 11B2 cabinet');

- having noted that the literature and catalogues which were presented did not corroborate the appellants' verbal claims of compliance with technical specifications as requested in the Tender Document;

reached the following conclusions:-

1. the clarifications provided to the Evaluation Committee by the appellants as well as the arguments raised by the same appellants during the hearing, were not convincing;
2. the methodology adopted by the Evaluation Committee was not only in line with normal praxis but even operated beyond what is normally required in similar circumstances;
3. In consequence to 1 and 2 above, the appellants' objection to the decision reached by the General Contracts Committee to deny Messrs I.M.S.S Co. Ltd from being considered further as regards this particular tender is not upheld.

Furthermore, in terms of the Public Contracts Regulations, 2005, this Board recommends that the deposit submitted by appellants in terms of regulation 83, should not be refunded.

Alfred R Triganza
Chairman

Anthony Pavia
Member

Edwin Muscat
Member

17th February, 2006