

PUBLIC CONTRACTS APPEALS BOARD

Case No. 61

**RE: CT 2114/2005 – Advert No 201/205
Tender for the Procurement of New Equipment for the Public Health
Laboratory of Malta (Lot 4)**

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 375,000 (approximately Lm 160,000) 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 their '*tender for Lots 1, 4 and 5 has not been selected due to technical non-compliance*' Messrs Technoline Limited filed an objection on 29.11.2005.

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 01.02. 2006 to discuss this objection.

Present for the hearing were:

Technoline Ltd

Mr Ivan Vassallo	Sales and Marketing Manager
Dr Margaret Geissler	Product Specialist GCMS, Shimadzu Europa GmbH
Dr Michael Sciriha	Legal Council
Mr Stephen Debono	Sales Manager, Scientific Division

Cherubino Ltd

Dr Adrian Delia LL.D.

Ministry of Health - Evaluation Committee

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

As soon as the Chairman, Public Contracts Appeals Board (PCAB), initiated proceedings, Dr Adrian Delia, legal representative of Messrs. Cherubino Ltd, declared his interest in this hearing, stating that the main reason behind his client's interest was that the latter's tender was recommended for the opening of the financial offer.

However, Dr Michael Sciriha, as legal representative of Technoline Ltd, insisted that it was the Adjudicating Board that had to defend its decision for not admitting his clients to proceed to the final stage of the tendering process and not the other party. Here, Dr Delia insisted that he should not be precluded from intervening or making submissions. The Chairman PCAB ruled that for transparency's and fairness' sake they did not find any objection in giving all interested parties the opportunity to intervene. However, it was made clear that the extent of their intervention would be determined by the PCAB.

Furthermore, all interested parties and the PCAB agreed with Dr Sciriha's request to conduct the proceedings in English.

Then, the representatives of Technoline Ltd were invited to explain the motive of their objection. This was followed by the Chairperson Evaluation Committee's reply and the witnesses' testimony.

Dr Michael Sciriha said that the main issue of their objection was related to the specifications of the *Mass Spectrometer*. He claimed that there was no quadrupole instrument that could function with liquid reagents and that only the Ion Trap worked with liquid reagents. Dr Sciriha said that Technoline Ltd requested Dr Margaret Geissler, a scientist and an author of many publications, to explain the matter by way of scientific proof and relevant documentation.

With regard to the other issue, that is, the gas distribution panel system, the appellant's legal representative contended that his clients had given more than what was requested.

Dr Natasha Azzopardi Muscat, Chairperson of the Evaluation Committee, said that when they examined Technoline Ltd's initial bid it was noted that the gas distribution panel that had been offered was a change over system with alarms and not an overhead system as required in the technical specifications. In spite of the fact that they did not meet the specifications, they gave the tenderer the opportunity to clarify the matter because they wanted to establish exactly what was being offered before making a decision. She maintained that in reply to their clarification letter, Technoline Ltd submitted a different model and this was not an overhead distribution system but

a wall mounted system. Apart from this they offered three gas distribution panels instead of one.

As regards Item 4.2 (Mass Spectrometer), Dr Azzopardi Muscat contended that the model offered did not have the option of liquid reagents as requested in the tender specifications.

Messrs Jesmond Farrugia, Principal Technical Office at the Medical Engineering Section, and Albert Gambin, Principal Scientific Officer, both members of the Evaluation Committee, and Mr Stephen Debono, Sales Manager, Technoline Ltd, were the three witnesses who testified on the issue of the overhead gas distribution panel system. Other interventions on the subject matter were made by the representatives of the interested parties.

During the witnesses' testimony, reference was made to the relative tender's specifications wherein tenderers were requested to quote for:

'an overhead gas distribution panel. This panel shall be connected to the pipelines carrying high purity nitrogen, helium, hydrogen and air. This panel shall have outlets to supply gases to the three units. The gas panel shall have pressure gauges for each gas. The panel shall accommodate the two units in this document and the other unit in Code No. ICPHLGCMS001 as well as the 3 units included in Code No: ICPHLHPLC001 while having space for future applications. The quote shall include the installation and connection of this gas distribution panel to the existing pipeline. Tenderers are invited to view the existing pipeline.'

On cross-examination by the PCAB, Messrs Farrugia and Gambin reiterated what the Chairperson Evaluation Committee had said in her opening statement regarding Technoline Ltd's submission concerning the change over system, different model, wall mounted system and three panels. The first witness said that the literature submitted with appellants' original offer indicated that it was a change over system from one cylinder to the other while Mr Gambin explained that the gas distribution system was required to supply gases to different instruments. When Mr Vassallo, representing Technoline Ltd, asked the latter witness to state whether they had evaluated all items from 4.0 to 4.5 as stipulated in Technoline Ltd's offer, the reply given was in the affirmative. Mr Gambin identified the Labmaster (Item 4.5) as one of the items that did not conform to the specifications. He explained that they wanted *'an overhead gas distribution panel'* which could be used for all GC instruments mentioned in the tender and for future expansion.

Mr Vassallo replied by categorically denying that they had changed their model. He affirmed that, in their reply to clarifications, they submitted the literature of one of the components of the gas distribution system that was not supplied with their original offer. Mr Vassallo explained that in their original offer they submitted the literature of that part near the cylinder while after clarification they submitted the literature of another component near the instrument. Also, he said that although Technoline Ltd offered three panels they could take only one because this could be connected with as many instruments as they could. With regard to the overhead system, Mr Vassallo

said that, technically speaking, this could be either ceiling mounted or wall mounted and that in the specifications it was not stipulated that the overhead system had to be suspended from the ceiling. Mr Farrugia agreed with this statement, however, he contended that if the tenderer had visited the site when invited to do so they would have realised that the system required was not wall mounted because most of the walls were made of gypsum.

Then, it was the turn of Mr Debono, representing Technoline Ltd, to take the witness stand. On cross examination by Dr Sciriha, the witness declared that they offered a state of the art system that had both a gas audible as well as a visual alarm panel, gas intrinsically safe barrier and a wall mounted distribution panel. However, he was of the opinion that the distribution panel was a peripheral item because its main function was just to distribute gases from the cylinders to laboratories so that gas would be available at instrument point. The witness pointed out that in actual fact the tender was issued for the laboratory equipment and not for the gas distribution panel system.

In reply to a specific question on the number of panels offered, Mr Debono said that they did not offer one panel because in a central system if they had a problem they would end without gas distribution and none of the instruments would function. Furthermore, Mr Vassallo explained that Technoline Ltd offered three panels instead of one because they always tried to exceed their customers' expectations. He confirmed that the extra two panels offered were less than 1% of the total tender. Dr Azzopardi Muscat responded by stating that this equipment was intended for a refurbished laboratory which was designed to function with one gas distribution panel system.

Continuing, Mr Debono contended that Technoline Ltd offered all components that were required and stated also that they did not change the model. He testified that the literature submitted pertained to Item 4.5 *Labmaster wall mount outlet point complete with regulator* and that a 'Labmaster' was just a brand name. At this point, Dr Azzopardi Muscat said that in view of the witness' declaration they were withdrawing their statement that the appellant had offered a '*different model*'. However, she declared that the Evaluation Committee still had reservation on whether one gas distribution panel as offered by Technoline Ltd could fulfil their requirement of having a single focal point for multiple user functions. Here, Mr Farrugia explained that they required one panel with many outlets to accommodate three units plus future expansion. He said that the other tenderers offered a panel with a number of outlets and that they could expand on the same panel by simply increasing point/s on existing holes. The witness maintained that the panel offered by the appellants was different because they had only one outlet for each gas while the others had 6 outlets for each gas. However, Mr Debono declared that the panel they offered could meet all requirements stipulated in the specifications because they could increase branches from the regulator.

In his concluding remarks on this issue, Dr Sciriha said that his clients had guaranteed that they offered more than what was requested. Furthermore, he failed to understand how at that stage the Evaluation Board was being so enthusiastic in disqualifying the appellants on such a peripheral issue. He was of the opinion that, on the basis of this

matter, Technoline Ltd should be allowed to proceed to the final stage, that is, the opening of the financial offer.

Here, Dr Delia maintained that it was the duty of the Evaluation Committee to ensure that the offers submitted were technically compliant with the specifications.

Dr Azzopardi Muscat said that the remarks passed by the appellants' lawyer were absolutely not acceptable because they were only doing their job. She pointed out that, contrary to the impression given by the appellants' representatives, the gas distribution panel was a crucial and central component for the laboratory because all equipment depended thereon to function. She asserted that the appellants' offer was rejected because it did not meet the technical specifications. Finally, Dr Azzopardi Muscat said that, in spite of what was stated during these proceedings, they still had reservations on their offer because Technoline Ltd did not offer what was requested.

At this stage, Dr Margaret Geissler, an Analytical Chemist, was called to take the witness stand to testify on the issue of the *quadrupole* which was mentioned by Dr Sciriha in his opening statement.

On cross-examination by the same lawyer, Dr Geissler said that there were different types of *Mass Spectrometers*, amongst which was the *Quadrupole* as well as the *Ion Trap*. She said that the tender asked for the Quadrupole detector, which was the instrument that had the highest performance, and in the technical specifications it was stipulated that '*The Chemical Ionisation (C.I.) mode shall be able to operate with low pressure gases as well as liquid reagents such as acetonitrile*'. The witness contended that such an instrument did not exist because there was no quadrupole instrument that could function with low pressure gases as well as liquid reagents. She explained that a Quadrupole detector always used gases for chemical ionisation and that the only instrument which used Liquid CI Reagents was the Ion Trap. Therefore, once the specifications were considered to be scientifically nonsensical, the adjudication board should not have rejected Technoline Ltd's offer because '*the model offered does not have the option of liquid reagents as requested in tender specifications*'. However, Dr Geissler declared that, whatever they wanted to measure, could still be measured with the system offered by Technoline Ltd and that this was the most important instrument in the whole lot. During her testimony she tabled various documents on the subject matter.

Dr Azzopardi Muscat questioned why the appellants did not draw the Department's attention once they knew that the specifications were incorrect or that they were asking for something that did not exist. The Chairperson of the Evaluation Committee confirmed that they based their specifications on the literature that was available and that they based their decision on the literature that was submitted.

Mr Vassallo responded by stating that they had two options - either approach the Director of Contracts or else interpret the specifications and elicit an advantage from these specifications. He declared that although the instrument they offered did not use liquid reagents it could still meet their requirements.

On cross-examination by the PCAB, Mr Albert Gambin, a member of the Evaluation Committee, declared that the specifications of the liquid reagents were based on the literature of one of the supplier's brochures and that his offer was the only offer that complied with the specifications.

Dr Delia considered Dr Geissler's statement as a very serious accusation because she implied that they had offered something which did not exist. Thus, he was of the opinion that they should be allowed to get somebody to defend their position.

The PCAB declared that, in the prevailing circumstances, it was not in a position to conclude this case as it was faced with two technical and contrasting views. Thus, it was ruled that it was a must to reconvene in order to establish whether the specifications were fictitious or not. Both parties were requested to get their experts and the PCAB reserved the right to seek expert advice from an independent arbiter.

Dr Azzopardi Muscat remarked that they could risk losing a whole project if they did not install the equipment within the next few days. However, the PCAB pointed out that it could not take a decision on something that they did not know whether it existed or not.

The sitting was adjourned for Monday, 20 February 2005 at 12.00 which was the earliest possible date that was convenient to everybody.

For the resumption of the hearing on the agreed date, the following were present:

PCAB

Prof Anthony Seracino Inglott Technical Expert for the PACB.

Technoline Ltd

Mr Ivan Vassallo	Sales and Marketing Manager
Dr Margaret Geissler	Expert Witness
Dr Michael Sciriha	Legal Council
Mr Stephen Debono	Sales Manager, Scientific Division
Prof. Dr Luigi Mondello	Expert Witness

Cherubino Ltd

Dr Marcello Basile Cherubino	Managing Director
Dr Adrian Delia	Legal Advisor
Dr Emyr Lewis	Expert Witness

Ministry of Health - Evaluation Committee

Dr Natasha Azzopardi Muscat	Chairperson
Mr Paul Bezzina	Secretary
Ms Rose Schembri	Member
Mr Albert Gambin	Member
Mr Jesmond Farrugia	Member
Dr Martin Shepherd	Expert Witness

The Chairman, Public Contracts Appeals Board opened the meeting by stating that the purpose of this hearing was to clarify the issue relating to the 'quadrupole'. He recalled that in the previous hearing, which was held on 1 February 2006, Technoline Ltd called as witness Dr Geissler who claimed that there was no quadrupole instrument that could function with liquid reagents and that only the Ion Trap instrument worked with liquid reagents. On the other hand, Cherubino Ltd's legal representative claimed that such an instrument did exist and that it was possible for the latter to operate with low pressure gases as well as liquid reagents.

For this hearing the PCAB was assisted by Prof Anthony Seracino Inglott, who was engaged as an independent arbiter to observe the proceedings and to report to the Board.

The interested parties summoned the following expert witnesses:

Technoline Ltd	Prof Dr Luigi Mondello <i>and</i> Dr Geissler Margaret
Cherubino Ltd	Dr Emyr Lewis
Evaluation Committee	Dr Martin Shepherd

Before the witnesses were called to take the stand, Dr Azzopardi Muscat pointed out that in drawing up the specification their experts relied upon the IUPAC definitions. IUPAC was the *International Union for Pure and Applied Chemistry* and was the world renowned authority on the matter.

During the witnesses' cross-examination, Dr Azzopardi Muscat said that one of the reasons that Technoline Ltd were disqualified was that from the information submitted there was no evidence that the model offered had the option of liquid reagents as requested in the tender specifications. She drew the PCAB's attention to the fact that although it was stated that the specifications were not clear, no requests for clarifications were ever received.

Prof Dr Luigi Mondello presented his *curriculum vitae* to prove his qualifications in the subject matter and submitted information about the Ion Trap and the Quadrupole MS Analysers.

On cross-examination by Dr Sciriha, Prof Dr Mondello declared that the Ion Trap and the Quadrupole were two different machines. He said that although each used a different technique / approach for ionisation they could achieve the same result. The witness explained in scientific terms how the Ion Trap and the Quadrupole worked and also indicated the advantages and disadvantages of each technique.

Prof Dr Mondello declared that there was no instrument in the world that worked with liquid but always used gas which was taken from either the cylinder or the top of the liquid. However, he said that the Quadrupole used high pressure gas and the Ion Trap used low pressure gas. He maintained that the word '*liquid*' in the specification was

wrongly used. Prof Dr Mondello confirmed that although the Quadrupole could use liquid or gas on top of the liquid, there was no need to use liquid once gas was available.

At this stage Prof Seracino Inglott asked the witness to state whether an Ion Trap and a Quadrupole could be interfaced and the reply given was in the affirmative.

During his testimony, Prof Dr Mondello said that the tender's specifications were very generic since they covered all the machinery that was on the market. He claimed that every company could participate either with an Ion Trap that used gas taken from the top of the liquid and/or Quadrupole with gas.

Dr Martin Shepherd commenced his testimony by declaring that he was not involved in this tender and that he had no experience in Chemical Ionisation. The witness said that he was in Malta because he was managing a project at the Public Health Laboratory. With regard to the specifications, the witness said that those of the quadrupole were clear but those about Chemical Ionisation were less clear. He declared that he preferred the Quadrupole Ion Trap because it was more flexible than the Quadrupole Mass Spectrometer.

Dr Shepherd said that a reagent could come as a liquid or gas and that both could give the same result in a Mass Spectrometer. However, the witness said that he preferred the use of liquid reagents because they were safer.

Dr Emyr Lewis, a Mass Spectrometer Specialist for *Varian*, confirmed that the tender specifications were very generic because they did not specify whether tenderers had to provide a Quadrupole Mass Spectra and/or a Quadrupole Ion Trap. However, he claimed that the wording used in the specifications indicated that they were inclined towards the Ion Trap. As an example he mentioned the words '*Selective Ion Storage*', '*Chemical Ionisation*' and '*low pressure gases as well as liquid reagents*'. He explained that they could store with an Ion Trap and not with mass filter and that they used low pressure ionisation for Ion Trap and high pressure ion source for Quadrupole Mass Filter.

In reply to a specific question by Prof Seracino Inglott, Dr Lewis said that liquid reagents did not go into the Mass Spectrometer because only gas could go inside. Furthermore, he said that although gas could be used with the Ion Trap, it was much easier and safer to use liquid.

During his testimony Mr Gambin confirmed that Technoline Ltd's offer was rejected because the instrument offered did not use liquid reagents. In reply to a specific question by Prof Seracino Inglott, Mr Gambin said that they wanted a liquid reagent because it was cheaper, easier to handle, more flexible and provided a safer environment for the workers.

On cross-examination by the PCAB, Mr Gambin said that in drawing up the specifications they tried to leave the tender open as much as possible and that they wanted to include the option of Quadrupole Ion Trap. He maintained that the

specifications were not based on a brochure of a particular company or brand and that they were drawn from a previous tender (which was not issued due to lack of funds) and after seeing different brochures.

At this point Dr Delia asked Dr Lewis to state whether the machine of Varian was the only one in the world that used liquid reagents. The reply given was in the negative because even *Thermo* produced Ion Traps. Prof Dr Mondello intervened by saying that there was only one company in the world which produced the Quadrupole Ion Trap with the liquid reagents. He insisted that the specifications were copied from a particular brochure and that the EU did not accept such things. Dr Sciriha said that he was informed that only Varian used '*acetonitrile*'. Here, Dr Azzopardi Muscat rebutted this statement by stating that this liquid reagent was mentioned as an example because they wrote '*such as acetonitrile*' and that this liquid reagent was indicated because it was commonly used.

On taking the witness stand, Dr Sciriha asked Mr Farrugia to state whether he agreed that the tender's specifications were identical to a particular brochure. However, the witness replied that he did not know because he was not involved in the drawing of the Mass Spectrometer's specifications. He claimed that it was Dr Michael Sammut who gave his scientific input for this particular item. When Prof Dr Mondello presented Mr Farrugia with a copy of the Varian brochure to compare the wording with the tender's specifications, the witness said that he could see no statement on the brochure that was exactly like the specifications.

On cross-examination by the PCAB, Mr Farrugia declared that the specifications were not based on any particular brand.

Dr Geissler reiterated that a Quadrupole Mass Spectrometer did not function with Liquid Reagents but only used gas and that there were no advantages when using Liquid CI Reagents.

In his concluding remarks, Dr Sciriha argued that as Technoline Ltd quoted with a gas reagent together with a quadrupole they should qualify within the terms and specifications of the tender. Thus, he contended that justice required that the machinery offered by his clients should not have been disqualified at this initial stage. Dr Sciriha maintained that, once the specifications were not clear, they should give the tenderers the benefit of the doubt.

Prof Dr Mondello contended that, once the tender was open and asked for liquid reagents and gas reagents, in substance a quadrupole with a gas reagent should be accepted within the context of this tender.

Dr Delia concluded by stating that it was clear that while Technoline Ltd did not satisfy the characteristics of the Mass Spectrometer, the model offered by Cherubino Ltd had the possibility of having a liquid reagent in its chemical ionisation mode. He insisted that the issue of advantages or disadvantages was irrelevant because it was not the issue.

The session came to a close and the PCAB informed those present that it shall now await a formal report from its technical advisor, Prof Seracino Inglott, following which it shall deliberate and deliver its decision.

Subsequent to this, the following report was submitted to the Board by Prof Seracino Inglott ...

“Report of the Expert Consultant on Specifications of GC/MS Tender for Public Health Lab-Chemistry

Item 4.2 ***Gas chromatograph/Mass Spectrometer (MS)***
Code no ***1CPHLGCMS001***
Quantity ***1 Unit***
Section ***Public Health Lab-Chemistry***

Functional Specifications:

A complete system which shall include a capillary gas chromatograph/mass spectrometer and autosampler for pesticide analysis and other food contaminants.

The expert consultant was asked to advice:

- 1. Whether the specifications for the instruments could be met and therefore whether such an instrument exists on the market.*
- 2. Whether the specifications offered a choice of instruments and therefore that the specifications were not drawn in such a way that only one particular specific instrument satisfied these specifications.*
- 3. Whether the specifications were clear enough for a tenderer to be able to submit a tender in a fair and equitable manner.*

The expert consultant attended a public hearing of the Public Contracts Appeals Board held on Monday 20 February 2006 at the Department of Contracts Floriana at 12.30 hours. A number of submissions by all parties were made including a number of expert witnesses from both parties. The expert consultant had also the opportunity to put questions to all the witnesses at the hearing. The objection concerned the tender specifications namely that they were not clear enough in what was being requested in respect of the MS – quadrupole capable of various modes of operation

including Electron Impact (EI) and Chemical Ionisation (CI) and possessing Selective Ion Storage (or equivalent). These different modes of operation shall be user friendly, easy to use and shall be computer controlled and software “switchable” during the same chromatographic run as necessary. Changing from one mode to another shall be fast and efficient. The MS shall be capable of analyzing both positive and negative ions. The part of the specifications that was highly contested involved the requirement that the CI mode shall be able to operate with low pressure gases as well as liquids such as acetonitrile. The submissions of the appellant dwelt in particular detail upon the explanation of what was referred to as an “Ion Trap” versus “Quadrupole” MS Analysers.

The Consultant Expert determined that a quadrupole instrument is a cheaper and more sensitive mass spectrometer than a magnetic sector instrument and is based on the quadrupole analyser. The appellant pointed out that the tender “is looking for a quadrupole detector (and that quadrupole is not a detector but is a Mass Analyser). However this is only a trivial and technically petty detail. One could deduce the specifications were calling for a quadrupole analyser which uses two electric fields applied at right angles to each other rather than a magnetic field, to separate ions according to the m/z ratios. A quadrupole instrument is more sensitive than a magnetic sector instrument since it is able to collect ions with a wider range of kinetic energies.

It is clear that the specifications here required a quadrupole instrument rather than a magnetic sector instrument.

The appellant emphasised that the specification stating that the chemical Ionisation (C.I.) mode shall be able to operate with low pressure gases as well as liquid reagents such as acetonitrile was a specification that cannot be satisfied from a scientific point of view because only gases may be used with this kind of instrumentation and therefore it was wrong to specify “liquid reagents”. In the view of appellant all systems operated on “gas” and therefore all systems submitted satisfy the

specifications and the requirements and needs of the tenderer. The appellant further submitted that

- 1. An iontrap is not a quadrupole as demonstrated also from the Varian Brochure.*
- 2. Low pressure chemical ionisation is an alternative C.I. mode for Trap Analysers.*
- 3. Trap analysers could be severely contaminated by conventional C.I. gas.*
- 4. In Trap mass spectral data differ from quadrupole mass spectral data and*
- 5. Most of the library have been constructed with quadrupole analysers.*

All the above could make excellent points for a learned and scientific discussion on the use of GC/MS instrumentation. However this is outside the realm of this tender. The decision upon what the requirements for the Public Health Lab-Chemistry are, was made by the responsible persons. It has been clearly expressed in the tender specifications. Appellant questioned the wisdom of this decision in an eloquent and scientific presentation. These views were very carefully listened to and considered. However the Public Health Lab-Chemistry made it very clear in the specifications that the instrumentation must be able to operate with low pressure gas as well as liquid reagents such as acetonitrile.

It was accepted that Chemical Ionisation (C.I.) is gaining wide acceptance as an alternative to Electron Ionisation in routine GC/MS on bench top instruments for a variety of analyses. As a relatively soft ionisation technique CI produces less fragmentation than EI and provides the analyst with a number of advantages including Molecular Weight information, structural information, selectivity and also great sensitivity in complex matrices due to minimisation of background. In the past the most common reagents used for CI have been gases such as methane, isobutane and ammonia which are introduced into ionisation sources at relatively high pressures. In a "quadrupole ion trap" instrument it is possible to have different ionization configurations that can make use of both low pressure and high pressure ionization compatible with gas or liquid reagents, thus enabling the use of such reagents as methanol and acetonitrile. As well as being very low cost reagents the use of these liquids eliminates the need for large cylinders of high purity gases in the

laboratory. Both acetonitrile and methanol are relatively soft reagents and give similar spectra to those generated by isobutane. Acetonitrile is proving to have an important application in the analysis of long chain hydrocarbons. Acetonitrile is used in the analysis of hydrocarbons, pesticides and herbicides, and terpenes. The above information was submitted by appellant in the form of an extract from a paper on Acetonitrile as a Reagent for GC/MS written by Anabel Mitchell (Varian Australia) and Robert Britain (Varian USA). This paper clearly shows that the specifications as stated in the tender namely the use of liquid reagents such as acetonitrile in GC/MS could be satisfied.

As far as the specifications being too specific in that in this case a “direct order” could have been more appropriate the expert consultant is of the opinion that this is not so. The specifications certainly limit the type of GC/MS to satisfy the diverse requirements of the Lab. However the specifications are generic enough to allow tenders from different manufacturers. The tender specifications were also clear enough to enable one to tender without misunderstandings. Further clarification and details in the tender specifications could have the danger of limiting further the ability of choice of instruments.

It is concluded that:

- a. a GC/MS instrument which uses a liquid reagent such as acetonitrile is available on the market*
- b. such a specification does not limit the choice to one specific instrument*
- c. the specifications were clear enough to enable a tenderer with reasonable background knowledge in GC/MS to submit a tender which would satisfy the tender requirements.”*

This Board has taken note that:

1. the appellants in terms of their letter of objection as well as through the verbal submissions made during the public hearings held on the 1 and the 20 February, 2006 had objected to the decision taken by the General Contracts

Committee that their tender did not comply with the specifications of the Tender Document and that, in any case, a mass spectrometer as specified in the Document did not exist;

2. Dr Adrian Delia, as representative of Cherubino Ltd pleaded that he should be allowed to make intervention on behalf of this client when this became necessary, which plea was agreed to by the Board;
 3. during the evidence it became clear that the specifications regarding the mass spectrometer were not as clear as one would wish;
 4. the fact that the overhead gas distribution panel was a minor item of the whole tender;
 5. the reasons brought forward by the contracting entity why the appellants' tender was deemed to be non compliant and also their statement that none of the tenderers had availed themselves of the opportunity of a site inspection;
 6. the declarations by the various scientific experts as to the availability or non availability of a mass spectrometer as specified in the tender document;
 7. during the evidence given it was stated that at least two manufacturing companies can offer a mass spectrometer as requested by the contracting entity, which statement was not contested;
 8. the contracting entity's initial contention that the offer for a gas distribution panel system had been changed during the clarification process, which contention was not sufficiently proven during the hearing of evidence;
9. Prof Seracino Inglott's report contained specific conclusions as fully quoted above. The report was considered by the Board which agreed with the conclusions ;

The Board has therefore arrived at the following conclusions:

1. the overhead gas distribution panel was not precisely as requested in the specifications in the Tender Document;
2. although the relative specifications were not totally clear a mass spectrometer of a kind requested was available on the market and had in fact been offered.

As a consequence the Board finds against the appellants.

The Board wishes to put on record its preoccupation with the seemingly growing tendency of tenderers to refrain from taking part in site visits or pre tendering clarification meetings organized by the relative departments or authorities. As a result of this tenderers tend to offer according to their interpretation of the relative specifications and to what they or their principals are in a position to supply

irrespective of the real needs of the contracting authorities. It is recommended that tenderers should be strongly recommended to take part in all pre tendering clarification processes.

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

13th March, 2006