

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 739**

**CT 3021/2014**

**Tender for the Supply, Delivery, Installation and Commissioning of General and Imaging Medical Equipment for the Gozo General Hospital (Lot 15 – Dental Unit).**

The tender was published on the 21st March 2014. The closing date was the 6<sup>th</sup> May 2014.

The estimated value of the Lot was €647,550 (Exclusive of VAT).

On the 1<sup>st</sup> September 2014 Cherubino Limited filed a letter of objection objecting to the disqualification of their tender for being technically non-compliant.

Four (4) bidders had participated in this tender for this lot.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a hearing on Friday the 12<sup>th</sup> September 2014 to discuss the objection.

Present for the hearing were:

### **Cherubino Limited -Appellant**

Dr Francis Cherubino	Director
Dr Adrian Delia	Legal Representative

### **Bart Enterprises Limited - Preferred Bidder**

Mr Etienne Barthet	Director
Dr Franco Vassallo	Legal Representative

### **Gozo General Hospital - Contracting Authority**

Ing. John Muscat	Chairman Evaluation Board
Ms Rita Tirchett	Secretary Evaluation Board
Mr Mario Caruana	Member Evaluation Board
Ms Rita Galea	Member Evaluation Board
Mr Lawrence Mizzi	Member Evaluation Board
Ing. Saviour Debrincat	Technical Expert
Mr Noel Borg	Technical Expert
Dr Renzo Pace Ascjak	Project Leader
Ms Ruth Spiteri	Representative
Ms Marnol Sultana	Representative
Dr Adrian Mallia	Legal Representative

## Department of Contracts

Mr Kevin D'Ugo

Procurement Manager

The Chairman made a brief introduction and invited the appellant's representative to make his submissions on the objection.

Dr Adrian Delia on behalf of the appellant explained that this tender called for an air supply plant comprising at least two compressors, allowing the functioning of 5 dental chairs at the same time all the time. Since the plant supplied by appellant had 3 compressors, appellant had asked for clarification on how to put this down in the financial bid. As a result of this clarification the financial bid template had been changed and the Air Plant was to be quoted as one unit capable of drive 5 dental chairs. Appellant had submitted a plant with three compressors each capable of feeding between 3 to 4 chairs thus giving a total capability of between 9 and 12 chairs. This was in excess of the tender requirement which was of 5 chairs.

Dr Adrian Mallia said that appellant's tender shows that the offered plant does not cater for 5 chairs, it catered for 3 to 4 chairs.

Engineer John Muscat ID No. 116158M, on behalf of the contracting authority, under oath said that appellant's offer was not technically compliant because the 5 dental chairs had to be able to be used simultaneously and the offered plant had to supply air to all these. Appellant's bid, at page 19 states that the plant supports 3 to 4 chairs. The evaluation board understood that the plant is capable of dealing with 3 to 4 chairs, there were no compressors mentioned. Plant meant the whole unit. The literature submitted to the evaluation board showed that the plant only dealt with 3 to 4 chairs.

Dr Delia explained that three compressors were included in the appellant's plant and these were connected in such a way as to provide continuous air flow to the 5 chairs. The evaluation board understood that appellant offered a plant with only 1 compressor since there is nowhere indicated that there are three compressors. He referred to the clarification number 6 question 3. The financial bid form had been changed because of this and bidders had to quote the price for the whole plant driving all 5 dental chairs. That is what appellant offered a plant that has 3 compressors. The tender did not mention compressors but just plant. The contracting authority did not include any item where the number of compressors could be inserted; it just wanted each plant to have at least 2 compressors. Dr Delia stressed that the price offered by appellant included three compressors.

Engineer John Muscat reiterated that the contracting authority was after 5 chairs in continuous use and the plant consisted of a receiver plus compressors enabling this kind of use.

Dr Delia insisted that appellant had declared that it was offering what the contracting authority wanted. If in doubt the, contracting authority should have asked for clarification. The literature submitted by appellant clearly stated oil free "compressors". This meant that at least two compressors were being offered.

The Chairman remarked that Item 19 was clear that "air plant system for all dental use" was

being offered.

Dr Adrian Mallia said that bidders had the obligation to be clear on what they were submitting. Item 19 does not state 3 compressors and the evaluation board could not decide that appellant's offer was technically compliant.

Engineer John Muscat replying to a question by Dr Delia confirmed that a plant with three compressors would have been compliant. Replying to questions by Dr Franco Vassallo on behalf of the preferred bidder, Mr Muscat said that appellant's literature showed that the equipment would only cater for 3 to 4 chairs, while the preferred bidder's showed that it would take 5 to 6 chairs.

At this point the hearing was closed.

**This Board,**

**Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 1<sup>st</sup> September 2014 and also through Appellant's verbal submissions during the hearing held on 12<sup>th</sup> September 2014, had objected to the decision taken by the pertinent Authority, in that:**

- a) Appellant contends that his offer was unjustly discarded by the Contracting Authority as it was considered by the latter, to be technically non compliant. Appellant Company claims that its offer was fully compliant and the Contracting Authority's decision should be declared null and void.**
- b) Appellant also contends that due to the reasons given by same, in a) above, his offer should be reintegrated in the evaluation process.**

**Having considered the Contracting Authority's verbal submissions during the hearing held on 12<sup>th</sup> September 2014, in that:**

- a) The Contracting Authority maintained that the literature submitted by the Appellant Company did not indicate that the 'Air Supply Plant' could cope with the necessary requirement as stipulated in the technical specifications of the tender document.**
- b) The Evaluation Board, from the literature submitted by Appellant, understood or rather assumed, that the 'Air supply system' offered by the Appellant could not carry out the functions as dictated in the tender document, to supply enough air supply through compressors, for the functioning of five dental chairs at the same time, at any instance.**

**Reached the following conclusions:**

- 1. From the verbal submissions during the hearing, this Board noted that it was vividly clear that the only factor why Appellant's bid was discarded, on technical grounds, was due to the fact that the Evaluation Board, on the basis of the**

**literature submitted by the Appellant Company, could not assess the ‘technical compliance’ of the same bid. In this regard, the Appellant did not indicate the number of compressors to provide for the ‘Plant air system’ to be utilised in this tendered requirement. However, this Board opines that:**

- i) The tender specification, under item 19 of the financial bid schedule, of the tender document calls for a quote as “Air plant” and not number of compressors to be utilised for the proper function of the same ‘Plant’. This Board also notes that all tenderers were made aware through the clarification made by the Contracts Department, it was clearly and vividly explained that, through Clarification Note Number 6, with particular reference to question and answer 3, quite rightly, the Contracts Department explicitly stated that, ‘The Air Plant shall be offered to drive all Qty 5 Dental Chairs’ and not the number of compressors to be utilised to assume the tendered function.**
  
- ii) In view of the credible submissions made by the Appellant Company during the hearing of this Appeal, this Board opines that the Appellant’s offer deserves to be re-adjudicated on its technical merit, due to the fact that a proper technical assessment of the offered bid is solicited by this Board to ensure full transparency and technical compliance of the tendered bids.**
  
- iii) This Board also opines that the Contracting Authority could have sought clarifications on the documentation submitted by the Appellant Company.**

**In view of the above, this Board recommends the following:**

- a) The Appellant Company’s offer should be reintegrated and re-appraised technically.**
  
- b) The deposit paid by the Appellant Company should be reimbursed.**

Dr Anthony Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Lawrence Ancilleri  
Member

*18<sup>th</sup> September 2014*

