

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 752**

**PCHD 18/2013**

**Tender for the Supply, Installation and Commissioning of a 16 Lead ECG Machine on Trolley.**

The tender was published on the 28<sup>th</sup> February July 2014. The closing date was the 27<sup>th</sup> March 2014.

The estimated value of the Tender was €18,000 (Exclusive of VAT).

On the 11<sup>th</sup> August 2014 Cherubino Limited filed a letter of objection objecting to the rejection of their tender on grounds that it was not technically compliant.

Three (3) tenders had been received.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a hearing on Thursday the 30<sup>th</sup> October 2014 to discuss the objection.

Present for the hearing were:

### **Cherubino Limited - Appellants**

<b>Mr Thomas Dimech</b>	Representative
Dr F. Cherubino	Representative
Mr Peter Neleman	Representative
Dr Danica Caruana	Legal Representative
Dr Adrian Delia	Legal Representative

### **Triomed Limited - Preferred Bidder**

Mr Alex Vella	Representative
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### **Central Procurement & Supplies Unit - Contracting Authority**

Mr Stephen Mercieca	Chairperson Evaluation Board
Dr Ray Sammut	Member Evaluation Board
Ms Sarah Cutajar	Member Evaluation Board
Mr Jimmy Bartolo	Member Evaluation Board
Mr Marnol Sultana	Representative
Dr Adrian Mallia	Legal Representative

The Chairman made a brief introduction and remarked that although the hearing was appointed to be heard at 9.00 am, at 9.26 am the appellants and their representatives had not yet made an appearance. This could not be tolerated and the hearing should start without them. The Chairman therefore invited the contracting authority's representative to make submissions on the appellants' objections.

Mr Jimmy Bartolo, ID No. 228464M under oath, on behalf of the contracting authority explained that the evaluation board had discovered that from the documents submitted by appellants with their tender, that the machine they offered was not according to specifications. The contracting authority needed a 16 lead machine because of patients' needs and appellant had offered a machine that accepted 12 to 15 leads. Thus appellants' tender could not be chosen. The department felt that with a 16 lead machine you could save a patient's life.

Dr Oscar Aquilina, ID No. 606860M on behalf of the contracting authority, under oath explained that the requisite of 16 leads was important because the state of the art ECG machines now required 16 leads because these gave a better picture of the patients' heart condition and enabling a more reliable diagnoses to be made. The more leads that there are mean that better pictures could be obtained, since no areas are missed leading to better diagnoses.

At this point it was 9.34 am and the appellants and their legal representatives entered the hall.

Dr Adrian Delia on behalf of appellants said that clients' tender was excluded because it did not offer a 16 lead machine. This was not correct since the tender specifications had been changed through Clarification Number 2. This clarification request had asked whether a 15 lead machine would be considered acceptable. The answer to the clarification had been that *"the ECG machine had to give ECG channels from the following ECG leads: channel C1, channel C2, channel C3 channel C4, channel C5, channel C6, channel C3R, channel C4R, channel C5R, channel C7 channel C8 and channel C9. If acquiring the above channels through a 15 lead ECG cable is NOT possible, then a 15 lead ECG machine will NOT be considered acceptable, in which case the specifications are to remain as published, ie as a 16 lead ECG machine."* The machine offered by his clients, although a 15 lead machine acquires all these channels and is therefore compliant. He also cited another clarification that stated that the requirement of a 16 lead machine was not related to any AHA Guidelines, but was an operational prerequisite by the cardiologists at the hospital. He explained that his clients' machine gave six plus six plus three points. He insisted that appellants' tender was totally compliant with the tender specifications as amended through the clarification.

Mr Peter Neleman, passport number 179138625 employed with Mortara Instruments as Vice President of the International section. He has a master's degree in exercise physiology. The company exports ECG machines throughout the world. He explained the difference between a 15 lead machine and a 16 lead machine. The 16 machine has an extra lead but there is no scientific evidence that says that 16 lead is better than 15 lead. The 16 lead could give a result in 1 shot while the 15 machine would need two shots to give a result. No scientific publication says that 16 lead is better. The 15 lead gives a full picture of one side of the body, the posterior end or the anterior. The machine offered by appellant is able to print the channels stated in the clarification simultaneously. Replying to questions by Dr Mallia published literature does not prove that a 16 lead machine is better than a 15 lead one.

Dr Adrian Delia explained where the 15 points are fixed on to the patients. Six and six are fixed points while the other three points are either on the right or on the left.

Dr Oscar Aquilina said that a 16 machine is the required standard for Mater Dei. This was an internal decision by a lot of stakeholders. These decided to go for a 16 lead simultaneous channels and not accept 12 plus 3. On being shown the clarification number 2 witness stated that he was a cardiologist and could not answer whether the machine offered by appellant performed as well but insisted that the contracting authority wanted 16 lead machines.

Mr Jimmy Bartolo replying to questions by the Chairman about the clarification number 2 said that he knew about the clarification. Presently we are using 12 lead machines but these have to move leads from one side to the other while conducting the ECG reading. The 16 lead gave the opportunity to the cardiologist to analyse the heart from different angles. The 15 machine had several disadvantages. Replying to a question by Dr Delia regarding the clarification Mr Bartolo said that the reply given to the clarification was wrong because the machine would not work with chest leads only. The evaluation board took the clarification into consideration but considered also the tender specifications.

Dr Mallia on behalf of the contracting authority explained that the clarification did not change all the tender specifications; the machine would not work with the points mentioned in the clarification only.

Dr Adrian Delia for the appellants reiterated that the specifications had been changed by the clarification and therefore a 15 lead machine was acceptable. It was not true that a 16 lead was better. The machine offered by appellant was adequate and performed what was required.

Dr Adrian Mallia on behalf of the contracting authority contended that the objection was null since it gave no reasons for the objection. The contracting authority had the right to set the specifications according to its requirements. There were procedures to challenge these at the appropriate time if any bidder disagreed and this was not done in this case. There is a conflict in the proof brought forward today – the doctor who has no connection with any bidder and the expert on behalf of the manufacturer of the appellants' machine. The clarification did not mean that all the 16 channels were conditioned by the clarification but the clarification meant to change only the listed channels.

At this point the hearing was brought to an end.

**This Board,**

**Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 11<sup>th</sup> August 2014 and also through Appellant's verbal submissions during the hearing held on 30<sup>th</sup> October 2014, had objected to the decision taken by the pertinent Authority, in that:**

- a) Appellant contends that the machine being offered by same, having a 15 Lead, does in fact meet the technical specifications of the tender document. The same machine is capable of meeting the required procedures as laid out in the tender, so that, the reason given by the Contracting Authority, that Appellant's product is technically non compliant, is incorrect.**

- b) Appellant maintains that the specifications of the tendered document had been altered through a clarification and thus a 15 Lead machine would perform the required functions as those stipulated in the tender.**

**Having considered the Contracting Authority's verbal submissions during the hearing held on 30<sup>th</sup> October 2014, in that:**

- a) The Contracting Authority maintains that it has asked for a 16 Lead machine and this mandatory requirement was for the health benefit of the patient. Appellant's offer consisted of a '12-15' Lead, which in the opinion of highly experienced Cardiologists, was not as efficient as a 16 Lead, as specified in the tender document.**
- b) The Contracting Authority contends that a 16 lead machine enables the Cardiologists to analyse the heart of the patient from different angles whilst a 15 Lead machine is not as efficient as the 16 lead one. At the same time, the Contracting Authority insists that the clarification referred to by Appellant did not mean that all the 16 Leads were conditioned by the clarification itself, but rather, the clarification meant to change only the listed channels.**

**Reached the following conclusions:**

- 1. In all Appeals relating to health issues, this Board's main concern is to ensure that the medical equipment being tendered for, is in accordance with the technical specifications as laid out in the tender document. From the credible expertise submissions, this Board is justifiably convinced that the 16 Lead machine is beneficial to the probability of survival of the patient. and this Board would emphasise the importance of this factor. It has also been noted that the technical specifications of the machine, were compiled after various consultations with the Experts involved in the procedure i.e. Cardiologists and the latter's reason for opting for a 16 Lead machine was for Mater Dei Hospital to procure the latest equipment on the market. This Board also noted the Expertise credible affirmation that, the 16 Lead machine is more effective than a 15 Lead one, in that it offered the possibility for the Cardiologist to examine and analyse the patient's heart from different angles. In this regard this Board does not uphold Appellant's first grievance.**
- 2. This Board opines that the Contracting Authority had every right to dictate the technical specifications of the product it so required. The technical specifications in a tender document are not capriciously stipulated but are laid out in accordance with the actual requirements of the Contracting Authority. This Board also maintains that clarifications made by the Contracting Authority do not alter the technical specifications of the tender document but rather clarify points to avoid any misinterpretation on the Bidder's part. On the other hand, if a Bidder is not certain on a particular part of the technical specifications of the**

**tender document, he has remedies to clarify prior to the submission of his tender. This Board notes that Appellant Company did not avail itself of this remedy. In this regard, this Board does not uphold Appellant's second contention.**

**In view of the above, this Board finds against the Appellant Company and recommends that the deposit paid by Appellant should not be reimbursed.**

Dr Anthony Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Lawrence Ancilleri  
Member

*24 November 2014*