

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 817**

**DH 498/ 2013**

### **Tender for the Supply, Installation and Commissioning of Stress ECG Machine.**

The tender was published on the 10<sup>th</sup> January 2014. The closing date was the 6<sup>th</sup> February 2014. The estimated value of tender is €38,135.59 (Exclusive of VAT).

Three (3) offers had been received for this tender.

On the 27<sup>th</sup> February 2015 Cherubino Limited filed an objection against the decision of the Contracting Authority to reject its tender.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a hearing on Tuesday 9<sup>th</sup> June 2015 to discuss the objection.

Present for the hearing were:

#### **Cherubino Limited:**

Dr Francis Cherubino	Representative
Mr Thomas Dimech	Representative
Dr Marcello Cherubino	Representative
Dr Danica Caruana	Legal Representative
Dr Adrian Delia	Legal Representative

#### **Triomed Limited:**

Mr Alex Vella	Representative
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#### **Central Procurement and Supplies Unit:**

Mr Stephen Mercieca	Chairperson Evaluation Board
Mr Jimmy Bartolo	Member Evaluation Board
Mr Marnol Sultana	Procurement Manager
Mr Wayne Caruana	Representative
Dr Stefan Zrinzo Azzopardi	Legal Representative

The Chairman made a brief introduction to the present case and then asked the Appellant's representative to make his submissions on the objection.

Dr Adrian Delia on behalf of Cherubino Limited, the Appellant insisted that their tender was the cheapest compliant tender; but had been disqualified for:

- i. *“The technical literature attached does not mention the BP monitoring system (in the financial Bid Form as well) as requested in the tender dossier.”* Dr Delia contended that the tender dossier did not ask for any literature in the financial form bid. The form does not contain a box where the BP had to be indicated and furthermore there was no reason requiring this to be included in the financial bid form. This could be because it formed an integral part of the system. It could be seen from the literature submitted for the X Scribe 5 that the BP monitor was included;
- ii. *“in the technical specifications submitted the NIPB was included as an optional device, but the bidder did not supply any information”.* Dr Delia does not agree that the NIPB was offered as an optional device. It can be seen from the same documentation for the X Scribe 5 that an automated NIPB and SPO readings (with optional device) are provided. It was not the NIPB that was optional. Thus he contended that the Appellant's offer was compliant
- iii. *“The stress ECG machine offered does not include a UPS as requested in the Tender Specification. In fact the bidder offered an isolation transformer”.* Dr Delia admitted that there could be some misinterpretation here. Appellant had indicated at item 9 of the financial offer that no UPS was required as the equipment is provided with the isolation transformer. This does not mean that no UPS would be provided. It just means that the UPS was not necessary. The isolation transformer would ensure that if a defibrillator had to be used, the ECG machine would not be damaged. The hospitals are linked to an essential supply of electricity and a power cut would not mean that machines are switched off. He insisted that nowhere did Appellant state that the UPS would not be provided but that no cost was being assigned to it.

Dr Adrian Delia continued that the equipment offered by the Appellant was made by one of the best firms, using advanced technology, and used in many European hospitals. Because of the substantial difference in price, in this case the principle of the 'Bonus Pater Familiae' should have been used and a request for clarification was in order. The equipment offered by Appellant was the cheapest but was of a very good quality.

Dr Stefan Zrinzo Azzopardi for the Contracting Authority said that it is evident that the Appellant's offer was disqualified because it was not technically compliant and therefore the question of the cheap price cannot be taken into consideration. The need for the UPS was indicated in the tender document as well as the particular specifications for it, and the need was clearly explained. What the Board had to decide now was whether the UPS was part of the Appellant's offer or not. From the submitted documentation it was evident that no UPS was being offered. Regarding the other two reasons of non-compliance, it can clearly be seen from the documents submitted with the tender by Appellant, that both of these – the Blood Pressure monitor as well as the Non Invasive Blood Pressure were optional. He contended that even if only one of the three reasons for non-compliance was proven, the Appellant's

tender as a whole would still be non-compliant.

Mr Jimmy Bartolo ID No. 228464M, on behalf of the Contracting Authority, under oath stated that he was a technical person in the Department who helps to evaluate the tenders. The present tender specified at page 3, C 4<sup>th</sup> paragraph that the stress machine has to have a non invasive blood pressure system incorporated. There were absolutely no references to this object in the documents submitted by the Appellant. He then referred to the document that had been cited by Dr Delia marked X Scribe 5 and reiterated that this showed that the device was optional and said also that the item is not listed in the financial bid form. Replying to a question by Dr Delia he said that the document stated “*Automated NIPB and SpO2 readings (with optional device)*”; and there was no further reference to this item (Blood Pressure monitor) in the bid. Replying to a question by Dr Zrinzo Azzopardi, the witness said the requisite asking for a UPS was not offered in Appellant’s bid; Appellant clearly offered an isolation transformer. This transformer was a basic requirement for all medical equipment and is required by international standard IT6 60601. The UPS is needed because in case of a power failure, although the hospital is equipped with an uninterrupted supply system, a patient who is using the equipment at a certain speed, and at a raised heart rate, cannot be stopped instantaneously because of the risk of a heart attack. This shows the need of an UPS, to enable gradual slowing down. The Appellant had declared that “no UPS is required” in the tender financial offer.

Replying to questions by Dr Delia, the witness agreed that there was no box in the financial bid form to indicate where the price for the NIPB had to be inserted. It is true that the software supplied with the offered system gave the required readings but the monitor that has to be interfaced with the system is not mentioned anywhere. He insisted that the Appellant’s equipment needed additional equipment to provide the blood pressure readings. Their equipment in the specifications indicated that it was with an optional device. This meant that no information was provided by the Appellant’s submission about this optional device.

Dr Adrian Delia said that the system offered by his client complied with the requirements as regards the blood pressure readings. He insisted that there was no space in the financial bid form to write down the NIPB.

Mr Thomas Dimech ID No 523463M on behalf of the Appellant, under oath stated that the X Scribe by Mortara included BP monitoring. The NIPB monitor is also included in the machine’s monitoring. The documentation provided covered these items. He insisted that once a machine read the blood pressure it perforce had to record it, and show it on the monitor. Replying to Dr Zrinzo Azzopardi he said that he did not agree that additional equipment was needed in order to read the blood pressure, in view of the mentioned optional interface. There were no additional documents submitted with the tender.

Dr Adrian Delia on behalf of the Appellant referred once again to the 3 documents he had shown the Board earlier and said that it can be clearly seen from these that the BP monitoring system was included and was not optional. Regarding the NIPB he said that the requirements did not ask for an optional device. The Appellant had submitted the requirements but also offered an additional optional device; the standard features were offered. It was for this reason that the price was not included in the bid form. There is an issue of misinterpretation in the question of the third reason of disqualification, the UPS. He contended that whenever doubts arise, the Contracting Authority should ask for clarification. He contended that the UPS was being offered by the Appellant at no extra cost.

Dr Stefan Zrinzo Azzopardi reiterated that all the literature supplied by the Appellant with the tender referred to the items being optional. He pointed out that they had clearly put down in the case of the UPS that *“no UPS is required as the equipment is provided with the isolation transformer.”* This clearly means that the UPS was not being offered as otherwise Appellant would have written *“included in the price.”* Since the UPS was a requirement necessary for medical reasons the Appellant’s bid had to be rejected.

Mr Alex Vella on behalf of the Recommended Bidder explained that the machine can be supplied without an NIPB monitor. In that case the measurements are taken manually and then entered into the report. No specifications of the NIPB monitor had been given by the Appellant. This meant that it had to be acquired additionally.

Dr Adrian Delia explained that the result is shown in the monitor as can be seen from the documents submitted.

At this point the hearing was closed.

### **This Board**

**Having noted the Appellant company’s objection in terms of the “Reasoned Letter of Objection” dated 27th February 2015 and also through their verbal submissions during the Public Hearing held on the 9th June 2015, had objected to the decision taken by the pertinent Authority, in that:**

- a) Appellant contends that the first reason given by the Contracting Authority for refusal of the Appellant’s offer was not correct in that:
  - i) The Tender Document did not ask for any literature in the Financial Bid and:**
  - ii) From the literature submitted by the Appellant, the BP Monitoring System was in fact included****
- b) The Appellant maintains that he did satisfy the requirements of the Second Reason given by the Contracting Authority for his offer’s rejection in that; the NIPB was not optional but could take “optional devices”. Again, in this respect, the Appellant contends that his bid was technically compliant;**
- c) With regards to the Contracting Authority’s third reason for refusal of the Appellant’s offer, the Appellant contends that although he stated that the UPS was not necessary, their product contained an “isolation transformer”, however this did not mean that the UPS will not be supplied by the Appellants.**

**Having considered the Contracting Authority’s “Letter of Reply” and also through verbal submissions during the Public Hearing held on 9th June 2015, in that:**

- a) The Contracting Authority maintains that the Tender Document dictated that the Stress ECG Machine had to include a “Blood Pressure (BP) Monitoring System”. From the documentation submitted by the Appellant, this system was not included as part of the machine;**

- b) **The Appellant did not include in his offer another mandatory requirement which was the software so that the blood pressure of the patient can be taken and its reading displayed automatically on the monitor during any time of the exercise;**
- c) **The Contracting Authority insists that the Appellant's offer, included the NIBP, (Non-Intrusive Blood Pressure Monitoring Device), as "optional", whilst in fact this had to be part of the offer;**
- d) **The Contracting Authority maintains that it was the Appellant himself who declared in his "Financial Offer" that the UPS was not required.**

**Reached the following conclusions:**

1. **With regards to the Appellant's first contention mentioned as a) and b) above , this Board opines that although the Tender Document did not ask for literature in the financial bid of the latter, this same Board contends that the Appellant's submission of literature did give a clearer insight into the type of equipment being offered. The Evaluation Committee had to assess on the information submitted by the Appellant and in this regard, after hearing credible submissions by the Contracting Authority; this Board justifiably affirms that the literature submitted by the Appellant gave no clear indication that the Appellant's equipment included the Blood Pressure (BP) monitoring system as part of the said ECG machine. In this regard, the Appellant's bid did not meet the Technical Specifications as dictated in the Tender Document. This Board does not uphold the Appellant's first Grievance;**
2. **With regards to the Appellant's second grievance, this Board justifiably refers to their self submission whereby it is stated that the "Non-Intrusive Blood Pressure Monitoring device", was an optional device. This Board opines that had the Appellant given a more clear explanation of what is being offered as "optional", the Evaluation Committee would have had a clearer understanding of what was being offered by the Appellant. The latter in this respect failed to supply any information to clear any misunderstandings which might mislead the Evaluation Committee. In this regard, this Board does not uphold the Appellant's second grievance;**
3. **With regards to the Appellant's third grievance, this Board respectfully refers to the Appellant's note in the financial bid wherein it was stated that "No UPS is required, as the equipment is provided with the Isolator Transformer". After hearing credible technical submissions from the Contracting Authority, the Board is justifiably convinced that the use of an "Isolator Transformer" is a basic requirement for all medical equipment. It was credibly justified that it does not serve the same purpose as that of a UPS. In this regard, this Board does not uphold the Appellant's Third Grievance;**
4. **This Board also notes that the Tender Document dictated that the system to be offered by the prospective tenders had to include the roper software to allow the blood pressure of the patient to be taken and displayed on the monitor during the period of the stress exercise. In this respect, the Appellant's bid did not**

**contain this requirement. In this regard, this Board justifiably opines that the Appellant failed in this mandatory requirement as well.**

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

Dr. Anthony Cassar  
Chairman

Dr. Charles Cassar  
Member

Mr. Lawrence Ancillieri  
Member

*16 June 2015*