

This Board,

having noted this call for remedy prior the closing date of competition filed by Cherubino Limited (herein after referred to as the Appellants) on 25 February 2019, refers to the claims made by the same Appellants with regard to the tender of reference Ct 2024/2018 listed as case no 1295 in the records of the Public Contracts Review Board.

Appearing for the Appellants: Mr Paul Calleja

Appearing for the Contracting Authority: Dr Marco Woods

Whereby, the Appellants contend:

- a) that items A2.1.26.1.5 and item B2.1.20.2.1.5 are somewhat restrictive and will limit the scope of competition;**

- b) Appellants also maintain that items A.2.1.26.1.1 and items A6.10 and B6.10 need amending, as the wording does in fact, deter competitors from participating.**

This Board also noted the Contracting Authority's 'Letter of Reply' dated 10 March 2019 and its verbal submissions during the hearings held on 9 April 2019, 16 April 2019 and 27 June 2019 in that:

- a) the Authority contends that the tender and clarifications as published, do not, in whatsoever manner, preclude Bidders from participating.**

This same Board also noted the testimony of the witness namely Engineer Chris Attard Montalto duly summoned by the Public Contracts Review Board.

This Board convened three hearings in order to treat Appellants' concerns and during the third hearing, consensus was reached between the Contracting Authority and Appellants in that, there existed certain clauses in the tender document which precluded a major participation in this particular tender.

In this regard, this Board after having examined the relevant documentation to this call and hard submissions made by the parties concerned arrived at the following conclusions:

a) Appellants’ offer specifications in relation to Clauses A2.1.26.1.5 and B2.1.20.2.1.5 do satisfy the requirements as stipulated in the technical specifications of the tender document;

b) directs the Authority to issue, by way of a clarification note, an amendment to clause A2.1.26.1.1 to read as follows:

A2.1.26.1.1 High pressure Limit	when the airway pressure exceeds the alarm threshold	cm H2O	10 to 105 or better
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c) Directs the Authority to issue, by way of a clarification note, an amendment to clauses A6.10 and B6.10 to read as follows:

B6.10	The manufacturer is required to submit documented proof, that the firm has a minimum track record of manufacturing medical equipment for at least 20 years. Failing this offer will be refused irrevocably.	N/A	Mandatory
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In view of the above, this Board,

i) upholds Appellants' contentions;

**ii) directs the Authority to issue the clarification notes as instructed above
and to resume the tendering process.**

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Richard Matrenza
Member

2 July 2019