

Eng Chris Attard Montalto (260567M) called as a witness by the Public Contracts Review Board testified on oath that he is the Director of Medical Apparatus at Mater Dei Hospital. He stated that the Hospital required flexible, portable, stand alone endoscopes which ideally could be connected to existing light sources, as the light source gives clearer pictures. In view of the Appellants explanation that flexible units cannot be operated by aligning them to a light source he was prepared to waiver the requirements of section 2.7 in the tender document through the issue of a clarification note.

The Chairman noted this point made by the Contracting Authority thanked the parties for their submissions and declared the hearing closed.

End of Minutes

Decision

This Board,

having noted this ‘Call for Remedy Prior to the Closing Date of a Call for Competition’ filed by Cherubino Ltd (herein after referred to as the Appellants) on 9 October 2019, refers to the claims made by the same Appellants with regard to the tender of reference CFT 019-0896-19 listed as case No. 1388 in the records of the Public Contracts Review Board.

Appearing for the Appellants: Dr Francis Cherubino

Appearing for the Contracting Authority: Dr Marco Woods

Whereby, the Appellants contend that:

- a) Their main concern refers to the fact that, clauses 2.1.1, 2.1.3 of section 2 and article 3.1 denote a portable unit. At the same instance,**

section 2.7 stipulates that the unit must be capable of being attached to existing light source units. In this respect, Appellants maintain that clause 2.7 creates a confusion in that, battery operated units are not aligned to another source of light which is contained in the unit itself.

This Board also noted the Contracting Authority's 'Letter of Reply' dated 31 October 2019 and its verbal submissions during the hearing held on 26 November 2019, in that:

- a) The Authority's objective in the procurement of this product, was to acquire a flexible, portable, stand alone unit which would preferably have the facility to be connected to other existing light sources for the attainment of better images.**

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, after having examined the relevant documentation to this 'Call for Remedy' and heard submissions made by the parties concerned, including the testimony of witness duly summoned, opines that the issue that merits consideration is the inclusion of clause 2.7 of section 4 of the tender document.

1. This Board would respectfully refer to item 2.7 and 3.1 of the technical specifications wherein it is being stipulated the following:

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|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|-----------|
| 2.7 | <i>The Flexible Naso-Pharyngoscope Unit shall also be capable of being attached to various endoscopy light sources that are available from all suppliers that include, but are not limited to Pentax, Olympus, Karl Storz, Richard Wolf, Tekno, etc.</i> | N/A | Mandatory |
| 3.1 | <i>The Portable Light Source and Monitor shall both be battery Operated</i> | N/A | Mandatory |

”

The above-mentioned clauses stipulate that the unit must be capable of being connected to other light source units and at the same instance, that unit must be battery operated to make same portable.

2. From credible submissions made by Appellants, this Board was made aware of the fact that the light source of such units cannot be capable of being connected to other different ‘Light Sources’ brands. In this regard, this Board is comfortably assured that clause 2.7 does, in fact, create confusion and at the same instance sufficient evidence was provided to prove such a fact.

3. From the testimony of the witness namely, Engineer Chris Attard Montalto, this Board was informed that the authority was willing to cancel article 2.7 of the technical specifications, in view of Appellants vivid explanations given during the hearing.

In conclusion, this Board opines that:

- a) Clause 2.7 of the technical specifications of the tender document is somewhat confusing.**

- b) The non-inclusion of clause 2.7 of the technical specifications will not affect the treatment to the patient.**

In view of the above, this Board,

- i. upholds Appellants' concerns,**

- ii. directs the Authority to cancel clause 2.7 of the technical specifications, through a clarification note,**

iii. directs that the closing date of the call for tenders be 23 December 2019.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

3 December 2019