

In the Public Contracts Review Board



31st October 2019

Re: Call for Remedies CPSU 019-0896-18 – Tender for the Supply of Qty Six (6) Portable Flexible Nasopharyngeal Endoscope with Integrated Monitor for the ENT Department at Mater Dei Hospital

Reply of the **Central Procurement and Supplies Unit (CPSU)** following the reasoned application for remedies before closing date of a call for competition submitted by Cherubino Limited.

By means of a letter dated 9th October 2019, Cherubino Limited, hereinafter the applicants presented a reasoned application requesting a call for remedies before the closing date of the competition, wherein they submitted that the published specifications issued by CPSU restrict competition.

The objectors allege that the tender dossier precludes other bidders from taking part in the said tender due to the technical specifications listed in the tender.

Submissions

With reference to the claims submitted by the applicants in the reasoned application, CPSU submits the following:

- 1) CPSU contend that the technical specifications which form the basis of the application filed by Cherubino stipulate the following;

“2.3 The Flexible Naso-Pharyngoscope Unit shall be of the ultra slim type and shall be delivered with a universal connector to fit on various Endoscopy Equipment from various 3rd party suppliers, available at Mater Dei Hospital.

2.7 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.

2.8 The scope shall be required to have its own integrated small LCD Screen which may display all images from the scope.

2.9 The monitor shall be powered via a battery source. Batteries used shall be normal locally available battery units or shall be rechargeable Lithium Ion Batteries.”

CPSU submit that the above technical specifications exclude the supply of a light source, as the Contracting Authority wishes to make use of the numerous light source equipment currently at Mater Dei Hospital.

The contracting authority does not require equipment providing a light source since this equipment is readily available.

The equipment required is clearly explained in the technical specifications published, which equipment is in addition to the light source already in hand and for the objectives explained in the technical specifications.

Thus, the exclusion of the light source is **clearly** intended for the reasons explained above.

A contracting authority has every right to specify what it requires provided that the technical specifications are in accordance with the established rules and regulations of public procurement¹.

Furthermore, a contracting authority may not be obliged to procure what it does not need or what is already in hand.

- 2) CPSU contend that the product being requested in the technical specifications is a **portable unit**, and therefore the Monitor being requested must be powered via a battery source, be it rechargeable Lithium Ion Batteries or Normal Locally Available Replaceable Batteries.
- 3) Although the following could have been clarified by means of a clarification requested by the applicant, without the need of filing the application in question, CPSU submit that the said product being requested in the technical specifications may also be submitted as a fully integrated system with both a light source and a monitor, provided that the remaining individual technical specifications are satisfied by the said product.

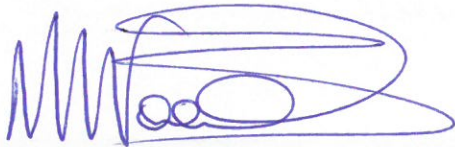
In the case that additional equipment is provided over and above that requested in the technical specifications and that the price of this equipment is within the allocated budget, the additional equipment will

¹ Public Procurement Regulations (S.L. 174.04)

not lead to the automatic exclusion of the bidder offering such additional equipment.

- 4) CPSU contend that the technical specifications are to remain as they are, for the mere reason that the products being requested by the technical specifications may be sourced from various suppliers and for this reason CPSU submit that competition is in no manner being hindered and that the specifications as published provide for a level playing field amongst prospective bidders.

CPSU is hereby reserving the right to present further evidence both written and orally in order to further their submissions in relation to the said application throughout the hearings.

A handwritten signature in blue ink, consisting of several loops and a large horizontal stroke, positioned above the name Dr. Marco Woods.

Dr. Marco Woods