

PUBLIC CONTRACTS APPEALS BOARD

Case 79

Advert No 294/2005, CT 2335/2005 - Tender for the Purchase of Computer Systems for the Gozo Training Centre and the ICT Learning Centre (Lot 1)

This call for tenders, published in the Maltese Government Gazette on 30.09.2005, was issued by the Contracts Department following a request transmitted to the latter by the Education Division.

The closing date for this call for offers was 22.11.2005 and the global estimated value of the contract was Lm 20,766 exclusive of VAT.

Six (6) different tenderers submitted their offers.

Following the publication of the *Notification of Recommended Tenderers*, Messrs **VSS Ltd** filed an objection on 22.04.2006 against the intended award of the said tender to Messrs **Advanced Telecommunications Systems Co Ltd** (Lm 16,846).

The Public Contracts Appeals Board (PCAB) made up of Mr Alfred Triganza (Chairman) with Mr Anthony Pavia and Mr Edwin Muscat, respectively, acting as members, convened a public hearing on 24.05.2006 to discuss this objection.

Present for the hearing were:

VSS Ltd

Ing Silvio Saliba
Mr Charles Saliba
Dr Anton Refalo LL.D Legal Representative

Advanced Telecommunications Systems Co Ltd

Mr Paul Agius
Mr Adrian Sciberras

Education Division

Dr Stephen Zammit LL.D Legal Representative

Evaluation Board

Mr Emile Vassallo	Chairman
Mr Carmel Serracino	Secretary
Mr Dennis Zammit	Member
Mr Conrad Fenech	Member
Mr Franco Costa	Member

Following the Chairman PCAB's brief introduction VSS Ltd's representatives were invited to explain the motive for their objection.

Dr Anton Refalo, the appellants' legal representative, started by stating that his clients submitted their objection on the basis of the fact that the offer submitted by Advanced Telecommunications Systems Ltd for Lot 1 – Personal Computers was recommended for acceptance even though the monitors offered were not according to the tender's technical specifications. He claimed that ANNEX II: Technical Specification Lot 1 – Personal Computer of the tender document clearly stipulated that the Monitors had to be '*15" LCD with built-in speakers and microphone – Beige Colour*'. He contended that the monitors offered by the recommended tenderer were neither beige nor with built-in microphones. Dr Refalo pointed out that under Section 1.2 of the Instructions to Tenderers it was clearly stated that:

'The supplies must comply fully with the technical specifications set out in the tender dossier (technical annex: page 62) and conform in all respects with the drawings, quantities, models, samples, measurements and other instructions.'

Ing Silvio Saliba, also representing the appellants, said that their tender was disqualified because the Bank Guarantee was not valid as it had a validity period of two months instead of three months.

Dr Refalo intervened and contended that, once the two offers did not meet the requirements of the tender conditions/specifications, even the offer submitted by the recommended tenderer should have been disqualified. He insisted that, in the prevailing circumstances, the tender for Lot 1 should not be awarded.

Dr Stephen Zammit, the Education Division's legal representative, said that four out of six offers received, including that of the appellants, were disqualified at the tender opening session. The remaining two offers, including that of Advanced Telecommunications Systems Ltd, which were considered to be suitable for further evaluation, were referred to the Evaluation Board.

Mr Emile Vassallo, Chairman of the Evaluation Board, explained that two offers, including that submitted by VSS Ltd, did not have a valid tender guarantee, another offer did not have a tender guarantee and the envelope of the fourth one was not sealed.

He declared that on examining the offers referred to them for evaluation purposes, they noticed that the LCD Monitors, including those offered by the Advanced Telecommunications Systems Ltd, had built-in speakers but did not have built-in microphones. Mr Vassallo explained that it was after conducting a research that the Evaluation Board has learnt that there were no LCD Monitors with built-in microphones on the market. When the PCAB drew his attention that such line of action should have been taken on drawing up the technical specifications, the Chairman Evaluation Committee replied by stating that they assumed that such monitors were similar to *normal monitors*.

Ing Saliba declared that the monitors offered by their Company, VSS Ltd, were up to specifications because their suppliers confirmed that the LCD Monitors would be provided with built-in speakers and microphones, and beige.

When Dr Zammit intervened to claim that the *colour* was not a technical specification, the PCAB emphasised that once it was included in the specifications, tenderers had to comply therewith.

Ing Saliba proceeded by saying that he could not exclude the possibility that there could have been tenderers who might have not submitted an offer because of these particular specifications.

Mr Paul Agius, representing Advanced Telecommunications Systems Co Ltd, acknowledged that the specification of the LCD monitors with built-in microphones was a genuine mistake on the part of those who issued the tender document because such monitors did not exist. He claimed that this mistake was being repeated with every tender issued because these specifications were an outright copy of previously issued tenders. Furthermore, Mr Agius maintained that it was very hard to believe that a supplier would provide such tailor-made monitors for only 44 PCs.

When Mr Agius said that the appellants could have sought clarifications on the matter, the PCAB pointed out that, similarly, they (Advanced Telecommunications Systems Co Ltd) could have drawn the Department of Contracts' attention as far as the built-in microphones were concerned.

Towards the end of the hearing, Dr Zammit requested the appellants to provide a copy of the supplier's confirmation specifying that the LCDs offered were beige and with built-in microphones. Ing Saliba reiterated that when the suppliers were specifically, verbally, asked to confirm whether the LCD Monitors would be supplied with built-in microphones, the reply given was in the affirmative. He declared that if this were not the case, they would not have submitted such a quotation.

Following a specific request made by the PCAB, the appellants agreed to provide the Board's Secretary (by Friday, 26 May 2006) with their supplier's formal confirmation that the monitors would be provided with built-in microphones and beige. The PCAB agreed with the appellants' request that such information (which was subsequently provided, after the hearing, by the appellants' supplier) would be kept confidential.

At this stage, the public hearing was brought to a close and the PCAB proceeded with its deliberations before reaching its decision.

This Board,

- having noted that the appellants, in terms of their 'reasoned letter of objection' dated 02.05.2006, and also through their verbal submissions presented during the public hearing held on 24.05.2006, had objected to the decision taken by

the General Contracts Committee, formally communicated via a letter, informing them that the tender submitted by them was not successful;

- having considered the appellants' legal representative's statement which contended that the offer submitted by *Advanced Telecommunications Systems Ltd* was recommended for acceptance even though the monitors offered were not according to the tender's technical specifications in view of the fact that 'inter alia' the monitors offered by the recommended tenderer were neither beige nor with built-in microphones;
- having also noted both Mr Vassallo's admission that on examining the offers referred to them for evaluation purposes, the Evaluation Board had noticed that the LCD Monitors, including those offered by the Advanced Telecommunications Systems Ltd, had built-in speakers but did not have built-in microphones;
- having considered Dr Refalo's claim in regard to the fact that once the two offers did not meet the requirements of the tender conditions/specifications, even the offer submitted by the recommended tenderer should have been disqualified;
- having also considered both (a) Ing Saliba's declaration that the monitors offered by their Company, VSS Ltd, were up to specifications because their suppliers confirmed that the LCD Monitors would be provided with built-in speakers and microphones, and beige, as well as (b) Mr Agius' remark relating to the fact that it was very hard to believe that a supplier would provide such tailor-made monitors for only 44 PCs;
- having taken cognizance of both the fact that according to (a) Mr Vassallo, it was after conducting a research that the Evaluation Board did actually learn that there were no LCD Monitors with built-in microphones on the market and (b) Mr Agius, the specification of the LCD monitors with built-in microphones was a genuine mistake on the part of those who issued the tender document because such monitors did not exist and that this mistake was being repeated with every tender issued because these specifications were an outright copy of previously issued tenders;
- having noted Ing Saliba's claim that he could not exclude the possibility that there could have been tenderers who might have not submitted an offer because of these particular specifications;
- having reflected on the fact that it was only following a specific request made by the PCAB, that the appellants were in a position to provide the Board's Secretary with a formal statement from their suppliers confirming that the monitors would be provided with built-in microphones and in a beige colour

reached the following conclusions:-

1. The PCAB fails to understand how an Evaluation Board would only come to realise that there were no LCD Monitors with built-in microphones on the market after issuing the call for offers. Undoubtedly this demonstrates a high degree of lack of professionalism on the part of those who are themselves expected to be the guarantors of a transparent, efficient and effective ‘modus operandi’.
2. This Board, whilst acknowledging that a formal confirmation from the appellants’ suppliers was received subsequent to the hearing, yet cannot accept the admissibility of same as this ‘supporting’ document should have been made available to the Evaluation Board at evaluation stage and not at this stage as by so doing one would be in jeopardy of contravening the concept of guaranteeing a level playing field.
3. The PCAB concurs with Ing Saliba’s observation that one could not exclude the possibility that there could have been tenderers who might have not submitted an offer because of these particular and, possibly, non-existent, terms and conditions.

Pursuant to (1) to (3) above, this Board not only upholds the appeal lodged by the appellants but also recommends the nullification of the tendering process and the re-issue of same, albeit under a much more informed structure in order to avoid any repetition of events experienced by the Evaluation Board in this particular instance.

In view of the above and in terms of the Public Contracts Regulations, 2005, this Board recommends that the deposit submitted by appellants in terms of regulation 83, should be refunded.

Alfred R Triganza
Chairman

Anthony Pavia
Member

Edwin Muscat
Member

June 06, 2006