

## PUBLIC CONTRACTS REVIEW BOARD

### Case No. 253

#### **DQSE 471/10 - Adv No FSB 03/10 Tender for the Supply and Delivery of Special Education Needs Equipment for the eLearning Centre**

This call for tenders was published in the Government Gazette on 6<sup>th</sup> August 2010. The closing date for this call for offers with a department estimate of €62,000 was 18<sup>th</sup> August 2010.

Three (3) tenderers had originally submitted their offers

*Technoline Ltd* filed an objection on 26<sup>th</sup> November 2010 against the decisions by the contracting authority, namely the Department for Quality and Standards in Education, to discard its offers with regard to items 24 and 32 on being found technically non-compliant and to recommend award to *Be Independent*.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman and Mr. Edwin Muscat and Mr. Joseph Croker as members convened a public hearing on Friday, 28<sup>th</sup> January 2011 to discuss this objection.

Present for the hearing were:

#### **Technoline Ltd**

Mr Charlot Scicluna  
Mr Nicky Sammut

Legal Representaive  
Representative

#### **Be Independent Ltd**

Mr Edward Tanti  
Mr Christine Tanti

Representative  
Representative

#### **Ministry for Education, Employment and the Family (Department for Quality and Standards in Education)**

#### **Evaluation Board:**

Mr Mario Saliba  
Mr Franco Costa  
Ms Marika Gatt

Chairman  
Member  
Member

After the Chairman's brief introduction, the appellant company was invited to explain the motives of its objection.

Mr Charlot Scicluna, representing Technoline Ltd, the appellant company, stated that his clients' offer was the cheapest in respect of items

- 24 'Simple Environment Unit' and
- 32 'TFT Touch Monitor'

Furthermore, he stated that since he retained that his client's offer was also, technically, compliant with regard to these two items he reckoned that there had to be some misunderstanding for his client's offer not being recommended for the award of this tender. Mr Scicluna maintained that his company's foreign supplier had confirmed that the items offered were according to specifications.

Mr Mario Saliba, chairman of the adjudicating board, explained that the tender was made up of 67 items and that items could be awarded individually to different tenderers, so much so that the appellant company had been awarded 6 items. He added that a correction was made to the evaluation report in the sense that item 24 was awarded to the third cheapest since the other two cheaper offers were found non compliant.

On her part Ms Marika Gatt, a member of the adjudicating board whose area of specialisation is the education of persons with disabilities, remarked that the appellant company failed on item

- 24 - 'Simple Environment Unit' - because it did not have a built-in display and it did not allow for any form of data collection, *and*
- 32 'TFT Monitor' it failed with regard to the 'robust and reliable' and 'removable tilt base' criteria which were both mandatory features in the tender.

The said items were then treated separately and in greater detail as results from the following, namely:

#### Item 24 – Simple Environment Unit

With regard to the 'built-in display' Mr Scicluna submitted that the product offered by his company contained LED bulbs and that a built-in LED or LCD display referred to a device that showed information.

Mr Nicky Sammut, also representing the appellant company, commented that, usually, when a client required something in particular, that item would be described in detail in the tender specifications but it turned out that, in this call for tenders, the request for the 'built-in display' was left wide open.

Ms Gatt intervened to state that the built-in display was in the form of ‘numbers in digital form’ and that, in this sense, there was a wide difference between the item awarded and the one presented by the appellant company since the latter had no such display.

Mr Scicluna admitted that he was not quite sure of what the contracting authority meant by the term ‘data collection’.

The Chairman Public Contracts Review Board pointed out that tenderers had to clarify any shades of grey about the tender specifications prior to the submission of their bids and not at appeal stage.

### *Item 32 TFT Monitors*

Ms Gatt explained that the product offered by the appellant company failed in various respects, particularly in so far as (a) the fact that it was not clear whether the item had a ‘removable tilt base’ and (b) the fact that it was not demonstrated that the product was robust and reliable for the purpose required. She added that this equipment was intended for use by persons with varying degrees of disabilities and, as a result, the items had to be robust.

Mr Scicluna remarked that he had sought information from the company’s supplier and it turned out that the monitor had an ‘angle adjustment and removable stand’ and that the item was built to withstand stress. Also, it transpired that it was used in public libraries, supermarkets and in various types of schools, including those for students with special needs. Mr Scicluna stated that it was common knowledge that any type of imported TFT screen had a removable tilt base.

The Chairman Public Contracts Review Board observed that the needs arising from the environment of teaching persons with special needs were quite different from those where the users were more rational in the use of computers’ equipment. At this point he requested an explanation as to the difference between the item recommended and the item offered by the appellant company.

Ms Gatt remarked that the recommended product had undergone certain stress and abrasive tests - conducted by an independent body - such as the number of finger touches and drop tests. She added that the preferred monitor had the type of technology that used an ‘x’ and ‘y’ axis which meant that if the monitor sustained any damage the system would still function. Ms Gatt declared that the recommended product provided the required comfort that the contracting authority was acquiring an item with lasting reliability.

The same Evaluation Board member also declared that she was involved in the drawing up of the tender specifications and for this purpose she carried out research on the items listed in the call for tenders. She conceded that albeit, to her recollection, there was one manufacturer of the product that met the requirements set by the contracting authority, yet, of the three participating bidders there were two who offered the same product as that

being recommended even though they quoted different prices. She placed emphasis on the fact that it was the appellant company who was offering a different product.

The Chairman Public Contracts Review Board intervened to remark that specifications should be drawn up in such a way as to allow for as wide a competition as possible and not narrow them to fit a few or, even worse, a sole supplier.

Mr Edward Tanti, representing Be Independent Ltd, commented as follows:

- his firm had obtained three quotations with regard to item 32 – TFT Monitor – which met the published specifications but he opted to offer the most robust product, even if it turned out to be more expensive;
- his firm's product had the removable tilt base with a mounting option besides carrying a three year guarantee; and
- one of the three quotations his firm managed to obtain was from Keytools which did meet specifications but it was questionable whether it had a removable tilt base with a mounting option and its robustness and reliability were not of the same standard as those of IG Tools which had a very detailed certification by third parties covering, among other things, drop and abrasive tests and which could be recalibrated using the 'x' and 'y' axis'

Mr Scicluna referred to the certificate dated 26<sup>th</sup> November 2010 drawn up by the Managing Director of Keytools which he presented with his objection. He pointed out that, as far as he could deduce, it fitted the tender specifications and that the product was meant to withstand a hostile working environment. Mr Scicluna conceded that he did not provide a certificate from third parties covering the features and performance of the model his company was offering but he expected the contracting authority to seek a clarification whenever such shortcomings were detected. The same appellant company's representative remarked that there were other instances when his firm had supplied inclusive and assisted technologies, as the recommended tenderer did, but he conceded that his firm did not have extensive experience on each and every item requested in this tender.

Ms Gatt remarked that the adjudication board did not feel the need to seek a clarification from the appellant company because, once the bidder did not indicate that the product had, for example, a removable tilt base, as requested, then it meant that the product did not have it and, even more, her research did not demonstrate that this product had that feature. Ms Gatt stated that, with regard to the removable tilt base, a problem could arise in the event that within the stand there were electronics and, as a direct consequence, the tilt base could not be removed even when mounted to the wall and that would compromise the overall safety of the students using this equipment.

At this point the hearing was brought to a close.

This Board,

- having noted that the appellants, in terms of their ‘reasoned letter of objection’ dated 26<sup>th</sup> November 2010 and also through their verbal submissions presented during the hearing held on 28<sup>th</sup> January 2011, had objected to the decision taken by the pertinent authorities;
- having noted the appellant company’s representatives’ (a) claim that their company’s offer was both the cheapest and technically compliant in respect of items (1) 24 ‘Simple Environment Unit’ and (2) 32 ‘TFT Touch Monitor’, (b) admittance to the fact that, with regards to 24 ‘Simple Environment Unit’, these were not quite sure of what the contracting authority meant by the term ‘data collection’, (c) claim that the item - 32 ‘TFT Touch Monitor’ – offered by them was built to withstand stress and that it was common knowledge that any type of imported TFT screen had a removable tilt base and (d) remark with regards to the fact that, while conceding that the company did not provide a certificate from third parties covering the features and performance of the model his company was offering, yet he expected the contracting authority to seek a clarification whenever such shortcomings were detected;
- having considered the contracting authority’s (a) reference to the fact that the tender was made up of 67 items and that items could be awarded individually to different tenderers, so much so that the appellant company had been awarded 6 items, (b) reference as to why the appellant company had technically failed compliance level, namely, (1) 24 ‘Simple Environment Unit’ - because it did not have a built-in display and it did not allow for any form of data collection and (2) 32 ‘TFT Touch Monitor’ - it failed with regard to the ‘robust and reliable’ and ‘removable tilt base’ criteria which were both mandatory features in the tender in view of the fact that this equipment was intended for use by persons with varying degrees of disabilities and, as a result, the items had to be robust (c) reference to the fact that the recommended product had undergone certain stress and abrasive tests - conducted by an independent body - such as the number of finger touches and drop tests adding that the preferred monitor had the type of technology that used an ‘x’ and ‘y’ axis which meant that if the monitor sustained any damage the system would still function, (d) declaration that Ms Gatt albeit, to her recollection, there was one manufacturer of the product that met the requirements set by the contracting authority, yet, of the three participating bidders there were two who offered the same product as that being recommended even though they quoted different prices and (e) reference to the fact that the adjudication board did not feel the need to seek a clarification from the appellant company because, once the bidder did not indicate that the product had, for example, a removable tilt base, as requested, then it meant that the product did not have it;
- having noted the recommended company’s representatives’ (a) claim that his firm had obtained three quotations with regard to item 32 – TFT Monitor – which met the published specifications but it opted to offer the most robust product, even if it turned out to be more expensive and (b) reference to the fact that one of the three quotations the company managed to obtain was from Keytools which did meet specifications but it was questionable whether it had a removable tilt base with a mounting option and its robustness and reliability were not of the same standard as those of IG Tools which had a

very detailed certification by third parties covering, among other things, drop and abrasive tests and which could be recalibrated using the 'x' and 'y' axis',

reached the following conclusions, namely:

1. The Public Contracts Review Board opines that tenderers have to clarify any shades of grey about the tender specifications prior to the submission of their bids and not at appeal stage. Clarifications are not meant to deal with what is supposedly considered to be obvious. In this instance this Board concludes that the adjudication board was right in not seeking a clarification from the appellant company because, once the bidder did not indicate that the product had, for example, a removable tilt base, as requested, then it meant that the product did not have it. Furthermore, the appellant company should not have expected that the contracting authority should have sought a clarification whenever such shortcomings were detected.
2. The Public Contracts Review Board acknowledges that the unique requirements arising from the environment of teaching persons with special needs are quite different from those where the users are more rational in the use of computers' equipment, hence the necessity for the 32 'TFT Touch Monitor' to be 'robust and reliable'. In this instance, this Board feels that the appellant company did not offer what was actually considered as mandatory in the tender specifications as published by the contracting authority.
3. The Public Contracts Review Board maintains that the fact that when one considers that, of the three participating bidders, there were two who offered the same product as that being recommended, even though they quoted different prices, implied that such product is freely available and hence does not preclude any potential bidder from offering it.

In view of the above this Board finds against the appellant company and also recommends that the deposit paid by the appellants should not be reimbursed.

Alfred R Triganza  
Chairman

Edwin Muscat  
Member

Joseph Croker  
Member

*16 February 2011*