

PUBLIC CONTRACTS REVIEW BOARD

Case No. 269

MF2010

Tender for the Provision of Multi-function Printing Services

The closing date for this call for offers was the 3rd September 2010.

The department's estimated value of this tender was Euro 37,000.

Seven (7) offers were received.

Advanced Telecommunications Systems Ltd filed an objection on the 7th February 2011 against the decision taken by the contracting authority, the Malta Financial Services Authority (MFSA), to refuse its tender submission and to award the tender to Image Systems Ltd.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman and Mr. Edwin Muscat and Mr. Carmel J Esposito as members convened a public hearing on Wednesday, 23rd March 2011 to discuss this objection.

Present for the hearing were:

Advanced Telecommunications Systems Ltd (ATS Ltd)

Mr Paul Agius	Managing Director
Mr Adrian Sciberras	Accountant

Image Systems Ltd

Mr Alex Gollscher	Managing Director
Mr Alec Massa	Sales Manager

Malta Financial Services Authority (MFSA)

Evaluation Board

Mr Albert Attard	Chairman
Mr Colin McElhatton	Secretary
Mr Joe Demanuele	Member
Mr Reuben Vella	Member

After the Chairman Public Contracts Review Board's brief introduction, the appellant company's representative was invited to explain the motives of its objection.

Mr Adrian Sciberras, representing Advanced Telecommunications Systems Ltd, complained of the fact that, in its letter dated 3rd February 2011, the Malta Financial Services Authority (MFSA), the contracting authority, informed his firm that its offer was not acceptable without giving the reasons that led to disqualification and, as a consequence, the said company was not in a position to present its case in an informed manner.

The appellant was furnished with the relevant extract of the evaluation report – page 3 - which read as follows:

“Tender No 7 by Advanced Telecommunications Systems Ltd - tendered with the Rex Rotary brand. Machines offered were not in compliance with specifications for the following reasons:-

- 1. The low end printer is not compatible with all paper types as requested in the specifications;*
- 2. Active Directory full integration - not confirmed and the machine panel only offers partial control;*
- 3. The protocols SNMP/DHCP are not listed as being supported;*
- 4. Manual tray only handles 100 sheets as opposed to the 200 requested in the tender specifications; and*
- 5. Noise levels of the machine could not be verified to fall within international standard levels.”*

At this point Mr Sciberras submitted that...

- i. this contract was to run for 5 years and involved the provision of various printing machines and printing paper with the client having to pay a given rate per copy;
- ii. the tender document indicated that the estimated printing requirements were 1.8 million mono (black & white) copies and 15,000 colour copies;
- iii. the offer made by his firm was the cheapest with regard to the mono prints and the provision of paper but higher with regard to the colour prints and, consequently, he claimed, that over the contract period, his firm's offer was about €8,000 cheaper than that offered by the recommended tenderer, Image Systems Ltd, which was a substantial saving taking into account the contract value;
- iv. the tender document was drawn up in such a way that the tenderer could not fill in the tables regarding the equipment minimum requirements and, as a consequence, his firm presented a general submission and attached the relative brochures;
- v. subsequently, on the 16th September 2010, the Malta Financial Services Authority, through Mr McElhatton, sought a clarification from his firm and even furnished an

electronic spreadsheet to fill in the ‘missing’ details which the evaluation board required to assess technical compliance;

- vi. on the 17th September 2010 his firm filled in and submitted the missing information as requested in the clarification;
- vii. there was no further communication between his firm and the contracting authority from the 17th September 2010, the date the clarification was answered, and the 3rd March 2011, the date the tender refusal was communicated; and
- viii. that his firm had submitted a compliant tender with regard to high-medium and low volume machines and which offer turned out to be the cheapest.

On his part Mr Albert Attard, chairman of the evaluation board, remarked that, prior to price consideration, the offer had to be technically compliant with tender specifications which according to the technical officer sitting on the evaluation board, was not the case with the offer made by the appellant company as clearly indicated at page 3 of the evaluation report. At this point Mr Attard introduced Mr Reuben Vella, a technical member on the evaluation board, who was considered to be in a better position to elaborate on the technical aspect of the adjudication process.

Mr Reuben Vella, Manager IT at the Malta Financial Services Authority and technical member on the evaluation board, under oath, gave the following evidence:

- a. in its tender submission the appellant company did present the brochures, however, it failed to communicate practically half the information requested in the tender document;
- b. by way of clarification the contracting authority furnished the appellant company with a compliance matrix and requested it to fill in the missing information so as to render possible the technical evaluation of its offer;
- c. albeit the appellants did manage to fill in most of the compliance matrix, yet, certain information was still not made available including the five items mentioned earlier on that were listed at page 3 of the evaluation report, which represented the most significant shortcomings;
- d. another issue was that certain information given by the appellant company in reply to the clarification was rather vague, as was the case by simply inserting “yes” against printing paper without listing the different types of printing paper that it would provide, thus rendering the evaluation process almost impossible; and
- e. in those circumstances, the evaluation board decided not to consider the appellants’ tender submission any further.

Mr Sciberras explained that the tender document included the section titled 'Equipment Minimum Requirements', pages 19 to 22, which referred to a list of items that had to be provided although no electronic compliance matrix was furnished with the tender document for the tenderer to fill in and include it in its tender submission. Mr Sciberras stated that, in the absence of a readily available compliance matrix, Advanced Telecommunications Systems Ltd had compiled one which consisted of a two-page document and which, admittedly, was not in great detail. Mr Sciberras added that apart from the information submitted in connection with the clarification, the contracting authority could have also consulted the brochures submitted.

Mr Vella referred to Section 5 "Terms and Conditions" sub-section 2 where it was stated that any submitted tender had to have a list of things, among them, item IV "Compliance Matrix for the Technical Specifications" and, contrary to the appellant company's assumption that the compliance matrix had to be provided with the tender document, the tenderer was obliged to draw up its own compliance matrix. Mr Vella pointed out that if the appellant company had any doubts as to the form in which it had to submit the compliance matrix, it could have sought a clarification from the contracting authority.

Mr Vella explained that, for example, with regard to item Microsoft 'active directory' at pages 20 and 22 of the tender document, the contracting authority requested 'full integration' whereas, in its clarification, the appellants indicated "Idap/hdd" with regard to high-medium machines and "no info available" with regard to low volume machines. Mr Vella declared that the evaluation board could not interpret the two answers given by the appellants as meaning "full integration". Mr Vella also pointed out that no information was given with regard to the "noise level" for low volume machines.

Mr Edwin Muscat, a Public Contracts Review Board member, queried why the contracting authority asked by way of a clarification for information which the tendering company was obliged to submit in its original tender submission. Mr Vella stated that this clarification was sought only from the appellant company because it was the only tenderer who, practically, left out half the information requested and their intention was to give the appellants the chance to participate in the tendering process.

The Chairman Public Contracts Review Board pointed out that a clarification should be sought on information already submitted in the original tender and not for the tenderer in question to submit mandatory data that the same tenderer should have made available in the first place. He also noted that the compliance matrix compiled by the appellant company, which consisted of 2 half-pages, could not have comprised all the items listed on four full pages (19 to 22) in the tender document. The Chairman Public Contracts Review Board said that it was the responsibility of tenderers to ensure that they submitted a correct and complete tender submission and that tenderers should not expect the evaluation board to look up the information in the brochures or somewhere in the tender submission.

Mr Vella informed the Public Contracts Review Board that the tender requested the provision of 18 machines and that the tender was not split up into lots.

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 7th February 2011 and also through their verbal submissions presented during the public hearing held on 23rd March 2011 had objected to the decision taken by the General Contracts Committee;
- having taken note of the appellants’ representatives’ (a) claim that , in its letter dated 3rd February 2011, the Malta Financial Services Authority (MFSA), the contracting authority, had informed the said appellant company that its offer was not acceptable without giving the reasons that led to disqualification and, as a consequence, the latter was not in a position to present its case in an informed manner, (b) submission wherein, *inter alia*, it was claimed that the offer made by them was the cheapest with regard to the mono prints and the provision of paper but higher with regard to the colour prints and that, over the contract period, the appellant company’s offer was about €8,000 cheaper than that offered by the recommended tenderer, Image Systems Ltd, which was a substantial saving taking into account the contract value, (c) claim that the tender document was drawn up in such a way that the tenderer could not fill in the tables regarding the equipment minimum requirements and, as a consequence, the appellants presented a general submission and attached the relative brochures, (d) statement that on the 17th September 2010 the appellant company had filled in and submitted the missing information as requested in the clarification requested on the 16th September 2010 by the Malta Financial Services Authority, (e) claim that there was no further communication between the appellant company and the contracting authority from the 17th September 2010, the date the clarification was answered, and the 3rd March 2011, the date the tender refusal was communicated, (f) claim that, in the absence of a readily available compliance matrix, Advanced Telecommunications Systems Ltd had compiled one which consisted of a two-page document and (g) claim that, apart from the information submitted in connection with the clarification, the contracting authority could have also consulted the brochures submitted
- having also taken cognisance of the contracting authority’s counter arguments and explanations, particular those relating to (a) the fact that in its tender submission the appellant company did present the brochures, however, it failed to communicate practically half the information requested in the tender document, (b) the fact that, by way of a clarification, the contracting authority furnished the appellant company with a compliance matrix and requested it to fill in the missing information so as to render possible the technical evaluation of its offer, (c) the fact that if the appellant company had any doubts as to the form in which it had to submit the compliance matrix, it could have sought a clarification from the contracting authority, (d) claim that, contrary to the appellant company’s assumption that the compliance matrix had to be provided with the tender document, the tendering company was obliged to draw up its own compliance matrix and (e) the fact that, albeit the appellants did manage to fill in most of the compliance matrix, yet, certain information was still

not made available including the five items listed at page 3 of the evaluation report which represented the most significant shortcomings,

reached the following conclusions, namely:

1. The Public Contracts Review Board opines that the contracting authority should not have asked – through a clarification - for information which the tendering company was obliged to submit in its original tender submission. Besides, the Board considers that the explanation given by the contracting authority's representative during the hearing, namely that a clarification was sought (only from the appellant company) due to the fact that the said company was the only tenderer which, practically, left out half the information requested with the contracting authority's intention being that of giving the appellants the chance to participate in the tendering process, was irregular and substantially '*ultra vires*'.
2. Notwithstanding (1) above, this Board agrees with the evaluation board regarding the fact that, despite the request for clarifications, yet the answers provided by the tendering company (the appellant company) did not provide the contracting authority with the right level of comfort.
3. The Public Contracts Review Board feels that it remains the responsibility of tenderers to ensure that they submit a correct and complete tender submission and that, as a result, tenderers should not expect any evaluation board to look up, on their behalf, the information in the brochures or, for all that matters, anywhere in the said bidder's tender submission.

As a consequence of (1) to (3) above this Board finds against the appellant company.

In view of the above and in terms of existing public contracts regulations this Board recommends that the deposit submitted by the said appellants should not be reimbursed.

Alfred R Triganza
Chairman

Edwin Muscat
Member

Carmel J Esposito
Member

7 April 2011