

PUBLIC CONTRACTS REVIEW BOARD

Case No. 358

MRRA/W/310/2011

Tender for Supply and Installation of a Large Format AO Laser Printer/Copier/Scanner for the Project Design and Engineering Directorate

This call for tenders was published in the Government Gazette on 9th August 2011 . The closing date for offers was 30th August 2011.

The estimated value of this tender was € 14,640.

Three (3) tenderers submitted their offers.

Messrs Avantech Ltd filed an objection on 27th September 2011 against the decision by the Ministry for Resources and Rural Affairs to disqualify its tender submission as technically not compliant.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman and Mr Carmel Esposito and Mr Joseph Croker as members convened a meeting on Thursday 15th December 2011 to discuss this objection.

Present for the hearing were:

Avantech Ltd

Mr Harold Felice	Representative
Mr Clint Buhagiar	Representative
Ms Kathlene Falzon	Representative

Image Systems Ltd – no representative turned up at the hearing.

Ministry for Resources and Rural Affairs

Adujdicating Board

Perit Anton Camilleri	Chairman
Mr Antoine Sapiano	Member
Mr Alexander Cutajar	Member

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

A) Memory

Mr Harold Felice, representing Avantech Ltd, the appellant company, made the following submissions:

- i. by letter dated 20th September 2011 the contracting authority informed his firm that its offer was found technically non-compliant since the tender requested equipment with 2GB memory whereas the equipment offered by the appellant company had 1GB memory;

and

- ii. as far as he was aware the technical data of the equipment offered, which was presented with the tender submission, clearly indicated that the product had a 2GB memory and a 160GB hard disk and so it was incomprehensible how the contracting authority arrived at its decision to reject the offer.

Architect Anton Camilleri, chairman of the adjudicating board and Director of the Project Design and Engineering Directorate, submitted the following remarks:-

- the adjudicating board had disqualified the appellant company's offer because, on checking the 'Product Specifications', it emerged that the proposed equipment had a 1,024 MB memory plus a 160GB hard disk drive;
- the letter of appeal had drawn the attention of the adjudicating board that in the same technical data sheet under 'Product Description' it was indicated that the product offered by the appellant company had a 2GB Memory and a 160GB hard disk;

(On checking the appellant company's original tender submission it was established that the technical data had indicated a 2GB memory under 'product description' and a 1,024 MB memory under 'product specifications').

- whilst the adjudicating board had, admittedly, overlooked the data given under 'Product Description' where a 2GB memory was indicated, yet, on receiving the appeal the adjudicating board carried out a search on the internet with regard to the product offered by the appellant company and the result was that the data listed under 'product description' in the appellant company's submission did not feature anywhere and, in fact, it was also noted that that data was not in the same font/print as the other data such that it seemed that it was pasted on by the appellant company; and
- had the adjudicating board noted the discrepancy between the technical data under 'product description' and 'product specifications', it would have sought a clarification from the appellant company.

Mr Clint Buhagiar, representing the appellant company, explained that, along with the printer, the contracting authority was also requesting the scan option and, once this printer was going to be operated in conjunction with the scanner, then the memory of the equipment would be upgraded from 1GB to 2GB. He conceded that he had added/pasted on the data under 'product description' so as to reflect the memory of the equipment comprising the printer and the scanner.

Architect Camilleri expressed doubt as to whether the printer's memory would, automatically, be upgraded with the memory of the scanner but he added that if the product was certified to have a 2GB memory then the contracting authority would consider the appellant company's offer.

The Chairman, Public Contracts Review Board, remarked that, as things stood, the appellant company had, in fact, submitted the 2GB memory requested even if, elsewhere, in its submission there featured a 1GB memory which event called for a clarification but the fact remained that the appellant company was *prima facie* compliant in this respect.

B) Price

Mr Felice remarked that the recommended price of €10,780 varied from the price that had featured in the published schedule of tenders where the recommended tenderer had quoted €12,970 for item 1.01 and €3,750 for item 2.01 resulting in a net price of €9,220 (€12,970 less €3,750). He asked for a clarification on this aspect.

Architect Camilleri explained that the award price of €10,780 was arrived at in the following manner:-

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12,970 – quoted price of the equipment
<u>1,560</u> – cost of maintenance (€0.12 per linear metre x 50m x 52 weeks x 5 yrs (60 months))
14,530
<u>3,750</u> – less trading-in for the existing copier
<u>10,780</u>

Architect Camilleri noted that the offer made by the appellant company was higher than the awarded offer with the said appellant company even excluding a trade-in possibility.

At this point the hearing was brought to a close.

This Board,

- having noted that the appellant company, in terms of the reasoned letter of objection dated 27th September 2011 and through the verbal submissions made during the hearing held on the 15th December 2011, had objected against the decision by the Ministry for

Resources and Rural Affairs to disqualify its tender submission as technically not compliant;

- having noted the appellant firm's representatives claims and observations regarding the fact that (a) the contracting authority had informed the appellant company that its offer was found technically non-compliant since the tender requested equipment with 2GB memory whereas the equipment offered by the appellant company had 1GB memory, (b) the technical data of the equipment offered, which was presented with the tender submission, clearly indicated that the product had a 2GB memory and a 160GB hard disk and so it was incomprehensible how the contracting authority had arrived at its decision to reject the offer, (c) along with the printer, the contracting authority was also requesting the scan option and, once this printer was going to be operated in conjunction with the scanner, then the memory of the equipment would be upgraded from 1GB to 2GB, (d) the appellant company was conceding that its representative had added/pasted on the data under 'product description' so as to reflect the memory of the equipment comprising the printer and the scanner and (e) the recommended price of €10,780 varied from the price that had featured in the published schedule of tenders where the recommended tenderer had quoted €12,970 for item 1.01 and €3,750 for item 2.01 resulting in a net price of €9,220 (€12,970 less €3,750)
- having considered the contracting authority's representative's submissions, namely that (a) the adjudicating board had disqualified the appellant company's offer because, on checking the 'Product Specifications', it emerged that the proposed equipment had a 1,024 MB memory plus a 160GB hard disk drive, (b) the letter of appeal had drawn the attention of the adjudicating board that in the same technical data sheet under 'Product Description' it was indicated that the product offered by the appellant company had a 2GB Memory and a 160GB hard disk, (c) whilst the adjudicating board had, admittedly, overlooked the data given under 'Product Description' where a 2GB memory was indicated, yet, on receiving the appeal the adjudicating board carried out a search on the internet with regard to the product offered by the appellant company and the result was that the data listed under 'product description' in the appellant company's submission did not feature anywhere and, in fact, it was also noted that that data was not in the same font/print as the other data such that it seemed that it was pasted on by the appellant company, (d) had the adjudicating board noted the discrepancy between the technical data under 'product description' and 'product specifications', it would have sought a clarification from the appellant company, (e) the contracting authority was doubtful as to whether the printer's memory would, automatically, be upgraded with the memory of the scanner with its representative, however, adding that if the product were to be certified to have a 2GB memory then the contracting authority would consider the appellant company's offer, (f) the award price of €10,780 was arrived at following consideration being given to (1) the quoted price of the equipment - €12,970 - (2) the cost of maintenance (€0.12 per linear metre x 50m x 52 weeks x 5 yrs (60 months) - €1,560 less (3) trade-in for the existing copier €3,750 and (g) the offer made by the appellant company was higher than the awarded offer with the said appellant company even excluding a trade-in possibility;

reached the following conclusions:

1. The Public Contracts Review Board acknowledges the fact that, on checking the appellant company's original tender submission, it was established that the technical data had indicated a 2GB memory under 'product description' and a 1,024 MB memory under 'product specifications'.
2. The Public Contracts Review Board opines that, as things stood, the appellant company had, in fact, submitted the 2GB memory requested even if, elsewhere, in its submission there featured a 1GB memory which event called for a clarification but the fact remained that the appellant company was, *prima facie*, compliant in this respect.
3. The Public Contracts Review Board analysed the statement made by the chairman of the adjudicating board regarding the fact that the offer made by the appellant company was higher than the awarded offer with the said appellant company even excluding a trade-in possibility and found such claim to be factual thus rendering the recommended tenderer's offer more financially competitive.

In view of the above, with regard to the issue concerning the submission of the 2GB memory as requested, this Board finds in favour of the appellant company and recommends that the deposit paid by the latter to file the said appeal should be reimbursed. However, at the same time, this Board finds that the statement made by the chairman of the adjudicating board regarding the fact that the offer made by the appellant company was higher than the awarded offer with the said appellant company (even excluding a trade-in possibility) to be factual thus rendering the recommended tenderer's offer more financially competitive .

Alfred R Triganza
Chairman

Carmel J Esposito
Member

Joseph Croker
Member

26th December 2011