

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 559**

**ETC/IT/Q/01/13**

### **Call for Quotations for the Supply of Energy Efficient Personal Computers**

The request for quotations was published on the 11<sup>th</sup> January 2013 with a closing date of the 18<sup>th</sup> January 2013. The estimated value of the Quotation was €60,000 (including VAT).

Three (3) bidders submitted their offers.

FGL Information Technology Limited filed an objection on the 9<sup>th</sup> April 2013 against a decision of the Employment & Training Corporation to discard its offer and to recommend the award to Merlin Computers Limited.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Richard A. Matrenza as members convened a meeting on Tuesday 2<sup>nd</sup> July 2013 to discuss the appeal.

#### **Present:**

#### **FGL Information Technology Ltd**

Dr David Zahra	Legal Representative
Dr John Gauci	Legal Representative
Mr Adrian Gatt	Representative

#### **Merlin Computers Ltd.**

Mr Sandro Musu`	Representative
Mr Joel Spiteri	Representative

#### **Employment & Training Corporation**

Dr Victoria Cuschieri	Legal Representative
Ms Mathea Gauci	Representative
Mr Mario Attard	Representative
Mr Edwin Camilleri	Representative
Mr Stephen Caruana	Representative
Ms Maria Cutajar	Representative

The Chairman made a brief introduction and the appellant company's representative was invited to explain the motives of the firm's objection

Dr David Zahra, legal representative of the appellant company, submitted that appellant company's bid was declared non-compliant on three points:

1. Size of PCs was not according to requested specifications;
2. Contracting Authority was being precluded from maintaining and upgrading the PCs offered without voiding the warranty;
3. The speakers of the offered PCs were not built in as specified in the quotation specifications.

On points one and three, Dr Zahra explained that the same contracting authority had issued an identical tender (ETC/G/14A Supply of classroom equipment and energy efficient desktop computers for the ETC in Gozo) with exactly the same specifications as the present, wherein Clarification Note 1 allowed the submission of PC sizes different from specifications within certain parameters. Dr Zahra contends that these clarifications issued in another tender should have been binding in the present tender which he reiterated was identical to the other tender.

He also contends that according to well known principle of public procurement, specifications should not be interpreted restrictively. That is if your bid satisfies the needs of the contracting authority, your bid should not be rejected. This has been confirmed by the European Court of Justice, (cases 45/87 and C-359/93)

As regards the second point of its rejection, he claimed that it was common knowledge that suppliers of all brands of PCs require that any maintenance or upgrading has to be done by their certified employees and that any tampering with the equipment nullified the warranty.

Dr Zahra thus contends that appellant's bid was compliant and that their bid was substantially cheaper and asks this Board to overrule the contracting authority's decision.

Dr Victoria Cuschieri legal representative of the contracting authority, Employment & Trading Corporation explained that the present call for quotations was issued with urgency and it was clear from the requested specifications that bidders had to stick with these specifications regarding size and built-in speakers because the place where these PCs were to be housed was very limited in area. In fact other bidders complied with the size as requested in the specifications. She also stated that appellant based his appeal on his interpretation of another tender. The Clarifications mentioned by the appellant referred to another distinct tender and not to this one. Thus it was not to be expected that these clarifications would hold true necessarily for the present call for quotations, which as stated required specific sizes and built in speakers.

As regards appellants reference to cases 45/87 and C-359/93, Dr Cuschieri contends that the principles mentioned in these cases do not apply in this quotation because of the constraints of the size of the place where the PCs are to be used, and thus the size of the offered PCs had to be given weight. She confirmed that the awarded bidder was not the cheapest, in fact the award has been queried by the Ministry of Finance. However, after it was explained to the Ministry of Finance, the reason for this, the award was authorised.

Mr Mario Attard, Unit Manager at the contracting authority explained that in the cases quoted by appellants, size of the PCs did not matter, but in the present case size mattered. The Contracting Authority had to house sixty persons in the available hall. He continued that as regards the warranty of the PCs offered by the appellant, it was a requirement that PCs supplied by the successful bidder had to be maintained and upgraded as necessary by ETC's own trained staff. PCs used by the staff of the Corporation are always maintained in house. Other PCs used by the contracting authority are normally maintained by the suppliers, but in this case the contracting authority needed to do this using its own staff without incurring the penalty of nullity of warranty. Other suppliers have accepted this without any reserve.

Dr Zahra on behalf of the appellant company made it clear that here the difference of dimensions was minimal, a question of a few millimetres.

At this point the hearing was brought to a close.

**This Board,**

**Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 9<sup>th</sup> April 2013 and also through the appellant's verbal submissions during the hearing held on 2<sup>nd</sup> July 2013, had objected to the decision taken by the pertinent Authority, in that:**

- a) Size of PC's was not in accordance with the requested specifications.**
- b) Contracting Authority was precluded from carrying out the maintenance without voiding the warranty.**
- c) Speakers were not 'Built in 'as specified in the Tender document.**
- d) With regards to point B) above, the Appellant stated that suppliers of Brands impose upon users of their Brand that any maintenance or upgrading on their equipment, has to be carried out by the Suppliers' qualified employees – otherwise, warranty is nullified.**
- e) The Appellant's Bid was compliant in all respects and cheaper, hence requests the Board to overrule the decision of the award of the Tender.**

**Having considered the Contracting Authority's submissions by way of letter dated 23 April 2013 and through the verbal submissions presented by same during the hearing held on 2<sup>nd</sup> July 2013:**

- i) The call for application was urgent.**
- ii) Bidders had to stick to the specifications laid down in the Tender documents.**
- iii) Appellant based his appeal on interpretation of another tender.**
- iv) In this particular case, constraint of space had to be given prominence.**
- v) Although successful bidder was not the cheapest and after the bid was queried by the Ministry of Finance, approval was authorised.**
- vi) The successful bidder satisfied all technical specifications and conditions laid out in the Tender Document.**

**Reached the following conclusions:**

- 1. Size of PC's were of the utmost importance due to constraint space and this was clearly explained and proved by the Contracting Authority**
- 2. Since the successful bid allowed for and accepted that Contracting Authority's technical staff to do the necessary maintenance without effecting the warranty issue, the Contracting Authority were correct in awarding the tender to the successful bidder**

**In view of the above this Board finds against the Appellant Company and recommends that the deposit paid by the Appellant should not be reimbursed.**

Dr. Anthony Cassar  
Chairman

Dr. Charles Cassar  
Member

Mr. Richard A. Matrenza  
Member

*25 July 2013*