

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 568**

**MRRA/W/544/2012/1**

### **Tender for Commissioning of Study to Establish Cost-Optimal Energy Performance Levels in New and Existing Offices**

The tender was published on the 15<sup>th</sup> February 2013. The closing date was the 1<sup>st</sup> March 2013. The estimated value of the Tender was €39,830.50 (Exclusive of VAT).

Five (5) bidders submitted their offers.

On the 14<sup>th</sup> May 2013, Advanced Industrial Systems Limited filed an objection, against a decision by the contracting authority, EU Affairs Directorate to discard its bid, failing however to give the reasons for its grievances. On the 2<sup>nd</sup> July 2013 Advanced Industrial Systems Limited filed another letter wherein it listed its grievances against its exclusion.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Richard A. Matrenza as members convened a hearing on Tuesday 23<sup>rd</sup> July 2013 to discuss the appeal.

#### **Present:**

#### **Advanced Industrial Systems Limited - Appellants**

Ing Mario Schembri	Representative
Ing Anthony Bartolo	Representative
Ing Bernard Brincat	Representative

#### **Casainginiera – Recommended Bidder**

Dr Andre Portelli	Legal Representative
Mr Pierre Cassar	Representative
Mr Daniel Azzopardi	Representative

#### **EU Affairs Directorate – Contracting Authority**

Dr Maria Scicluna	Legal Representative
Mr Samuel Attard	Chairman Evaluation Board
Ms Nathalie Pace	Secretary Evaluation Board
Mr Matthew Degiorgio	Member Evaluation Board
Mr Samuel Farrugia	Member Evaluation Board
Mr Stephen Pulis	Member Evaluation Board
Mr Twanny Grech	Member Evaluation Board
Mr Samuel Farrugia	Representative

After a brief introduction, the Chairman invited the appellants to explain the reasons for the objection.

Engineer Mario Schembri on behalf of appellants stated that this tender was identical to the previous one but the first dealt with residential dwellings whilst the present one deals with offices. However, surprisingly the conclusions reached by the evaluation board are the same in both cases. He questions if the primary intention of the evaluation board was to have a fair adjudication or that the incumbent company already working on the project be retained. The reason for stating this is that the preferred bidder was the company responsible for holding courses, examinations and certification. This Board should therefore verify the honesty of the tender documents and if the final decision is to re-issue the tender, this would mean giving an advantage to preferred bidder. He stated that it is true that the preferred bidder has the necessary competence but then so has the appellant company.

1. The first reason appellants were given was that they lacked understanding of reference building. But the definition of this was clearly explained in pages 13 and 14 of the tender document and thus should have been understood by every one of the bidders.
2. Another point we were accused of is that of not being innovative. Clauses 8.4 and 8.5 of the documents were very clear in what was expected, after all these were the EU standards. Bidders had to abide by the standards so there was no place for innovation.
3. The evaluation report in appellants' bid stated that they did not submit any detailed time frame when the tender clearly states that all the work should be completed within 18 weeks. Bidders had to sign a declaration to this effect and we signed it.
4. The evaluation board accuses appellants of not having specifically mentioned the use of ISBEMint software. At the closing date of the tender the certifications in this software had not yet been issued, the examination had been held on the 20<sup>th</sup> April 2013.
5. Regarding quality Management System, it has to be stated that AIS Limited has been certified under ISO9000:2000 Quality Management System which has been in place since 2005, so it does not make any sense to state that deliveries and measures were not understood by the appellants.

Stephen Pulis member of the adjudication board raised the point that the contracting authority was not aware of the points raised in appellants' objection because the reasoned letter of objection was not served on them. He made it clear that although in this hearing the word "accused" was used earlier, the adjudication board did not "accuse" any bidders, but stated facts as the adjudicators saw them. The board looked at the quality of the methodology proposed by bidders, and the main emphasis was on the understanding required to conduct this study, this being a specialised process. It was there that the evaluators found lack of understanding, for example the explanation of reference buildings showed that the meaning of reference building was not understood.

The points allotted to bidders on the different criteria as follows:

- |  |            |
|--|------------|
| 1. Range and depth of previous organisational experience | maximum 10 |
| 2. Demonstrated understanding and requirements           | maximum 10 |
| 3. Resources to be applied                               | maximum 20 |
| 4. Quality of tender and proposed methodology etc.       | Maximum 20 |

There was nothing subjective in the allocation of points. The tender documents explained clearly how the points were to be allotted. Clause 5.1 explains this. This is a standard basic

principle in this kind of tender.

Mr Matthew Degiorgio explained that experience cited in criterion 2 had to be relevant for the study in question. A company could have had experience in commissioning and installation of systems but less experience in conducting studies. This is a new field.

Mr Samuel Attard, chairman evaluation board stated that from the administrative side, all bidders understood the tender because there were no requests for clarifications. It seems that now, however, at the appeals stage, no one understood anything. This cannot be so.

Mr Mario Schembri confirmed that the tender document was clear and that there was no need for clarifications. It was the evaluation board that raised the matter that bidders did not understand what was required.

Mr Stephen Pulis continued that appellants passed the first criterion because they were allotted 7 marks for experience. Further, bidders had to show that they made studies, appellants did not do so. It was the onus of the bidders to show their worth and that they had the ability to perform the required tasks.

Dr Maria Scicluna the contracting authority's legal representative insisted that appellants did not reach the minimum requirements. The evaluation board had methodology frame work and appellants' bid did not reach the requirements. Everything was well explained in fact appellants themselves declared that they understood.

Mr Mario Schembri stated that his company had in its bid mentioned several energy management projects which they conducted including one for the NSO to evaluate consumption.

Mr Matthew Degiorgio said that the NSO project was examined by the evaluation board but that study did not include software simulation and was not relevant. In their bid appellants did not specify which software they would be using. This was essential and all bidders specified software.

The evaluation board had a matrix and the five members individually assigned points to each bidder under each criterion. The points so given were then averaged.

On being asked by the Chairman if appellants' bid was discarded when giving past experience because no software was specified, he stated that it was one of the reasons.

Mr Mario Schembri brought the attention to page 5 of appellants' bid wherein it is stated that by the 1<sup>st</sup> March the persons AIS is proposing to use, had attended a course on the software. A 7<sup>th</sup> May 2013 fax from The Ministry of Transport says that possibly, iSBEM software is to be used. In fact the examination was held on the 20<sup>th</sup> April 2013.

Mr Pulis stated that appellants did not state they would be using the software, only that persons it proposed to use had attended a course.

Dr Andre Portelli for the preferred bidder stated that the appeal is invalid. He referred to Article 21 (1) of the Procurement Regulations states that the letter of objection should contain the reasons for objection. This appeal is null and void because their letter of objection does not give any reasons.

This tender was as per page 8 considered as a MEAT tender and the methods of evaluation were clearly indicated.

The hearing was at this point brought to an end.

**This Board,**

**Having noted the Appellant's objection without giving reasons, against the decision of the Contracting Authority within the specified period, according to EU Affairs Directorate to discard its Bid. On the 2<sup>nd</sup> July 2013, the Appellant filed its grievances against the Contracting Authority, in that:**

- a) The Appellant confirms that it had good and clear understanding of what constitutes a 'Reference Building'.**
- b) The Appellant confirms that AIS has sufficient professionals to deal with the project.**
- a) The Appellant is supported by a team of professional Engineers, well versed in engineering experience.**
- c) The Appellant contended that they were not 'innovatives' and bidders had to abide by the standards laid down.**
- d) The Evaluation Board stated that the Appellant did not submit detailed time frame for completion of the tender works.**
- e) The Appellant was accused of not having mentioned the utilisation of the software, namely ISBEMint.**
- f) AIS Limited has been certified under ISO9000:2000 and in so far as 'Quality Management Systems' is concerned the Appellant Company is fully aware of its responsibilities and ensures that the Appellant will meet the commitments tendered for.**

**Having considered the Contracting Authority's submissions as follows:**

- a) That the Contracting Authority's Evaluation Board assessed the quality of the methodology proposed by the Bidder.**
- b) That the Contracting Authority expected quality of the methodology for the proposed project.**
- c) That during the evaluation process the Evaluation Board noted 'lack of understanding' of the concept of the tender by the Appellant.**
- d) There was lack of understanding to conduct a study on a 'Reference Buildings' by the Appellant.**
- e) That although this form of Tender relates to a new field, all bidders understood the contents of the tender as there were no requests for clarifications.**
- f) This proves that the tender documents were clear.**

**Reached the following conclusions:**

- 1. The Contracting Authority gave a clear explanation of how points were allocated to the prospective bidders and in the Board's opinion the system utilised was scientific and just.**
- 2. That the preferred bidder was 'administratively and technically compliant'**

3. **This was a new project of its kind, and the preferred bidder had a full detailed method strategy regarding deliverables and measures for ensuring quality of the assignment.**

**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

*13<sup>th</sup> August 2013*