

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 617**

**FTS 45/13**

**Tender for the Supply and Installation of Extra Low Voltage Systems at the Child Care Centre at Gzira.**

The tender was published on the 23<sup>rd</sup> July 2013. The closing date was the 12<sup>th</sup> August 2013. The estimated value of the Tender was €21,758.47 (Exclusive of VAT).

Two (2) bidders had submitted an offer.

On the 29<sup>th</sup> August 2013, ELV Engineering Ltd, filed an objection against the rejection of its offer as being administratively and technically non compliant and against the cancellation of the tender.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancillieri as members convened a hearing on Tuesday 22nd October 2013 to discuss the appeal.

**Present for the Hearing:**

### **ELV Engineering Services Limited - Appellant**

Mr Anthony Buttigieg	Managing Director
Mr Mark Agius Fernandez	Representative
Dr Carlos Bugeja	Legal Representative

### **Foundation for Tomorrow's Schools - Contracting Authority**

Mr Christopher Pullicino	Chairman Evaluation Board
Ing. Vincent Rapa	Member Evaluation Board
Mr Ivan Zammit	Member Evaluation Board
Ing. Albert Ellul	Representative

Following a brief introduction by the Chairman, Public Contracts Review Board, appellant's representative was invited to make his submissions on the objection.

Dr Carlos Bugeja on behalf of the appellant stated that his client's tender offer was found to be administratively non compliant because the first page of the tender form was missing. Dr Bugeja explained that appellant made some changes to the format of the first page of the tender, but all the details were included. All the information that had to be filled in page one as requested in the original form, was included in the new format. It was just a cosmetic change. Clause 16.1, cited in the letter of refusal, claiming that no rectification was allowed, does not apply to this case as all information had been submitted.

The appellant's bid was also disqualified because it was allegedly technically non-compliant as the appellant failed to submit required datasheets in connection with three items. Dr Bugeja contended that the tender document did not ask for the submission of any datasheets. Since no datasheets were requested in the tender document it is contended that appellant's bid could not be rejected because of the non-submission of these datasheets. There was no need to submit detailed specifications. Appellant with the tender duly submitted all the necessary certifications.

Mr Anthony Buttigieg for appellant explained that:

- i. The first item whose datasheets were allegedly not submitted, was the "Cable for the Fire Alarm System." In appellant's offer it was stated that what was to be supplied conformed to British Standard BS 5839 as requested. This cable that appellant offered was up to standard as it is illegal not to use this standard cable for fitting fire alarms.
- ii. The Cat 5e cable and the cable for the CCTV system can be considered together because they are the same type of cable. As the cameras requested are IP cameras, the cable used is network cable. According to the tender conditions, once this cable is installed it has to be tested therefore appellant could never have chosen to install an inferior cable because it would fail the test.

Dr Carlos Bugeja stated that appellant's bid was certainly not 'administratively non-compliant' and one has to take into consideration that appellant's bid was the most advantageous offer.

Mr Ivan Zammit on behalf of the contracting authority said that appellant's tender was not disqualified of page one that was changed because that is just the cover page of the tender document. Appellant's bid was specifically disqualified because of the tender form. This tender form comprises pages 16, 17 and 18 of the tender document and these were not filled in by the appellant. These pages contained essential information about the bidder and about the offer such as sub-contracting and is missing from appellant's bid. The appellant's contact person is also missing. This was the person who would have legal ties with the contracting authority. Article 16.1 states that the tender must comprise the following duly completed documents. Sub section f) is qualified by note 3 and according to note 3 no rectification shall be allowed. The missing information could not be rectified because the evaluation board was precluded from asking appellant to rectify by producing the missing information. Article 30.3 Eligibility and Selection Compliance, states that tenders that are administratively compliant shall be technically evaluated, but in the evaluation board's opinion appellant's bid was not administratively compliant since no tender form was submitted.

The datasheets requested in page 19 of the tender documents refer to the technical literature of the bid. When the tender requested the datasheets of the fire alarm system it referred to all the components of the fire alarm system that is the alarm, cables and all components. The same could be said of the other items for which no datasheets were submitted. The contracting authority needed to know what each bidder was offering exactly.

Dr Carlos Bugeja stated that the appellant's tender included all the necessary information that it is being alleged was missing.

Here the Board went through appellant's bid and it was ascertained that page 16 did not exist; pages started from page 17.

Mr Anthony Buttigieg for appellant said that it is illegal to import a fire alarm cable from China. In the offer, all the items of the fire alarm system were included in the Bills of Quantity. This Bill of Quantity was filled in with great detail, every component of the alarm system.

Ing Albert Ellul for the contracting authority said that there was no information about the cables in appellant's offer. Cables are essential for the proper running of the systems. The evaluation board had to be careful as there were cases of previous tenders where all the cables failed the tests and had to be changed. It was discovered that the cables supplied had not been certified. In the present tender it was made a requirement that cables had to be certified.

Mr Anthony Buttigieg insisted that all installations were tested and if they failed it was the contractor who had to replace them. Appellant would not supply defective cable.

Mr Ivan Zammit on behalf of the contracting authority said that although the evaluation board made the technical evaluation of appellant's offer, the board did not need to do so. The price is the final item to be examined. There were no details regarding the cable.

The hearing was at this point brought to a close.

**This Board,**

**Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 29<sup>th</sup> August 2013 and also through the Appellant's verbal submissions during the hearing held on 22<sup>nd</sup> October 2013, had objected to the decision taken by the pertinent Authority, in that:**

- a) Appellant's bid was discarded as 'Administratively non compliant' due to a different presentation in format of the first page of the tender document.**
- b) All the requested information in the tender document was submitted by the Appellant.**

- c) **Appellant's Bid was not technically compliant as the Appellant did not submit the literature and data sheets of the products to be supplied, as specified in the tender document.**
- d) **The Appellant's bid was the cheapest.**

**Having considered the Contracting Authority's verbal submissions during the hearing held on 22<sup>nd</sup> October 2013, in that:**

- a) **The Appellant's bid was disqualified due to the simple fact that the essential pages of the tender document which had to contain vital technical details were missing.**
- b) **The data sheets requested in the tender document were of utmost importance to the Evaluation Board to establish the quality of the product being offered by the Appellant.**
- c) **The Evaluation Board, through experience, reaffirmed the importance of the requested information with regards to the cables being used in the system as offered by the Appellant. This was missing.**

**Reached the following conclusions:**

1. **From the submissions made by both the Appellant and the Contracting Authority, this Board feels that the information and data not submitted by the Appellant was most important for the evaluation of the Appellant's bid. Due to the fact that this was missing the Evaluation Board was not in a position to assess the Appellant's offer from the technical point of view.**
2. **Although the Appellant's bid was the cheapest, the same offer lacked the necessary technical data that was mandatorily required in the tender document.**

**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. Lawrence Ancillieri  
Member

*20 November 2013*