

PUBLIC CONTRACTS REVIEW BOARD

Case No. 625

MRRA/A/1/2013/1

Tender for the Purchase of Water Purification System for the Plant Tissue Culture Lab.

The tender was published on the 21st June 2013. The closing date was the 12th July 2013. The estimated value of the Tender was: €46,000 (Exclusive of VAT).

Three (3) bidders had submitted offers for this tender.

On the 15th October 2013 Reactilab Limited filed an objection against the decision to discard its offer as being administratively non-compliant.

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 Thursday 31st October 2013 to discuss the appeal.

Present for the hearing were:

Reactilab Limited - Appellant

Mr Stephen Debono	Representative
Mr Johann Mifsud	Representative
Dr John Gauci	Legal Representative

Evolve Limited - Preferred Bidder

Mr Lawrence Zammit	Representative
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Plant Health Directorate - Contracting Authority

Ms Maureen Delia	Chairperson Evaluation Board
Mr Matthew Tabone	Member Evaluation Board
Mr Chris Leone Ganado	Member Evaluation Board
Mr Michael Sciberras	Member Evaluation Board
Ms Marika Gatt	Head of Contracting Authority
Dr Abigail Caruana	Legal Representative

The Chairman made a brief introduction and the appellant's representative was invited to make his submissions.

Dr John Gauci on behalf of the appellant said that his client was declared to be administratively non compliant because the evaluation board said that the documents requested in Clauses 1.2.8 and 8.3 of the tender were not submitted. Dr Gauci insisted that his client had submitted all the necessary documents. While the letter of rejection mentioned the said Clauses, strangely it was not explained to appellant what documents were not submitted. Dr Gauci contended that his client's bid had no missing documents. Clause 1.2.8 states that the tenderers are to submit a) detailed technical specifications, which were submitted; b) user manual, with full instructions that was also submitted; c) certificate of local company representation, does not apply but was still submitted; and d) guarantee for parts and after sales services, that was also supplied according to the template provided. The evaluation board should have indicated which documents were missing. Clause 8.3 .1 is practically a reflection of Clause 1.2.8 and there was no need to repeat what is stated above.

Dr Abigail Caruana on behalf of the contracting authority stated that Clause 1.2.8 explained which documents had to be submitted and specified that failure to comply will render the offer null. In appellant's case, the user manual was missing. Dr Caruana explained that only a part of the manual had been submitted. The user manual had to be submitted with full instructions. The required system could be made up of several components that together comprised the purification system. Appellant provided the user manual of only one component of the system proposed. The system submitted by appellant was composed of three units were the Select Analyst, Select Neptune and the Select Pump and Tank, but the manual submitted was for the Select Tank and Pump only. No manual for the Analyst and Neptune were submitted. The contracting authority required the user manuals for the whole system and therefore appellant's bid did not comply with Clause 1.2.8 and was null.

The Chairman inquired why no clarification had been requested.

Dr Abigail Caruana said according to Clause 2.1.3 the evaluation board could have asked for rectification but this could not be done for Clause 1.2.8. Rectification was admissible only under Clauses 1.2.3, 1.2.5, 1.2.6, and 1.2.7. Clause 1.2.8 allowed no rectification.

Dr Gauci remarked that therefore it was not a document that was missing but part of a document. Not as the letter of rejection claimed. It was a case of incomplete documentation but not of missing documentation. He contended that Clause 2.1 at page 16 of the tender speaks of contractor and not bidder and thus refers to actions after the award of the tender. It was intended that whoever was awarded the tender would have to submit the listed literature with the equipment. So it is a case where the cheapest bidder was disqualified because of a part of a document when, if awarded the tender, the appellant was obliged to provide the missing documents with the equipment. It was clear that the tender was referring to contractor because the tenderers do not provide the equipment unless awarded the tender. Dr Gauci contended that special conditions overruled general conditions.

The Chairman remarked that the fact remains that appellant's bid failed to include important documents required by the contracting authority.

Dr Gauci reiterated that he was only given the reason for disqualification now. It is evident now that his client's bid was only disqualified because of the user manual and not a set of

documents as stated in the letter of rejection. He referred to a recent decision handed out by this Board in the tender TWD 03/2012 which dealt with the wind monitoring system in Gozo where the submitted technical literature was erroneous. But this Board decided a clarification should have been issued.

Dr Abigail Caruana rebutted what was stated by the appellant's representative because all bidders when submitting an offer accept the tender conditions and are bound by them. Clause 2.1.1 states that bidders accept the tender in full and abide by it. Clause 2.1.11 states that tenderers, 'shall provide all the documents required by the provisions of the tender without exception'. Page 18 of the tender document is a declaration that bidders accept all the conditions and obligations of the tender. The letter of rejection just cited the Clause relative to the non-compliance of the tender bid. Stating the specific reason would have not changed anything of substance.

Ms Maureen Delia, Senior Pharmacist, and Chairperson of the evaluation board under oath stated that the relative clause asking for manuals is used in all the tenders, because the evaluation board wanted to inspect in detail the workings. The equipment submitted by the appellant consisted of three components. The only user manual submitted was for the pump and tank. All the other technical literature was submitted. The reason for exclusion was the missing user manual. The evaluation board had asked for the advice of the ministry's procurement officer if the user manual could be asked for in a clarification. There were other bidders that were disqualified because of the same non submission of the user manual. The technical specifications of the appellant's bid were not evaluated because it was administratively non compliant. Replying to a question by the Chairman Ms Delia replied that the preferred bidder's user manual was examined in detail by the evaluation board. The least important part of the equipment was the pump and tank yet the user manual was supplied only for this part. No manual for the other important components were submitted.

Dr Abigail Caruana finally referred to page 15 of the tender document the hardware specifications of the system. Point 1.5 states that it must be safe and easy to use. To evaluate this you needed a user manual.

Mr Lawrence Zammit on behalf of the preferred bidder agreed that the user manual should have been submitted.

The hearing was at this point brought to an end.

This Board,

Having noted the Appellant's objection ,in terms of the 'Reasoned Letter of Objection' dated 14th October 2013 and also through the Appellant's verbal submissions during the hearing held on 31st October 2013, had objected to the decision taken by the pertinent Authority, in that :

- a) **The Appellant's bid was declared 'administratively non compliant' for the alleged failure to submit all documentation required in the tender document. In this regard, the Contracting Authority failed to inform the Appellant of the missing documentation.**

- b) The Appellant was only made aware during the hearing as to what was missing in the Appellant's bid. The missing document is now being established as being the User Manual of part of the system being offered by the Appellant.**

Having considered the Contracting Authority's submissions during the hearing held on 31st October 2013, in that:

- a) The Appellant failed to submit the User manual of a section of system.**
- b) The Evaluation Board insists that under Clause 1.2.8., no rectification is allowed.**
- c) The tender document clearly stated and identified the documentation that had to be submitted by the tenderer. In fact, it was stated that unless all documentation as requested is submitted, a tender will be considered as null and void.**

Reached the following conclusions:

- 1. From the submissions made by both the Appellant and the Contracting Authority, it is evidently clear that the User Manual which was not submitted by the Appellant was of great importance for the Evaluation Board to assess the Appellant's bid from the technical side.**
- 2. The Appellant was aware of the documentation which had to be submitted.**
- 3. The Appellant was also advised that if a tender document is not accompanied by all the required information, the tender will be declared null and void.**

In view of the above, This Board finds against the Appellant Company, however due to circumstances, it recommends that the deposit paid by the Appellant should be reimbursed.

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Richard A. Matrenza
Member

4 December 2013