

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 646**

**MRRA/A/1/2013**

**Tender for the Supply, Delivery, Installation and Commissioning of an Autoclave at Plant Health Directorate.**

The tender was published on the 4<sup>th</sup> June 2013. The closing date was the 25<sup>th</sup> June 2013.

The estimated value of the Tender was €18,000 (Exclusive of VAT)

Six (6) bidders had submitted an offer for this tender.

On the 2<sup>nd</sup> December 2013 Al-Nibras for Science & Technology Limited filed an objection against the rejection of its offer as being administratively non compliant and the award of the tender to Reactilab Limited.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a hearing on Tuesday the 7<sup>th</sup> January 2014 to discuss the objection.

Present for the hearing were:

### **Al-Nibras for Science & Technology Limited - Appellant**

Mr Sandro Ciliberti	Representative
Mr Noel Delia	Representative
Dr Marco Ciliberti	Legal Representative

### **Reactilab Limited - Preferred Bidder**

Mr Stephen Debono	Representative
Dr John Gauci	Legal Representative

### **Plant Health Directorate - Contracting Authority**

Ms Maureen Delia	Chairperson Evaluation board
Ms Moira Bonello	Secretary Evaluation board
Mr Noel Demicoli	Member Evaluation board
Mr Chris Leone Ganado	Member Evaluation board
Mr Darren Vella	Member Evaluation board
Dr Marica Gatt	Director
Dr Abigail Caruana	Legal Representative

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

Dr Marco Ciliberti on behalf of the appellant stated that his client's bid had been rejected as being administratively non compliant because the offer did not submit the user's manual. He said that the appellant offered a specially customized model manufactured in order to be according to the specifications of the tender. In fact the compliance table submitted with the bid gives in detail what had been requested and what the model offered. Since the model offered was custom-made and specifically manufactured for this tender, the manufacturer did not have a specific users' manual for the model, and appellant could only submit the general literature and brochures which still contained the required information. The model submitted was fully technically compliant. This manual would only have shown how to use the programs of the autoclave.

Mr Noel Delia on behalf of the appellant said that the autoclave requested by the contracting authority was very specific and had to possess certain features. Appellant's supplier, the manufacturer had it made specifically for the tender according to the required specifications. The submitted technical literature related to the basic model. Appellant with bid submitted a list of the programs which the autoclave was capable of running. All the programs were clearly shown and illustrated. Appellant offered a custom made model 505 which was the basic model customized to clients, the contracting authority's needs. Appellant's offer included general manual and two brochures that showed all the specifications of the model. With the order, manufacturer would have compiled the relative user manual. This could not be submitted at this stage but appellant submitted manuals of the other models made by the manufacturer. The compliance table submitted by appellant made this clear and explained what was being offered.

Dr Abigail Caruana on behalf of the contracting authority said that appellant is admitting that the user manual was not submitted with the offer. The tender document at Clause 1.2.8 is very clear that the submission of the manual was a requisite. It was necessary in order to allow the evaluation board to make assessments of the submitted autoclaves. This fact was reiterated several times in the tender document, clause 8.3.1 and 8.6 user manual with full instructions had to be submitted. The appellant's offer failed at the administratively compliance stage. All bidders signed a declaration that they accepted all the tender conditions in full. Clause 2.1.11 required the submission of all the requested documents.

Ms Maureen Delia, chairperson of the evaluation board, replying to a question by the chairman replied that although the appellant's tender failed at the administrative compliance stage, the evaluation board still went through and examined the literature submitted by appellant. From the information submitted the board could see that although the tender asked for a free standing model, the literature submitted by appellant was seen to offer a bench top model.

Mr Sandro Ciliberti on behalf of the appellant in this specific tender the contracting authority seem to have prepared for the contingency of being offered a custom made model because it indicated in parenthesis (technical specifications) just after user manual in the definition of user manual and this is not usually written in other tenders. The appellant's offer explained that the custom made model would be free standing and according to the requirements of the end user. The proper user manual would have been provided later after the model was manufactured.

Dr Abigail Caruana stated that the appellant nowhere indicated in the tender document that a custom made model was being submitted. It is the first time, here during the hearing, that the contracting authority was informed that appellant was submitting a custom made autoclave. Replying to a question by the chairman, Dr Abigail Caruana said that the preferred bidder had not only submitted a user manual, but also indicated how to repair any damages that developed in the product.

Mr Stephen Debono for the preferred bidder stated that in fact the product offered by the preferred bidder was an off the shelf product.

Dr Marco Ciliberti reiterated that 'user manual' in the tender had in parenthesis at 1.2.8 the words 'technical illustrated literature'. Dr Abigail Caruana emphasized that the preferred bidder had also given instructions to effect repairs, but this was not asked for by the tender documents. The Chairperson of the evaluation board stated that the board had examined the literature submitted by appellant. This meant that the evaluation board should have noticed that the model was in fact free standing as requested. This is shown in page 1 of the technical specifications says vertical autoclave. It is also shown graphically later on how the offered autoclave looks, the customized model.

Mr Noel Delia for the appellant stated that appellant could have opted for an off the shelf model but this would have been more costly. That was why appellant offered a customized, in order to be able to make a more advantageous offer to the contracting authority.

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 2<sup>nd</sup> December 2013 and also through Appellant's verbal submissions during the hearing held on 7<sup>th</sup> January 2014, had objected to the decision taken by the pertinent Authority , in that:**

- a) Appellant claims that his offer was discarded as 'Administratively non compliant' due to the fact that he did not submit a 'User Manual' with his tender.**
- b) Appellant contends that, since the product he offered was 'Custom Made', he could not submit the 'User Manual' prior to the award of the tender.**
- c) The Appellant's product was 'technically compliant'**

**Having considered the Contracting Authority's verbal submissions during the hearing held on 7<sup>th</sup> January 2014, in that:**

- a) Appellant was well aware that the submission of a 'User Manual' was mandatory.**

- b) The valid reason why such documentation was requested, was to enable the Evaluation Board to assess the technical aspects of the Appellant's bid in the most professional manner.**
- c) Appellant did not inform the Contracting Authority that the product being offered in his bid was 'Custom Made' neither did he informed the Contracting Authority that a 'User Manual' will be supplied after the award of the tender.**

**Reached the following conclusions:**

- 1. This Board opines that whenever supplementary documentation is requested in a tender document, same should be regarded as a mandatory requirement complimenting the tender documentation. Failure to submit such documentation is definitely deemed 'Administratively non Compliant.**
- 2. The documentation which the Appellant failed to submit was pivotal for the Evaluation Board in assessing the technical qualities of the product being offered by the Appellant.**
- 3. The Appellant failed to inform in his submissions that the product being offered was 'Custom Made'. He also failed to inform the Contracting Authority that the 'User Manual' would be made available after the manufacture of the same product.**
- 4. The onus was on the Appellant to inform the Contracting Authority of such issues and not vice versa.**

**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**

*12 February 2014*