

PUBLIC CONTRACTS REVIEW BOARD

Case No. 662

NTBC 36/2013

Tender for the Supply, Delivery, Installation and Commissioning of Equipment for Setting Up of Nucleic Acid Testing Laboratory in the NBTC.

The tender was published on the 5th April 2013 and the closing date was on the 6th May 2013.

The estimated value of the tender was €93,152.00 (Exclusive of VAT)

Five (5) bidders had submitted an offer for this tender.

On the 15th November 2013 Levo Laboratory Services Limited filed an objection against the rejection of its bid as being technically 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 Tuesday 4th February 2014 to discuss this objection.

Present for the hearing were:

Levo Laboratory Services Limited - Appellant

Mr Joseph Vella	Representative
Mr Marc Vella	Representative

Al-Nibras for Science and Technology - Preferred Bidder

Mr Sandro Ciliberti	Representative
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Ministry for Health - Contracting Authority

Dr Alex Aquilina	Chairman Evaluation Board
Mr Paul Mercieca	Secretary Evaluation Board
Ms Victoria Borg	Member Evaluation Board
Ms Sephora Aquilina	Member Evaluation Board
Ms Graziella Zahra	Member Evaluation Board

Following a brief introduction by the Chairman, the appellant's representative was invited to explain the reasons for the objection.

Mr Marc Vella on behalf of the appellant explained that this tender required the supply of two cabinets, C and D. One of the reasons why appellant's bid had been rejected was because it offered cabinet C equipped with two electrical sockets instead of the requested three as per clause C 2.3. He added that the unit offered by appellant the Flowfast V 12 came supplied with one socket, but appellant had declared in the tender that the price included the installation of an additional 2 socket outlets per cabinet. In fact the two cabinets as proposed were supplied with six outlets, three per unit. The two other reasons for the rejection were that for both cabinets C and D, the appellant had offered equipment where the Ultra Violet light was not built in as requested in the specifications, clauses C.2.5 and D.2.5 respectively.

Mr Joseph Vella for the appellant explained that the unit as supplied by the manufacturer has one electric socket, but the manufacturer had added another two sockets at appellant's request to be according to specifications. He explained that the UV light serves to sterilize and the tender requested that this light be built in. Appellant offered a unit supplied with UV light but which was removable.

Mr Marc Vella for the appellant continued that the UV light in the equipment offered by appellant was considered to be built-in by the supplier. That the UV light was moveable does not mean that it is not built-in. The light is in fact an integral part of the equipment and is attached with magnets but is controlled by the microprocessor that serves the unit. The cabinet cannot be opened while the UV light is on preventing the user from inserting his hand into the cabinet with the light on. The units are also fitted with timer and the life of the UV lamp is shown. However Mr Vella continued that the UV light alone is not sufficient since it is a consumable and the efficiency decreases with time. Other practices are recommended, like cleaning of the cabinet. Since the UV light offered by appellant is not fixed, it can easily be removed for cleaning the inside of the cabinet and enabling different areas to be selected for sterilization

Dr Alex Aquilina Director Blood Transfusion Service, on behalf of the contracting authority, on the first reason for rejection said that evaluation board had to adjudicate by what the bidders submit in their tender. The information supplied by appellant for the electrical equipment was that it had one socket, and added that code fx0002124900 in the information sheet had "additional service connection". There was nowhere indicated that these additional services were for socket outlets. For the other, fx00012149500 it was clearly specified that this was an additional socket. In the tender Compliance Sheet which had tick boxes where bidders indicated compliance, the appellant ticked the NO box where it stated if the UV light was built-in or not. This was repeated for both the cabinets C and D. That the UV light had to be built in was required because when the equipment validation was made. The UV was used for sterilizing and the position it is installed is critical because it has to reach the whole of the cabinet. That the UV is fixed makes it simpler to validate the sterilization process. It is preferable for the light to be fixed.

Mr Marc Vella stated that he thinks that the adjudication board misinterpreted appellant's submission regarding the socket outlets.

Mr Joseph Vella said that the evaluation board should have asked for clarification. The submission, under "standard fittings" stated that appellant put down that one service

connection is standard for Flowfast V12. Why was it therefore that the letter of rejection mentioned that appellant's bid had two service connections?

Mr Marc Vella continued that the specifications did not specify that the UV light had to be fixed but that it had to be built-in. There are different interpretations as to what built-in means, it could be ambiguous. Appellant contends that he submitted equipment that was considered built-in with timer. The supplier interpreted also in this way since it was integrated. The contracting authority interpreted it differently.

Dr Alex Aquilina for the contracting authority stated that appellant's offer specifically stated that it was not built-in. The board had to adjudicate by what it had before it.

Mr Joseph Vella for appellant said that although the bid stated NO for the tick box of whether the UV light was built in, the light was an integral part of the equipment submitted by appellant.

Mr Sandro Ciliberti for the preferred bidder stated that the UV light was the most vital part of the cabinet. In fact the lamp has a timer which shows the time it has been used. The positioning of the lamp is essential for the proper working of the cabinet therefore it was important that it was built-in and not moveable as otherwise proper validation could not be made.

Mr Marc Vella said that it is not easy to change the UV light because it is enclosed. He stated that reliance only on the UV light is nowadays not being recommended. Proper cleaning of the cabinets is being recommended. That is why equipment submitted by appellant was moveable.

The hearing was brought to a close at this point.

This Board,

Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 14th November 2013 and also through Appellant's verbal submissions during the hearing held on 4th February 2014, had objected to the decision taken by the pertinent Authority, in that:

- a) Appellant felt aggrieved for having his offer discarded on technical grounds due to the fact that the cabinets being offered had 2 electrical sockets instead of 3. Appellant stated in his offer that included in the bid there was a provision for the installation of 2 additional sockets in each cabinet.**
- b) Appellant insisted that the UV light was built in. It is however moveable and not fixed but is regarded as built in.**

Having considered the Contracting Authority's verbal submissions during the hearing held on 4th February 2014, in that:

- a) Appellant stated in his offer that the cabinets had one socket.**

b) Appellant's offer specifically stated that the UV light was not built in.

Reached the following conclusions:

- 1. Any Adjudicating Board evaluates an offer on the information and documentation submitted by the tenderer. From submissions made during the hearing held on 4th February 2014, it was evidently clear that the Appellant offer did not meet the specifications as laid out in the tender document.**

- 2. The UV Light was not fixed although it was located inside the cabinet. From scientific and technical submissions made by the Evaluation Board, this Board was made aware of the great importance of the UV light being fixed and not moveable.**

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

3 March 2014