

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 734**

**MCH 86/2014**

**Call for Quotes for the Supply, Installation and Commissioning of Inverter Type Air Conditioning Units to the Mental Health Services.**

The tender was published on the 17<sup>th</sup> June 2014. The closing date was the 24<sup>th</sup> June 2014. The estimated value of the Tender was €20,000 (Inclusive of VAT).

On the 22<sup>nd</sup> July 2014 Solar Engineering Ltd filed a letter of objection objecting to the disqualification of their tender.

Six (6) bidders had participated in this tender.

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 9<sup>th</sup> September 2014 to discuss the objection.

Present for the hearing were:

### **Solar Engineering Ltd - Appellant**

Mr Anthony Saliba	Representative
Dr Angele Formosa	Legal Representative

### **Arjakon Ltd - Preferred Bidder**

No representatives

### **Mental Health Services - Contracting Authority**

Mr Gilbert Bonnici	Chairperson Evaluation Board
Ing. Franco Cassar	Representative
Dr Carina Nagiah	Legal Advisor

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

Dr Angele Formosa on behalf of the appellant explained that the call was for inverter type air conditioners, inverter type and appellant's offer was disqualified because a) the literature had not been submitted in either Maltese or English and b) it was not clear which model air conditioner was being offered. The tender states that the manuals have to be in Maltese or English and is qualified by having "where applicable". She contended that appellant interpreted this as not being mandatory. It was only one sheet containing the numerical data that was not in either Maltese or English, and she insists that this should not have led to the disqualification. The contracting authority could have asked for clarifications but did not.

Regarding the second reason for disqualification, Dr Formosa said that since the tender called for 12 Btu air conditioners, it should have been obvious that the appellant was offering 12 Btu units and not 10 Btu units. The data sheet showed both types of units, but as the call was for 12Btu the appellant would not submit 10 Btu. Again the authority should have asked for clarifications. Dr Formosa insisted that appellant's tender was the most economically advantageous tender and therefore according to Regulation 28(3) of the Public Procurement Regulations, should have been awarded.

Dr Carina Nagiah on behalf of the contracting authority said that the call specified clearly that specifications and manuals had to be in either Maltese or English. This was in the second paragraph of page 11 of the call for quotations. Thus it was mandatory. Even the Web site where the tender was indicated clearly states "Kindly attach literature in English or Maltese regarding the products being used to render this service." Furthermore the tender would be awarded to the "cheapest offer that is fully compliant with the administrative, technical and financial requirements." In appellant's offer, the first two pages were in Italian and these contain the technical specifications. The third page does not contain only numbers as alleged by appellant; the literature contained explanations of the items listed and these were also in Italian. The only information submitted by appellant with the tender referred to parts and components and not to the air conditioners themselves.

The Chairman remarked that the contracting authority failed to submit all the documents including all the offers, for the perusal of the Board, and insisted that these be made available.

Mr Anthony Saliba said that it was assumed that since this was an electronic tender, the necessary documents would be downloaded at the PCRB. He promised that he would be submitting the offers later, within one week.

Dr Nagiah finally said that although appellant had submitted literature for four types of air conditioners, failed to indicate which of these were being offered.

At this point the hearing was adjourned for another date for the submission of the other offers by the contracting authority.

## **2<sup>nd</sup> Hearing**

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 16<sup>th</sup> September 2014 to continue hearing the objection.

Present for the second hearing:

### **Mental Health Services - Contracting Authority**

Mr Gilbert Bonnici	Chairman Evaluation Board
Dr Carina Nagiah	Legal Advisor

No other persons on behalf of the appellant or the preferred bidder were present.

The Chairman pointed out that the requested documents (the other offers) had been produced on Friday and therefore there was no need for any submissions to be made.

Dr Carina Nagiah for the contracting authority explained that during the last hearing she did not conclude her submissions and wished to do so at the second hearing. She said that appellant had produced specifications of 4 different types of air conditioning units, QI inverter 10, QI inverter 12, Q+ inverter 12 and Q+ inverter 10. However appellant failed to specify in the tender which of these four would be provided. It must also be noted that these specifications were in Italian. If QI 10 and Q+10 were ignored and the Evaluation Board only considered QI 12 and Q+ 12 there was still a problem since one of these was non-compliant with the requirements. The evaluation board could not ask for rectification but only for clarification.

The hearing was closed.

### **This Board,**

**Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 22<sup>nd</sup> July 2014 and also through Appellant's verbal submissions during the hearing held on 9<sup>th</sup> September 2014, had objected to the decision taken by the pertinent Authority, in that:**

- a) Appellant Company contends that its offer was unfairly discarded due to the simple fact that one of the pages in the literature accompanying the tender document was in Italian. Appellant contends that the Contracting Authority could have asked for clarifications;**
- b) Appellant claims that the units which were being offered in his tender document were of 12 BTU's and not 10 BTU's. In this regard, Appellant contends that he was fully aware of what he had to supply.**

**Having considered the Contracting Authority's verbal submissions during the hearing held on 9<sup>th</sup> September 2014, in that:**

- a) The Contracting Authority contends that the tender document clearly dictated that 'Specifications and Manuals had to be submitted in Maltese or English' as stipulated in the second paragraph of page 11 of the tender document. Appellant Company submitted two pages of technical specifications in Italian;**

- b) Appellant failed to indicate which type of ‘Air Conditioner’, his offer was referring to.

Reached the following conclusions:

1. This Board insists that, conditions are stipulated in a tender document in order to ensure clear understanding of what the particular tender is requesting, and in this regard all conditions therein must be respected by the prospective tenderer. The tender document in the second paragraph of page 11 stated that ‘all literature and manuals must be submitted either in Maltese or English. No other language is acceptable. In this regard, Appellant Company included two pages of technical specifications in the Italian language. It is an established fact that the terminology, sometimes, is interpreted in different ways, so that confusion can arise in assessing the technical compatibility of a particular product. Appellant failed to submit a translated version of these two pages, so that the Evaluation Board could more easily understand the specifications of the tendered product of Appellant. This Board also opines that the Contracting Authority could not ask for clarifications as this would have been a rectification. In this regard, this Board does not uphold the Appellant Company’s contention.
2. The fact that the Appellant Company submitted the literature of the various types of Air Conditioners which Appellant could offer does not necessarily imply or indicate the actual type of Air Conditioner being offered by Appellant. The tender document requested Air Conditioners of 12 BTU’s and the tenderer had to actually indicate the correct type Appellant is offering and again, in this regard, the same Appellant failed to specify the type of Air Conditioner to be supplied by same. This was a mandatory condition in the tender document and in this respect this Board does not uphold Appellant’s contentions.
3. This Board also opines that a Prospective Tenderer is in duty bound to abide by all the conditions stipulated in a tender document as these are not capriciously dictated; they are stipulated in order to ensure proper evaluation of all tenders in a just and transparent manner.

In view of the above, this Board finds against the Appellant Company and recommends that the deposit paid by Appellant should not be reimbursed.

Dr. Anthony Cassar  
Chairman

Dr. Charles Cassar  
Member

Mr. Lawrence Ancillieri  
Member

*2 October 2014*

