

PUBLIC CONTRACTS REVIEW BOARD

Case No. 781

MEAIM 236/2014

Tender for the Provision of Cleaning Services at the Premises Pertaining to the Ministry for European Affairs and Implementation of the Electoral Manifesto, using Environmentally Friendly Cleaning Products and Equipment.

The tender was published on the 12th August 2014. The closing date was the 5th September 2014.

The estimated value of the Tender was €120,000 (Exclusive of VAT)

Eight (8) bidders had submitted an offer for this tender.

On the 18th December 2014 Messrs. Dimbros Limited filed an objection against their tender being considered 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 Thursday the 12th February 2015 to discuss the objection.

Present for the hearing were:

Dimbros Limited - Appellant

Mr Melchior Dimech	Representative
Dr Franco Galea	Legal Representative
Dr Douglas Aquilina	Observer

TF Services Limited - Preferred Bidder

No representatives were present

Ministry for European Affairs and Implementation of Electoral Manifesto - Contracting Authority

Mr Victor Mallia	Chairperson Evaluation Board
Mr Paul Pace	Secretary Evaluation Board
Ms Melissa Xuereb	Member Evaluation Board
Mr Johan Galea	Observer
Mr Etienne Bonello	Representative
Ms Audrey Anne Anastasi	Technical Expert

The Chairman made a brief introduction and asked appellant's representative to make his submissions on the objections.

Dr Franco Galea for the appellant firm Dimbros Limited referred to the four points about four products on which his client's tender had been rejected. He claimed that some of the items mentioned in these four points were in fact not declared by the appellant as going to be used in the tender submission. Other products mentioned in the four points are in fact acceptable to be used according to specifications. He referred also to a list "Appendix 1" enclosed with appellant's tender where appellant listed the products that were going to be used in providing the service. Bidders had to submit literature about the products mentioned in the list. Inadvertently appellant had submitted literature referring to ROBO bleach, but this was not going to be used and was not listed in appendix 1. His client had obtained information from the suppliers about the products that would be used. In addition he had obtained declarations from the MCCA covering the products showing that these were registered and could be used. It was not understood how the contracting authority obtained different results from the same MCCA.

At this point the question of whether the evaluation board had seen appellant's appendix 1 was raised. The Chairman remarked that the evaluation board could not have processed appellant's tender without having seen this document.

Dr Franco Galea pointed out that ROBO bleach was not listed in the same document, but inadvertently the literature for this product was included with the other literature. Regarding Rexoguard he said that appellant had submitted the technical data provided by the local supplier of this product. Furthermore appellant had asked about the product from the MCCA and it resulted that it was registered and at this point filed a copy of an email by Ms Audrey Anne Anastasi from the MCCA stating that the product can be used. Dr Galea continued making submissions on the other products that caused the disqualification of appellant's tender.

1. Weiman Furniture Cleaner: appellant had submitted the technical literature from where it can be seen that the SPDL of the product stated that it could be used.
2. WC Net Bleach Gel: appellant had been told that the product was not registered. Dr Galea contended that any product that is on the local market must be registered. The product in question is imported by Alf Mizzi & Sons and is widely available on the market. Thus the product is presumably registered and conforms to the law. Here, photos of the product in question on supermarket shelves were produced.

Ms Audrey Anne Anastasi on behalf of the contracting authority said that the question of ROBO bleach has been clarified by the appellant. Regarding Rexoguard she admitted that the product was registered but appellant had failed to include a list of its ingredients, risk phrases and CAS numbers as requested in the tender document. WC Net Extra white is registered and can be used. However this being a green tender, products that are toxic to marine organisms because they contain chemicals classified as R50/53 cannot be used and this product contained such chemicals.

Dr Franco Galea admitted and explained that once again the evaluation board were misled. Appellant was only going to use WC Net but had inadvertently also submitted literature regarding WC Net Extra White and WC Net Intense which were not going to be used in the

service.

Ms Audrey Anne Anastasi for the contracting authority continued to state that appellant failed to submit the list of risk phrases for the furniture cleaner. The risk phrases should be numbered and listed. These have to be written down as otherwise it would not be according to European Union Law.

Dr Franco Galea contends that the product was obtainable on the open market and was not being manufactured by appellant who had submitted the relevant Canadian Classification for the same product. The contracting authority could have checked with the MCCA for compatibility of these classifications. Toxic qualities and hazardous uses are listed and the specifications given. Appellant would have obtained the product from the market.

Ms Audrey Anne Anastasi for the contracting authority said that bidders should have followed the tender requirements. Not all products are checked by the MCCA. The tender required that bidders submit a list of risk phrases. It was up to the suppliers to list all the risk phrases of the products they produce.

Mr Etienne Bonello for the contracting authority explained that the contracting authority had no leeway and the tender had to follow exactly the requirements of green procurement. Also the tender did not allow for rectification and since the information about Rexoguard was not submitted the appellant could not be asked to rectify. There were other bidders who were disqualified for the same reasons. He insisted that bidders should submit all that was requested from them.

Dr Franco Galea insisted that this would not have been rectification but a clarification. The end user had no control over products that are on the open market. Appellant was not going to import these products himself. He reiterated that the MCCA had registered the product Rexoguard and was thus aware of the product's specifications. Yet the same authority, now functioning as an expert guiding the contracting authority was saying that the product was not suitable since appellant failed to produce this information. Finally he pointed out that the appellant's bid was after all the cheapest offer.

The hearing was brought to a close.

This Board,

Having noted the Appellant's objection, in terms of the 'reasoned letter of objection' dated 18th December 2014, and also through Appellant's verbal submissions during the hearing held on 12th February 2015, had objection to the decision taken by the pertinent authority, in that:

- a) Appellant contends that his offer was in fact technically compliant and wished to the point out that the Evaluation Board could have been inadvertently misled by the literature submitted by Appellant. However, same listed the actual products which were to be applied in the tender service.**
- b) Appellant claims that, his offer was also the cheapest and the Evaluation Committee could have asked for clarifications.**

Having considered the Contracting Authority's verbal submission during the hearing held on 12th February 2015, in that:

- a) The Contracting Authority, although accepting the clarifications given by Appellant with regards to the acceptable use of 'Robo' bleach, Appellant still failed with regards to the technical specifications of 'WC Net Extra White'.**
- b) Appellant failed to submit the list of risk phrases for the furniture cleaner, as was requested in the tender document.**
- c) The Evaluation Board were in duty bound to follow the technical requirements as specified in the tender document and in this regard the Contracting Authority could not ask for a clarification on technical details which should have been submitted by Appellant.**

Reached the following conclusions:

- 1. This Board, after hearing credible submissions from the technical aspect, from the Contracting Authority, justifiably opines that since this was a green tender, the Evaluation Board were obliged to adhere strictly to the technical specifications as dictated in the tender document and as required in accordance with European Union Regulations. Although this Board notes that Appellant did in fact list and identify the products to be applied by same in 'Appendix 1', he did not submit the list of 'risk phrases of the furniture cleaner'. This Board does not uphold Appellant's first contention.**
- 2. With regards to Appellant's second contention, this Board opines that Appellant was well aware of the required technical ingredients of the products to be utilised. In this regard, the Evaluation Committee could not ask for missing information/documentation which was dictated in the tender document and not submitted by Appellant. This would have resulted in a 'rectification'. In this regard this Board does not uphold Appellant's second contention.**

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

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Richard A. Matrenza
Member

26 February 2015