

PUBLIC CONTRACTS REVIEW BOARD

Case No. 902

DH 1295/2015

Tender for the Supply of Consumables for Ricoh Printers.

The Tender was published on the 4th August 2015. The closing date was on the 17th September 2015. The estimated value of the Tender was €110,000.00 (Exclusive of VAT)

Nine (9) bids were submitted for this Tender.

On the 14th January 2016 SG Solutions Limited filed an objection against the decision taken by the Contracting Authority to reject their Tender on grounds of it not being 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 11th February 2016 to discuss the objection.

Present for the hearing were:

SG Solutions Limited:

Mr Edwin Attard	Representative
Dr Kris Borg	Legal Representative

MB Distributors Limited:

Mr Ian Darmanin	Managing Director
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Central Procurement and Supplies Unit:

Mr Wayne Caruana	Chairperson Evaluation Board
Mr Marnol Sultana	Secretary Evaluation Board
Mr Joseph Baldacchino	Member Evaluation Board
Mr Frankie Caruana	Member Evaluation Board
Dr Alexia J Farrugia Zrinzo	Legal Representative

The Chairman made a brief introduction and then invited the Appellants' representative to make his submissions.

Dr Kris Borg on behalf of the Appellants explained that his clients' Tender was disqualified because they omitted quoting for item 37 in the Bill of Quantities. He said that his clients were the local agents for Ricoh and were aware that printer SP 4100NL is not equipped with any toner waste bottle. Thus they did not quote a price for a non-existing part and had written down that the part did not exist. After being disqualified, the Appellants had confirmed with the Ricoh manufacturer and the latter confirmed that the printer in question does not have a separate toner waste bottle – the waste is stored in a compartment of the toner bottle itself.

Mr Edwin Attard, ID No. 29283M on behalf of Appellants under oath said that on the 5th February 2016 they had received confirmation from the Ricoh supplier that the printer in question, listed in item 37 of the bill of quantity did not have any waste toner bottle. The Appellant had quoted for the toner bottle which in fact had included inside it a compartment for waste toner.

Dr Alexia Farrugia Zrinzo on behalf of the Contracting Authority explained that the Appellant's Tender had in fact been rejected because it had omitted quoting a price for item 37. However, other bidders had in fact quoted for this item 37 and she could not understand why the Appellant did not do the same thing. She also explained that the latter's offer had not been the cheapest.

At this point the hearing was closed.

This Board,

Having noted the Appellant's Objection, in terms of the "Reasoned Letter of Objection" dated 14 January 2016 and also through their verbal submissions during the Public Hearing held on 11 February 2016, had objected to the decision taken by the Pertinent Authority, in that:

- a) The Appellant's main contention was the discarding of his offer due to the fact, that he did not quote for Item 37, which represented *"Ricoh Aficio SP 4100NL Waste Toner bottle"*.**

In this regard, the Appellant Company maintains that in its original submission, the latter has indicated the reason for not being able to quote for item 37, as requested in the Financial Bid form of Page 18 of the Tender Document.

This was due to the fact that the Appellant's offer did not necessitate this requirement and was to fulfil anyway the Technical Specifications as stipulated.

- b) The Appellant also provided evidence that although the offered product did not have any “Waste Toner Bottle”, the same product had this facility in its compartment for Waste Toner as requested.**

Having considered the Contracting Authority's “Letter of Reply” dated 2 February 2016 and also through the latter's verbal submissions during the Public Hearing held on 11 February 2016, in that:

- a) The Contracting Authority contends that the Appellant's bid was discarded due to the simple fact that he did not quote for Item 37 as stipulated in the “Financial Bid”, whilst at the same time, other bidders did quote for the same item.**

Reached the following conclusions:

- 1. With regards to the Appellant's First Grievance, this Board, after having examined the contents of the Appellant's tendered submission, would justifiably point out that, the latter did in fact inform the Contracting Authority that his offered product did not entail a "Waste Toner Bottle" as a separate item, but was incorporated in its waste compartment for the Toner. This Board is credibly comforted that the Appellant's bid would be technically compliant.**

This Board credibly notes that the fact that the Appellant offered a product which would cater for Item 37 of the "Financial Bid" in the Tender Document and yet not quoted a price for the same item, should not have been a deterrent to the Appellant's offer. In this regard, this Board credibly deems that the latter should not be discarded on this merit.

At the same instance, this Board notes that the only reason given by the Contracting Authority for the discarding of the Appellant's offer was that he did not quote for item 37 of the "Financial Bid", as stipulated in the Tender Document.

In this regard, this Board refers to the “*Letter of Rejection*” dated 11 January 2016 where the only reason stated was that “*Bidder did not submit all prices for the requested items in the Financial Bid Form. Not acceptable.*”

This Board credibly notes that during the Public Hearing held on 11 February 2016, the Contracting Authority made submissions which show that other bidders had quoted for item 37 and at the same time the Appellant’s offer was not the cheapest.

In this regard, this same Board opines that the fact that other bidders quoted for all items does not credibly justify the discarding of the Appellant’s bid.

This Board would like to point out that the merit of this Appeal is centred on the reasons given by the Contracting Authority for rejecting the Appellant’s offer. This Board credibly opines that the matter of price should not be considered during this Public Hearing as the latter factor was not stated in the “*Letter of Rejection*”.

In this regard, this Board justifiably points out that the only reason

for rejecting the Appellant's offer was the non-inclusion of the price of item 37 of the "*Financial Bid*" as stipulated in the Tender Document.

At the same instance, this Board credibly points out that the Appellant Company did inform the Contracting Authority, through a clearly underlying note that "*Waste Toner Bottle does not exist in SP4100NL*".

In this regard, this Board opines that the Appellant Company, through this "*important underlying note*" did induce the Contracting Authority to ask for a clarification as to why the Appellant did quote a "0" for this item.

Apart from this fact, there was no missing documentation from the Appellant's part, so as to render any clarification made by the Contracting Authority as a rectification. This Board, therefore, upholds the Appellant's First Grievance.

2. With regards to the Appellant's Second Grievance, this Board credibly notes the supplier's declaration, as submitted by the Appellant during the Public Hearing held on 11 February 2016, that

“Item 37” of the Appellant’s offer was, as stated by the Appellant in his original submission. In this regard, this Board upholds the Appellant’s Second Grievance.

In view of the above, this Board finds in favour of the Appellant Company and recommends that:

- i) The Appellant’s offer is to be re-integrated in the Evaluation Process;**

- ii) The deposit paid by the same Appellant is to be reimbursed.**

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Richard A Matrenza
Member

22 February 2016