

PUBLIC CONTRACTS REVIEW BOARD

Case No. 948 – GPS 2859/16: Call for Quotations for the Supply of Soft, Loose and Fixed Furniture, Refurbishment at CPSU Stores San Gwann.

The Tender was published on the 1st March 2016. The closing date was on the 15th March 2016. The estimated value of the Tender was €52,438.39 (Exclusive of VAT)

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

On the 24th May 2016 Anjo 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 23rd June 2016 to discuss the Objection.

Present for the hearing were:

Anjo Limited:

No representatives were present.

Omnistat Limited:

Mr Mark Schembri Representative

Central Procurement and Supplies Unit:

Mr Josef Borg	Chairperson Evaluation Board
Mr Joseph Xuereb	Secretary Evaluation Board
Mr Joe Formosa	Member Evaluation Board
Ms Alison Anastasi	Representative
Dr Stefan Zrinzo Azzopardi	Legal Representative

When the case was called no representative from the Appellant firm was present.

The Chairman informed those present that the Board had just been informed that the Appellant had thought that the hearing would be at 13.00. Appellant had been given twenty-five minutes in which to appear to make submissions.

The case was called at 10.30 am that is more than 45 minutes late and still nobody from Anjo Ltd had yet made an appearance. The Chairman explained that the Appellant had clearly been informed through an email of the 9th June 2016 that the case would be heard at 9.45 am and Appellant had acknowledged this through an email on the 21st June 2016.

The Chairman declared that the case would be decided on the submissions already made in writing by the Appellant in the Letter of Objection, and the Contracting Authority's Letter of Reply.

At this point the hearing was closed.

This Board,

Having noted the Appellant's Objection, in terms of the "*Reasoned Letter of Objection*", dated 24 May 2016, in that:

- a) Anjo Ltd contends that although he submitted three offers covering this Tender, he had only received one request for clarification without indicating to which offer the clarifications were intended;**

- b) The Appellants maintain that in the Tender Document, it had confirmed that the Appellant will comply with all the Technical Specifications as dictated in the Tender Document. In this regard, Anjo Ltd was surprised as to why the Contracting Authority wanted clarifications for both chairs and desks.**

Having considered the Contracting Authority's "*Letter of Reply*" in that:

- a) Central Procurement and Supplies Unit maintain that the Clarifications sent to Anjo Ltd referred to the three offers which the latter had submitted;**

- b) The Contracting Authority had to resort to clarifications simply due to the fact that the Literature submitted by the Appellants did not confirm that the items were in accordance with the Technical Specifications as dictated in the Tender Document.**

Reached the following conclusions:

- 1. With regards to Anjo Ltd's First Contention, this Board, after having examined the documentation related to the case, opines that, the Contracting Authority had indicated to this Board, through the "*Letter of Reply*" dated June 2016, that the Clarifications referred to the three bids submitted by the Appellant Company which were all the same, so that these Clarifications were made for all offers submitted by Anjo Ltd.**

This Board, after having examined the issue, feels that even if the Appellant was slightly confused as to which offer the clarifications referred to, he had the option to enquire and clarify his position. In this respect, this Board does not uphold the First Contention by Anjo Ltd.

- 2. With regards to the Appellant's Second Contention, this Board, as it had done on many occasions, would like to emphasize the fact that, when a Tender dictates the submission of Literature/Photos etc, these are required to ensure that what is being offered by the Prospective Bidder does in fact comply with the Technical Specifications as dictated in the Tender Document.**

In this particular case, this Board credibly establishes that the Literature/Photos submitted by Anjo Ltd with his offer did not abide by the Technical Specifications and in this regard, the Evaluation Board sent for clarifications, thus the latter went further than that which was expected.

One has to point out that the Technical Specifications are not capriciously drawn up, but they are dictated by the Contracting Authority to ensure and safeguard that the product being tendered

for will have all the qualities to accommodate the purpose of use of such product.

This Board credibly notes that the Clarifications were not answered within the stipulated timeframe. This Board would also like to comment on the fact that the declaration made a prospective Bidder to supply and abide with all Technical Specifications. This declaration does not complement the Bills of Quantity.

It is the Technical Literature which has to contain all the requirements as per Tender Document. In this regard, this Board notes that there were valid reasons for the Contracting Authority to send clarifications and this same Board credibly notes that the reply to these were not sent within the mandatory period. To this effect, this Board does not uphold the Appellant's Second Contention.

In view of the above, this Board finds against the Appellants and recommends that the deposit paid by the latter should not be refunded.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Richard A Matrenza
Member

4 July 2016