

## **PUBLIC CONTRACTS REVIEW BOARD**

### **Case No. 949 – FTS 034/2016: Tender for the Supply, Delivery and Installation of HPL Lockers at Various Schools.**

The Tender was published on the 11<sup>th</sup> March 2016. The closing date was on the 4<sup>th</sup> April 2016. The estimated value of the Tender was €54,750.00 (Exclusive of VAT)

Nine (9) offers had been submitted for this Tender.

On the 19<sup>th</sup> May 2016 OmniStat 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 23<sup>rd</sup> June 2016 to discuss the Objection.

Present for the hearing were:

#### **Omnistat Limited:**

Mr Mark Schembri	Representative
Mr Johann Camilleri	Representative

#### **Al-Nibras for Science & Technology Ltd.:**

No representative

#### **Foundation for Tomorrow's Schools:**

Mr Stephen Bonello	Chairman Evaluation Board
Mr Ivan Zammit	Secretary Evaluation Board
Mr Paul Debono	Member Evaluation Board
Mr Joseph Pace	Member Evaluation Board
Mr George Schembri	Member Evaluation Board

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

Mr Mark Schembri on behalf of the Appellant contended that their Tender was the cheapest one offered. However the Contracting Authority had asked Appellant to rectify and submit images with the logo of the company that was to manufacture the items. In their Tender, Omnistat always declared that the lockers would be made of HPL.

They had submitted specifications compiled from the manufacturer's letterheads because the lockers would be manufactured according to the Tender specifications. Following a request for clarification, the manufacturer had stated that they did not manufacture the panels themselves but purchased the panels and then made the lockers.

Omnistat Ltd had informed the Evaluation Board about this. The panels were made by G-Lam but it was ERSA who then made the lockers. G-Lam informed us that the material of the panels would be HPL and not plywood. Since ERSA manufactured metal lockers normally but not HPL ones the Literature they had referred to metal lockers.

In their offer, the Appellants declared and confirmed that the lockers offered were according to specifications. Mr Schembri pointed out that the Contracting Authority had not asked for samples. Had it asked for samples the matter would have been settled. After all, the Appellant had submitted the cheapest Tender.

Mr Ivan Zammit on behalf of the Contracting Authority said that he was the Secretary of the Evaluation Board. He explained that Omnistat Ltd had merged parts of other documents to the drawings prepared by the Contracting Authority for the Tender Specifications, and submitted these as Technical Literature from the manufacturer.

The Contracting Authority wanted the Technical Literature from the manufacturer of the lockers, in this case ERSA, but the Appellant submitted Literature which had been produced by the latter. Furthermore from the Rectification Letter it resulted that the specifications according to G-Lam, the panels to be used would be of a thickness from 0.2mm to 1.2mm.

The Tender specifications had asked for thickness of 4mm, 6mm and 8mm so the offer was not according to specifications. Thus the Tender was disqualified. Samples are only demanded after the Technical Offer has been found to be according to specifications from the submitted Literature.

Mr Mark Schembri for the Appellant confirmed that the thickness range as submitted by G-Lam was 0.2mm to 2.2mm, but at no point did he state that the thickness used was the one stated. The Appellant had signed a declaration that offer would be as per specifications.

The Chairman explained that the evaluation had to be made on the submitted documentation with the Tender.

At this point the hearing was closed.

**This Board,**

**Having noted the Appellant's Objection, in terms of the "*Reasoned Letter of Objection*" dated 19 May 2016 and also through their verbal submissions during the Public Hearing held on 23 June 2016 had objected to the decision taken by the Pertinent Authority, in that:**

- a) **Omnistat Ltd's main contention is that although his offer was the cheapest, the latter was discarded due to the fact that the Contracting Authority requested the Appellant's submission of a "*Manufacturer's Certificate*". Since the panels and lockers were made by two separate manufacturers, the Evaluation Board apart from being informed of this situation expected the Appellant to make a declaration that the panels would be composed of HPL material. In this regard, the Appellant contends that this should have satisfied the Evaluation Committee's requirements.**

**Having considered the Contracting Authority's "*Letter of Reply*" dated 30 May 2016 and also their verbal submissions during the Public Hearing held on 23 June 2016, in that:**

- a) **The Contracting Authority maintains that since the Appellant was**

requested to provide a “*Manufacturer’s Certificate*” which the Appellant did not submit. At the same instance, Omnistat Ltd submitted self-prepared Literature giving a panel thickness which ranged between 0.2mm to 1.2mm, whilst the Tender dictated a Thickness range of 4mm, 6mm and 8mm. In this regard, the Appellant’s offer was technically not compliant.

Reached the following conclusions:

1. With regards to the Appellant’s Contentions, this Board would like to treat the merit of this Appeal on two counts, namely the “*Manufacturer’s Certificate*” and the “*Submitted Literature*” as follows:

- Manufacturer’s Certificate

When drawing up the Technical Specifications of the Tender, the Contracting Authority must ensure that what is being tendered for is what the latter requires to render the desired results. In doing so, the duty and obligation of the Contracting Authority is to safeguard itself against any deficiency in quality and mode of manufacture of a product or a rendering of a service.

**This safeguard can only be achieved through the submission of manufacturer's certificate, in this particular case and Technical Literature which should complement the Technical Specifications of the Tender. This Board, after having examined the relative documentation and heard credible submissions noted that Omnistat Ltd did not submit a "*Manufacturer's Certificate*" but instead compiled an alternative which, by far, did not represent what was asked for.**

**This Board opines that the Appellant's Declaration that he would supply the product with the specifications as dictated in the Tender Document does not, in any credible way, substitute the "*Manufacturer's Certificate*", the latter of which would give the necessary comfort as to the material being used in the supply of the finished product. In this regard, this Board does not uphold Omnistat's Contention.**

- **Submitted Literature**

**With regards to the Appellant's Contention on this issue, this Board, as has on many occasions issued adjudications in this respect, in that**

**the Technical Literature requested in a Tender Document should complement or rather confirm the Bidder's adherence to the Technical Specifications as laid out in the Tender Document.**

**This Board justifiably notes that apart from the fact that the Literature submitted by the Appellant did not represent the Technical Literature as clearly dictated in the Tender Document; the same form of Technical Literature submitted quoted a panel thickness range of 0.2mm to 1.2mm, whilst the requested range was 4mm, 6mm and 8mm.**

**The fact that the Appellant signed the necessary declaration and the fact that the Contracting Authority did not ask for a sample does not justify the actual submissions showing a panel thickness range which was much less than that dictated. This Board upholds the Contracting Authority's Contention in that the Appellant's offer was not Technically Compliant.**

**In view of the above, this Board finds against Omnistat Ltd 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

*1 July 2016*