

PUBLIC CONTRACTS REVIEW BOARD

Case No. 971 – T 032/2016: Tender for the Supply and Installation of Office Furniture – MITA Gozo Branch.

The Tender was published on the 15th March 2016. The closing date was on the 8th April 2016. The Estimated Value of the Tender is €14,000.00 (Exclusive of VAT).

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

On the 2nd June 2016 ProMan Interiors filed an Objection against the decision of the Contracting Authority to declare its offer as being non-compliant.

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 30th August 2016 to discuss the Objection.

Present for the hearing were:

ProMan Interiors:

Mr Mario Falzon	Representative
Mr Robert Massa	Representative
Dr Henry Antoncic	Legal Representative

Best Deals International Limited:

Mr Jean Claude Borg Olivier	Representative
Ms Christine Spiteri	Representative

Malta Information Technology Agency:

Ms Caroline Schembri de Marco	Chairperson Evaluation Board
Mr Brian Micallef	Member Evaluation Board
Ms Amanda Spiteri	Member Evaluation Board
Mr Wayne Valentine	Member Evaluation Board
Mr Robert Grixti	Representative
Dr Danielle Vella	Legal Representative

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

Mr Mario Falzon on behalf of ProMan Interiors said that they objected because they had offered the cheapest Tender and had replied to every Clarification asked by the Contracting Authority. The Appellants felt that their offer was not justly discarded because they had replied to all Clarifications. One of the reasons for disqualification was that the desk partitions were not made of Perspex. He claimed that this was not a Tender requirement but there was a tick box to state whether it was made of Perspex or not. The Appellants had ticked the yes box, and no Clarifications on this were sought by the Contracting Authority.

Dr Henry Antoncic on behalf of ProMan Interiors explained that the Appellants were aggrieved because their Tender was compliant with the Tender specifications and all requests for Clarifications had been answered properly. The information about the partitions was not a Tender requirement and therefore the Appellants did not submit it. ProMan Interiors' Tender had been the cheapest and therefore they felt that they should have been awarded the Tender.

Dr Danielle Vella for Malta Information Technology Agency explained that this Tender was for the cheapest compliant offer. The Appellants' offer was disqualified because of two reasons namely:

- i) The furniture did not have the requested steel legs;
- ii) The desk partitions were not made of glass or Perspex.

There were three items of furniture which were requested by the Contracting Authority:

- i) A unit seating four persons;
- ii) A normal desk;
- iii) An L shaped desk.

The Appellants' offer was compliant in only one of these items while it was not in the other two. Although for the partitions Appellants' Tender had a ticked box for Perspex, the documentation submitted showed otherwise. In a Clarification reply, ProMan Interiors explained that the L shaped desk would have "*slab end legs*".

The partitions offered by Appellants were made of wood and this was confirmed in a Clarification Reply. In the offer submitted by ProMan Interiors, the Technical Specifications were not met and so the offer had to be disqualified even though it was one of the cheapest.

Mr Mario Falzon for the Appellants contended that their reply to Clarification number 6 clearly explained that the legs would be made of steel. In fact a choice was offered where these could be square shaped or round shaped. The photos that Appellants had enclosed together with the Tender showed that these were of wooden partitions, because these were the standard.

He reiterated that the matter of the partition was not clear in the Tender Document; bidders had just to tick the yes box to show that they would be providing Perspex partitions. The

Appellants had no problem with providing these partitions in Perspex and had bound themselves to provide these by ticking the “yes” box. ProMan Interiors felt the need to object because their offer was around €5,000 cheaper.

Mr Wayne Valentine for Malta Information Technology Agency explained that when Appellants were asked to clarify, their response said that their L shaped desk would have slab end legs and this was confirmed twice. The general data sheet submitted by Appellants did in fact offer options and it was because of this that the Evaluation Board had asked Appellant to clarify. The image sent as Clarification showed the same desks and an explanation which said that these were slab end legs made of melamine. Thus the Evaluation Board could not find the offer to be compliant.

Mr Mario Falzon claimed that the Clarification had asked for the sizes of the desks and whether the legs were made of steel. The response for the Clarification offered the Contracting Authority a choice of steel legs in addition to the wooden ones. This was highlighted in the reply.

The Chairman remarked that Tender submission should be clear and choices should not be offered when specific items had been requested.

Mr Wayne Valentine said that the Clarification response clearly stated that the partitions would be of melamine coated chipboard. The Clarification did not state that Perspex ones were being offered.

At this point the hearing was closed.

This Board,

Having noted the Appellant’s Objection, in terms of the “*Reasoned Letter of Objection*” dated 2 June 2016 and also through their verbal submissions during the Public Hearing held on 30 August 2016 had objected to the decision taken by the Pertinent Authority, in that:

- a) ProMan Interiors contend that since they had replied to all clarifications and that their offer was the cheapest, they were unfairly rejected;**

b) The Appellant also maintains that he had given options to the Contracting Authority so that the latter will have a wider choice.

Having considered the Contracting Authority's "*Letter of Reply*" dated 9 June 2016 and also their verbal submissions during the Public Hearing held on 30 August 2016, in that:

a) Malta Information Technology Agency contends that there were two reasons why the Appellant's Offer was rejected namely:

i) The Furniture did not have the requested steel legs;

ii) The Documentation submitted by the Appellant relating to the Partitions, did not show that the material was of Perspex, but showed otherwise.

Reached the following conclusions:

1. This Board would justifiably point out that it is not sufficient to reply to the Clarifications, but rather to reply to the specific question that is being sought by the Contracting Authority. In this particular case

and from the relative documentation and submissions, it is evidently clear that ProMan Interiors, in their replies to clarifications, was not referring to the particular question being sought but rather, through a general and vague reply and this approach did in fact assured the Evaluation Board that the Appellant's offer was not abiding by the Technical Specifications as dictated in the Tender Document.

The fact that the Appellant's Offer was the cheapest does not merit the award of the Tender but such an award is to be given to the cheapest yet administratively and Technically Compliant Bidder.

From the submissions made during the Public Hearing, it was evident that ProMan Interiors' replies to the Clarifications being requested by the Evaluation Board and the replies given by the same Appellant confirmed that the latter was not Technically Compliant. In this regard, this Board does not uphold the Appellant's First Grievance.

- 2. With regards to the Appellant's Second Grievance, this Board, after having examined the relative documentation, opines that, by giving options as a reply to the Clarifications, ProMan Interiors has shifted the obligation to submit clear and direct answers onto the Evaluation**

Board.

It is not the Evaluation Board's jurisdiction to choose and pick any particular item to suit their Technical Requirements as dictated in the Tender Document. The Evaluation Board's obligations and duties are to assess fairly and transparently what is being offered by the prospective Bidder.

In this case, the Evaluation Board requested clarifications to ensure that what ProMan Interiors were offering was in conformity with the Technical Specifications in the Tender. The Board credibly notes that the replies given by the Appellant did not, in any credible manner, clarify the Technical Specifications being sought by the Evaluation Board.

The onus is on the Bidder to provide the correct and exact reply to a clarification so that the Evaluation Board will be in a position to assess the Bidder's offer on the same level playing field.

In this regard, the choice given to the Evaluation Board did not specify clearly the contents therein. In fact, the Appellant's replies confirmed the non compliance of the item being clarified. In this

regard, this Board does not uphold the Appellant's Second Grievance.

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

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

6 September 2016