

PUBLIC CONTRACTS REVIEW BOARD

Case No. 975 – DH 819/2016: Tender for The Supply, Delivery and Installation of Qty 65 Secured Dangerous Drugs Floor Mounted Cabinets.

The Tender was published on the 8th April 2016. The closing date was on the 5th May 2016. The estimated value of the Tender is €105,932.20 (Exclusive of VAT).

Four (4) offers have been submitted for this Tender.

On the 30th June 2016 Debono Storage Systems Limited filed an Objection against the decision of the Contracting Authority finding their Tender Technically 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 6th September 2016 to discuss the Objection.

Present for the hearing were:

Debono Storage Systems Limited:

Mr Jeremy Holland	Sales Executive
Mr Adrian Mifsud	General Manager

Technoline Limited:

Mr Nicholas Sammut	Representative
Mr Ivan Vassallo	Representative

Central Procurement and Supplies Unit:

Mr Charlot Muscat	Chairperson Evaluation Board
Mr Tanio Scerri	Secretary Evaluation Board
Mr Chris Attard Montalto	Member Evaluation Board
Mr Noel Psaila	Member Evaluation Board
Mr George Cutajar	Representative
Dr Stefan Zrinzo Azzopardi	Legal Representative

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

Mr Adrian Mifsud on behalf of Storage Systems Ltd contended that the decision to disqualify their offer, which was cheaper, for a technical detail, was unjust and the Letter of Objection was filed for this reason. He stated that Appellant had offered cabinets that would have been manufactured for the purpose by the manufacturer, and made to measure as per Tender requisites. The supplier however, since these were custom-built did not have the necessary brochures. Storage Systems Ltd had therefore submitted general brochures of cabinets that had different internal measurements with the Tender. The manufacturer was clearly indicated and the cabinets offered would comply fully with the requested Technical Specifications.

Dr Stefan Zrinzo Azzopardi on behalf of Central Procurement and Supplies Unit contended that the Appellant had failed to comply with the Tender requirements. The Appellants failed to submit the Technical Literature and this was subject to exclusion of the bidder unless this was submitted.

The Appellant also failed to indicate the model of the cabinets offered although the manufacturer was properly indicated. The model number of the cabinet submitted had to be indicated and therefore the Evaluation Board could not adjudicate the Appellant's Tender. According to clause 1 at page 18 of the Tender Document, the bidders submitted "*literature clearly illustrating and indicating what is actually being offered*" and the Appellant failed to do this. Appellant offered something similar to the brochures submitted with the Tender. The Evaluation Board felt that it that did not have enough information and rejected Appellant's offer.

Mr Adrian Mifsud for Debono Storage Systems Ltd re-iterated that the cabinets offered were custom-built and therefore no brochures existed. That was the reason why the bid explained that "something similar to the brochures submitted".

Chairman, PCRБ remarked that the Literature submitted with a Tender had to clearly represent what the Tender was offering.

At this point the hearing was closed.

This Board,

Having noted the Appellant's Objection, in terms of the "*Reasoned Letter of Objection*" dated 30 June 2016 and also their verbal submissions during the Public Hearing held on 6 September 2016, and had objected to the decision taken by the pertinent Authority, in that:

a) Debono Storage Systems Ltd contend that, although their offer was

the cheapest, the Literature which they had submitted was not accepted by the Contracting Authority, hence the latter deeming the offer as Technically non-compliant, which is not the case.

Having considered the Contracting Authority's "*Letter of Reply*" dated 2 September 2016 and also their verbal submissions during the Public Hearing held on 6 September 2016, in that:

- a) Central Procurement and Supplies Unit maintain that the Appellant failed to submit the Technical Literature which indicates the type of furniture which the Appellant was offering. Furthermore, the Appellant failed to submit the Model Number. These conditions were mandatory requirements.**

Reached the following conclusions:

- 1. With regards to the Appellant's Grievance, this Board, after having examined the relative documentation and heard all submissions made by the parties concerned, opines that, the Tender Document dictated that Debono Storage Systems Ltd had to submit either Brochures or Technical Literature showing and confirming, the Manufacturer, the model of the cabinet and its Model Number.**

From the documentation, it is evidently clear that with regards to the

Manufacturer, the requested details were duly submitted. However, the Appellant did not submit the Technical Literature and Model Number of the cabinet itself. Instead, Debono Storage Systems Ltd submitted a choice of models with a declaration that the cabinet will look similar to those shown on the brochure.

By submitting the Technical Literature, the Appellant shifted the responsibility of selecting the correct model to the Evaluation Board. This should never occur since it is the responsibility of the Bidder to submit the exact information as dictated in the same Tender Document.

In this particular instance, the Appellant has submitted options which are available but similar to that in his offer. The Tender Document requested the submission of the relative Technical Literature which in fact, should show exactly the specifications, as to how the cabinet will look like but not similar to other models.

In this regard, the Appellant failed to submit both the Technical Literature and model number of the Cabinet which he is offering. The Evaluation Board's jurisdiction is to assess the Tenders and not to choose a particular item from various similar alternatives.

This Board would like to also justifiably refer to Page 18 Clause 1.1

of the Tender Document, which specifically dictates that “*Literature clearly illustrating and indicating what is actually being offered*”.

And also

The Tender Document specifically states that “*Tenderers are requested to submit the Manufacturer and Model of Equipment offered. Offers shall be supported by the relevant Technical Literature. Failing this, the submission/quotation will be ignored and refused irrevocably.*”

As had been proved, Debono Storage Systems Limited did submit the details of the manufacturer but failed to remit the proper Technical Literature of the model being offered by the same. In this regard, this Board does not uphold the Appellant’s Grievance.

In view of the above, this Board finds against Debono Storage Systems Limited and recommends that the deposit paid by the latter should not be reimbursed.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

13 September 2016