

PUBLIC CONTRACTS REVIEW BOARD

Case 1344 – MJCL/MPU/80/2019 – Tender for the Provision of Thirty-three Leased Multi-Function Printers with Reduced Environmental Impact including Full Service and Maintenance Agreement for the Courts of Justice Department

The publication date of the tender was the 18th May 2019 whilst the closing date was 17th June 2019. The estimated value of the tender (exclusive of VAT) was € 154,440.

On the 25th July 2019 Advanced Telecommunications Systems Co Ltd filed an appeal against the Ministry for Justice, Culture and Local Government, Courts of Justice Department as the Contracting Authority contesting the decision to disqualify them as their bid was considered technically non-compliant. A deposit of € 772.20 was paid.

There were seven (7) bidders.

On 20th August 2019 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Mr Lawrence Ancilleri and Mr Carmel Esposito as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – Advanced Telecommunications Systems Co Ltd

Dr Fransina Abela	Legal Representative
Mr Paul Agius	Representative
Mr Maurice Abela	Representative

Recommended Bidder – Strand Electronics

Ms Fiona Broome Camilleri	Representative
Ms Nicola Tardi	Representative

Contracting Authority – Courts of Justice Department obo MJCL

Dr Chris Mizzi	Legal Representative
Mr George Grima	Chairperson Evaluation Committee
Ms Laura Desira	Representative

Dr Anthony Cassar, Chairman of the Public Contracts Review Board, welcomed the parties and invited them to make their submissions.

Dr Fransina Abela Legal Representative for Advanced Telecommunications Systems Co Ltd (hereinafter referred to as ATS) had failed technically because under Note 3 the Contracting Authority cannot allow rectification. However, on the part of her clients' submission it was only a clarification that was required. Through an oversight ATS had sent in the wrong form but the contents of that form were in substance what the tender basically required. Article 53 of the Public Procurement Regulations (PPR) states that the technical specifications must lay down the characteristics required of a works, service or supply. The only discrepancy in her clients' submission was the quantity or number otherwise all other characteristics are correct. Dr Abela argued that a quantity or number is not a characteristic of a product. The second discrepancy was that the point of delivery was shown as the Arts Council instead of the Courts of Justice although all other relevant details were the same and correct – this is simply a technical default and does not affect the overall result. Details in the financial bid were all correctly stated. Her clients object to the Contracting Authority's claim that the technical specifications are incorrect as the delivery details and quantity of printers are not technical specifications and do not affect the offer.

Dr Chris Mizzi Legal Representative for the Courts of Justice said that the wrong document had been submitted and no rectification was allowed. No discretion is allowed once the specifications are submitted and the Authority cannot decide which parts to accept or reject.

Mr George Grima (710959M) called as a witness by the PCRB testified on oath that he was the Chairperson of the Evaluation Committee. He listed the following as discrepancies in the tender submissions by ATS:

- The Authority requested 33 in number multi-function printers – submissions show that 4 in number were offered
- Delivery indicated that it would be made to the Arts Council instead of the Courts of Justice
- Black and White print photocopiers were requested – offer submitted was for colour print ones
- Period of delivery and installation requested was two weeks – no indication of this was made in the submissions

Witness stated that these shortcomings were unacceptable because the specifications would have gone on to be part of the contract in case Appellants' offer was recommended for award.

The Chairman pointed out that the Evaluation Committee is obliged to use the principle of self limitation and thus the submissions have to tally with the tender documents and conditions and regulations have to be adhered to. The procedure followed by the Committee in not considering the financial bid was correct as in this case the evaluation did not reach that stage.

Dr Abela said that that the mistakes in the questionnaire were due to lack of clear instructions and the literature lists were entirely correct. The Contracting Authority should not refuse a better offer when the mistakes in the submission were obvious oversights.

Dr Mizzi in conclusion said that the technical questionnaire as published is part and parcel of the complete document. Appellants accepted that they made mistakes and the Authority had no alternative except to disqualify the bid.

The Chairman thanked the parties for their submissions and declared the hearing closed.

This Board,

having noted this objection filed by Advanced Telecommunications System Co Ltd (herein after referred to as the Appellants) on 25 July 2019, refers to the claims made by the same Appellants with regard to the Tender of reference MJCL/MPU/80/2019 listed as case no 1344 in the records of the Public Contracts Review Board, awarded by Courts of Justice Department (MJCL) (herein after referred to as the Contracting Authority).

Appearing for the Appellants: Dr Fransina Abela

Appearing for the Contracting Authority: Dr Chris Mizzi

Whereby, the Appellants contend that:

- a) Their claim is that, their offer was discarded simply due to the fact that, through an oversight, they failed to submit the correct technical questionnaire. In this respect, Appellants maintain that the details requested, were however submitted in their bid.**

This Board also noted the Contracting Authority’s ‘Letter of Reply’ dated 3 August 2019 and its verbal submissions during the hearing held on 20 August 2019, in that:

- a) The Authority insists that Appellants submitted a technical offer questionnaire which does not pertain to this particular tender, rendering Appellants’ offer as incomplete and in this respect, the Authority had no other option but to declare Appellants’ bid as technically non-compliant.**

This same Board also noted the testimony of the witness namely, Mr George Grima, Chairperson of the Evaluation Committee duly summoned by the Public Contracts Review Board.

This Board, after having examined the relevant documentation pertaining to this appeal and heard submissions made by the parties concerned, including the testimony of the witness duly summoned, opines that the issue that merits consideration relates to Appellants’ submissions.

- 1. First and foremost, this Board would respectfully point out that, the technical questionnaire forms an integral part of the tender document, so that the questionnaire is subject to the terms and conditions as stipulated in the tender dossier. At the same instance, it must also be pointed out that technical specifications are not capriciously stipulated by the**

Authority but are formulated to ensure that there is a level playing field among participating economic operators and provide the tools for the objectives of the tendered works or supply of goods.

- 2. Since the introduction of the European Single Procurement Document (ESPD), in the Public Procurement Process, the questionnaire represents the declaration an economic operator makes, wherein he is declaring what he can offer, so that such a document is not only important but forms the core of the bidder's technical offer.**

- 3. This Board would also emphasize the fact that whilst the Evaluation Committee, in its deliberations, must abide strictly by the principle of self-limitation, on the other hand, the bidder must also ensure that, upon submission, he has abided by all the terms and conditions so dictated in the tender dossier.**

- 4. In this particular case, Appellants admitted that, through an oversight, they had submitted the incorrect technical questionnaire form and it has been evident that such questionnaire failed to indicate the correct number of printers being requested, the correct beneficiary, the correct**

type of printer and also failed to indicate the period of delivery and installation of same.

5. With regard to Appellants' contention in that, the Evaluation Committee should have requested clarifications, this Board, as it has on so many occasions, would point out that, clarifications are only allowable on submitted information and not on missing or incorrect submissions. In this particular case, Appellants submitted incorrect information with regard to number of printers, beneficiary, type of printer and did not indicate the delivery and installation of printers. This Board would point out that clarifications should not be made so as to rectify an incorrect or incomplete offer, as otherwise an advantage is given to a particular bidder, thus breaching the principles of level playing field and equal treatment.

6. With regard to Appellants' contention in that, the Authority should not refuse a better offer, when inadvertent mistakes are obvious, this Board would point out that Appellants' offer did not reach and qualify for the third stage of the evaluation, that is, the financial evaluation stage so that the price could not be considered by the Evaluation Committee.

In conclusion, this Board opines that:

- a) Appellants' submission consisted of an incomplete offer due to failure, on their part, to submit the correct interrelated technical questionnaire form, as duly stipulated.**

- b) Appellants' offer failed to indicate correctly the number and type of printers to be offered. At the same instance the offer indicated incorrectly the beneficiary and did not include the period of delivery and installation of the printers.**

- c) The Evaluation Committee could not request clarifications as such an action would have rectified Appellants' offer thus, breaching the principles of equal treatment and level playing field.**

- d) It was the duty and obligation of Appellants to ensure that all the stipulated information is submitted in their offer.**

In view of the above, this Board,

i) does not uphold Appellants' contentions,

ii) upholds the Contracting Authority's decision in the award of the tender,

iii) directs that the deposit paid by Appellants should not be refunded.

Dr Anthony Cassar
Chairman
5 September 2019

Mr Lawrence Ancilleri
Member

Mr Carmel Esposito
Member