

PUBLIC CONTRACTS REVIEW BOARD

Case 1524 – SPM 24-20 – Tender for the Supply, Delivery and Installation of Office Furniture at the Offices at Level 2, 469, Bugeja Institute, St Joseph’s High Road, St Venera.

The tender was published on the 1st July 2020 and the closing date of the tender was the 24th July 2020. The estimated value of the tender (exclusive of VAT) was € 70,966.

On the 16th November 2020 Omni Stat Ltd filed an appeal against Social Projects Management Ltd as the Contracting Authority objecting to their disqualification on the grounds of being not technically compliant.

A deposit of € 400 was paid.

There were six (6) bidders.

On 6th January 2021 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a public virtual hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – Omni Stat Ltd

Mr Johann Camilleri	Representative
Mr Andrew Camilleri	Representative

Contracting Authority – Social Projects Management Ltd

Dr Ivan Gatt	Legal Representative
Ms Nathalie Psaila	Chairperson Evaluation Committee
Mr Patrick Vella	Representative
Arch Jessica Sammut	Representative

Interested Party – Invicta Ltd

Mr Clive Farrugia	Representative
Mr Alfred Farrugia	Representative

Dr Anthony Cassar Chairman of the Public Contracts Review Board welcomed the parties. He noted that since this was a virtual meeting all the parties agreed to treat it as a normal hearing of the Board. He then invited submissions.

Mr Andrew Camilleri Representative of Omni Stat Ltd said that it appeared as if there was an oversight on the part of the Contracting Authority in the evaluation process since the submitted technical characteristics of the furniture were according to the tender specifications but at a late stage the Authority decided that a specified panel was not according to specifications. A clarification sent earlier in the evaluation process had not raised this point.

Mr Johann Camilleri stated that if the Board examined the specifications on Item 2.01 submitted by Appellants it was clear that the panel referred to was shown in full.

Dr Ivan Gatt Legal Representative for Social Projects Management Ltd said that the Authority had reached its conclusion on the basis of the designs submitted and which did not meet the specifications.

Architect Jessica Sammut Representative of Social Projects Management Ltd said that if one referred to Bill of Quantities item 2.01 it was clear that the panel had to go down to floor level. A clarification sent to Appellants indicated the Authority's requirement, but their reply indicated another panel to the one requested.

Mr Johann Camilleri objected to the fact that the discrepancy in the technical literature was not mentioned in the clarification note which to him meant that the submissions were in conformity with the tender requirements.

Ms Nathalie Psaila Chairperson of the Evaluation Committee said that clarification was only allowed on matters that could be corrected. Technical literature submitted did not fall under this heading as that would amount to a rectification.

Mr Camilleri said that in that case his company's bid should have been dismissed from the start if it was not compliant – once it was not, their submissions must have been according to the specifications.

Dr Gatt made the point that a clarification letter cannot correct what does not conform to the tender technical requirements. The Authority had clearly carried out its evaluation correctly.

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

End of Minutes

Decision

This Board,

having noted this objection filed by Omni Stat Ltd (hereinafter referred to as the Appellants) on 16th November 2020, refers to the claims made by the same Appellants with regard to the tender of reference SPM 24-20 listed as case

No. 1524 in the records of the Public Contracts Review Board recommended for award by Social Projects Management Ltd (hereinafter referred to as the Contracting Authority).

Appearing for the Appellants: Mr Johann Camilleri

Mr Andrew Camilleri

Appearing for the Contracting Authority: Dr Ivan Gatt

Appearing for the Recommended Bidder: Mr Clive Farrugia

Mr Alfred Farrugia

Whereby, the Appellants claim that:

- a) Their main contention refers to the fact that, the technical literature as duly submitted was in fact compliant with the technical specifications as stated in the tender document and not as allegedly stated by the Contracting Authority. In this regard, Appellants maintain that, the technical literature, with special reference to item 2.01, clearly demonstrates that the ‘Panel’ being referred to, did comply with what was being requested by the Authority.**
- b) Their second contention refers to the Authority’s ‘Clarification Request’ which did not indicate such an alleged technical issue.**

This Board also noted the Contracting Authority's 'Letter of reply' dated 20th November 2020 and its verbal submissions during the virtual hearing held on 6th January 2021, in that:

- a) The Authority contends that the designs submitted by Appellants did not meet the specifications as dictated in the tender document. In this respect, reference should be made to the 'Bill of Quantities', item 2.01 where it was dictated that, the 'Panel' had to go down to floor level and in this respect, Appellants' technical literature did not show that it met such a requisite.**
- b) With regard to Appellants' second contention, the Authority insists that, the clarification request was sent to Appellants to enable the latter to correct issues that existed prior to the commencement of the evaluation process.**

This Board, after having examined the relevant documentation to this appeal and heard submissions made by the parties concerned, opines that the issues that merit consideration are two-fold namely:

- a) Technical compliance of Appellants' offer and**
- b) The Authority's clarification request**

1. Appellants' Offer Technical Compliance

1.1. First and foremost, it must be acknowledged that, the evaluation process consists of three stages namely; Administrative, Technical and Financial Compliance. It must also be said that, each offer must pass the

particular stage to move forward to the next corresponding stage of the evaluation process.

1.2. One of the requisites was the submission of the technical literature and in this regard, this Board cannot but emphasize the fact that, when literature is requested by the Authority, such a requisite is not capriciously stipulated. The literature must complement the declared product being offered by the economic operator and such submission must prove to the Authority that:

(i) The product is available on the market

(ii) The manufacture of the product will be carried out in accordance with the specifications as duly dictated in the tender dossier

It must also be mentioned that through such a submission, the Authority is given a guarantee that the product will satisfy the ultimate intended objective of the Authority.

1.3. In this particular case, the issue refers to the characteristics of the furniture with particular reference to a specified panel designated under item 2.01 of the BOQ and referred to a drawing marked as ‘BB-02’ whereby the back panel of the consoles was clearly illustrated.

1.4. After having examined Appellants’ submission in this regard, this Board confirms that the technical literature submitted does not indicate

a back panel. This Board also considered the fact that, the back panel formed an important feature of the console to enable the passing and affixing of sockets thereto.

1.5. As stated earlier, the technical literature must not only complement the technical specifications so declared by the bidder but must also confirm that the dictated specifications are in fact present in the technical literature of the manufacturer. In this respect this Board opines that Appellants' technical literature did not conform with their offer, so that Appellants' offer was indeed technically non-compliant.

2. Authority's Clarification Request

2.1. Appellants' second contention refers to the fact that, since the Authority did not mention the alleged technical non-compliance in their clarification request, their offer must have been compliant, as otherwise such a request would have been futile.

2.2. This Board would respectfully refer to the clarification request dated 22nd September 2020 sent by the Authority, viz:

“22nd September 2020

TID 136741 – Omnistat Ltd

SPM 24-20 - Tender for Supply, Delivery Installation of Office Furniture at the Offices at Level 2, 469, Bugeja Institute, St Joseph High Road, St Venera.

Reference is made to the tender in caption, and to your offer submission to same.

The Evaluation committee noted the following shortcomings with regard to your submission related to the technical criteria:

a) As per Section 1- Instruction to Tenderers Clause 7 (C) Technical Specifications (ii), bidders had to submit the literature as per form marked “Literature List”. However, it was noted that the following technical literature was not submitted:

- Item 4 - Reception Desk as per Specification F41 and BOQ Item 2.04;*
- Item 5 - Low Cupboards;*
- Item 6 - Lockable 3 Drawer Units;*
- Item 9 - Desk Swivel Chairs;*
- Item 10 - Set of 4 Connected Chairs;*
- Item 11 - 4 Lagged Chairs; and*
- Item 12 – Kitchen Cupboards.*

In view of this, you are kindly being asked to rectify your position by submitting the above technical literature to corroborate your technical offer.

This information must be submitted by not later than 29th September 2020 at 15:00hrs. Failure to submit the above within five (5) working days from this notification will lead to disqualification as per Article 16 of the General Rules Governing Tendering.”

In accordance with Clause 7(C) of the ‘Instructions to tenderers’, Appellants were given the opportunity to submit missing technical literature.

2.3. It must be pointed out that, such a rectification opportunity was given on missing information, prior to the commencement of the technical evaluation process and this Board notes that the finalisation of the evaluation process was on the 19th October 2020.

2.4. It is evidently clear that, at the time of the Authority’s submission of the rectification request, the Evaluation Committee could not be aware of Appellants’ technical deficiency, as the technical adjudication of all the offers was not yet determined. As stated in the para 1.1, the process is divided into three stages and the ‘Rectification Request’ formed part of the first stage, i.e. the administrative stage.

In conclusion, this Board opines that:

- a) The technical literature relating to item 2.01 of the Bill of Quantities was not compliant with what was requested in the tender document.**
- b) Appellants had the remedy to seek clarification prior to the submission of their offer and this Board notes that such an opportunity was not availed of.**

- c) The Authority's 'Request for Rectifications' pertaining to missing 'Technical Literature' for some of the furniture items was made to satisfy the administrative stage of the evaluation process.**
- d) The technical literature forms an integral part of the technical specifications, the latter of which cannot be rectified.**

In view of the above, this Board,

- i. does not uphold Appellants' contentions,**
- ii. upholds the Contracting Authority's decision in the recommendation of award,**
- iii. directs that the deposit paid by Appellants should not be refunded.**

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

12th January 2021