

PUBLIC CONTRACTS REVIEW BOARD

Case 1605 – MPU-MSFC/20036 – Tender for the Leasing of (24) A3 Colour Multifunction Energy Efficient Printing Devices with Reduced Environmental Impact including Full Service and Maintenance Agreement - MSFC

27th July 2021

The Board,

Having noted the letter of objection filed by Mr Paul H Agius acting for Advanced Telecommunications Systems, (hereinafter referred to as the appellant) filed on the 29th March 2021;

Having also noted the letter of reply filed by Ms Bernadette Barbara on behalf of Ministry for Social Justice and Solidarity, the Family and Children's Rights (hereinafter referred to as the Contracting Authority) filed on the 5th April 2021;

Having taken cognisance and evaluated all the acts and documentation filed, as well as the submissions made by the legal representatives of the parties;

Having noted and evaluated the minutes of the Board sitting of the 22nd July 2021 hereunder-reproduced.

Minutes

Case 1605 – MPU-MSFC/20036. Tender for the Leasing of Twenty-Four (24) Brand New A 3 Colour Multifunction Energy Efficient Printing Devices with Reduced Environmental Impact including Full Service & Maintenance Agreement (FSMS) for the Ministry for Social Justice and Solidarity, the Family and Children's Rights (MSFC)

The tender was published on the 18th December 2020 and the closing date was the 4th February 2021. The estimated value of the tender was € 207,900.

On the 29th March 2021 Advanced Communication Systems filed an appeal against the Ministry for Social Justice and Solidarity, the Family and Children's Rights (MSFC) as the Contracting Authority objecting to the cancellation of the award on the grounds that the offer was not technically compliant.

A deposit of € 1,040 was paid.

There were eight (8) bidders.

On 22nd July 2021 the Public Contracts Review Board (PCRB) composed of Mr Kenneth Swain as Chairman, Mr Lawrence Ancilleri and Dr Vincent Micallef as members convened a public virtual hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellant – Advanced Telecommunication Systems

Mr Paul Agius Representative

Contracting Authority – Ministry for Social Justice and Solidarity, the Family and Children’s Rights

Dr Anita Giordimaina	Legal Representative
Mr Clifford Schembri	Member Evaluation Committee
Mr Andy Cassar	Member Evaluation Committee
Ms Sandra Hili	Member Evaluation Committee
Arch Jesmond Mugliett	Member Evaluation Committee
Mr Joe Borg	Member Evaluation Committee

Preferred Bidder – Strand Electronics Ltd

Ms Fiona Broome Camilleri Representative

Mr Kenneth Swain 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 in line with Article 89 of the Public Procurement Regulations. He then asked Appellant’s representative to make his submissions.

Mr Paul Agius Representative for Advanced Telecommunications Systems stated that his firm’s offer was the cheapest and he had been disqualified on petty points since it was obvious, without the need to be stated, that delivery and installation was included in the price. Similarly printing devices had zoom facilities which are a common feature on all machines. He admitted that he had failed to reply to the ‘yes’ or ‘no’ questions in his submissions.

Dr Anita Giordimaina Legal Representative for the Ministry for Social Justice and Solidarity, the Family and Children’s Rights said that there are clear criteria set out in the tender and Appellant had himself admitted that he failed to reply to certain questions on the technical offer which came under Note 3. The Evaluation Committee cannot assume bidder’s intentions and must follow the tender specifications. The appeal therefore should be denied.

Mr Agius countered by saying that the submitted brochure had full details regarding the zooming facilities and in any case he had only omitted to reply to five out of seventy points to which Dr Giordimaina replied that no rectifications were allowed in the tender.

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

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 22nd July 2021.

Having noted the objection filed by Advanced Telecommunications Systems (hereinafter referred to as the Appellant) on 29th March 2021, refers to the claims made by the same Appellant with regards to the tender of reference MPU-MSFC/20036 listed as case No. 1605 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Mr Paul H Agius

Appearing for the Contracting Authority: Dr Anita Giordimaina

Whereby, the Appellant contends that:

- a) **No 15 of the technical offer has been left unanswered** – “this is an error from our end (Appellant) but one would assume that our company will definitely be responsible for the successful delivery and installation of the machines”.
- b) **Other points (No 34 & 35) of technical offer – no answer provided but could be corroborated with literature provided** – “Technical literature submitted shows we are 100% compliant to the tender requests”.
- c) **Other points (No 36 & 37) of technical offer – no answer provided and no literature to corroborate technical offer was submitted** – “Re point 36 evaluation committee comments seem to be an error from their end as this point has nothing to do with ‘zoom’ features. Re point 37 this was mentioned in page 12 of the brochure submitted in the tender offer”.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 5th April 2021 and its verbal submission during the virtual hearing held on 22nd July 2021, in that:

- a) **No 15 of the technical offer has been left unanswered** – as per wording of technical offer it is stated that – “Tenderers that fail to complete and upload the requested information will be deemed as non-compliant and will not be considered further for final adjudication. The information / technical specifications provided in the below table shall not be subject to rectifications”. Moreover, technical offer is marked as Note 3 which means that “No rectifications shall be allowed. Only clarifications on the submitted information may be requested”. Bidder did not answer the respective item in the Technical Offer as per technical offer instructions. Evaluation Board had no other choice than considering No 15 as unanswered hence rendering offer non-compliant as per above instructions which accompany the Technical Offer Form.
- b) **Other points (No 34 & 35) of technical offer – no answer provided but could be corroborated with literature provided** – as stated in the Evaluation Report, although bidder did not answer the respective items in the Technical Offer, the required specifications could be corroborated with the provided literature at tendering stage but in view that technical offer was not duly filled in it had to be deemed as non-compliant (Technical Offer being Note 3)
- c) **Other points (No 36 & 37) of technical offer – no answer provided and no literature to corroborate technical offer was submitted** – the bidder did not answer the respective items as per technical offer instructions. Although in his reply the bidder stated that information was also listed in the brochure submitted, the Evaluation Board still did not find relevant information. The missing literature can be rectified but since the technical offer was not duly filled in, there was no reason to request bidder to submit the missing literature when his offer was considered as non-compliant (Note 3).

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties, will consider Appellant's grievances, as follows:

1. The main matter that impinges on this case is the 'Technical Offer' which falls under the 'Technical Evaluation' stage, being the 2nd stage of evaluation procedure.
2. Since the Appellant's bid was deemed not technically compliant, the evaluation process did not proceed to the 3rd stage of evaluation. Hence the financial comments made by Appellant in the virtual hearing are deemed to be irrelevant since the financial offer of the Appellant was not evaluated (Financial Evaluation is the 3rd and final stage of Evaluation).
3. It is to be noted that the Technical Offer is a Note 3 document. *"Tenderers that fail to complete and upload the requested information will be deemed as non-compliant and will not be considered further for final adjudication. The information / technical specifications provided in the below table shall not be subject to rectifications"*.
4. The Board notes that the Appellant stated in his Letter of Objection and also in the virtual hearing that *"this is an error from our end, but one would assume that our company will definitely be responsible for the successful delivery and installation of the machines"*. Hence this is deemed as *ex admissions* from the Appellant. It is humbly being noted that the Contracting Authority would not be acting in a responsible manner should it 'assume' that such services / objective would be adhered to without the proper confirmation of the prospective bidder.
5. Being that sections of the Technical Offer were left unanswered and that these fall under Note 3, the Contracting Authority could not make a rectification request to the Appellant company.

On these grounds, this Board does not uphold Appellant's grievances.

In conclusion this Board;

Having evaluated all the above and based on the above considerations, concludes and decides:

- a) Does not uphold Appellant's Letter of Objection and contentions,
- b) Upholds the Contracting Authority's decision in the recommendation for the award of the tender,
- c) Directs that the deposit paid by Appellant not to be reimbursed.

Mr Kenneth Swain
Chairman

Dr Vincent Micallef
Member

Mr Lawrence Ancilleri
Member