

PUBLIC CONTRACTS REVIEW BOARD

Case 1718 – SPD1/2022/013 – Tender for the Supply, Delivery, Installation and Commissioning of 3D Printers Auxiliaries’ Equipment for Labs in Malta and Gozo

9th May 2022

The Board,

Having noted the letter of objection filed by Mr Patrick Gatt acting for and on behalf of Patrick Prints, (hereinafter referred to as the appellant) filed on the 14th March 2022;

Having also noted the letter of reply filed by Dr Simon Cachia acting for Ministry for Education and Sport (hereinafter referred to as the Contracting Authority) filed on the 24th March 2022;

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

Having noted and evaluated the minutes of the Board sitting of the 5th May 2022 hereunder-reproduced.

Minutes

Case 1718 – SPD1/2022/013 – Tender for the Supply, Delivery, Installation and Commissioning of 3D Printers Auxiliaries’ Equipment for Labs in Malta and Gozo

The tender was issued on the 31st January 2022 and the closing date was the 21st February 2022. The value of the tender, excluding VAT, was € 32,203.39.

On the 14th March 2022 Mr Patrick Gatt filed an appeal against the Ministry for Education and Sports as the Contracting Authority objecting to their disqualification on the grounds that he was not awarded the tender

A deposit of € 400 was paid.

There were two (2) bids.

On the 5th May 2022 the Public Contracts Review Board composed of Mr Kenneth Swain as Chairman, Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a public virtual hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – Mr Patrick Gatt

Mr Patrick Gatt

Representative

Contracting Authority – Ministry for Education and Sports

Dr Simon Cachia	Legal Representative
Mr Alexander Pizzuto	Chairperson Evaluation Committee
Mr Oliver Vella	Member Evaluation Committee
Mr Mark Psaila	Member Evaluation Committee
Ms Daniela Zerafa	Member Evaluation committee
Mr Joseph Zerafa	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 invited submissions.

Mr Patrick Gatt representing himself said that the price was the criterion in this tender. He was the sole representative in Malta of the product offered and therefore there would be no technical support for any other bidder. The price offered by him was Eur 100 cheaper and it was impossible for any other bidder to offer the product at Eur 4000 cheaper. The mother company in Holland had offered a discount of Eur 4,900 to safeguard the offer.

Dr Simon Cachia Legal Representative for the Ministry for Education and Sports stated that the offer of a discount was enough not to need to put any further arguments – it is totally out of court as it infringes the Public Procurement Regulations. The offer of a discount indicates that the initial offer could have been lower. All other issues raised are irrelevant. The preferred bidder met all the criteria.

Mr Gatt said that no competitor could match the service which he was able to give. The discount was offered by the manufacturer of the equipment to ensure that the bid succeeds.

Dr Simon concluded by saying that all the tender asked for is that the product had to be compatible with but not necessarily the same brand offered by Appellant, who had made many unproven allegations. His bid was illegal.

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

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 5th May 2022.

Having noted the objection filed by Patrick Prints (hereinafter referred to as the Appellant) on 14th March 2022, refers to the claims made by the same Appellant with regard to the tender of reference SPD1/2022/013 listed as case No. 1718 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Mr Patrick Gatt

Appearing for the Contracting Authority: Dr Simon Cachia

Whereby, the Appellant contends that:

- a) This tender will be upgrading a past tender won by the Appellant. How can an unauthorised seller, unexperienced, unprofessional company with no history in 3D printing be chosen for a mere difference of €3,950?
- b) Experience is priceless. Appellant is also the only authorised resellers of Ultimaker B.V.
- c) Appellant is ready to offer a discount of €4,900 to counter the offer made by the other party.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 24th March 2022 and its verbal submission during the virtual hearing held on 5th May 2022, in that:

- a) Tender Dossier states *"The sole award criterion will be the price. The contract will be awarded to the tenderer submitting the cheapest priced offer satisfying the administrative and technical criteria."* The preferred bidder submitted a cheaper bid and was both administratively and technically compliant.
- b) Nowhere in the tender document was it a requirement to be an authorised reseller of Ultimaker S5. Hence such an argumentation is irrelevant to proceedings.
- c) In relation to the experience of the preferred bidder. This has not been proven by Appellant. Moreover, the tender dossier did not require any specific experience as part of its requirements.
- d) That the allegation that the recommended bidder will not be able to fulfil the tender requirements are totally premature. Nonetheless, should such an instance occur, there are the pre-determined remedies which would then be triggered.
- e) That the discount offered by the appellant at this stage of proceedings is illegal in nature.

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:

- a) **Discount offered by the Appellant** – This Board refers to the General Rules Governing Tenders paragraph 12.1 whereby: *“Tenderers may amend/replace or withdraw their tenders online from www.etenders.gov.mt until the expiry of the deadline for submission. No tender may be amended or withdrawn after the deadline for submission”*. Therefore, this Board opines that it is very clear that no changes to the ‘Financial Offer’ may be done following the closing date of the call for tender. Such offers should never be considered as where will the line be drawn? Will then the recommended bidder be allowed to make a further discounted offer?
- b) **Experience** – This Board notes that the Tender Dossier did not list any specific requirements in terms of experience. Hence this grievance will not be considered any further.
- c) **Authorised Resellers** – Reference is made to the letter issued by Ultimaker HQ to the Ministry for Education dated 9th March 2022 whereby it was stated that Patrick Prints (Patrick Gatt) is in fact authorised to promote, distribute, sell and serve as the manufacturer's authorised distribution within Malta. However, it also states that *“At the date of this statement Ultimaker B.V. has not appointed any other distributor for this country.”*. Hence, this letter does not state and / or confirm that Patrick Prints is the sole and only representative of Ultimaker B.V. in Malta. The Board opines that others may also be authorised. None-the-less, the tender dossier did not require the economic operators to be authorised by Ultimaker B.V. The requirement was for “Compatible” products.

Hence this Board, does not uphold Appellant's grievances.

The 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

Mr Lawrence Ancilleri
Member

Dr Charles Cassar
Member