

PUBLIC CONTRACTS REVIEW BOARD

Case No. 653

DH 3487/2013

Extended Call for Quotes: Supply of IT Enterprise Blade Servers.

The tender was published on the 4th December 2013. The closing date was the 12th December 2013.

The estimated value of the Tender was €120,000

Seven (7) bids had been received for this tender.

On the 27th December 2013 eWorld Limited filed an objection against rejection of its bids and the proposed award of the tender to PTL Limited.

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 14th January 2014 to discuss the objection.

Present for the hearing were:

eWorld Limited - Appellant

Mr Raphael Micallef Trigona	Representative
Mr Keith Muscat	Representative
Dr George Cutajar	Legal Representative

PTL Limited - Preferred Bidder

Ms Dorianne Spiteri	Representative
Mr Pierre Attard	Representative

Central Procurement & Supplies Unit - Contracting Authority

Mr Joe Caruana	Chairman Evaluation Board
Ing. Karl Farrugia	Representative
Mr Marnol Sultana	Representative
Ms Ruth Spiteri	Representative
Mr Dion Barbara	Representative

Following a short introduction by the Chairman, the appellant's representative was invited to put forward his submissions on the objection.

Dr George Cutajar on behalf of the appellant company eWorld Limited stated that this tender should have been awarded to the cheapest compliant offer, and appellant's offer was in fact the cheapest, and compliant. The reasons given to appellant for the rejection of its bid were not related to what was in fact requested by the tender document. The tender requested three IT Enterprise Blade Servers. His client had submitted two options for the tender, both for IT Enterprise Blade Servers, and he contended that these offers were the cheapest and compliant. Appellant had signed the necessary tender form wherein it had been declared that appellant had accepted all conditions and was fully compliant. It was up to the contracting authority to prove that appellant's bid was not compliant.

Mr Joe Caruana, the Chairman Evaluation Board, for the contracting authority said that the evaluation board found that the software submitted with the hard drives was not powerful enough to handle the volume of work expected. On being asked by the Chairman if the specifications explained what was required, Mr Caruana replied that no, there were not enough explanations. During the evaluation process the board asked appellant for clarifications through an email. The appellant had replied in time and the reply satisfied the requirements.

The chairman recapitulated that it has been established that the Bill of Quantity did not have sufficient information to enable the evaluation board to state if appellant's bid was compliant or not.

Mr Joe Caruana continued that the fact remains that the equipment offered by appellant cannot be used both technically-wise and financial-wise. The software for back up is not compatible and the SATA drives appellant proposed could not handle the volume and speed of all the required transactions. This was not including in the specifications. When asked by appellant's legal representative to state whether appellant's offer was according to the tender specifications, Mr Caruana confirmed this.

The Chairman said that it seems that appellant had abided and complied with the tender specifications but the contracting authority wanted something more than these specifications.

At this point the hearing was brought to a close.

This Board,

Having noted the Appellant's objection , in terms of the 'Reasoned Letter of Objection' dated 27th December 2013 and also through the Appellant's verbal submissions during the hearing held on 14th January 2014, had objected to the decision taken by the pertinent Authority, in that:

- a) The Appellant's offer was the cheapest and fully compliant.**
- b) The Appellant's bid complied with all the technical requirements as specified in the tender document.**

Having considered the Contracting Authority's verbal submissions during the hearing held on 14th January 2014, in that:

- a) The Evaluation Board confirmed that the equipment tendered for, by the Appellant was not powerful enough to provide the required output.**
- b) The same Board, however, also confirmed that the Appellant's offer fully complied with the technical specifications as laid out in the tender document.**

Reached the following conclusions:

- 1. From the submissions made by both the Appellant and the Contracting Authority, it became evidently clear that :**
 - i) The Contracting Authority failed to provide the correct and complete technical specifications which should have been laid out in the tender document, in the first instance.**
 - ii) So that, additional specifications were laid out during the evaluation stage of the tender. These additional technical specifications were not asked for in the tender document.**
 - iii) The Contracting Authority confirms that the Appellant's offer complied with all technical specifications as originally stipulated in the tender document.**
- 2. Furthermore, this Board opines that when drafting the tender document, the Contracting Authority should take great care to ensure that the technical specifications are thoroughly checked to safeguard correctness and completeness of same.**

In view of the above, this Board finds in favour of the Appellant Company and apart from recommending the reimbursement of the deposit paid by the Appellant, this same Board also recommends that the Appellant's bid be reintegrated in the evaluation process.

**Dr. Anthony Cassar
Chairman**

**Dr. Charles Cassar
Member**

**Mr. Lawrence Ancillieri
Member**

20 January 2014