

PUBLIC CONTRACTS REVIEW BOARD

Case No. 708

ETC/FIN/05/13

Tender for the Lease of Twelve Brand New Photocopiers, including the Delivery, Installation, Commissioning, Maintenance and After-Sales Services, Lot 1 - 'Type A' – Photocopy Machines Lot 2 – 'Type B' Photocopy Machines.

The tender was published on the 12th November 2013. The closing date was the 10th December 2013.

The estimated value of the Tender was €70,000 (Excluding VAT)

Three (3) offers have been received for this tender.

On the 25th April 2014 Image Systems Limited filed an objection against the disqualification of their offer.

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 3rd June 2014 to discuss the objection.

Present for the hearing were:

Image Systems Limited - Appellant

Mr Henry Jones	Representative
Mr Alex Massa	Representative

Alfa Co. Limited - Preferred Bidder

Mr Tonio Mifsud	Representative
Mr Kenneth Saliba	Representative

Employment & Training Corporation - Contracting Authority

Ms Claudine Cassar	Chairperson Evaluation Board
Mr Stephen Caruana	Member Evaluation Board
Ms Maria Cutajar	Member Evaluation Board
Ing Chris Micallef	Member Evaluation Board
Ms Mathea Gauci	Representative
Dr Peter Fenech	Representative

The Chairman made a brief introduction and asked the appellant's representative to make his submissions.

Mr Alex Massa on behalf of the appellant firm said appellant's bid had been disqualified because of some irregularity in the documentation submitted. Bidders had to submit a list of deliveries so that the contracting authority could evaluate their capacity of providing the requested items. The list had to include deliveries effected during 2012 and inadvertently the appellant had submitted a list giving only the deliveries made during 2013. He said that appellant believed that the evaluation board could have asked appellant for clarification. He claimed that the spirit of the requested information was to assess the bidder's ability. This type of tender is normally issued for a period of around five years. Thus what was relevant for 2012 was also valid for 2013, and the evaluation board could have asked for more information.

The Chairman explained that clarifications can only be requested on documents already submitted.

Dr Peter Fenech on behalf of the contracting authority said that the advice he always gave to his clients was that you had to limit yourself to what was submitted before you in writing. Unfortunately in the appellant's case, the requisite was clear that deliveries during 2012 were required according to clause 16.1.d which asked for deliveries during 2012. Clause 6.1.2 also clearly asked for at least two deliveries during 2012. Clause 16 allowed no rectifications to be made but only clarifications and the evaluation board had to abide with the regulations. To ask for data in 2013 would have been rectification.

Mr Alex Massa for appellant insisted that since appellant had submitted 2013 documentation, had the contracting authority asked for the 2012 figures would not have been rectification but clarification.

At this point the hearing was closed.

This Board,

Having noted the Appellant's objection , in terms of the 'Reasoned Letter of Objection' dated 25th April 2014 and also through Appellant's verbal submissions during the hearing held on 3rd June 2014, had objected to the decision taken by the Pertinent Authority, in that:

- a) **Appellant contends that although same had submitted a list of 'Principal Deliveries for 2013 only, the purpose of the 'Experience clause' was to assess the capability of the prospective tenderer, in so far deliveries are concerned. Appellant does in fact possess such capabilities.**
- b) **Appellant also contends that the Evaluation Board should have asked for clarifications from the tenderer in this regard.**

Having considered the Contracting Authority's 'Letter of Reply' dated 30th April 2014 and also through verbal submissions during the hearing held on 3rd June 2014, in that:

- a) **The Appellant Company failed to submit the mandatory list of ‘Principal Deliveries’ as stipulated in Article 6.1.2 of the ‘Instructions to Tenderers’.**
- b) **The Evaluation Board could not ask for clarifications on ‘missing information’, as this would be a ‘rectification’ to the documentation as submitted by the Appellant Company.**

Reached the following conclusions:

1. **In 2013, the mandatory ‘experience’ clause was still in force. In accordance with Article 6.1.2 of the ‘Instructions to tenderers’, Appellant had to submit the following documentation:**
 - i) **A list of Principal deliveries effected in 2012.**
 - ii) **A minimum of two deliveries/projects, of a similar nature effected in 2012.**

In both i) and ii) above, Appellant failed to submit the required information. Instead Appellant Company submitted information regarding deliveries effected in 2013, which information was not requested in the tender document.

2. **This Board opines that the Evaluation Board could not request clarifications on information not submitted by the Appellant in his tender form, as this would give rise to rectification, which is not permitted in accordance with ‘Public Procurement Regulations’.**

In view of the above, this Board finds against the Appellant Company and recommends that the deposit paid by Appellant should not be reimbursed.

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Lawrence Ancilleri
Member

1 July 2014