

PUBLIC CONTRACTS APPEALS BOARD

Case No. 48

RE: CT 2607/2004, Advert No 303/2005, FTS C 12 – 04 Tender for Tools and Equipment: General Tools and Equipment for Technology Workshops in various Government Schools

This call for tenders, published in the Government Gazette on the 02.11.2004, was issued by the Contracts Department following a request transmitted to the latter by the Foundation for Tomorrow's Schools (FTS).

The closing date for this call for offers was 21.12.2004.

The Foundation for Tomorrow Schools (FTS) appointed an Evaluation Board consisting of Messrs.

- Charles Spiteri (Education Officer Design & Technology)
- Andrew Ellul (Senior Architect FTS)
- Tano Zammit (Senior Architect FTS)

to analyse a total of six (6) offers submitted by different tenderers.

The global estimated value of the contract in question was Lm 54,225.

Following final recommendations, dated 22.06.2005, made by the Evaluation Board relating to the tender in question, the Contracts Committee did not award Messrs MCE Ltd Item Nos 3, 34, 37, 39, 40, 44, 45, 54, 64 and 79. As a consequence, the said Company filed an objection on 09.08.2005.

The Public Contracts Appeals Board (PCAB) made up of Mr. Alfred Triganza (Chairman) with Mr Anthony Pavia and Mr. Edwin Muscat, respectively acting as members, convened a public hearing on 05.10.2005 to discuss this objection.

Present for the hearings were:

MCE Ltd

Mr Ivor Puglisevich – Sales & Contracts Manager
Mr Stefan Casha

Foundation for Tomorrow's Schools

Mr Chris Pullicino – Financial Controller
Eng Chris Attard Montalto – Technical Consultant (**Witness**)

Adjudication Board

Mr Charles Spiteri – Education Officer Design & Technology
Mr Tano Zammit (A & C.E.)
Mr Andrew Ellul (A & C.E.)

Following the Chairman's brief introduction, MCE Ltd's representative, Mr Ivor Puglisevich commenced his intervention by briefly stating the main reasons behind his Company's decision to file an objection.

He claimed that they were contesting the General Contracts Committee's decision not to award Item Nos. 3 (Air Compressor Unit), 34 (Stock & Dies), 37 (Taps and Wrench - Metric), 39 (Sash Clamps – 450mm), 40 (Sash Clamps – 900mm), 44 (G-Cramps – 4”), 45 (G-Cramps – 6”), 54 (300mm [12”] stainless Steel Scaled Ruler), 64 (Scissors) and 79 (Watch Maker Screw Driver) because, in their opinion, their offer was technically valid and was compliant with the tender specifications.

MCE Ltd's representative showed his concern about the fact that if a fresh call were to be issued, their company would be put in a great disadvantage because their prices had already been made public. Furthermore, he argued that, if these were to be broken down in smaller values, such calls would not fall under the jurisdiction of the Contracts Committee because then they could be purchased through a Departmental Call for tenders, a call for quotations or even by direct order.

The appellant requested the PCAB to review the decision and to allow the purchasing process to continue under this call for tenders.

The first witness to take the stand was Eng Chris Attard Montalto, who was FTS's Technical Consultant who also drew the technical specifications and evaluated the tenderers' proposals.

Referring to his technical report dated 3 February 2005, Eng Attard Montalto testified that MCE Ltd submitted only the technical literature in respect of Items 3, 34 and 37. He said that none was supplied for Item Nos 39, 40, 44, 45, 54, 64 and 79.

Mr Puglisevich intervened to confirm that they had submitted only a description of the latter five items. However, he declared that they had supplied the technical literature pertaining to Items 39 and 40. Thus, claimed the appellant, he failed to understand how such literature could have been misplaced. When MCE Ltd's representatives were asked to explain the method of how they submitted their tender, Mr Stefan Casha, also representing MCE Ltd, said that they attached a copy of the product with their tender document and highlighted each Item number for which technical literature was supplied. At this point, the PCAB requested MCE Ltd's original tender document for verification. However, although according to FTS's Evaluation Committee such document was supposed to be at the Department of Contracts, it was not found. The PCAB decided to proceed with the hearing notwithstanding this mishap.

Eng Attard Montalto said that Item No 3 was acceptable for him because the air compressor unit offered by MCE Ltd gave a maximum flow of 320 litres per minute and reached pressures of 9 bar while the tender specifications indicated 500 litres and 10 bar respectively. He contended that these variations were considered reasonable. It was explained that although an acceptable variation usually was +/- 10%, MCE Ltd's air compressor was recommended for acceptance because in this case, this was the only unit which was nearest to the tender specifications. Arch Tano Zammit explained that they did not uphold the consultant's recommendation because (a) none of the models offered was according to the specifications and (b) they did not meet

their requirements. At this point, Eng Attard Montalto admitted that, in the prevailing circumstances, he had to agree with the adjudication board's recommendation not to accept MCE Ltd's offer.

With regard to Items 34 and 37 respectively, FTS's consultant said that these items were not acceptable because he was not certain whether these were according to specifications or not. Also, he pointed out that subsequently, when the adjudication board requested MCE Ltd to submit a sample thereof, it was established that such items were not compliant with the tender's specifications. Referring to the same subject matter, Arch Zammit clarified that these were not accepted because two of the sizes indicated in the specifications were missing. When Mr Casha intervened to state that the sizes in the tender documents were not standard, his attention was drawn to the fact that, if this was the case, they should have referred the matter to the Department of Contracts before the closing date of the tender so that necessary action could be taken to notify all potential bidders accordingly. Yet, FTS's representative declared that these sizes were available.

Arch Zammit declared that Items 44 and 45 should have been awarded to MCE Ltd because Items 44 (G-Cramp – 4") and 45 (G-Cramp - 6") were combined as one set in their offer. He explained that in their report dated 22 June 2005 they indicated Item 44 as one of the items recommended for award to MCE Ltd and, through an oversight, they included Item 45 with the items not recommended for award. Mr Zammit said that although MCE Ltd did not submit the technical literature of these items, these were considered acceptable because the bidder submitted the name of the manufacturer and the model number, and also because they were familiar with these items. Mr Puglisevich pointed out that in those cases where no literature was submitted, apart from supplying the description thereof, they also indicated the model number and the supplier of the items concerned. However, Mr Zammit explained that in this particular case they were familiar with such items (G-Cramps).

With regards to Items 39 and 40, Mr Zammit said that in spite of the fact that the appellant submitted samples and technical literature, the items offered were still not found to be according to specifications. However, Mr Casha remarked that they only submitted the technical literature because their suppliers did not provide them with samples of these models on time. He declared that the only samples submitted were in respect of Items 32 and 78.

At this point, the Evaluation Committee acknowledged that the phrase '*Samples and technical literature submitted by Tenderers Nos. 5 and 6*' in their report was wrongly worded. Also, it was declared that these items were not accepted because according to the technical literature submitted the items were not according to specifications.

At this stage, the public hearing was concluded and the PCAB proceeded with its deliberations before reaching its decision.

This Board,

- having examined the reasons given by the General Contracts Committee for disqualifying Appellants' offer;
- having considered the objections put forward in writing by Appellants, in terms of their motivated letter of objection dated 9th August, 2005;
- having heard the reasons given by Appellants during the public hearing held on 5th October, 2005 for objecting against the Contracting Authority's recommendation that Appellants' bid should be disregarded;
- having perused the Evaluation Board's reports dated 3rd May and 22nd June, 2005 respectively, which were substantiated by the Evaluation Board's verbal interventions during the public hearing held on 5th October, 2005;

reached the following conclusions:-

1. Items 44 and 45 are to be awarded to MCE Ltd because Items 44 (G-Cramp – 4”) and 45 (G-Cramp - 6”) were combined as one set in their offer, as confirmed by Arch Zammit who, during the hearing had testified and admitted that the Appellants had been erroneously not awarded the tender in so far as these particular items are concerned;
2. Tender specifications required supporting documentation to accompany offers and, in its opinion, a description, irrespective of the level of detail entered into, is not what is meant in similar circumstances if such details are not provided within the context of official printed material originating from manufacturer or service provider. As a consequence, it is not deemed reasonable to permit local representatives to provide subjective details in lieu of formal details emanating from source;
3. All items, except for Items 44 and 45 (refer to '1' above) were either not accompanied by pertinent supporting explanatory leaflets (as confirmed by Appellants themselves during the hearing) or else such leaflets, albeit thought by Appellants to have been submitted were not found. In view of the fact that this Board had no reason to believe otherwise, considering that the inter-departmental forwarding of documentation took place in a normal manner, deems that for all intents and purposes such documentation was not submitted and, hence, not in line with tender specifications.

In consequence, this Board has decided to reject the appeal, except for issues relating to Items 44 and 45 where it finds in favour of Appellants.

In view of this, the PCAB recommends that 10% of the deposit made by Appellants in connection with their appeal be refunded

Alfred R. Triganza
Chairman

Anthony Pavia
Member

Edwin Muscat
Member

Date: 24th October 2005