

## PUBLIC CONTRACTS APPEALS BOARD

### Case No. 49

**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, the global estimated value of which was Lm 54, 225, 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.

Following final recommendations, dated 22.06.2005, made by the Evaluation Board relating to the tender in question, the Contracts Committee awarded Item Nos. 8, 15, 62, 67 and 82 regarding the tender in caption to **MERANTI Ltd** when, according to appellants, MCE Ltd., in all these items their prices were much cheaper, technically correct and according to specifications.. 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

#### **MERANTI Ltd**

Mr Peter Vella

#### **Foundation for Tomorrow's Schools**

Mr Chris Pullicino – Financial Controller  
Eng Chris Attard Montalto – Technical Consultant

#### **Adjudication Board**

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

#### **Department of Contracts**

Mr Mario Borg

The Chairman PCAB opened the sitting by giving a brief introduction relating to the case, following which he invited the appellant's representative to briefly state the motivation behind their objection.

Mr Ivor Puglisevich, representing MCE Ltd., started by stating that they were contesting the Evaluation Board's decision to award Items Nos 8 (Centre Punches), 15 (Hacksaw Frame), 62 (½ Round Rasps 200mm), 67 (Smoothing Plane 9") and 82 (Fire Blanket) to Meranti Ltd because their products met the technical specifications and their prices were much cheaper. With particular reference to item 62, Mr Puglisevich failed to understand how the same Evaluation Board recommended the award of this item to Meranti Ltd considering the fact that both companies offered the same product and their price was cheaper. The appellant said that the comparative list of items which was submitted with their objections showed that in all cases these items met or surpassed the tender specifications.

Therefore, they requested that the decision in respect of these items should be reviewed.

Mr Peter Vella, representing Meranti Ltd., rebutted MCE Ltd.'s representative's opening statement by providing those present with specific details on each item mentioned by the appellant. He explained that although the quantity requested in the tender document for centre punches (Item 8) was 180 pieces, it was awarded for 36 pieces. This was due to the fact that they submitted a quantity of 36 pieces in sets of five (5). As regards the hacksaw frame (Item 15), which was one of the most important tools for schools, it was declared that they were offering a first quality Eclipse together with a spare blade in accordance to tender specifications. Meranti Ltd's representative said that the ½ Round Rasps 200mm (Item 62) was not produced by the same manufacturer because that supplied by MCE Ltd was *Palmera* while theirs was *Simonds*. As a consequence, it was not a case where they were offering a more expensive product for the same item. Furthermore, as far as the smoothing plane 9" was concerned, Mr Vella said that he failed to understand how such item could be bought at a price of Lm3.62 because it was too cheap. With regard to the last item, he contended that although it was cheaper, it was extremely difficult to handle a 2m by 1m fire blanket (Item 82). He pointed out that according to the tender specifications the size of the fire blanket had to be 1200mm by 1200mm.

Mr Vella concluded by stating that the items offered were all according to specifications and that all tools offered were of high quality.

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

Upon being shown a copy of his technical report dated 3 February 2005, Eng Attard Montalto confirmed that it was a copy of the original one he had submitted to the Foundation. Eng Attard Montalto explained that items 8, 15, 67 and 82 were not accepted because MCE Ltd did not submit relative literature as required in terms of the Tender Document and the FTS's Consultant proceeded by saying that the tenderer only supplied a description.

At this stage the same witness drew the attention of those present for the hearing that Clause 1.49 of the tender document specified that *'Prospective suppliers shall include together with their tender, full technical literature on each item being offered, in the English language to enable specifications' verifications.* He added that, by 'technical literature' he understood a supporting document from the parent company and not a description of tools by the local agent / tenderer. MCE Ltd's representative intervened and claimed that they had submitted the literature of Item 67 but Eng Attard Montalto insisted that no literature was found with their documents. Following a specific request by this Board to give his views in regard, Mr Pullicino explained that these documents could not have been misplaced because the tender documents were immediately forwarded to their technical adviser in the same condition as these were received by them from the Department of Contracts.

Eng Attard Montalto confirmed that every item recommended for acceptance was accompanied by the technical literature and also met the tender specifications.

As regards item 62 (½ Round Rasps 200mm), FTS's consultant said that in his technical report, he indicated that this item was acceptable because it fitted the published specifications.

At this point, Mr Tano Zammit, a member of the Evaluation Board, was called to the witness stand to explain why this item was not awarded to MCE Ltd. Arch Zammit declared that following the receipt of the technical consultant's report dated 3 February 2005, through an oversight he indicated one tenderer (Tenderer No 3, Meranti Ltd) instead of the other (Tenderer 6, MCE Ltd) in the Evaluation Board's reports dated 3<sup>rd</sup> May and 22<sup>nd</sup> June 2005 respectively. Also, he declared that he made another mistake when he recommended the award of Item 8 (Centre Punches) to Tenderer No 3, Meranti Ltd instead of Tenderer No 5, Anastasi & Briffa Ltd because the prices of the latter were cheaper. It was explained that they did not draw the Department of Contract's attention about the matter because when he checked with Mr Chris Pullicino to enquire how they could formally rectify the matter, in view of the limited time available, it was suggested to raise the issue during the appeal's hearing. Here, Mr Charles Spiteri and Arch Andrew Ellul were called to the stand and both confirmed Arch Zammit's statement.

This Board, aware of all the mistakes mentioned, intervened and expressed its concern as regards the lack of checking taking place, especially when such checking could ultimately save the public coffers a substantial amount of money in high ranking public officials being more professional and precise in delivering their services.

As regards items 15, 67 and 82, it was confirmed that the Evaluation Board had agreed with the technical consultant's recommendations that, on the basis of lack of technical information, MCE Ltd's offers should be eliminated.

During his testimony, Mr Pullicino explained that when the offers were brought in his office from the Department of Contracts, these were then collected by Eng. Attard Montalto. FTS's Financial Controller remarked that if the tender was related to one of their projects, such as Karwija School, he would have opened the offers, but this tender concerned more the Education Division rather than FTS.

The last witness to take the stand was Mr Mario Borg from the Department of Contracts, who when specifically asked by the PCAB to explain what Department of Contracts understood by the term 'technical literature', replied by stating that prospective suppliers were expected to provide a leaflet / brochure from their principals and not just a subjective description thereof. During his testimony Mr Borg said that usually, when technical literature was supplied with tenders, it was indicated on the schedule. Also he claimed that offers were usually sealed when these were referred to the departments / entities concerned. Mr Borg confirmed that, possibly, the receipt of the technical literature was not indicated on the schedule of this particular tender through an oversight. Also it was declared that he could not recall any instance where such documents were permanently lost or misplaced when these were referred to other departments / entities.

As a concluding statement, Mr Puglisevich said that they were of the opinion that those items which were not accompanied by pertinent technical literature should not have been disqualified because their company had provided full description and detailed specifications thereof. As regards item 67, MCE Ltd's representative said that, in view of the method used in the submission of tenders, it was very unlikely that such literature was not provided.

This Board,

- having examined the reasons given by the General Contracts Committee for awarding Item Nos. 8, 15, 62, 67 and 82 regarding the tender in question to MERANTI Ltd;
- having considered the objections put forward in writing by Appellants, in terms of their motivated letter of objection dated 9<sup>th</sup> August, 2005;
- having heard the reasons given by Appellants during the public hearing held on 5<sup>th</sup> October, 2005 for objecting against the Contracting Authority's recommendations;
- having perused the Evaluation Board's reports dated 3<sup>rd</sup> May and 22<sup>nd</sup> June, 2005 respectively, which were substantiated by the Evaluation Board's verbal interventions during the public hearing held on 5<sup>th</sup> October, 2005;

reached the following conclusions:-

1. Item 62 is to be awarded to MCE Ltd following Arch Zammit's admission that he had made a mistake following the receipt of the technical consultant's report dated 3 February 2005, when through an oversight he indicated one tenderer (Tenderer No 3, Meranti Ltd) instead of the other (Tenderer 6, MCE Ltd) in the Evaluation Board's reports dated 3<sup>rd</sup> May and 22<sup>nd</sup> June 2005 respectively.;
2. With regards to Items 15, 67 and 82, this Board rules against Appellants' objection. 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. Although Messrs Anastasi & Briffa Ltd did not effectively file an objection, yet for fairness' and total transparency's sake, this Board feels that with regards to Item No. 8, considering what was stated under oath by Arch Zammit when the latter declared that he had made another mistake when he recommended the award of Item 8 (Centre Punches) to Tenderer No 3, Meranti Ltd instead of Tenderer No 5, Anastasi & Briffa Ltd because, as can be evidently verified, the price offered by Anastasi & Briffa Ltd was cheaper and their offer was also according to specifications, Anastasi & Briffa Ltd should be awarded the tender (Item 8);
4. Almost all items, unless otherwise specified, 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, unless otherwise stated in (1) to (3) above, this Board has decided to reject the appeal.

In view of this, the PCAB recommends that 20% of the deposit made by Appellants in connection with their appeal be refunded.

**Alfred R. Triganza**  
Chairman

**Anthony Pavia**  
Member

**Edwin Muscat**  
Member

*Date: 24<sup>th</sup> October 2005*