

PUBLIC CONTRACTS REVIEW BOARD

Case No. 852

FTS 69/2015

Tender for the Supply, Delivery and Installation of Library Furniture for Various Schools in Malta and Gozo.

The Tender was published on the 20th March 2015. The closing date was the 16th April 2015. The estimated value of Tender is €118,044.12 (Exclusive of VAT).

Five (5) offers had been received for this Tender.

On the 10th July 2015 C. Fino and Sons Limited filed an objection against the decision of the Contracting Authority to disqualify its Tender as being technically non-compliant.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a hearing on Thursday 24th September 2015 to discuss the objection.

Present for the hearing were:

C. Fino & Sons Limited:

Mr Jean Carlo Fino
Mr Dave Hosken
Mr Kevin Tabone

Managing Director
Commercial Sales Manager
Financial Controller

Mario Portelli Woodworks:

Mr Mario Portelli
Dr Mario Camilleri

Representative
Legal Representative

Foundation for Tomorrow's School:

Perit Joseph Zerafa Boffa
Mr Ivan Zammit
Mr Joseph Saetta

Chairperson Evaluation Board
Secretary Evaluation Board
Member Evaluation Board

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

Mr Kevin Tabone on behalf of the Appellant said that their Tender had been disqualified since the Contracting Authority had decided from the documents submitted with their Tender, that the specifications of the desks were different from the Tender requisites. He explained that there are diverse permutations on the design of desks and therefore the Appellant had submitted specifications for the most similar desks but had enclosed a declaration that any furniture supplied by the latter was covered by the specifications as per the Tender Document. Mr Tabone also added that in the Bill of Quantity the required desks were specified.

Mr Ivan Zammit on behalf of the Contracting Authority explained that the Tender asked for administration desks but the Appellant had offered certification for teachers' desks, and these had a different design. The desired design for the desks was clearly shown. There have been several decisions on appeal previously that stated that "where items were not according to specifications as requested could not be accepted". The Evaluation Board could not therefore accept the Appellant's offer. The Tender Document included drawings at DSK 05 and 07 showing the desired design of the desks in question. These showed that there had to be a cable management system, drawers, the legs etc for each desk.

Mr Kevin Tabone for the Appellant reiterated that Appellant's Bill of Quantity and prices showed that the offered desks were according to the specifications. It was not possible to produce specifications of items in a short time between the call for Tenders and the closing date. Therefore Appellant had submitted specifications incorporating the Tender specifications.

Mr Ivan Zammit for the Contracting Authority explained that the Contracting Authority had a set of specifications for each item to ensure that the standard is the same. These had been used for the last ten years. While a teacher's desk has code 55 Appellant submitted code 42. Apart from this there had been design measurement problems with Appellant's submission and for item 1.2, shelving; this was not as per specification 122 since Appellant offered wood shelving instead of epoxy coated metal as requested.

Mr Kevin Tabone for the Appellant insisted that the literature submitted was to certify the items submitted, and this was according to specifications. The BOQ listed the proper items.

Mr Jean Carlo Fino on behalf of the Appellant said that the BOQ and prices were filled according to the Contracting Authority's specifications. Certification of products cannot cover all the various measurements of the items to be provided.

Mr Kevin Tabone for the Appellant declared and promised that the Appellant would certify and confirm the items listed in Appellant's BOQ.

Mr Ivan Zammit for the Contracting Authority said that a Department of Contracts Circular issued in January 2015 had made it clear that if one or more of the applicable specifications was not met the Tender had to be deemed out of specifications, and that these fell under note 3 that meant that no rectification was possible.

Mr Jean Carlo Fino declared that the Appellant was willing to confirm in writing they would be providing the items as listed in the Bill of Quantity and prices.

At this point the hearing was closed.

This Board,

Having noted the Appellant’s objection in terms of the “Reasoned Letter of Objection” dated 10 July 2015 and also through his verbal submissions during the Public Hearing held on the 24th September 2015, had objected to the decision taken by the pertinent Authority, in that:

- a) The Appellant contends that he had submitted specifications for the most similar desks but had also enclosed a declaration that any furniture supplied by the Appellant covered all the specifications as dictated in the Tender Document. In this regard, the Appellant maintains that his offer was unjustly discarded;**
- b) The Appellant maintains that for the short period between the “Call for Tenders” and “The Closing Date”, they could not produce specifications of items, but submitted specifications as those required in the Tender Document.**

Having considered the Contracting Authority’s “Letter of Reply” dated 4 September 2015 and the verbal submissions during the Public Hearing held on 24th September 2015, in that:

- a) The Contracting Authority insists that the desired design was clearly demonstrated to the Appellant. The latter did not abide by the set of specifications as dictated in the Tender Document. In this regard, the Evaluation**

Committee had no other option but to discard the Appellant's offer.

Reached the following conclusions:

- 1. With regards to the Appellant's first contention, this Board, after having examined all the documentation of this Tender, opines that the design of the desks as clearly illustrated in the Tender Document and justifiably contends that the design is part and parcel of the requested Technical Specifications.**

From credible submissions, it was proved that the Appellant offered certification for "Teachers' Desks" and not for "Administration Desks" as clearly depicted in the design submitted by the Contracting Authority in its Tender Document. This Board has, on many occasions, emphasized the fact the Technical Specifications are not capriciously dictated in the Tender Document.

Specifications are drawn up to ensure that the Contracting Authority procures the product for its specific utilisation. The reason why the Tender Document dictated a specific design which had to be adopted was justifiably proved from the submissions by the Contracting Authority.

The Literature submitted by the Appellant Company proves that the items offered were not according to the requested specifications. This Board would reaffirm its contention that the Technical Specifications must be strictly adhered to.

In this regard, this Board is justifiably convinced that the Appellant failed to meet the specifications as dictated in the Tender Document and in this respect, this same Board does not uphold the Appellant's First Grievance.

- 2. With regards to the Appellant's Second Contention, this Board, after having heard submissions made by the Appellant, opines that the lack of sufficient time between the "Call for Tenders" and the "Closing Date" is definitely not credible. In the opinion of this Board, the Appellant had other remedies prior to the submission of his bid.**

This Board respectfully notes that certain explanations/clarifications are being presented during the Appeal process. This should not be pertinent so. Prior to submission of one's offer, the Appellant had to explain or clarify any misconceptions, misunderstanding or clarifications. This Board notes that the Appellant did not avail himself of such remedies. In this regard, this Board does not uphold the Appellant's Second Contention.

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

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancillieri
Member

6 October 2015