

PUBLIC CONTRACTS REVIEW BOARD

Case 1129 – MEDE/MPU 022/2017 – Tender for the Supply of Stationery Items for Various Schools and Colleges using Environmentally Friendly Items within the Ministry of Education and Employment

The publication date of the call for tenders was the 14th September 2017 whilst the closing date of the call for tenders was the 11th October 2017. The estimated value of the tender (exclusive of VAT) was € 134,999.

There were five (5) bidders on this tender.

Smart Office Supplies Ltd filed an appeal on 11th January 2018 against the Contracting Authority's decision that their tender had been rejected as it was considered to be technically non-compliant.

On 8th February 2018 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Carmel Esposito as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellant – Smart Office Supplies Ltd

Dr Carlos Bugeja	Legal Representative
Mr Joe Borg	Representative

Contracting Authority – Ministry for Education and Employment

Dr Dennis Zammit	Legal Representative
Ms Karen Micallef	Chairman Evaluation Board
Ms Mary Anne Borg	Assistant Director

The Chairman of the Board, Dr Anthony Cassar invited the parties to make their submissions.

Dr Carlos Buhagiar, Legal Representative of Smart Office Supplies Ltd said that his clients' letter of appeal covered the grounds for this hearing. The specification sheet in the tender document requested three particular items to be 'non-toxic'. Nowhere in these specification sheets was it mentioned that these product had to be labelled non-toxic on the containers. He continued by stating that the technical data sheets for these products contain all the requested details but these were never asked for by the Contracting Authority, whose decision seemed to be based not on the fact that the product was non-toxic but that the product was not labelled as such.

Dr Buhagiar tabled a document from Italian firm Viva plc suppliers of one of the products stating that it was non-toxic.

The Chairman pointed out that out of five bidders three had their tenders disqualified for non-compliance on precisely the same three products and for the same reason.

Dr Dennis Zammit, Legal Representative of the Contracting Authority said that it was not a valid argument to say that there was insufficient space on the label for the symbols – the whole purpose of symbols was that they should be displayed. He stated that the Authority's objective in issuing tenders is that they would be awarded and therefore the Ministry are prepared to re-evaluate the present submission.

The Chairman said that out of two hundred items specified in the tender only three appeared not to have met the specification – this is not an appreciable amount and he suggested that in re-evaluating they include all the tenders that had been otherwise compliant but had been disqualified on this point. This would be a practical step bearing in mind that there is no danger that children would be using these products. He then thanked both parties for their submissions and declared the meeting closed.

This Board,

Having noted this Objection filed by Smart Office Supplies Limited, (herein after referred to as the Appellant), on 11 January 2018, refers to the Contentions made by the latter with regards to the cancellation of the Tender of reference MEDE/MPU/022/2017 listed as Case Number 1129 in the records

of the Public Contracts Review Board, issued by the Ministry for Education and Employment, (herein after referred to as the Contracting Authority).

Appearing for the Appellant: Dr Carlos Bugeja

Appearing for the Contracting Authority: Dr Dennis Zammit

Whereby the Appellant contends that:

- a) Their main objection is that their offer was allegedly deemed to be technically non-compliant due to the fact that on items 97, 103 and 106, there was no indication that these supplies are non-toxic. In this regard, the Appellants are insisting that this alleged reason cannot be interpreted that these items are toxic.**

This Board also noted the Contracting Authority's "*Letter of Reply*" dated 29 January 2018 and its verbal submissions during the Public Hearing held on 8 February 2018, in that:

- a) The Ministry for Education and Employment insist that "*Toxic*" and "*Non-Toxic*" labeling should be displayed on the items being supplied. However, the Contracting Authority's main objective is to issue the Tender and in this regard, the latter is prepared to revise the Evaluation Process.**

This Board also took note of the documents submitted by Smart Office Supplies Limited which consisted of a confirmation from an Italian Supplier that the items referred to in this Appeal are non-toxic.

This Board, after having examined the relevant documentation and heard submissions by all interested parties, opine that from the submissions made, it was credibly established that:

- a) The reason why non-toxic supplies were requested was well justified by the Ministry for Education and Employment and this Board notes that the issue pertains to three items numbered 97, 103 and 106 in the Technical Specification of the Tender Dossier, out of two hundred items. In this regard, this Board also notes that two other offers were discarded for the same reason relating to the same items;**

- b) Although the Tender was cancelled, this Board is credibly convinced that the intention of the Ministry for Education and Employment is to issue this Tender and consequently procure these necessary supplies. In this regard, this Board confirmed the Contracting Authority's positive intention.**

This Board would emphasize that whenever possible a Tender should be saved so that unnecessary delays in procuring the supplies or services is avoided. In this case, this Board, after identifying the three items which did not denote the non-toxic sign, in actual fact, represented items which are not to be distributed to children of a very minor age, so that there is no physical danger of such utilization of these items.

In view of the above, this Board,

- i) Revokes the Ministry for Education and Employment's decision to cancel the Tender;**

- ii) Upholds Smart Office Supplies Limited's grievances and recommends that the deposit paid by the latter is to be refunded;**

- iii) Recommends that the Evaluation Process is to be continued by including into consideration all those offers which were discarded for the same reasons relating to items 97, 103 and 106.**

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Carmel Esposito
Member

13th February 2018