

PUBLIC CONTRACTS REVIEW BOARD

Case 1167 – Q4/2018 – Call for Quotations for the Supply and Delivery of Board Room Chairs for Active Ageing & Community Care Department

The publication date of the call for tenders was the 17th January 2018 whilst the closing date of the call for tenders was the 31st January 2018. The estimated value of the tender (exclusive of VAT) was € 7,300

There were seven (7) bidders on this tender.

Invicta Ltd filed an appeal on 3rd April 2018 against the Contracting Authority's decision to reject the tender on the grounds that the bid was technically non-complaint. A deposit of € 400 was paid.

On 17th May 2018 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Mr Carmel Esposito and Mr Lawrence Ancilleri as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellant – Invicta Ltd

Mr Alfred Farrugia	Representative
Mr Clive Farrugia	Representative

Recommended Bidder – Al Sadi Fino Company Ltd

Dr Robert Gauci Maistre	Legal Representative
Mr Dino Fino	Representative
Ms Christabel Carabott	Representative

Contracting Authority – Active Ageing & Community Care Department

Mr Matthew Mangion	Chairperson Evaluation Board
Ms Bernardette Barbara	Secretary Evaluation Board
Mr Dylan Mercieca	Member Evaluation Board
Mr Simon Vella	Member Evaluation Board
Ms Janet Pace	Member Evaluation Board

The Chairman of the Public Contracts Review Board, Dr Anthony Cassar, after a brief introduction invited Appellants to make their submission.

Mr Alfred Farrugia, representative of Invicta Ltd, said that the appeal was based on the rejection of the height of the back of a high back chair which in the brochure supplied had erroneously been shown as 400mm instead of 500mm. Other literature supplied agreed with the technical specifications requested in the tender. His bid was the lowest and as such the Contracting Authority should have asked to see a sample before rejecting his bid

The Chairman pointed out that the Contracting Authority requested literature which had to conform to the technical offer and which forms part of the tender. If it disagrees with the technical offer then it was not compliant. The Evaluation Committee was not obliged to ask to see samples or to seek rectification. This Board had to follow the tender directives and cannot undermine this principle.

The Chairman thanked the Appellant for his submissions and declared the hearing closed.

This Board,

Having noted this Objection filed by Invicta Limited, (hereinafter referred to as the Appellant), on 3 April 2018, refers to the contentions made by the same Appellant with regards to the award of Tender of Reference Q4/2018 listed as Case No 1167 in the records of the Public Contracts Review Board, awarded by the Active Ageing & Community Care Department, (herein after referred to as the Contracting Authority).

Appearing for the Appellant: Mr Alfred Farrugia

Appearing for the Contracting Authority: Mr Matthew Mangion

Whereby, the Appellant contends that:

- a) His main contention is that whilst their technical offer was compliant, the Literature submitted by the same had erroneous chair back height dimension of 400mm instead of 500mm, as so requested in the Technical Specifications. In this regard, the Appellants maintain that since their offer was the cheapest, the Contracting Authority should have requested a sample.**

This Board also noted the Contracting Authority's "*Letter of Reply*" dated 5 April 2018 and its verbal submissions during the Public Hearing held on 17 May 2018, in that:

- a) The Active Ageing and Community Care Department insist that the Appellants' Technical Literature indicated a chair back height of 400mm instead of the requested dimensions of 500mm and in this regard, the Evaluation Board had no other option but to deem Invicta Limited's offer to be technically non-compliant.**

This Board, after having examined the relevant documentation to this Appeal and heard submissions made by the parties concerned, opines that the issue worth of consideration is the Literature which was submitted by Invicta Limited.

First and foremost, this Board would emphasize the basic fact that the Technical Literature, when so requested, forms an integral part of the Technical Offer, in a Tender Dossier. It must also be mentioned that, when so requested, the Technical Literature should represent and confirm what the Tenderer has promised to provide in his Technical Offer, so that such Literature represents a form of due diligence during the Evaluation Process.

At the same instance, the Evaluation Board can only assess an offer solely, on the information submitted by the Bidder and the same Board is also bound to adhere to the principle of self-limitation. In this particular case, the Appellants' Technical offer, as so declared, in the Technical Form of their offer was technically compliant, however upon submission of the Technical Literature by the same Invicta Limited, the dimensions of the chair, contained therein did not confirm the same dimensions as those in the Technical Offer,

so that the Evaluation Board, quite appropriately could not ask for any clarifications as such an action would have amounted to a rectification, the latter of which is not allowed on matters of a technical nature.

With regards to the Appellants' claim that the Contracting Authority should have requested a sample, this Board would respectfully point out that the same Authority, in its Tender specifications and conditions is not obliged to request samples. It can ask for samples in instances of certain type of Procurement but only in cases where the Active Ageing and Community Care Department feels that such samples are necessary for the proper evaluation of a particular product. In this particular case, the Contracting Authority felt the need to ask for the Technical Literature and the Appellants' submission. In this regard, the Appellants did not justify the Technical Specifications of the product which they had declared to supply.

This Board would like to also point out that it is the Bidders' responsibility and obligation to ensure that, prior to the submission of documentation, in a tendering process, all the information to be submitted conforms with the requirements of the Tender Dossier.

In view of the above, this Board,

- a) Does not uphold Invicta Limited's Contentions;**

- b) Recommends that the deposit paid by the Appellants should not be refunded;**

- c) Upholds the decision taken by the Active Ageing and Community Care Department in the award of the Tender.**

Dr Anthony J Cassar
Chairman

Mr Carmel Esposito
Member

Mr Lawrence Ancilleri
Member

22nd May 2018.