

PUBLIC CONTRACTS REVIEW BOARD

Case 1172 – MEDE/MPU/72/2017 – Tender for the Purchase of Maltese Books for Primary Schools – Scholastic Year 2018-2019

The publication date of the call for tenders was the 14th February 2018 whilst the closing date of the call for tenders was the 6th March 2018. The estimated value of the tender (exclusive of VAT) was € 102,120.50

On the 23rd April 2018, Mizzi Design and Graphic Services Ltd filed an objection against the Contracting Authority on the grounds that their tender was rejected due to being technically non-compliant. A deposit of € 510 was paid.

On 29th May 2018 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Richard Matrenza as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellant – Mizzi Design and Graphics Services Ltd

Dr Clement Mifsud Bonnici	Legal Representative
Mr Joseph Mizzi	Representative

Contracting Authority – Ministry for Education and Employment

Dr Dennis Zammit	Legal Representative
Ms Bernardette Gerada Aloisio	Chairperson Evaluation Committee
Ms Phyllis Vella	Secretary Evaluation Committee
Mr Jurgen Carl Grixti	Representative

The Chairman of the Public Contracts Review Board, Dr Anthony Cassar, in a brief introduction requested the Appellants to make their submissions.

Dr Clement Mifsud Bonnici, Legal Representative of Mizzi Design and Graphics Services Ltd, stated that it appeared as if there was some form of misunderstanding in the two reasons given for the rejection of the bid. The Evaluation Committee now accepts that there was a misprint in the lot numbers referred to in the rejection letter and his clients confirm that they never received the clarification letter requesting them to submit a Power of Attorney form confirming that Appellants were authorised to represent Midsea Books Ltd.

Dr Dennis Zammit, Legal Representative of the Ministry for Education and Employment, said that their hands were tied by the terms of the tender document – however, if the Board were to allow it they will request a clarification which would overcome the existing impasse.

The Chairman made it clear that if there was agreement between the parties the Board agrees to an extension to file the missing documents and adjust the incorrect numbers in the rejection letter. This would save the tender and safeguard that the books would be available for the benefit of students. He thanked the parties for their co-operation and declared the hearing closed.

This Board,

Having noted this Objection filed by Mizzi Design & Graphics Services Limited, (hereinafter referred to as the Appellants), on 23 April 2018, refers to the contentions made by the same Appellants with regards to the award of Tender of Reference MEDE/MPU/72/2017 listed as Case No 1172 in the records of the Public Contracts Review Board, awarded by the Ministry for Education and Employment, (hereinafter referred to as the Contracting Authority).

Appearing for the Appellants: Dr Clement Mifsud Bonnici

Appearing for the Contracting Authority: Dr Dennis Zammit

Whereby, the Appellants contend that:

- a) **They were informed by the Contracting Authority that since they did not reply to the Clarification submitted to them, their offer was discarded. In this regard, the Appellants insist that they did not receive such communication.**

This Board has also noted the Contracting Authority's "*Letter of Reply*" dated 3 May 2018 and the verbal submissions made during the Public Hearing held on 29 May 2018, in that:

- a) **The Ministry for Education and Employment insist that the Appellants' offer was discarded due to the fact that their submitted documentation was in the name of another entity. In this regard, the Contracting Authority requested clarification to which no reply from the Appellants was communicated to the Authority.**

This Board, after having examined the relevant documentation to this Appeal and heard submissions made by the parties concerned, opines that the issue worthy of consideration is the alleged non receipt of the Clarification sent by the Ministry for Education and Employment.

First and foremost, this Board would point out that the Bidder created confusion in his offer by submitting documentation in the name of Midsea Books Limited whilst the official Tenderer was Mizzi Design & Graphics Limited. In this respect, the Evaluation Board, quite correctly, asked for a Power of Attorney to ensure that Midsea Books Limited were authorised by Mizzi Design & Graphics Limited to submit such documentation. In this regard, the Appellants should have been well aware of the fact that, although both entities had the same shareholders and directors, the two companies are separate and legal entities, so that the two are not the same and the Bidder was Mizzi Design & Graphics Limited.

Secondly, during the submissions, this Board was made aware that the requested books could only be obtained from the Appellants. At the same instance, the Ministry requested that a resubmission of the clarification is to

be made aware so as to save the procurement of these books so that the interest of the students is safeguarded.

In view of the above, this Board recommends that,

i) The Ministry for Education and Employment, through a Clarification, regularise the identity of the submitter of documentation pertaining to the Appellants' offer;

ii) The offer submitted by Midsea Books Limited is to be reintegrated in the Evaluation Process;

iii) The deposit paid by the Appellants is to be fully refunded.

Dr Anthony J Cassar
Chairman

Dr Charles Cassar
Member

Mr Richard A Matrenza
Member

5th June 2018