

PUBLIC CONTRACTS REVIEW BOARD

Case 1314 – MPU MFCS 19005 – Tender for the Supply and Delivery of Aluminium Material at Ruzar Briffa Phase 2 at St Vincent de Paule Long Term Care Facility, Luqa

The publication date of the call for tenders was the 21st February 2019 whilst the closing date of the call for tenders was 13th March 2019. The estimated value of the tender (exclusive of VAT) was € 60,621.20

On the 25th April 2019 C-Three Aluminium Ltd filed an appeal against the Ministry for the Family, Children’s Rights and Social Solidarity as the Contracting Authority objecting that their bid was rejected as it was not technically compliant. A deposit of € 400 was paid.

There were three (3) bidders.

On 23rd May 2019 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:

Appellants – C-Three Aluminium Ltd

Mr Eugenio Gatt	Representative
Ms Claudia Gatt	Representative

Contracting Authority – Ministry for the Family, Children’s Rights and Social Solidarity

Dr Abigail Caruana Vella	Legal Representative
Mr Anthony Caruana	Chairperson Evaluation Committee
Ms Marika Saliba	Representative

Dr Anthony Cassar, Chairman of the Public Contracts Review Board, welcomed the parties and noted that the exclusion of the Appellants was based on their failure to identify brand names in parts of their submissions. One of the conditions in the technical specifications is that brand names are not given.

Dr Abigail Caruana Vella Legal Representative of the Ministry for the Family, Children’s Rights and Social Solidarity said that the brand names were required only after the tender had been submitted to ensure that the product delivered matched with that offered.

Mr Eugenio Gatt Representative of C-Three Aluminium Ltd said that it was impossible to give brand names on small items like spacers, screws and drilling bits. The aluminium sections required had all been properly identified but it was not in order to try to identify little bits and accessories with brand names.

The Chairman again pointed out that it was not necessary to give brand names in the technical specifications.

Dr Caruana Vella re-iterated that the brand names were requested to be given only after submission of the tender to ensure compliance of the contract with the offer.

The Chairman thanked the parties for their submission and declared the hearing closed.

This Board,

having noted this objection filed by C-Three Aluminium Limited (herein after referred to as the Appellants) on 25 April 2019, refers to the claims made by the same Appellants with regard to the cancellation of the tender of reference MPU MFCS 19005 listed as case no 1314 in the records of the Public Contracts Review Board.

Appearing for the Appellants: Mr Eugenio Gatt

Appearing for the Contracting Authority: Dr Abigail Caruana Vella

Whereby, the Appellants contended that:

a) Their main concern refers to the fact that, the tender is being cancelled as allegedly, there were no compliant offers. In this regard, Appellants have been made aware that the reason for their offer's non-compliance was due to the fact that they failed to submit the requested brand names of petty items, such as, spacers, screws, drilling bits, etc. Appellants maintain that such a requisite is impossible to provide whilst at the same time, they insist that they have offered all the items as so requested in the tender dossier.

This Board also noted the Contracting Authority's 'Letter of Reply' dated 2 May 2019 and its verbal submissions during the hearing held on 23 May 2019, in that:

a) the Authority insist that Appellants did not submit the brand names of the items as duly requested, so that their offer was non-compliant and in view of the fact that there were no compliant Bidders, the tender was cancelled.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by the Parties concerned, opines that

the issue that merits consideration is the request for brand names of all the items contained in the procurement document.

1. This Board would respectfully point out that the technical specifications of a tender should abide by the following guidelines:

- be precise in the way they describe the requirements,**
- be easily understood by the prospective Bidder,**
- have clearly defined, achievable and measurable objectives,**
- not mention any brand names or requirements which might limit competition,**
- provide sufficient detailed information that allows tenderers to submit realistic offers.**

The specifications in a tender dossier form an important part of the document itself so that they should describe the service or supply to be provided at the desired levels. One must not neglect the fact that the specifications so dictated in a tender document, have a direct influence on the price.

2. In this particular case, the Authority stipulated that in the ‘technical questionnaire form’, which was a mandatory requirement, the brand of all the items being offered is to be included, as follows:

Item No.	Technical requirements as per Tender Document	Confirmation that item shall be as per technical specifications requested (Yes/No)	Details (Brand, Model Number) of items being offered are to be inserted next to each item in the space provided below
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Apart from the fact that the brand name of items such as, fixing spacers, screws, drills etc. should not be requested, such a requirement creates difficulties for the Tenderers to identify. On the other hand, the Authority had laid out the technical specifications of all the items and so long as the offers meet those technical requirements, the request for brand names of such petty items of supply is totally unnecessary. In this respect, this Board also noted that the model numbers or reference codes which denotes the nature of the item have been submitted by Appellants and such information would have been sufficient to establish whether the offer meets the technical specifications and standard so stipulated in the tender document.

3. The Authority's contention in that, the brand names were only requested after the offers had been submitted, does not in any way justify the stipulated requirements of the brand name of such petty items as described earlier above. At the same instance, this Board would respectfully point out that, although the request for brand names was not stipulated in the tender dossier, this mandatory requirement which formed part of the documentation on which assessment was to be carried out, was then requested as a mandatory requirement in the technical questionnaire, so much so that, the introductory note of such questionnaire stated that:

“This form is to be submitted online through the prescribed tender response format and by using the Tender Preparation Tool provided. Bidders are to state the brand and the model of the supplies being offered in response to the specifications requested under Section 4-Technical Specifications.

Tenderers that fail to complete and upload the requested information will be deemed as non-compliant and will not be considered further for final adjudication. The information/technical specifications provided in the below table shall not be subject to rectifications.

The Technical Offer shall constitute of the following Questionnaire:”

4. From the evaluation report, this Board notes that two out of three of the submitted offers were deemed technically non-compliant for the same reason, that is:

“No Brand names of model number given on part of technical offer as requested.”

In this regard, this Board would point out that, the Authority has the obligation to save offers as much as possible and in this particular case, this same Board opines that such a requirement of brand names was not justified. At the same instance, the Authority stipulated sufficient technical data in the tender dossier to enable tenderers to submit realistic offers, without the need to submit brand names.

In conclusion, this Board opines,

- a) the mandatory requirement of submission of brand name of such daily use items such as, screws, spacers, drilling bits etc., which formed the considerable part of the procurement, is not justified,**

- b) such a requirement made it impossible for Tenderers to comply with,**

c) the technical specifications as stipulated in the tender dossier provide sufficient information for the Tenderers to understand the Authority's requirements.

In view of the above, this Board,

- i. does not uphold the Contracting Authority's decision to cancel the tender,**
- ii. uphold Appellants' contentions,**
- iii. directs that the deposit paid by Appellants should be fully reimbursed,**
- iv. directs that all the submitted offers which were deemed technically non-compliant for the reason of non-submission of brand names, are to be integrated in the evaluation process.**

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Carmel Esposito
Member

30 May 2019