

PUBLIC CONTRACTS REVIEW BOARD

Case 1371 – CT 2256/2019 – Tender for the Supply and Installation of Energy Efficient Interactive Flat Panels for various Schools in Malta and Gozo

Remedy before Closing Date of a Call for Competition

The publication date of the call for tenders was the 9th August 2019 whilst the closing date was the 17th September 2019. The estimated value of the tender (exclusive of VAT) was € 1,350,000.

On the 16th September 2019 Forestals Information Technology Ltd sought a Remedy against the Foundation for Tomorrow Schools as the Contracting Authority requesting widening of the tender specifications as currently most brands of interactive panels would be excluded.

On 17th October 2019 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Mr Lawrence Ancilleri and Mr Carmel Esposito as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – Forestals Information Technology Ltd

Dr John L Gauci	Legal Representative
Dr David Zahra	Legal Representative
Mr John Farrugia Randon	Representative

Contracting Authority – Foundation for Tomorrow Schools

Not represented

Department of Contracts

Dr Franco Agius	Legal Representative
Ms Marisa Gauci	Representative

Interested Party

Mr Etienne Borg Ferranti

Dr Anthony Cassar, Chairman of the Public Contracts Review Board, welcomed the parties and invited submissions.

Dr John Gauci Legal Representative for Forestals Information Technology Ltd said that this Call for Remedy was intended to request the Contracting Authority to allow a 1% tolerance on the requested 75 inch panels for interactive television screens. It was an established fact that screen panels are always a minimal fraction less than the stated size. The Authority had stated that to overcome this restriction Appellant could always tender for a larger size – it would be absurd to spend more money on larger screens when the tolerance requested is minimal.

Mr Bryan Schembri (311771M) called as a witness by the Appellants testified on oath that he had 30 years experience in the Audio Visual and Broadcasting sector and apart from his technical knowledge he had undertaken courses with firms like Sony and LG. He stated that the LCD Display panels, which are measured diagonally, had a viewable area which is never the exact measurement stated – it is normally less, for technical reasons to do with resolution and the number of pixels.. He had personally measured television screens produced by Acer, BenQ, Black Hawk, TCL and Sony and in all cases the advertised size was marginally bigger than the actual screen size.

Examples given at random:

TCL – Advertised as 40 ins. – Actual size 39.4 ins

TCL – Advertised as 32 ins. – Actual size 31.5 ins

Black Hawk – Advertised as 27 ins. – Actual size 26.75 ins

BenQ – Advertised as 24 ins. – Actual 23.75 ins.

In all television sets tested the small reduction in the stated size did not make any difference to the visual area.

When questioned why it was not feasible to move to a larger size witness stated that the most common size after the 75 inch screen would be the 80 or 86 inch screen but there was a difference in price of hundreds of Euro.

Dr Franco Agius Legal Representative of the Department of Contracts stated that the size stated in the tender document was chosen as a benchmark and the tender will be decided on the cheapest offer to come closest to the requested size. It was the Board's prerogative to decide if they would allow the requested 1% tolerance.

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

End of Minutes

Decision

This Board,

having noted this ‘Call for Remedies Prior to the Closing Date of a Call for Competition’ (herein after referred to as the Appellants) on 16 September 2019, refers to the claims made by the same Appellants with regard to the Tender of reference CT 2256/2019 listed as case No. 1371 in the records of the Public Contracts Review Board.

Appearing for the Appellants: Dr John Gauci
Appearing for the Contracting Authority: Not represented
Appearing for the Department of Contracts: Dr Franco Agius

Whereby, the Appellants contend that:

- a) The stipulated measurements of the panel display area of 75 inches is not practical, due to the simple fact that, in the industry, the actual measurement of the panel display is never exact to the inch. In this regard, Appellants are requesting that, the technical specifications, with regard to panel display measurement, would allow for a +/- tolerance of 1%.**

This Board also noted the Contracting Authority’s ‘Letter of Reply’ dated 7 October 2019 and its verbal submissions during the hearing held on 17 October 2019, in that:

- a) The Authority contends that the measurement of 75 inches stipulated in the tender document was chosen as a benchmark and the Authority would abide by the Public Contracts Review Board’s instructions.**

This same Board also noted the testimony of the witness namely:

Mr Bryan Schembri duly summoned by Forestals Information Technologies Ltd.

This Board, after having examined the relevant documentation to this ‘Call for Remedies’ and heard submissions made by the parties concerned, including the testimony of the witness duly summoned, opines that the only issue which merits consideration is the stipulated minimum measurement of display area being stated at 75 inches.

- 1. Through the credible testimony of Mr Bryan Schembri, this Board was made aware of the various sizes of display panels with tangible evidence of screen measurements available on the market. In this regard, this Board was presented with justifiable details to prove that although**

screens are advertised at a round digit measurement in inches, the actual display area is minimally smaller.

- 2. At the same instance, it has been credibly established that, this minimal reduction in the stated size, does not make any visual difference in the display area.**
- 3. This Board also noted the positive approach taken by Authority in arriving at an equitable solution to this ‘Call for Remedy’.**

In view of the above, this Board

- i) Upholds Appellants concern,**
- ii) directs the Authority to amend, though a clarification note, item no (i) (measurements) to read as follows:**

1. Interactive Flat Pane

Measurements:

- i. 75 inches with a tolerance of +/- 1% or over, measured diagonally (display area)**

iii) Directs the Authority to amend, through a clarification note, any other documentation or clause which might refer to the measurement of 75 inches to read as stated in (ii) above.

Dr Anthony Cassar
Chairman

Mr Lawrence Ancilleri
Member

Mr Carmel Esposito
Member

25 October 2019