

PUBLIC CONTRACTS REVIEW BOARD

Case 1378 – QO13-0633/19 – Tender for the Supply of Disposable Paper Tumblers/Cups

The publication date of the tender was the 28th June 2019 whilst the closing date was the 18th July 2019. The estimated value of the tender (exclusive of VAT) was € 127,500.

On the 13th September 2019 Perla Converting Hygienic Tissue Paper Co filed an appeal against the Central Procurement and Supplies Unit as the Contracting Authority on the grounds that their two bids were rejected as technically not compliant. A deposit of € 1127.10 was paid on the two bids made by Appellants.

There were three (3) bidders and four bids.

On 5th November 2019 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Richard A Matrenza as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – Perla Converting Hygienic Tissue Paper Co Ltd

Dr Eliza Borg Rizzo	Legal Representative
Mr Werner Vassallo	Representative

Contracting Authority – Central Procurement and Supplies Unit

Dr Marco Woods	Legal Representative
Mr Jefferson Galea	Secretary Evaluation Board
Eng Patrick Borg Cardona	Member Evaluation Board

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

Dr Eliza Borg Rizzo Legal Representative of Perla Converting Hygienic Tissue Paper Co Ltd said that Appellants were disqualified on the basis of Clause 6.4 of the General Rules covering Tenders as they had submitted files in a thumbnail link. This was too rigid an interpretation of the clause and the Contracting Authority ought to have used the principle of proportionality, more so since they were disadvantaged by not accepting the cheapest offer.

Dr Marco Woods Legal Representative for the Central Procurement and Supplies Unit stated that the bidder, by submitting a bid, had accepted all terms and conditions of the tender documents. Clause 6.4 makes it clear that it cannot accept link files and therefore the Contracting Authority

had no alternative but to reject the bid. Failing that, the Authority would be prejudicing other bidders.

Dr Borg Rizzo asked why the Authority had not sought clarification to which Dr Woods replied that such would have amounted to rectification.

The Chairman pointed out that the Authority had to exercise self-limitation otherwise the tender document becomes just a piece of paper. Tenderers must stick to regulations.

Mr Werner Vassallo Representative of the Appellants said that the only item that was not in the requested format was the certificates of origin, and was done to authenticate those certificates as original documents.

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

End of Minutes

Decision

This Board,

having noted this objection filed by Perla Converting Hygienic Tissue Paper Co Ltd (herein after referred to as the Appellants) on 13 September 2019, refers to the claims made by the same Appellants with regard to the tender of reference QO13-0633/19 listed as case No. 1378 in the records of the Public Contracts Review Board.

Appearing for the Appellants:

Dr Eliza Borg Rizzo

Appearing for the Contracting Authority: Dr Marco Woods

Whereby, the Appellants contend that:

- a) **Their offer was disqualified as they had submitted certain documentation namely the certificates of origin in a thumbnail link. In this respect, Appellants insist that the purpose for such an action was to prove the authenticity of the said certificates to the Authority.**

This Board also noted the Contracting Authority’s ‘Letter of Reply’ dated 17 September 2019 and its verbal submissions during the hearing held on 5 November 2019, in that:

- a) **The Authority maintains that clause 6.4 of the tender document, makes it clear that it cannot accept link files, so that, the Authority had no other option but to dismiss Appellants’ offer.**

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 Appellants’ submissions in the form of thumbnail link.

- 1. This Board would respectfully refer to clause 6.4 of the General Rules Governing tenders V3 which states the following:**

“6.4 No. ink files or URLs are to be submitted as part of the offer. If these types of files or links are uploaded, these shall not be accessible to the

Evaluation Committee since they usually refer to a location on the computer of the individual who is completing the Tender Structure or else may be retrieved online. When the Evaluation Committee encounter tender submissions with these types of files, they shall have no other alternative but to reject such tenders.”

The above clause makes it clear from the onset that, submissions which must be obtained through a link are not to be considered by the Evaluation Committee and in which case, the particular offer is to be rejected. In this particular case, the stipulated certificates were not submitted through the proper format, as duly requested in the tender document so that, quite appropriately, the Evaluation Committee rejected Appellants’ bid.

- 2. It must be pointed out that it is the duty and obligation of the bidder to ensure that he submits all the information through the proper channels as so stipulated in the tender document. At the same instance, this Board would point out that the conditions dictated in the tender document must be respected at all times, so that the principle of equal treatment will prevail. Through their submission of offer, Appellants confirmed their acceptance to adhere to all the conditions as laid out in the tender dossier**

and in this particular case, it was made amply clear that submissions, through links, are not acceptable.

- 3. With regard to Appellants' contention that the Evaluation Committee should have sought clarifications, this Board would affirm that any clarification at that particular stage of the evaluation process would have amounted to a rectification, which is not allowed.**

- 4. With regard to Appellants' contention that the Authority should have applied the principle of proportionality, this Board would respectfully point out that, such a principle should never be applied to correct the original submissions of a particular bidder and in this particular case, such a principle was not admissible to be applied.**

- 5. Last but not least, this Board would emphasize the importance of adherence to the principle of self-limitation. In this regard, this Board would remind the Appellants that the Evaluation Committee, in their deliberations, must always apply such a principle and in this particular case, it was most important that all the submissions were in accordance with the requirements as dictated in the tender dossier.**

In conclusion, this Board opines that:

- a) Appellants' offer was in breach of clause 6.4 of the General Rules Governing Tenders, so that the Evaluation Committee, deemed appropriately, that Appellants' offer was not compliant.**

- b) It was the duty and obligation of Appellants to adhere to the conditions as stipulated in the tender dossier.**

- c) The Evaluation Committee could not ask for clarifications on Appellants' offer, as such an action would have amounted to a rectification.**

- d) The principle of proportionality could not be applied in such a case.**

- e) It was the duty and obligation of the bidder to ensure that, prior to the submission of their offer, all the conditions stipulated in the tender dossier have been complied with. If, on the other hand, Appellants had some doubts or misunderstanding about any of the stipulated clauses, same Appellants had the remedies to seek clarifications, however, this Board notes that such remedies were not availed of by Appellants.**

In view of the above, this Board,

- i. does not uphold Appellants' contentions,**
- ii. upholds the Contracting Authority's decision to cancel the tender,**
- iii. directs that the deposit paid by Appellants should not be refunded.**

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Richard A Matrenza
Member

12 November 2019