

PUBLIC CONTRACTS REVIEW BOARD

Case 1428 – MEDE/MPU/IFE/003/2019 – Tender for the Provision of Conference Tables and Chairs for the Institute of Education (Lot 2)

The tender was published on the 30th October 2019 and the closing date of the call for tenders was the 19th November 2019. The estimated value of the tender (exclusive of VAT) for Lot 2 was € 28,400.

On the 7th February 2020 F.X. Borg Furniture Ltd filed an appeal against Ministry for Education and Employment as the Contracting Authority objecting to their disqualification on the grounds of their bid being deemed to be technically non-compliant. A deposit of € 424.80 was paid.

There were four (4) bidders.

On 25th February 2020 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – F.X. Borg Furniture Ltd

Ms Jenny Cassar	Representative
Mr Joseph Borg	Representative

Contracting Authority – Ministry of Education & Employment – Institute for Education

Mr John Trapani	Chairperson Evaluation Committee
Ms Phyllis Vella	Secretary Evaluation Committee
Mr Anthony Satariano	Member Evaluation Committee
Mr Anton Callus	Member Evaluation Committee
Mr Geoffrey Tanti	Member Evaluation Committee
Ms Joanne Grima	Representative

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

Ms Jenny Cassar Representative of F.X. Borg Furniture Ltd said that there are three points on which their bid is alleged to have failed.

The first point was regarding the question of the interpretation of the word ‘diameter’. It is an ascertained fact that the symbol \varnothing followed by a figure always denotes the diameter of a circle. If as the Contracting Authority maintains diameter could refer to a rectangle then the symbol would be followed by two figures (indicating length and breadth) not just one figure. The tender refers to round tables and diameter so the meaning is clear.

On the second point, although Appellants accept that they supplied illustrations of rectangular tables they made it very clear at the time that these were simply for illustrative purposes only by noting on the literature the words ‘Image for visual purposes only’

Regarding the third point made by the Authority that on their site the table suppliers (SEIPO SRL) only show rectangular tables Appellant explained that these tables were a new item and suppliers were not expected to produce expensive catalogues for every single new item.

Mr John Trapani Chairperson of the Evaluation Committee said that the technical offer requested supporting documents and the information given shows a rectangular table with four legs whereas the tender asked for round table with six legs. Nowhere in the literature was there any reference to ‘diameter’ or ‘round’.

Ms Cassar said that the literature supplied tied in with the technical offer in that it stated ‘top diameter 1600mm’ and ‘six sturdy black epoxy legs’ just as the tender requested. She again reiterated the reason why Appellants could not provide an illustration of a round table.

The Chairman commented that the literature indicates that Appellants were supplying 1600mm diameter table. He then thanked the parties for their submission and declared the hearing closed.

End of Minutes

Decision

This Board,

having noted this objection filed by F.X. Borg Furniture Ltd (hereinafter referred to as the Appellants) on 7 February 2020, refers to the claims made by the same Appellants with regard to the tender of reference MEDE/MPU/IFE/003/2019 listed as case No. 1428 in the records of the Public

Contracts Review Board awarded by Institute for Education (herein after referred to as the Contracting Authority).

Appearing for the Appellants: Ms Jenny Cassar

Mr Joseph Borg

Appearing for the Contracting Authority: Mr John Trapani

Mr Anthony Satariano

Whereby, the Appellants contend that:

- a) **Their offer was discarded for the simple reason that the Authority interpreted Appellants' submissions and literature, as offering rectangular table tops instead of round ones. In this respect, Appellants maintain that their offered product complies with the tender document and moreover, Appellants contend that the literature so supplied represented a general catalogue, not showing all the recently manufactured items.**

This Board also noted the Contracting Authority's 'Letter of reply' dated 14 February 2020 and its verbal submissions during the hearing held on 25 February 2020, in that:

- a) **The Authority insists that the documentation supporting Appellants' technical offer indicated a rectangular table with four legs whilst, the**

tender document requested round tables with six legs, in addition, the technical literature did not show or indicate reference to ‘Diameter’ or ‘Round’.

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 technical literature submitted by Appellants.

1. First and foremost, this Board would respectfully point out that, when technical literature is requested, such documentation must confirm and complement the technical offer of the bidder. Such documentation forms an integral part of the technical offer so that, one has to ensure that what is submitted does confirm visually and technically the product in all respects, which the bidder is offering.

2. At the same instance, one must also consider the fact that technical specifications fall under note 3 of Notes to clause 7: of the tender document, which clearly stipulates that:

“No rectification shall be allowed. Only clarifications on the submitted information may be requested.”

This very important article limits completely the powers of the Evaluation Committee from rectifying the already submitted information or technical literature.

- 3. One must also point out that, it is the duty and responsibility of the bidder to ensure that prior to the submission of his offer, the documentation, especially technical literature where requested, conforms to the technical offer of his product or service. At the same instance, this Board would respectfully point out that, if the bidder is not certain about any of the technical requisites, he has the remedies available to seek clarifications prior to the submission of his offer**

- 4. In this particular case, the tender document requested under lot 2, that, for each item offered, the respective supporting documents and printed manufacturer's technical literature are to be submitted. Appellants, in their technical offer did indicate the dimensions were 1600 Ø x 750 H, denoting through the Ø that the tabletop was round. However, they also denoted that the model number is "Book AL 74" and its respective technical visual literature depicts a rectangular tabletop, so that it does not collaborate with the specifications as duly declared in the technical offer form.**

5. On the other hand, the Evaluation Committee had to abide by the principle of self-limitation so that no further enquires or clarifications could be requested. Had the Appellants' submitted a manufacturer's declaration to confirm the technical specifications as declared in the technical form, the situation would have been different. The fact that the technical literature denoted that the images are for visual purposes only, is not sufficient to give comfort to the Authority that the literature conforms with the product being offered by Appellants.

In conclusion, this Board opines that:

- a) The technical literature submitted by Appellants does not complement the technical specifications as duly declared in their technical offer form.**
- b) In all respects, the technical literature must give comfort to the Authority that the offered product is on the market and can be delivered. In this particular case, such an assurance was not documented in the manufacturer's technical literature.**
- c) It is the responsibility of the bidder to submit the technical literature, when requested, and to conform with the full specifications as dictated in the technical offer.**

- d) If in doubt, the Appellants had the remedies to seek clarifications prior to the submission of their offer and in this particular case, this Board notes that such remedies were not availed of by Appellants.**
- e) The Evaluation Committee carried out the evaluation process in a just, fair and transparent manner.**

In view of the above, this Board,

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

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

5 March 2020