

PUBLIC CONTRACTS REVIEW BOARD

Case 1422 – MEDE/MPU/FES/001/2109 – Tender for the Provision of External Auditors for the Foundation for Educational Services for three (3) years.

The tender was published on the 15th October 2019 and the closing date of the call for tenders was the 14th November 2019. The estimated value of the tender (exclusive of VAT) was € 34,500.

On the 16th January 2020 Parker Randall Turner filed an appeal against Foundation for Education Services as the Contracting Authority objecting to their disqualification on the grounds that their offer was not technically compliant. A deposit of € 400 was paid.

There were (5) bidders.

On 13th February 2020 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 – Parker Randall Turner

Dr Noel Camilleri	Legal Representative
Mr Arthur Douglas Turner	Representative

Contracting Authority – Foundation for Educational Services

Dr Dennis Zammit	Legal Representative
Mr Mark Cassar	Member Evaluation Committee
Ms Amanda Mizzi	Member Evaluation Committee
Ms Rebecca Bartolo Cutajar	Member Evaluation Committee
Mr Raymond Vella	Secretary Evaluation Committee
Mr Joelle Mifsud Bonnici	Representative

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

Dr Noel Camilleri Legal Representative for Parker Randall Turner said that Appellants had been disqualified through a shortcoming in submitting a document. Technical specification clause 2 allows missing information to be requested and Appellants had been prejudiced by not being requested to submit the missing document.

Dr Dennis Zammit Legal Representative of the Foundation for Educational Services stated that the Technical Offer Form specifically stated that tenderers who fail to upload the requested information will be deemed as non-complaint. No document had been submitted and it was therefore impossible to seek a clarification on nothing. In any case section 7 note 3 did not allow rectification. Section 2 to which Appellants had alluded did not refer to the technical specifications.

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 Parker Randall Turner (hereinafter referred to as the Appellants) on 16 January 2020, refers to the claims made by the same Appellants with regard to the tender of reference MEDE/MPU/FES/001/2019 listed as case No. 1422 in the records of the Public Contracts Review Board awarded by Foundation for Educational Services (herein after referred to as the Contracting Authority).

Appearing for the Appellants: Dr Noel Camilleri

Appearing for the Contracting Authority: Dr Dennis Zammit

Whereby, the Appellants contend that:

- a) Their offer was discarded due to the simple fact that they inadvertently failed to submit the technical offer form. In this respect, Appellants maintain that, as per notes 2A of Clause 7, the Authority should have requested them to submit the missing documentation.**

This Board also noted the Contracting Authority's 'Letter of reply' dated 31 January 2020 and its verbal submissions during the hearing held on 13 February 2020, in that:

- a) The Authority maintains that Appellants failed to submit the technical offer form, which specifically was denoted to fall under Note 3 and not note 2A of clause 7, of the tender document, so that the Evaluation Committee had no other option but to deem Appellants offer non-compliant.**

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 non-submission of the technical offer form by Appellants.

1. First and foremost, this Board would respectfully point out that the technical offer form represents the core of Appellants' offer and is an integral important part of the tender document so that an offer without the submission of the technical offer documentation, as duly stipulated, will automatically render it an incomplete bid.

2. At the same instance, this Board would point out that whilst it is the responsibility of the bidder to ensure that he has submitted all the requested information, it is also the duty and obligation of the Evaluation Committee to adhere to the principles of self-limitation, transparency and equal treatment, in their deliberations.

3. In this particular case, Appellants admittedly failed to upload and thus submit the technical offer form and they are maintaining that the Evaluation Committee should have requested such missing documentation, as per article 2A and 2B of clause 7, which states the following:

“2. A) Tenderers will be requested to either clarify/rectify any incorrect and/or incomplete documentation, and/or submit any missing documents within five (5) working days from notification.

B) Tenderers will be requested to rectify/submit only missing documents within five (5) working days from notification. No changes to the information provided in the Literature submitted will be allowed. Literature submitted shall be rectifiable only in respect of any missing information i.e. documentation.

All rectifications are free of charge.”

- 4. This Board would respectfully refer to the technical offer form which had to be uploaded and submitted by Appellants, with particular reference to the heading and opening paragraph of this particular form, as follows:**

“Technical Offer Form (Note 3)

(MEDE/MPU/FES/1/2019)

Tenderers that fail to complete, duly sign and upload the requested information will be deemed as non compliant and will not be considered further for final adjudication. The information/terms of reference provided in the below table shall not be subject to rectifications.”

The actual heading of the above form is marked by note 3 which refers to clause 7 and which categorically states that:

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

The same technical offer form stipulates that non-submission of this form will be subject to rejection of the offer and no rectifications will be allowed.

In conclusion, this Board opines that:

- a) It was the duty and responsibility of the Appellants to submit the requested information and such responsibility should not be shifted on to the Evaluation Committee.**

- b) The technical offer form clearly and explicitly denoted that such a form falls under note 3 of clause 7 and moreover (it) clearly indicated the consequences for non-submission of this highly important document which forms the core of the tender dossier.**

- c) The Evaluation Committee carried out the Evaluation process in a fair and just manner adhering to the principles of self-limitation, transparency and equal treatment.**

d) The Evaluation Committee could not ask for the submission of Appellants' technical offer form as this would have amounted to a rectification which was not possible under Note 3 as appropriately indicated in the said form.

In view of the above, this Board,

- i. does not uphold 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

Mr Lawrence Ancilleri
Member

Mr Carmel Esposito
Member

20 February 2020