

PUBLIC CONTRACTS REVIEW BOARD

Case 1590 – CT3407/2020 Lot 5 – Supply, Delivery and Installation of College Furniture and Equipment (Lecture Room, Office, Staffroom, IT Labs, Reception Areas) and Energy Efficient IT Related Equipment at the Institute of Information and Communication Technology (IICT)

6th July 2021

The Board,

Having noted the letter of objection filed by Dr Reuben Farrugia on behalf of Farrugia Advocates acting for and on behalf of MC Design & Build Ltd, (hereinafter referred to as the appellant) filed on the 24th May 2021;

Having also noted the letter of reply filed by Dr Jean Carl Abela on behalf of FSGM Partners Advocates acting for MCAST (hereinafter referred to as the Contracting Authority) filed on the 28th May 2021;

Having taken cognisance and evaluated all the acts and documentation filed, as well as the submissions made by the legal representatives of the parties;

Having noted and evaluated the minutes of the Board sitting of the 22nd June 2021 hereunder-reproduced;

Minutes

Case 1590 – CT 3047/2020. Supply, Delivery and Installation of College Furniture and Equipment (Lecture Room, Office, Staffroom, IT Labs, Reception Areas) and Energy Efficient IT related Equipment at the Institute of Information and Communication Technology (IICT) – LOT 5

The tender was published on the 16th October 2020 and the closing date was the 19th November 2020. The value of the tender on Lot 5 was € 158,255

On the 24th May 2021 MC Design & Build Ltd filed an appeal against Malta College of Arts, Science and Technology as the Contracting Authority objecting to the decision to reject their bid as it was deemed not technically compliant and to the eventual cancellation of Lot 5 of the tender.

A deposit of € 791 was paid.

There were seven (7) bids.

On 22nd June 2021 the Public Contracts Review Board (PCRB) composed of Mr Kenneth Swain as Chairman, Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a public virtual hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellant – MC Design & Build Ltd

Dr Reuben Farrugia	Legal Representative
Mr Martin Camilleri	Representative

Contracting Authority – MCAST

Dr Jean Carl Abela	Legal Representative
Architect Deborah Borg	Representative
Mr Conrad Vassallo	Representative
Ms Crisania Gatt	Representative
Mr Mark Anthony Farrugia	Representative
Architect Jevon Vella	Representative

Mr Kenneth Swain Chairman of the Public Contracts Review Board welcomed the parties. He noted that since this was a virtual meeting all the parties agreed to treat it as a normal hearing of the Board in line with Article 89 of the Public Procurement Regulations. He then asked Appellant's representative to make his submissions.

Dr Reuben Farrugia Legal Representative for MC Design & Build Ltd stated that the cardinal point of this appeal was that offer was considered not compliant due to the size of desk indicated in item 5.06 of the technical offer. The technical literature showed the correct size of desk but due to a clerical oversight in the cut and paste process a different size was shown in the typed image and repeated in the technical offer. This point is not contested. However the offer was the most favourable financially and in past cases the Board had decided that discrepancies should evoke clarifications instead of rejection. The Board should establish guidelines that evaluation committees should be obliged to ask for clarifications. One has to decide if the technical literature takes precedence over the technical offer – the latter is merely confirming the offer since it is the literature that is the basis for the evaluation. Appellant's offer should be considered valid.

Dr Jean Carl Abela Legal Representative for Malta College of Arts, Science and Technology said that the offer did not meet the tender requirements as the same mistake in the size of the desk was repeated in the technical offer which is the principal reason for the rejection, as this was an item on which no rectification is allowed.

Dr Farrugia said that the image shows the correct size and the literature meets the requirements of the tender and the Authority had the discretion to ask for a clarification but it opted not to use it. Appellant contends that following past jurisprudence discretion should have been applied to remedy an obvious error.

Dr Abela again said that non compliance was based on the error in the technical offer and not on the literature and as such could not be rectified.

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

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 22nd June 2021.

Having noted the objection filed by MC Design & Build Ltd (hereinafter referred to as the Appellant) on 24th May 2021, refers to the claims made by the same Appellant with regards to the tender of reference CT 3047/2020 – Lot 5 listed as case No. 1590 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Reuben Farrugia

Appearing for the Contracting Authority: Dr Jean Carl Abela

Whereby, the Appellant, in their Letter of Objection, contends that:

- a) Rejection Letter mentions offer was technically non-compliant in relation to item 5.06.
- b) In actual fact, the offer conforms to the said specifications.
- c) Issue is of a human error whereby the typed version of the specifications inserted next to the diagram of the desk erroneously do not tally. This is evidently a genuine error.
- d) As per pre-established public procurement principles, the evaluation committee is under an obligation to request a clarification.
- e) Appellant company cannot understand on what basis was the decision taken that the written specifications had to take precedence over the specifications in the diagram.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 28th May 2021 and its verbal submission during the virtual hearing held on 22nd June 2021, in that:

- a) The appellant inputted the values 2600mm length x 1800mm width x 740mm
- b) Appellant is only making reference to the 'Technical Literature' but not to the 'Technical Offer', (which also has same values declared in point a above).
- c) The Technical Offer falls under 'Note 3' whereby "***No rectification shall be allowed.*** Only clarifications on the submitted information may be requested".

- d) The reason for non-technical compliance was because of the Technical Offer and not because of the Technical Literature.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties, will consider Appellant's grievances, as follows in their entirety:

- a) There is a conflict in the data submitted in the *Technical Literature* and in the *Technical Offer*. This has not been contested by the Appellant.
- b) There is also a conflict of *specifications* also within the *Technical Literature*. One set of specifications submitted does in fact comply to the tender specifications, whilst in the second instance it is outside of required specification.
- c) The *Technical Offer* as submitted has the *out of spec* dimensions declared within it.
- d) The Board, fully acknowledges the fact that this is most probably a human typing mistake. However, the Board also notes that the *Technical Offer* falls within Note 3, i.e. no rectifications allowed, and in this case it should take precedence due to the conflicts also found within the *Technical Literature* submission.

Hence, after considering all the above, the Board does not uphold the Appellant's grievances.

In conclusion this Board;

Having evaluated all the above and based on the above considerations, concludes and decides:

- a) Does not uphold Appellant's Letter of Objection and contentions,
- b) Upholds the Contracting Authority's decision to cancel Lot 5 of this Tender in accordance with clause 18.3 (a) of the General Rules Governing Tenders.
- c) Directs that the deposit paid by Appellant not to be reimbursed.

Mr Kenneth Swain
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member