

PUBLIC CONTRACTS REVIEW BOARD

Case No. 369

CT/2067/2011

Framework Agreement for the Supply of Envelopes

This call for tenders was published in the Government Gazette on 15th March 2011. The closing date for offers was 3rd May 2011 .

The estimated value of this tender was € 74,322

Two (2) tenderers submitted four options as offers – two each.

A & M Printing Ltd filed an objection letter dated 20th October 2011 against the decision of the Department of Contracts to disqualify its offer as technically non-compliant.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman and Mr Carmel Esposito and Mr Paul Mifsud as members convened a meeting on Friday 20th January 2012 to discuss this objection.

Present for the hearing were:

A & M Printers Ltd

Mr Tonio Mercieca	Representative
Ms Francine Mercieca	Representative

Intermarkets Stationers Ltd

Mr Omar Toutoungi	Representative
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Department of Contracts (Evaluation Board)

Mr Bernard Bartolo	Chairman
Mr Sandro Drago	Member



After the Chairman's brief introduction, the appellant company's representatives were invited to explain the motives of the company's objection.

Ms Francine Mercieca, representing A & M Printers Ltd, the appellant company, made the following submissions:

1. by letter/email dated 14th October 2011 the Contracts Department had communicated that the offer had been found non-compliant for the following reasons:

“Envelopes offered under item 6 of Option A were gummed instead of strip and seal; and all envelopes offered under Option B were gummed instead of ‘strip and seal’”

2. this was the first time that A & M Printers Ltd was tendering for the supply of envelopes and to assist them in compiling in the tender submission the company's officials requested samples from the Contracts Department;
3. although the samples provided were of the gummed and 'strip and seal' types, yet, with regard to item 6 'airmail envelopes' they were verbally instructed to provide them strictly as per sample, namely gummed, so as to be according to international standards;
4. as a consequence they offered two options - Option 'A' with gummed envelopes and Option 'B' with 'strip and seal' envelopes. Nevertheless, in both options, item 6 'airmail envelope' was offered of the gummed type;

and

5. the appellant felt misguided by the contracting authority with regard to item 6 which, contrary to verbal indications, it had to be 'strip and seal' and not 'gummed'

Mr Tonio Mercieca, also on behalf of the appellant company, remarked that the envelopes requested in this tender were different from those that had been requested in previous similar tenders and that, in the manufacture of envelopes, costs varied according to the type, namely as to whether *gummed* or *strip and seal* and if an envelope closed on the *long* or on the *short edge*.

Mr Bernard Bartolo, chairman of the adjudicating board, made the following submissions:

- a. according to the tender conditions and specifications it did not result that any official samples were given out to bidders since the specifications were very clear;
- b. the fact that there might have been some gummed envelopes among the samples that the appellant company claimed to have obtained from the Contracts Department could be explained by the fact that the Department had an old stock of gummed envelopes which it decided to make use of instead of disposing/destroying them;



- c. the tender technical specifications at page 64 clearly stipulated that all envelopes had to be of the 'strip and seal' type;
- d. the appellants submitted Options 'A' and 'B' respectively, where item 6 under Option 'A' was of the gummed type whereas all the items under Option 'B' were of the gummed type instead of 'strip and seal' as requested in the tender document;
- e. bidders had to provide the items according to the specifications of this tender document, irrespective of what might have been requested in previous tenders and, in this case, the appellant company was not according to specifications and there was no room for clarification on the part of the evaluation board;

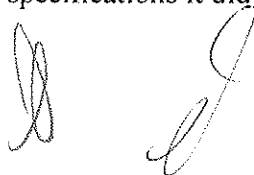
and

- f. if the appellant company noted a discrepancy between the tender specifications and the samples that its representatives had in hand, then the latter could have asked for a clarification prior to submitting the bid.

At this point the hearing was brought to a close.

This Board,

- having noted that the appellant company, in terms of the reasoned letter of objection dated 20th October 2011 and through the verbal submissions made during the hearing held on the 20th January 2012, had objected against the decision of the Department of Contracts to disqualify its offer as technically non-compliant;
- having noted the appellant firm's representatives' claims and observations regarding the fact that (a) by letter/email dated 14th October 2011 the Contracts Department had communicated that the offer had been found non-compliant, (b) this was the first time that A & M Printers Ltd was tendering for the supply of envelopes and to assist them in compiling in the tender submission the company's officials requested samples from the Contracts Department, (c) although the samples provided were of the gummed and 'strip and seal' types, yet, with regard to item 6 'airmail envelopes' they were verbally instructed to provide them strictly as per sample, namely gummed, so as to be according to international standards, (d) albeit, as a consequence they offered two options - Option 'A' with gummed envelopes and Option 'B' with 'strip and seal' envelopes, yet, in both options, item 6 'airmail envelope' was offered of the gummed type, (e) the appellant felt misguided by the contracting authority with regard to item 6 which, contrary to verbal indications, it had to be 'strip and seal' and not 'gummed' and (f) the envelopes requested in this tender were different from those that had been requested in previous similar tenders and that, in the manufacture of envelopes, costs varied according to the type, namely as to whether *gummed* or *strip and seal* and if an envelope closed on the *long* or on the *short edge*;
- having considered the contracting authority's representative's submissions, namely that (a) according to the tender conditions and specifications it did not result that any official samples

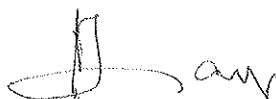


were given out to bidders since the specifications were very clear, (b) the fact that there might have been some gummed envelopes among the samples that the appellant company claimed to have obtained from the Contracts Department could be explained by the fact that the Department had an old stock of gummed envelopes which it decided to make use of instead of disposing/destroying them, (c) the tender technical specifications at page 64 clearly stipulated that all envelopes had to be of the 'strip and seal' type, (d) the appellants submitted Options 'A' and 'B' respectively, where item 6 under Option 'A' was of the gummed type whereas all the items under Option 'B' were of the gummed type instead of 'strip and seal' as requested in the tender document, (e) bidders had to provide the items according to the specifications of this tender document, irrespective of what might have been requested in previous tenders and, in this case, the appellant company was not according to specifications and there was no room for clarification on the part of the evaluation board and (f) if the appellant company noted a discrepancy between the tender specifications and the samples that its representatives had in hand, then the latter could have asked for a clarification prior to submitting the bid,

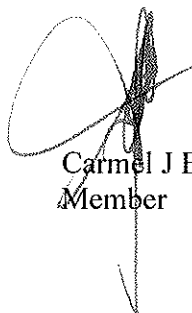
reached the following conclusions:

1. The Public Contracts Review Board opines that a tenderer is obliged to adhere to specifications.
2. The Public Contracts Review Board observes that the procedure leading to the attainment by the appellant company's representatives of samples was not corroborated by a formal procedure and, as a result, this Board cannot reach finite conclusions as to the spirit conducive to any party's action which would thus not preclude a possibility of misunderstanding anywhere along the line.
3. The Public Contracts Review Board notes that no formal clarification was made by the appellant company's representatives.
4. The Public Contracts Review Board contends that it cannot consider any reference made to previous similar calls.

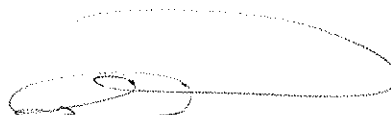
In view of the above, this Board finds against the appellant company but, considering the prevailing circumstances which transpired during the hearing wherein, in the absence of tangible proof, the appellant company could have been misguided due to submission of erroneous samples by contracting authority officials, which did not reflect the type required by the contracting authority in so far as this call is concerned, recommends that the deposit paid by the latter should be reimbursed.



Alfred R Triganza
Chairman



Carmel J Esposito
Member



Paul Mifsud
Member

30 January 2012