

PUBLIC CONTRACTS REVIEW BOARD

Case 1329 – CT3025/2019 –Provision of Consultancy Services for Drafting of Malta’s Common Agricultural Policy Strategic Plan 2021-2027

The publication date of the call for tenders was the 22nd March 2019 whilst the closing date of the call for tenders was 9th April 2019. The estimated value of the tender (exclusive of VAT) was € 200,000.

On the 20th May 2019 Attriga Consulting Services Ltd filed an appeal against the Ministry for European Affairs and Equality as the Contracting Authority contesting the decision to disqualify them as their bid was technically non-compliant and against the cancellation of the tender. A deposit of € 1,000 was paid.

There were two (2) bidders and three (3) bids.

On 16th July 2019 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 – Attriga Consulting Services Ltd

Dr John L Gauci	Legal Representative
Mr Alfred Triganza	Representative
Mr Stefan Cachia	Representative
Mr Eman Vella	Representative

Contracting Authority – Ministry for European Affairs and Equality

Dr Fiorella Fenech Vella	Legal Representative
Eng Anthony Camilleri	Chairperson Evaluation Committee
Mr Mark Muscat	Secretary Evaluation Committee
Dr Justin Zahra	Member Evaluation Committee

Dr Anthony Cassar, Chairman of the Public Contracts Review Board, welcomed the parties and prior to inviting submissions proposed that due to the extensive correspondence submitted in the appeal, discussion should be limited to the composition of the evaluation committee and the matter of clarifications as these were the main points of contention.

Dr John Gauci Legal Representative of Attriga Consulting Services Ltd outlined the scope of the tender. According to the evaluation committee Appellant did not reach the required level of points

to qualify. The comments of the committee had been carefully analysed by his clients who had concluded that their submission had not been objectively assessed. The committee appeared to have certain doubts about Appellants' bid but failed to seek clarifications. The tender was subsequently cancelled as there were no compliant bidders.

Dr Justin Zahra (561878M) called as a witness by the PCRB testified on oath that he was the Head of the Agency responsible for European payments. He was a member of the evaluation committee and explained the methodology behind the individual marking of submissions and the individual awarding of points. Submissions were quite clear and the committee did not feel the need to seek clarifications.

Eng Anthony Camilleri (90165M) called as a witness by the PCRB testified on oath that he was the Chairperson of the evaluation committee. Queried on the aspects of marking on items like the Gantt chart witness said that at the design stage there were items which had not been taken into consideration in the bid and hours not properly allocated. It worried the committee that a certain number of tasks, necessary to avoid risks, were not reflected in the Gantt chart. The committee did not feel the need to seek clarifications as all the necessary information was available. On item 24 (demonstrate the use of expertise etc.) the committee felt that the new strategy had to be independent of what happened before with existing clients. From the submissions made it appeared that the bulk of the work was going to be done by two persons when there were several tasks that had to be done in parallel.

Dr Fiorella Fenech Vella Legal Representative of the Ministry for European Affairs and Equality said that the evaluation committee was made up of experts in this type of policy and strategy. Any divergences between members in their markings balanced themselves out through averaging. What happened in the National Policy was of no consequence in this tender which dealt with a Strategy Plan. There was nothing ambiguous in the Appellants' submissions and therefore there was no need to seek clarifications.

The Chairman commented that in view of the fact that all three bids had been unsuccessful it might have been that the wording in the tender had not been clear enough.

Mr Alfred Triganza stated that the evaluation committee may have been expecting things that were not indicated in the tender. The evaluation committee had assumed certain things when a clarification would have sorted out any doubts.

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

subjective opinions and in this respect, Appellants insist that clarifications, which would have enlightened the members of the Evaluation Committee, in their allotment of points, would have earned their offer the necessary marks, as Appellants' bid was fully compliant.

This Board also noted the Contracting Authority's 'Letter of Reply' dated 10 June 2019 and its verbal submissions during the hearing held on 16 July 2019, in that:

- a) The Authority maintains that the composition of the Evaluation Committee consisted of members well versed in the subject matter being tendered for and in their deliberations, they adhered to the principle of self-limitation. In this regard, all the offers were treated equally, and the allocation of points was based on the submission made by each tenderer when compared with the stipulated requirements of the tender dossier.**

- b) The Evaluation Committee contends that it was not necessary for it to seek clarification, as the submissions made by Appellants were not compliant with the stipulated requirements and from same documentation, it was apparent that Appellants failed to understand what was actually requested by the Authority.**

This same Board also noted the testimony of the witnesses namely:

Dr Justin Zahra – duly summoned by the Public Contracts Review Board

Eng. Anthony Camilleri – duly summoned by the Public Contracts Review Board.

This Board, after having examined the relevant documentations to this appeal and heard submissions made by the parties concerned, including the testimony of the witnesses duly summoned opines that, the issues that merit consideration are two-fold namely:

- a) Competence of Evaluators and**
- b) Request for Clarifications.**

1. Composition of the Evaluation Committee

With regards to Appellants’ first contention, in that Appellants have doubts as to whether the Evaluators were qualified enough to assess the offers, this Board would respectfully point out that the evaluation of tenders must be carried out by suitably competent members and in accordance with the Public Procurement Regulations and EU principles of equal treatment, non-discrimination and transparency.

- 2. In this particular case, from submissions made by the Authority and from the detailed evaluation report made available to this Board, the latter**

noted that, the main appropriate principles were applied during the evaluation of the three offers submitted. At the same instance, the principles of equal treatment and self-limitation were strictly adhered to by the Committee and in this regard, this Board cannot identify any justifiable cause to deem the evaluation process as incorrectly carried out.

- 3. The composition of the Evaluation Committee consisted of members who already had experience in the drafting of strategy plans so that, this Board opines that, there existed enough competent element to enable the Committee to evaluate technically the offers so submitted. This Board also noted that there were divergencies in the allocation of points by members of the Committee and such an instance truly confirms that, allocation of marks were based on individual yet professional opinions by the Evaluators so that, this Board is satisfied that the evaluation process was carried out in a transparent and appropriate manner.**

4. Request for Clarifications

One must acknowledge the fact that clarifications can only be requested on the submitted documentation and at the same time, clarifications

should not be abused of, so as to amend or add to the original submissions. This Board would respectfully point out that the Authority is not bound to ask for a clarification if same opines that the submissions are clear enough to be properly assessed and in this particular case, Appellants' submissions were clear enough to be understood so that any clarification in this case, would have resulted in a rectification which is not allowable. From the evaluation report, this Board notes that Appellants covered all the items in the technical specifications so that, quite appropriately, any clarification would have been an addition to the original submissions.

5. From the submissions made during the hearing and remarks made by each of the Evaluators, this Board notes that the Authority was expecting propositions and strategies which were not explicitly indicated in the tender dossier. One has to be reminded that the technical specifications of a tender form the core of the tender itself so that great importance must be given in the drafting and composition of these specifications which should:

- be precise in the way they describe the requirements,**
- be easily understood by the prospective bidders,**

- **have clearly defined, achievable and measurable objectives,**
- **provide sufficient detailed information that allows tenderers to submit realistic offers.**

6. This Board must also point out that, this tender does not consist in the acquisition of a particular product where standard specifications can be applied but the Authority's request consists of a professional consultancy service so that the tender specifications must be explicitly clear and detailed enough to enable the bidder to identify the Authority's ultimate objective. In this particular case, this Board opines that the expectations and intentions of the Evaluation Committee were completely correct and appropriate but the tender document itself did not provide enough information to enable a prospective bidder to identify the requirement and submit an offer which would contain the necessary strategies to reach the Authority's objective.

7. This Board must also point out that the consultancy service the Authority is requesting, consists of drafting of a national policy strategic plan for the years 2021 to 2027 and in this respect, one has to acknowledge and

appreciate the importance which must be dedicated to this particular request and in this regard, the tender document has to be drafted to accommodate all the requirements which the authority is expecting to achieve through the procurement of such a consultancy service.

- 8. This Board would also point out that if and when the technical requirements are not explicitly defined in the tender dossier, there will be instances and occurrences where certain decisions taken by the Evaluators may be subjective and in this regard, this Board recommends that, the tender document should state, step by step, the requirements it is expecting so as to reach its ultimate intentions, thus allowing the evaluation procedure of offers to be carried out in an objective manner.**

In conclusion, this Board opines that,

- a) the members of the Evaluation Committee were competent enough to understand the actual requirement of the Authority,**

- b) the tender document should have been formulated to contain the exact requirements of the Authority to enable the Evaluation Committee to apply the principle of self-limitation and delivery of an objective assessment of offers,**

- c) in this particular case and instance, there was no justifiable cause for the Evaluation Committee to seek clarifications as the submissions made by the bidders were clear enough although not compliant with the Authority's expectations, some of which were not clearly indicated in the tender document.**

In view of the above, this Board,

- i) confirms that the composition of the Evaluation Committee was competent enough to assess the offers,**

- ii) directs the Authority to cancel the tender and issue a new one taking into consideration this Board's findings and recommendations,**

- iii) directs that the deposit paid by Appellants, be fully refunded.**

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

25 July 2019