

PUBLIC CONTRACTS REVIEW BOARD

Case 1338 – MTIP/BRO/028/2018 – Tender for the Carrying Out of Cost-Optimality Study for Existing Offices

The publication date of the call for tenders was the 14th February 2019 whilst the closing date of the call for tenders was 8th March 2019. The estimated value of the tender (exclusive of VAT) was € 46,200.

On the 13th May 2019 Camilleri & Cuschieri Consulting Engineers filed an appeal against the Ministry for Transport, Infrastructure and Capital Projects (Building Regulations Office) as the Contracting Authority contesting the decision to disqualify them as their bid was technically non-compliant. A deposit of € 400 was paid.

There were three (3) bidders.

On 8th August 2019 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 – Camilleri & Cuschieri Consulting Engineers

Dr Robert Tufigno	Legal Representative
Eng Carmel Cuschieri	Representative
Ms Louise Spiteri	Representative

Contracting Authority – Building Regulations Office

Dr Mario Caruana	Legal Representative
Arch Josianne Vassallo	Chairperson Evaluation Committee
Ms Graziella Bencini	Secretary Evaluation Committee
Eng Samuel Farrugia	Member Evaluation Committee
Ms Carmen Vella	Member Evaluation Committee
Arch Gail Woods	Member Evaluation Committee
Ms Ramona Attard	Representative

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

Dr Robert Tufigno Legal Representative of Camilleri & Cuschieri Consulting Engineers sought leave to call a witness.

Engineer Carmel Cuschieri (661556M) called as a witness by the Appellants testified on oath that he traded under the name of Camilleri & Cuschieri Consulting Engineers. He employed a staff of 20 persons consisting of engineers, architects and draughtsmen. The scope of the tender was to conduct studies on the optimal cost levels of various reference buildings as detailed on page 5 paragraph 1.2 of the tender document. The submissions included a Rationale and Method Statement indicating the proposed progress of the works. There was a sequence of projected work in the rationale explaining how the work was going to be undertaken by two very qualified members of staff. The requisite was for project completion in six weeks and a preliminary report after four weeks. In paragraph 3 of their tender submissions Appellants laid out the envisaged timetable confirming their adherence to the tender terms, and confirmed that all necessary hours will be allocated to complete the project. Witness confirmed that a day or so before the closing date of the tender his company had received a request from the Contracting Authority to extend the tender validity by four weeks to which they acceded. He also confirmed that they had never received any clarification requests from the Authority.

On being further questioned witness stated that there were two major milestones in the tender – the four week interim report and the final report in six weeks. The meeting of these milestones and the sequence were clearly laid out in the rationale section of the submission and it was beyond the requirement of this type of contract to list the daily activities – the only assurance that was necessary was that the project would be given full time attention. It was beyond the requirement of the tender to detail day to day happenings.

Architect Josianne Vassallo (99176M) called as a witness by the PCRB testified on oath that she was the Chairperson of the evaluation committee and that the tender referred to reference (non-existing) buildings. The technical committee expected a check list to enable it to ensure that the correct evaluation was made – although she did agree that Appellants had expertise in the line of energy saving projects. The committee expected some form of table of events and there appeared to be no mention of the six week milestone in their submissions.

The Chairman pointed out to the witness that Appellants had stated that there would be no final report before feedback was received from the Contracting Authority, and this was an essential part of the tender.

Engineer Samuel Farrugia (104575M) called as a witness by the PCRB testified on oath that he was an employee of the BRO and what the appeal was looking at was a tender for a specialised study requested by the European Union, and it had to follow clear European methodology. The BRO needed information on the progress of the works. This could not be evaluated during the first four weeks as no indication was given as to what work would be carried out in this period. He confirmed that the tender did not specify that there should be a works programme prior to the expected report at the end of week four. He further said that the committee required a programme

of works with timing, duration and sequence of work. No details were given regarding the mobilisation of time.

The Chairman stated that the issue to be considered is the interpretation of what a timetable is in the context of a professional service in a six weeks contract.

Dr Tufigno reiterated that the relevant issue is a contract of six weeks duration requiring constant attention throughout. If the Contracting Authority were not satisfied with the original submissions they should have asked for clarification. The tender document only sets feedback at four and six weeks. The Public Procurement Regulations allow an extension of contracts for delays on the part of the Contracting Authority and the final six weeks feedback should be considered in this light – there was no guarantee that the final feedback would not be subject to delay on the part of the Contracting Authority. The tender deliverables are clear and are on the timetable submitted by Appellants.

Dr Caruana said that this was a contract under the aegis of the European Union which regulated the details. The template in the tender documents requires a structured form and has to be followed strictly indicating timing, sequence and duration none of which appear in the bid. The mobilisation of time needed to be observed.

Dr Tufigno pointed out that the mobilisation of time does not have to be indicated but taken into consideration since it was linked to the placing of the contract.

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

This Board,

having noted this objection filed by Camilleri & Cuschieri Consulting Engineers (herein after referred to as the Appellants) on 13 May 2019, refers to the claims made by the same Appellants with regard to the tender of reference MTIP/BRO/028/2018 listed as case no 1338 in the records of the Public Contracts Review Board, awarded by Building Regulations Office (herein referred to as the Contracting Authority).

Appearing for the Appellants:

Dr Robert Tufigno

Appearing for the Contracting Authority: Dr Mario Caruana

Whereby, the Appellants contend that:

- a) **Their main objection refers to the fact that their offer was rejected on the alleged ground that the ‘Timetable of Activities’, as requested, was not submitted. In this regard, Appellants maintain that, in paragraph 3, under the heading of ‘Timetable of Activities’, they had clearly laid out the envisaged timetable confirming their adherence to the terms and execution period, as stipulated in the tender document.**

This Board also noted the Contracting Authority’s ‘Letter of Reply’ dated 9 July 2019 and its verbal submissions during the hearing held on 8 August 2019, in that:

- a) **The Authority insists that Appellants were expected to submit a timetable showing the progress of works to be carried out during the period of this assignment and in this respect, from Appellants’ submission, the work which would be carried out, in the first four weeks of the execution of the tendering works, could not be ascertained by the Evaluation Committee.**

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

Ing Carmel Cuschieri – duly summoned by Camilleri & Cuschieri Consulting Engineers

Arch Josianne Vassallo – duly summoned by the Public Contracts Review Board

Ing Samuel Farrugia - duly summoned by the Public Contracts Review Board

This Board, after having examined the relevant documentation to the appeal and heard submissions made by the parties concerned, including the testimony of the witnesses duly summoned, opines that, the issue that merits consideration is the validity of Appellants’ submissions with regard to the ‘Timetable of Activities’.

- 1. First and foremost, this Board would respectfully point out that the tendered works/services consist of the compilation of a cost-optimality study for existing offices, so that the Authority, in this particular case, is requesting professional services from warranted Engineers. At the same instance, this Board takes into consideration the fact that, such an assignment has to be completed in six weeks, divided into two stages, the first stage consists of compilation of a preliminary report to be completed within four weeks from being given all the necessary drawings and**

information by the Authority and a final report within two further weeks from being given a timely feed back by the Authority, so that, it is being established that the whole assignment has a delivery period of six weeks.

- 2. Appellants contend that they had submitted the necessary Timetable of Activities in their offer and had also declared that they will carry out the project work stages as detailed in the rationale. At the same instance, the Authority expected that Appellants to submit a form of a timetable of events to cover the six-week milestone, in their submission.**

- 3. This Board would refer to Appellants' submission with particular reference 'Deliverables' and 'Timetable of Activities', as follows:**

“Deliverables

It our plan to carry out the Project Work Stages as detailed in the Rationale.

We have only taken the assumptions as indicated elsewhere in this proposal and we do not envisage any risks affecting the successful execution of the contract.

Timetable of Activities

The timetable is tied to the date of receipt of the letter of confirmation by the Contracting Authority.

An Interim Report shall be prepared after 4 weeks from being handed all of the information including all architectural drawings and the results for energy performance simulations of all reference buildings.

While the Final Report with the completed studies in the format required to be communicated to the European Commission shall be submitted prior to the end of the period of execution, subject to the timely feedback on the interim report by the contracting authority.”

Through such submissions, this Board opines that Appellants are binding themselves to adhere to the short period of both the Interim and Final Reports. At the same instance, this Board notes that Appellants qualified their delivery time of the Interim Report to the extent that the four-week period will apply from the time Appellants are provided with the necessary drawings and other necessary information which will enable same to commence execution of the said report. The same qualification applies to the delivery of the Final Report, in that same will be delivered in time, provided that a timely feedback is received by the Authority on the Interim Report.

4. It is to be noted that due to the dictated short period for the delivery of both the Interim and the Final Reports, Appellants, in their professional capacity, had to provide for such an eventuality, as due consideration had to be taken into account to the contents of 4.2.2 on page 16 of the tender document, which reads as follows:

“The Contracting Authority will make available the details of the reference buildings to be simulated including inter alia dimensions of building, reference U-value and thermal characteristics, reference ventilation, heating and cooling systems, reference lighting, orientation, glazing areas, & types of construction”.

5. The information, in the form of a timetable of events which the Authority expected from Appellants was not so dictated in the tender document and such an issue should be addressed in a proportionate manner. In this respect, one has to consider the nature of the service being requested by the authority and the duration of execution of such a professional service.

6. This Board opines that due to the nature of the service and the execution period, it is highly impractical and unrealistic to expect the Appellants to list, in the form of a timetable, what is to be carried out on a daily or

weekly basis. The tendered service consists of professional reports to be carried out in a span of six weeks, so that, stages of execution of same is not relevant, as long as both the Interim and Final Reports are delivered within the stipulated period.

- 7. At the same instance, this Board opines that the information submitted by Appellants under the heading ‘Deliveries’ and ‘Timetable of Activities’ do represent enough assurance to the Authority for the latter to treat such declarations, as a sufficient time sequence of preparation of these reports.**

In conclusion, this Board opines that:

- a) Taking into consideration, the nature of the tendered service and the stipulated execution period for the delivery of both the Interim and the Final Report, the information submitted in Appellants’ declaration is sufficient enough to guarantee a timely delivery of the tendered professional service.**

b) If the Authority expected a formal timetable for such a short duration contract, it should have stated so, in the tender document.

c) In Appellants' submissions, the tender deliverables are clearly stated and guarantees a timely submission of both the Interim and Final Report.

In view of the above, this Board,

i) cancels the Authority's decision in the award of the tender,

ii) confirms that Appellants' submissions were compliant enough to merit further assessment of their offer,

iii) direct that Appellants' offer be reintegrated in the evaluation process,

iv) directs that the deposit paid by Appellants be fully refunded.

Dr Anthony Cassar
Chairman

Mr Lawrence Ancilleri
Member

Mr Carmel Esposito
Member

13August 2019