

PUBLIC CONTRACTS REVIEW BOARD

Case No. 343

CT/2113/2011; CT/N/004/2011

Negotiated Procedure for the Provision of Health Schemes to MEPA

This call for tenders was published in the Government Gazette on 3rd June 2011. The closing date for this call with an estimated budget of € 153,000 was the 28th June 2011.

Two (2) tenderers submitted three (3) offers between them.

Island Insurance Brokers Limited filed an objection on the 29th July 2011 against the decision by the Contracts Department to disqualify its bid on being found technically non-compliant and to recommend award to Atlas Healthcare Insurance Agency Ltd.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr Edwin Muscat and Mr Carmel Esposito as members convened a public hearing on Wednesday, 2nd November 2011 to discuss this objection.

Present for the hearing were:

Island Insurance Brokers Ltd

Dr Stephen Muscat	Legal Representative
Mr Mark Spiteri	Representative

Atlas Healthcare Insurance Agency Ltd

Dr Alessia Zammit McKeon	Legal Representative
Ms Claudine Gauci	Representative
Ms Catherine Calleja	Representative

Malta Environment and Planning Authority (MEPA)

Dr Ian Vella Galea	Legal Representative
--------------------	----------------------

Evaluation Board:

Ing. Ray Piscopo	Chairman
Ms Mary Anne Bonett Sladden	Member
Ms Miriam Bartolo Abela	Member
Mr Kevin Portelli	Member
Mr Alan Borg	Secretary

After the Chairman's brief introduction, the appellant company's representative was invited to explain the motives of his company's objection.

Dr Stephen Muscat, legal representative of Island Insurance Brokers Ltd, the appellant company, explained that, following the letter of objection dated 29th July 2011, more information had come to his client's knowledge and, as a result, he wished to make the following submission which, he claimed, would bring the matter to a conclusion without going into the merits of the issues raised in the appeal:-

- i. the 'Summary of Tenders Received' (Single Package Procedure) that had been published by Contracts Department had indicated that:-
 - a. only two bidders participated in this procedure

and
 - b. the other bidder, namely, Atlas Healthcare Insurance Agency Ltd, the eventual recommended tenderer, had not submitted the bid bond;
- ii. what had prompted his client to lodge the appeal was the fact that, since the submission of the bid bond was a mandatory requirement, the recommended tenderer should have been disqualified which, in the circumstances, would have left his client as the only bidder in this negotiated procedure;
- iii. from the letter of reply dated 29th August 2011 submitted by Atlas Healthcare Insurance Agency Ltd it transpired that it had submitted a valid bid bond in its original tender submission and, as a consequence, the 'Summary of Tenders Received' schedule had been erroneously drawn up by the Contracts Department;
- iv. once his client had been misled in the company's conclusion that there was a valid reason for the exclusion of the recommended tenderer – the non submission of the bid bond - and once the recommended tender was, after all, compliant, besides being cheaper, then his client saw no point in pursuing his appeal further and he was, therefore, requesting the Public Contracts Review Board to consider:
 - (a) the appeal as withdrawn

and
 - (b) the refund of the deposit he paid on lodging his appeal.

Dr Ian Vella Galea, legal representative of the Malta Environment and Planning Authority, confirmed that the 'Schedule of Tenders Received' drawn up by the Contracts Department on the 28th June 2011 was incorrect in indicating that Atlas Healthcare Insurance Agency Ltd had not submitted the bid bond and that the appellant company had been misled in that regard.

Originally this was a call for tenders with the closing date being 22nd March 2011, which, eventually, turned into a negotiated procedure with the closing date of 23rd June 2011 extended to the 28th June 2011.

At this point the hearing was brought to a close.

This Board,

- having noted that the appellant's company, in terms of the reasoned letter of objection dated 29th July 2011 and through the verbal submissions made during the hearing held on the 2nd November 2011, had objected against the decision by the Contracts Department to disqualify its bid on being found technically non-compliant and to recommend award to Atlas Healthcare Insurance Agency Ltd;
- having noted the appellant firm's representatives claims and observations regarding the fact that (a) following the letter of objection dated 29th July 2011, more information had come to the appellant company's knowledge, (b) the 'Summary of Tenders Received' (Single Package Procedure) that had been published by Contracts Department had indicated that (1) only two bidders participated in this procedure and (2) the other bidder, namely, Atlas Healthcare Insurance Agency Ltd, the eventual recommended tenderer, had not submitted the bid bond, (c) what had prompted the appellant company to lodge the appeal was the fact that, since the submission of the bid bond was a mandatory requirement, the recommended tenderer should have been disqualified which, in the circumstances, would have left the appellant company as the only bidder in this negotiated procedure, (d) from the letter of reply dated 29th August 2011 submitted by Atlas Healthcare Insurance Agency Ltd it transpired that it had submitted a valid bid bond in its original tender submission and, as a consequence, the 'Summary of Tenders Received' schedule had been erroneously drawn up by the Contracts Department and (e) once the appellant company had been misled in the company's conclusion that there was a valid reason for the exclusion of the recommended tenderer – the non submission of the bid bond – and, once the recommended tender was, after all, compliant, besides being cheaper, then the appellant company saw no point in pursuing its appeal further;
- having considered the contracting authority's representative's confirmation that the 'Schedule of Tenders Received' drawn up by the Contracts Department on the 28th June 2011 was incorrect in indicating that Atlas Healthcare Insurance Agency Ltd had not submitted the bid bond and that the appellant company had been misled in that regard;

reached the following conclusions:

The Public Contracts Review Board feels that, considering that the same contracting authority had confirmed that the 'Schedule of Tenders Received' drawn up by the Contracts Department on the 28th June 2011 was incorrect in indicating that Atlas Healthcare Insurance Agency Ltd had not submitted the bid bond and that the appellant company had been misled in that regard, this Board is left with no other option but to acknowledge the fact that the appellant was misled by circumstances into filing an appeal which, in normal circumstances it would not have done.

As a consequence, this Board suggests that the deposit paid by the appellant company to lodge this claim should be reimbursed.

Alfred R Triganza
Chairman

Edwin Muscat
Member

Carmel Esposito
Member

14th November 2011