

PUBLIC CONTRACTS REVIEW BOARD

Case No. 368

ME/TQF/CTS/D03/11

Tender for Continuous Tracer Study – Malta Enterprise

This call for tenders was published in the Government Gazette on 21st March 2011. The closing date for offers was 18th April 2011.

The estimated value of this tender was € 45,000 (excl. VAT)

Six (6) tenderers submitted their offers.

Pletora Consortium filed an objection letter dated 17th August 2011 against the decisions of Malta Enterprise to disqualify its offer as technically non-compliant and to recommend award of tender to MISCO International.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman and Mr Carmel Esposito and Mr Joseph Croker as members convened a meeting on Wednesday 18th January 2012 to discuss this objection.

Present for the hearing were:

Pletora Consortium

Dr Etienne Calleja	Legal Representative
Mr Michael Debono	Representative

MISCO International Ltd

Mr Morgan Parnis	Representative
Ms Vanessa Bajada	Representative

Malta Enterprise

Mr Edwin Ebejer	Representative
Mr Ronald Galea	Representative
Mr Pierre Theuma	Representative

Evaluation Board

Mr David Mifsud	Chairman
Mr Victor Camilleri	Member
Mr John Degiorgio	Member



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

Mr Ronald Galea, representing Malta Enterprise, under oath, by way of clarification confirmed that Malta Enterprise had informed bidders of the outcome of this tendering process by emails dated 9th August 2011, namely prior to the shutdown however the tender award notice was displayed at Malta Enterprise on the 23rd August 2011, namely, after the shutdown.

Dr Etienne Calleja, legal representative of Pletora Consortium, the appellant consortium, remarked that by letter/email dated 9th August 2011 Malta Enterprise had informed his client that the tender had been recommended for award to Misco International and that the consortium's offer had been found to be technically non-compliant with regard to four particular issues.

A) Interviews conducted only over the first 6 months instead of throughout the year

Dr Calleja explained that the tender requested 200 interviews per annum over a period of 3 years and claimed that, contrary to what the contracting authority stated, the tender document did not specify that the interviews had to be carried out throughout the whole year.

Mr David Mifsud, chairman of the adjudicating board, submitted that:-

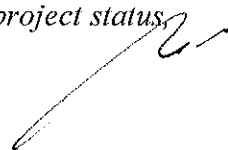
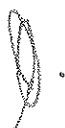
- i. clause 3.1 (page 50) - *Assumptions Underlying the Project Intervention* – stated that “*Interviews are to be carried out at the convenience of the client, within the guideline timeframe....*”
- ii. the guideline interview schedule and report schedule were found at Table 1 of clause 4.2.1 (page 52) ‘Methodology’ which indicated how the work had to be carried out between 2011 to 2013 and that one had to report updates on a quarterly basis;
- iii. clause 7.1 (page 56) - Reporting Requirements stated, among other things, that “*The report shall include full data analysis of results ranging from a summarised report to more in-depth analysis.*”

As a guideline, the following reports are required:

- a) *a quarterly update*
- b) *an interim report*
- c) *a yearly report*
- d) *a final detailed report*
- and*
- e) *presentations*

The quarterly updates are to include:

- a) *an updated progress Gantt chart indicating the project status*



- b) *the number of interviews made in the previous quarter,*
- c) *the planned interviews in the next quarter and*
- d) *any other status updates."*

- iv. areas covered in (iii) above were mandatory requirements;
- v. according to the Gantt chart submitted by the appellant consortium it was clearly indicated that, whereas it undertook to report throughout the year, the interviews were going to be conducted only during the first 6 months of each year (or 12 month period);
- vi. it would therefore follow that the appellant consortium would have nothing to report for two consecutive quarters during which no interviews would have been conducted;
and
- vii. the purpose of the study was to obtain feedback from companies on the activities of Malta Enterprise by conducting 45-minute face-to-face interviews – the fixing of the interviews was to be done over the telephone.

Dr Calleja remarked that:-

- a. according to the Gantt chart his client intended to conduct the interviews during the months of January to June of each year and no interviews would be carried out in the second half of each year;
- b. the fact that the tenderer was bound to report every quarter did not mean that one had to, necessarily, conduct the interviews every quarter because there were other matters that one could report upon;
- c. prior to the issue of this tender the contracting authority had issued an invitation for the expression of interest and his client's tender submission was, basically, the same as the submission made in the expression of interest; and
- d. apart from the quarterly update reports, the contracting authority did not spell out in the tender document that the interviews had to be conducted throughout the whole year.

The Chairman Public Contracts Review Board remarked that the tender itself was titled 'Continuous tracer study' and, as a result, one wondered how the appellant consortium was going to furnish data relating to only six consecutive months of each year. Furthermore, one had to question what the appellant consortium was going to report upon for two consecutive quarters during which no interviews were going to be conducted. He added that, with the methodology proposed by the appellant consortium, the contracting authority would not be in a position to assess in a timely manner the effectiveness of its activities among the beneficiaries and that could jeopardise the scope of the contract.

Mr Mifsud remarked that albeit the purpose of the invitation for expression of interest was to identify those entities that had the capabilities to undertake this work, yet, the details of contract were dealt with in the call for tenders.

Mr John Degiorgio, a member of the adjudicating board, stated that clause 4.2.3 (page 53) - *Data Collection* – summarised the scope and tasks of this contract as follows:-

“The selected contractor shall set-up, through telephone calls, the appointments for when the face to face interviews will be carried out. The selected contractor shall carry out interviews with the company's contact person or his / her representative, which will be indicated by Malta Enterprise. These interviews are to be carried out at the convenience of the client, within the guideline timeframe.

The submitted tender proposal is to include details of how the contractor plans to collect the data. The list of companies and contact persons shall be provided by Malta Enterprise.

The selected contractor shall hold on site one-to-one interviews at clients' office/premises, for a duration of between 30 to 45 minutes each; (depending on whether a client has attended one or more events), in order to evaluate the effectiveness and/or success of events in order to evaluate the effectiveness and/or success of events in helping companies generate any new business leads.

The selected contractor shall obtain key information relating to the business generated and deals secured as a result of the event. This includes baseline trade flows, export data, cooperation (business and/or technical) generated and secured and other relevant data and information pertaining to specific business activity.”

B) Did not specify the number of staff to be engaged on the job

Mr Mifsud submitted that:-

- i. clause 6.1.2 of the *Instructions to Tenders* provided, among other things, as follows:-

“A list of the key experts and other staff proposed for the execution of the contract. The Evaluation Committee reserves the right to request the tenderers to substantiate their claims in respect to the staff proposed by requesting CVs of key staff and signed Declarations of Exclusivity and Availability during the evaluation stage.”

- ii. Clause 6.1 – *Personnel* - of the ‘Terms of Reference’ (page 54) stated that details *“of personnel that will be involved in implementing the contract are to be provided. Curricula Vitae for key personnel are required, with clear indication of each individual's level of technical expertise in the relevant area and any previous experience in similar projects to be given.*

A presentation of the contractor's organisation is to be given, together with the organisation chart of the personnel to be involved in the implementation of the contract."

- iii. the appellant consortium had submitted a list of personnel that included a project coordinator, administration assistant, accounts officer and a couple of others as key personnel but did not include the other staff, e.g. the interviewers, that were to be engaged on the project.

The Chairman Public Contracts Review Board noted that the interviewers were, undoubtedly, going to be involved in the execution of the project and details thereof should have been given especially if the interviewer was expected to carry out a 45-minute face-to-face interview at corporate level. He added that the purpose behind the request for staff details and organisation chart was for the contracting authority to assess the administrative/operative capabilities of the tenderer even if there might, eventually, be staff changes.

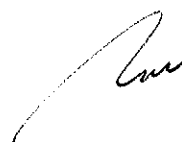
Mr Michael Debono, also representing the appellant consortium, remarked that:

- a. the letter of rejection mentions only the number of staff and it makes no reference to qualifications and so forth;
 - b. Form 3 – *Personnel to be engaged in the execution of this contract* - only provided space for the key personnel but made no mention of the other staff;
 - c. in the consortium's tender submission, whilst the latter had included the staff according to the Employment and Training Corporation list, yet the interviewers could well be part-timers;
 - d. one had to keep in view that only 200 interviews had to be conducted annually which amounted to less than one 45-minute interview per working day and, as a consequence, even one interviewer would be sufficient and that role could assigned to one of the key experts;
 - e. his firm had recently conducted 250 interviews over 8 weeks among government officers on ICT by deploying personnel on an assignment basis;
- and
- f. in this case, besides the fact that only a list was requested and not the number of staff, the consortium did not consider the number of personnel as an essential element because this was not an intensive interviewing programme.

Dr Calleja intervened to remark that his client had provided what was requested with regard to the key experts and the appellants would have done the same had they been requested details about the interviewers.

C) Did not specify how the tracer study will progress on a quarterly basis

Mr Mifsud submitted that:-



- a. clause 4.2.2 (page 53), provided, among other things, that the *"tender proposal is to include details of how the contractor plans to design the survey"*;

and

- b. clause 7.1 (page 56), provided, among other things, that the *"above is a guideline and the tender proposal is to include the details of what the contractor plans to present in the quarterly, the interim and yearly and final detailed reports."*

Dr Calleja insisted that his client did submit the methodology as far as operations and reporting were concerned at Annex 4 'Proposed Methodology' of the consortium's tender submission.

The parties concerned agreed that the appellant consortium did make a submission in this respect.

D) D Consulta, the local partner of the consortium, did not specify the required extensive experience in conducting marketing surveys and analysis

Mr Mifsud submitted that:-

- a. D Consulta was earmarked as the project leader whereas IceStat was the assistant partner and it would appear that the appellant consortium was not contesting that D Consulta did not have the required experience but that IceStat possessed the requested experience;
 - b. clause 4.1.1 (page 51) stated, among other things, that for *"this reason, extensive experience in conducting market surveys and analysis amongst industry players is essential"*;
- and
- c. according to the profile submitted by the appellant consortium, it appeared that D Consulta was involved in a number of activities which were not related to market surveys.

Dr Calleja remarked that the contracting authority should have evaluated Pletora Consortium as a whole and not an individual partner so much so that clause 6.1 (page 8) provided that:

"In the case of a joint venture, the joint venture as a whole must satisfy the minimum qualifications required below."

Mr Debono maintained that whilst the tender document called for extensive experience, yet, it did not specify the responsibilities/roles of the individual partners in the consortium. He claimed that Pletora Consortium, both as a whole and its partners individually, did possess the experience requested in the tender.

Dr Calleja concluded that the tender document was not at all clear in most of the issues raised in the letter of rejection, namely it did not request the number of interviewers and, whereas it obliged the tenderer to report every quarter it did not oblige him to carry out the interviews during every quarter of the year. He added that his client should not be penalised just because the contracting authority issued a tender document which was not clear or specific in certain respects.

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 17th August 2011 and through the verbal submissions made during the hearing held on the 18th January 2012, had objected against the decisions of Malta Enterprise to disqualify its offer as technically non-compliant and to recommend award of tender to MISCO International;
- having noted the appellant firm's representatives' claims and observations regarding the fact that (a) by letter/email dated 9th August 2011 Malta Enterprise had informed the consortium that its offer had been found to be technically non-compliant with regard to four particular issues, namely (1) Interviews conducted only over the first 6 months instead of throughout the year, (2) Tenderer (appellant consortium) did not specify the number of staff to be engaged on the job, (3) Tenderer (appellant consortium) did not specify how the tracer study will progress on a quarterly basis (4) D Consulta, the local partner of the consortium, did not specify the required extensive experience in conducting marketing surveys and analysis, (b) the tender requested 200 interviews per annum over a period of 3 years and that, contrary to what the contracting authority stated, the tender document did not specify that the interviews had to be carried out throughout the whole year, (c) according to the Gantt chart the appellant consortium intended to conduct the interviews during the months of January to June of each year and no interviews would be carried out in the second half of each year, (d) the fact that the tenderer was bound to report every quarter did not mean that one had to, necessarily, conduct the interviews every quarter because there were other matters that one could report upon, (e) prior to the issue of this tender the contracting authority had issued an invitation for the expression of interest and the appellant's representative's tender submission was, basically, the same as the submission made in the expression of interest, (f) apart from the quarterly update reports, the contracting authority did not spell out in the tender document that the interviews had to be conducted throughout the whole year, (g) the letter of rejection mentions only the number of staff and it makes no reference to qualifications and so forth, (h) Form 3 – *Personnel to be engaged in the execution of this contract* - only provided space for the key personnel but made no mention of the other staff, (i) in the consortium's tender submission, whilst the latter had included the staff according to the Employment and Training Corporation list, yet the interviewers could well be part-timers, (j) one had to keep in view that only 200 interviews had to be conducted annually which amounted to less than one 45-minute interview per working day and, as a consequence, even one interviewer would be sufficient and that role could be assigned to one of the key experts, (k) D Consulta had recently conducted 250 interviews over 8 weeks among government officers on ICT by deploying personnel on an assignment basis, (l) in this case, besides the fact that only a list was requested and not the number of staff, the

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consortium did not consider the number of personnel as an essential element because this was not an intensive interviewing programme, (m) the appellant consortium had provided what was requested with regard to the key experts and the appellants would have done the same had they been requested details about the interviewers, (n) the appellant consortium did submit the methodology as far as operations and reporting were concerned at Annex 4 'Proposed Methodology' of the consortium's tender submission – a claim agreed upon by those present at the hearing, (o) the contracting authority should have evaluated Pletora Consortium as a whole and not an individual partner, (p) whilst the tender document called for extensive experience, yet, it did not specify the responsibilities/roles of the individual partners in the consortium, (q) Pletora Consortium, both as a whole and its partners individually, did possess the experience requested in the tender and (r) the appellant consortium should not be penalised just because the contracting authority issued a tender document which was not clear or specific in certain respects;

- having considered the contracting authority's representative's submissions, namely that (a) clause 3.1 (page 50) - *Assumptions Underlying the Project Intervention* – stated that “*Interviews are to be carried out at the convenience of the client, within the guideline timeframe....*”, (b) the guideline interview schedule and report schedule were found at Table 1 of clause 4.2.1 (page 52) 'Methodology' which indicated how the work had to be carried out between 2011 to 2013 and that one had to report updates on a quarterly basis, (c) clause 7.1 (page 56) - Reporting Requirements – highlighted the (mandatory) reports required as well as the format of the quarterly updates, (d) according to the Gantt chart submitted by the appellant consortium it was clearly indicated that, whereas it undertook to report throughout the year, the interviews were going to be conducted only during the first 6 months of each year (or 12 month period), (e) the appellant consortium did not intend to report for two consecutive quarters during which no interviews would have been conducted, (f) the purpose of the study was to obtain feedback from companies on the activities of Malta Enterprise by conducting 45-minute face-to-face interviews – the fixing of the interviews was to be done over the telephone, (g) albeit the purpose of the invitation for expression of interest was to identify those entities that had the capabilities to undertake this work, yet, the details of contract were dealt with in the call for tenders, (h) clause 4.2.3 (page 53) - *Data Collection* – summarised the scope and tasks of this contract, (i) clause 6.1.2 of the *Instructions to Tenders* provided, among other things, a list of the key experts and other staff proposed for the execution of the contract, (j) Clause 6.1 – *Personnel* - of the 'Terms of Reference' (page 54) stated that details “*of personnel that will be involved in implementing the contract are to be provided*”, (k) the appellant consortium had submitted a list of personnel that included a project coordinator, administration assistant, accounts officer and a couple of others as key personnel but did not include the other staff, e.g. the interviewers, that were to be engaged on the project, (l) clause 4.2.2 (page 53), provided, among other things, that the “*tender proposal is to include details of how the contractor plans to design the survey*”, (m) clause 4.2.2 (page 53), provided, among other things, that the “*tender proposal is to include details of how the contractor plans to design the survey*”, (n) clause 7.1 (page 56), provided, among other things, that the “*above is a guideline and the tender proposal is to include the details of what the contractor plans to present in the quarterly, the interim and yearly and final detailed reports.*”, (o) D Consulta was earmarked as the project leader whereas IceStat was the assistant partner and it would appear that the

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appellant consortium was not contesting that D Consulta did not have the required experience but that IceStat possessed the requested experience, (p) clause 4.1.1 (page 51) stated, among other things, that for *"this reason, extensive experience in conducting market surveys and analysis amongst industry players is essential"* and (q) according to the profile submitted by the appellant consortium, it appeared that D Consulta was involved in a number of activities which were not related to market surveys,

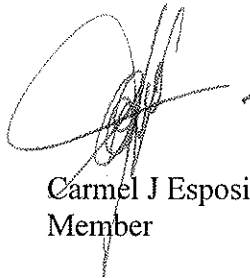
reached the following conclusions:

1. The Public Contracts Review Board feels that the contracting authority's claim that, according to the profile submitted by the appellant consortium, it appeared that D Consulta was involved in a number of activities which were not related to market surveys, is not acceptable in view of the fact that a joint venture is always considered holistically and not as separate fragments.
2. Nevertheless, the Public Contracts Review Board opines that the tender itself was titled 'Continuous tracer study' and, as a result, one wondered how the appellant consortium was going to furnish data relating to only six consecutive months of each year. Furthermore, one had to question what the appellant consortium was going to report upon for two consecutive quarters during which no interviews were going to be conducted. This Board also adds that, with the methodology proposed by the appellant consortium, the contracting authority would not be in a position to assess in a timely manner the effectiveness of its activities among the beneficiaries and that could jeopardise the scope of the contract.
3. Furthermore, the Public Contracts Review Board feels that since the interviewers were, undoubtedly, going to be involved in the execution of the project, once requested, details thereof should have been given. This Board also remarks that the purpose behind the request for staff details and organisation chart was for the contracting authority to assess the administrative/operative capabilities of the tenderer even if there might, eventually, be staff changes.

In view of the above this Board finds against the appellant company and recommends that the deposit paid by the latter should not be reimbursed.



Alfred R Triganza
Chairman



Carmel J Esposito
Member



Joseph Croker
Member

30 January 2012