

PUBLIC CONTRACTS REVIEW BOARD

Case No. 379

HM/12/11

Tender for the Construction (in steel, glass and timber) and Installation of a Ticketing – Security Booth, Ramp and Landing, Museum Exit, Reception Desk and Kitchenette Unit at the National War Museum, St Elmo, Valletta.

The closing date for this tender which was published on the 17th June 2011 was the 1st July 2011.

The estimated value of this tender was € 50,000.

One (1) tenderer submitted their offers.

Messrs J&P Contracting Ltd filed an objection on 28th September 2011 against the decisions of Heritage Malta that its offer was not the administratively compliant and to recommend the cancellation of the tender.

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 Tuesday, 7th February 2012 to discuss this objection.

J&P Contracting Ltd

Mr Joe Vella
Mr Mathias Vella

Managing Director
Representative

Heritage Malta

Dr Ruth Baldacchino

Legal Representative

Evaluation Board

Architect Reuben Abela
Mr Pierre Micallef
Mr Vince Pulis
Ms Daphne Zammit Fenech
Ms Anastasia Anastasi Vella

Chairman
Member
Member
Member
Secretary


1

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

Mr Joe Vella, representing J&P Contracting Ltd, the appellant company, made the following submissions:-

- i. by letter dated 28th September 2011 Heritage Malta, the contracting authority, had informed him that his company's offer was not administratively compliant for three specific reasons, namely non-compliance with sub-clauses 16.1 b (ii), 16.1 d (i) and 16.1 e (i) and (ii);
 - ii. he pointed out that tenderers were given only 3 weeks within which to submit their bid which was very tight and had contributed to a certain degree to the non submission of certain documentation and to his company being the only participating tenderer;
- and
- iii. clause 16.1 of the tender document allowed the contracting authority to request the bidder to submit documentation/information found missing in the tender submission.

Dr Ruth Baldacchino, legal representative of Heritage Malta, submitted that:-

- a. the 3 week tendering period was admissible by regulations, even if, admittedly, it was the shortest period permissible and it was the tendering period approved by the Departmental Contracts Committee;
 - b. clause 16.1 had to be considered together in the light of clause 1.1 of the tender document which provided, among other things, that the contracting authority could not request a rectification with regard to sub-clauses 16.1 (d), (e) and (f) but only clarifications on submitted information – these were reproduced in the notes to clause 11 of the 'Tender Form';
- and
- c. the evaluation board acted according to the provisions of the tender document and following the advice of the Departmental Contracts Committee.

16.1 (b) General/Administrative Information (ii) Power of Attorney (Volume 1, Section 7, Form 1)

Mr Vella stated that he was the sole shareholder and managing director of J&P Contracting Ltd and, as such, he was entitled to represent his firm such that no power of attorney was required. He added that this information could have easily been verified with the records held at the Malta Financial Services Authority which were in the public domain or else a clarification could have been requested.

Dr Baldacchino stated that, in the first place, the bidder was obliged to submit the documentation requested, however she conceded that the contracting authority could



have sought a rectification with regard to the non-submission of the power of attorney but it refrained from doing so given that the appellant company's offer was found deficient in other respects which rendered its bid non-compliant.

16.1 (d) Technical Capacity (i) Experience as Contractor

Dr Baldacchino remarked that the appellant company had provided only a list of works carried out whereas the tenderer was required to present the company's experience in the format given at page 22 of the tender document which included such details as the value of works, period of contract, client and the percentage of works completed.

16.1 (e) Evaluation Criteria/Technical Specifications (i) Tenderer's Technical Offer in response to specifications (Volume 3) (ii) Literature/List of Samples

Mr Vella remarked that he had filled in the tender specifications included in the tender document without any variations and he therefore failed to understand the requirement of a 'technical offer' referred to in sub-clause 16.1 (e) (i).

Dr Baldacchino stated that with regard to the technical specifications, at sub-clause 16.1 (e) (i) the bidder was requested a technical offer in response to the specifications provided at Volume 3 to outline the method and the timeframe for the execution of the works. She added that a specified list of literature had to be submitted with the tender as per Section 3 (1) at page 23 of the tender documents, which was a mandatory requirement, however the appellant company just stated its representative would be prepared to supply any literature/samples as requested.

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 28th September 2011 and through the verbal submissions made during the hearing held on 7th February 2012, had objected against the decisions of Heritage Malta that its offer was not the administratively compliant and to recommend the cancellation of the tender;
- having noted the appellant firm's representative's claims and observations regarding the fact that (a) by letter dated 28th September 2011 Heritage Malta, the contracting authority, had informed the appellant company that its offer was not administratively compliant for three specific reasons, namely non-compliance with sub-clauses 16.1 b (ii), 16.1 d (i) and 16.1 e (i) and (ii), (b) tenderers were given only 3 weeks within which to submit their bid which was very tight and had contributed to a certain degree to the non submission of certain documentation and to his company being the only participating tenderer, (c) clause 16.1 of the tender document allowed the contracting authority to request the bidder to submit documentation/information found missing in the tender submission, (d) he was the sole shareholder and managing director of J&P Contracting Ltd and, as such, he was entitled to represent his firm such that no power of attorney was required, arguing that this information



could have easily been verified with the records held at the Malta Financial Services Authority which were in the public domain or else a clarification could have been requested and (e) he had filled in the tender specifications included in the tender document without any variations and he therefore failed to understand the requirement of a 'technical offer' referred to in sub-clause 16.1 (e) (i);

- having considered the contracting authority's representative's submissions, namely that (a) the 3 week tendering period was admissible by regulations, even if, admittedly, it was the shortest period permissible and it was the tendering period approved by the Departmental Contracts Committee, (b) clause 16.1 had to be considered together in the light of clause 1.1 of the tender document which provided, among other things, that the contracting authority could not request a rectification with regard to sub-clauses 16.1 (d), (e) and (f) but only clarifications on submitted information – these were reproduced in the notes to clause 11 of the 'Tender Form', (c) the evaluation board acted according to the provisions of the tender document and following the advice of the Departmental Contracts Committee, (d) whilst stating that, in the first place, the bidder was obliged to submit the documentation requested, yet the contracting authority was conceding that, albeit it could have sought a rectification with regard to the non-submission of the power of attorney, yet it refrained from doing so given that the appellant company's offer was found deficient in other respects which rendered its bid non-compliant, (e) the appellant company had provided only a list of works carried out whereas the tenderer was required to present the company's experience in the format given at page 22 of the tender document which included such details as the value of works, period of contract, client and the percentage of works completed, (f) with regard to the technical specifications, at sub-clause 16.1 (e) (i) the bidder was requested a technical offer in response to the specifications provided at Volume 3 to outline the method and the timeframe for the execution of the works and (g) although a specified list of literature had to be submitted with the tender as per Section 3 (1) at page 23 of the tender documents, which was a mandatory requirement, however the appellant company just stated its representative would be prepared to supply any literature/samples as requested,

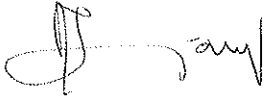
reached the following conclusions,

1. The Public Contracts Review Board agrees with the evaluation board's interpretation of facts, namely that clause 16.1 had to be considered together in the light of clause 1.1 of the tender document which provided, among other things, that the contracting authority could not request a rectification with regard to sub-clauses 16.1 (d), (e) and (f) but only clarifications on submitted information.
2. The Public Contracts Review Board cannot comprehend why the appellant company had, arbitrarily, decided to provide only a list of works carried out when tenderers were required to present the company's experience in the format given at page 22 of the tender document which included such details as the value of works, period of contract, client and the percentage of works completed.
3. The Public Contracts Review Board fails to understand as to how a tenderer could, arbitrarily, refrain from submitting mandatory information such as the specified list of literature as per Section 3 (1) at page 23 of the tender documents and, instead, opt to state that it would be prepared to supply any literature/samples as requested.



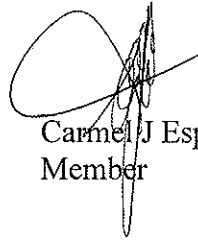
Undoubtedly, certain documents are requested at submission of tender to enable evaluation boards to conduct proper analysis at evaluation stage and not at any other stage that a tenderer may perceive to be more opportune. This Board feels that, in this particular tender, the appellant company's representative has opted, on more than one occasion, to decide in an arbitrary manner as to what he perceived to be justified or not, pertinent or not and so forth. Needless to say that this attitude is unacceptable.

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

13 February 2012



Carmel J Esposito
Member



Joseph Croker
Member