

PUBLIC CONTRACTS REVIEW BOARD

Case No. 384

MITC//359/2011

Tender for the Setting up of Press Conferences for the Ministry for Infrastructure, Transport and Communications and the National Information Advisory Society Council (NISCO)

This call for tenders was published in the Government Gazette on the 11th October 2011. The closing date for this call with an estimated budget as per Rate Card (page 41 of the tender document) was the 10th November 2011.

Two (2) tenderers submitted their offers.

Messrs Zaffarese Signs & Display Ltd filed an objection on 5th December 2011 against the decisions of the Ministry for Infrastructure, Transport and Communications (MITC) to disqualify its offer as technically non-compliant and to recommend the award of the tender to Casapinta Design Group Ltd.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr. Carmel Esposito and Mr Joseph Croker as members convened a public hearing on Friday, 9th March 2012 to discuss this objection.

Present for the hearing were:

Zaffarese Signs & Display Ltd

Mr Benny Zaffarese	Representative
Mr Thomas Farrugia	Managing Director

Casapinta Design Group Ltd

Mr Damian Casapinta	Representative
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Ministry for Infrastructure, Transport and Communications (MITC)

Mr Dennis Attard	Director Corporate Services MITC
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Evaluation Board

Ms Roberta Zahra	Member
Ms Henriette Calleja	Member
Mr Ray Cutajar	Secretary



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

Mr Benny Zaffarese, representing Zaffarese Signs & Display Ltd, the appellant company, made the following submissions:-

- i. he felt that the contracting authority did not conduct its evaluation in a correct and transparent manner so much so that on requesting more information on the award of this tender he was summarily directed to file an appeal;
- ii. it was beyond comprehension how his firm had always been considered compliant whenever identical calls for tenders were issued and it was even awarded the 2009 contract but, in this instance, the offer was rejected as technically non-compliant for having scored very low marks;

and

- iii. his firm was not expecting to be awarded the contract as a matter of course but it was objecting after having been considered technically non-compliant.

The Chairman Public Contracts Review Board noted that, contrary to what the appellant company had just declared, by letter dated 28th November 2011, the contracting authority had informed the appellant as follows:-

'Thank you for participating in the above-mentioned tender procedure. However, I regret to inform you that the offer submitted by your company was not recommended for award, since it was weak and lacked creativity.

Moreover, from the Proposal submitted, your experience seems more related towards tents rather than the setting up of conferences. For these reasons your bid failed to obtain the minimum score of 80 points required to be deemed technically compliant.

For your perusal hereunder please find a copy of the Evaluation Grid in your respect.

<i>Criterion</i>	<i>Maximum</i>	<i>Eval. 1</i>	<i>Eval. 2</i>	<i>Eval. 3.</i>
<i>Proposal Comprehensiveness</i>	<i>15</i>	<i>10</i>	<i>5</i>	<i>9</i>
<i>Innovation & Creativity concepts applied</i>	<i>35</i>	<i>15</i>	<i>20</i>	<i>15</i>
<i>Quality applied in designs</i>	<i>25</i>	<i>10</i>	<i>10</i>	<i>10</i>
<i>Bidder's Profile</i>	<i>25</i>	<i>10</i>	<i>10</i>	<i>10</i>
<i>Total Score for Organisation and Methodology</i>	<i>100</i>	<i>45</i>	<i>45</i>	<i>44</i>

Mr Zaffarese asked the contracting authority to explain such a low mark was given to his company's offer.

Ms Roberta Zahra, a member of the adjudicating board, gave the following explanations with regard to the evaluation of the appellant's offer:-

- a. Proposal Comprehensiveness - average mark awarded 8/15: the proposal supplied by Messrs Zaffarese failed requirement number 4.1.2 because, while listing two sub-contractors, no sample of their respective works were included in the actual proposal. The proposal also lacked requirement number 6.1.2 wherein the mentioned sub-contractors had to supply an undertaking to place the necessary resources at the disposal of the economic operator. Although mention was made of a number of projects undertaken by Messrs Zaffarese in the past 36 months, the actual total value was not indicated in the proposal. The Tender document specifically requested that the minimum value of projects of a similar nature completed should be not less than €200,000 per annum;
- b. Innovation & Creativity Concepts Applied - average mark awarded 17/35: The proposal submitted by Messrs Zaffarese contained only five photos depicting simple design backdrops and a number of tents and gazebos. The Evaluation Committee failed to see any innovation and creativity in this proposal and could only award a low mark. The portfolio itself failed to provide a holistic view for the setting up of a high quality event/conference. Clause 4.1.1 of the terms of reference requested 'a sample portfolio of similar assignments in the last 36 months'.
- c. Quality Applied in Designs - average mark awarded 10/25: from the only 2 photos of the backdrops submitted in the portfolio, the evaluation board noted that these were not up to standard and failed to determine "the high quality displays" as actually stated in the Bidder's covering letter. The Board would have appreciated to be in a position to view a more comprehensive sample of the "over 60 stands set up in the past 36 months" mentioned in the covering letter.

Judging by the photos submitted in the proposal depicting two basic backdrops, a screen projection and tent structures, the evaluation committee felt that the quality applied in design was very poor and definitely not up to the standard required by the Ministry for Infrastructure, Transport and Communications and NISCO, meriting only a low mark.

- d. Bidder's Profile - average mark awarded 10/25: the profile submitted by the bidder for this particular tender failed to provide a clear indication regarding the requested proof of the ability of the tenderer to put up a quality event as expected from the Ministry for Infrastructure, Transport and Communications and NISCO. From someone claiming to be one of the leading service providers in its field, with over 25 years experience, the Bidder's profile failed to support this and provided only a very skimpy idea of the company's abilities. In general, the evaluation committee felt that the quality of the bid presented by the tenderer indicated a hastily prepared presentation and not one based on professionalism.

Mr Zaffarese stated that 90% of all the works/services, which mainly included the hire of items, were to be carried out by his own firm and only a small percentage would require the engagement of a sub-contractor, namely Studio 7. Mr Zaffarese conceded that he did not submit the requested undertaking from the sub-contractor and neither did he give the details requested in Form 3 for sub-contracting. Mr Zaffarese kept on reiterating throughout the hearing that albeit this same tender had already been issued, evaluated and awarded to his firm, yet, two weeks after the award, the said tender was cancelled and as a consequence he failed to come to terms with the fact that in one

instance his firm's bid was judged as the preferred one and in this instance it was judged to be technically non-compliant.

Ms Henriette Calleja, a member of the adjudicating board, remarked that:-

- a. instead of submitting its work experience with the details in the format requested in page 21 of the tender document, the appellant company made reference to its covering letter where it only gave a list of companies that it had worked for without indicating the nature, time frame and value of each project;

and

- b. with regard to the submission of photos of works which the bidder was proud of, the appellant company furnished photos of simple designs which, frankly, one should not be much proud of.

The Chairman Public Contracts Review Board remarked that the bidder had to provide what the contracting authority requested and if the tender document was not clear or superfluous in some respects then the bidder had the opportunity to seek a clarification prior to the closing date of the tender. He added that the appellant company could not assume that it should be awarded the contract because it was the current contractor because, by time, standards tended to improve and competition tended to become fiercer.

The Public Contracts Review Board also went through the brochure/portfolio submitted by the recommended tenderer and compared it with what had been submitted by the appellant company and it could not fail to note the wide difference in terms of quality, innovation and quantity.

At this point the hearing was brought to a close.

This Board,

- having noted that the appellants, in terms of their 'reasoned letter of objection' dated 5th December 2011 and also through their verbal submissions presented during the hearing held on the 9th March 2012, had objected against the decisions of the Ministry for Infrastructure, Transport and Communications (MITC) to disqualify its offer as technically non-compliant and to recommend the award of the tender to Casapinta Design Group Ltd;
- having noted all of the appellant's representatives' claims and observations, particularly, the references made to the fact that (a) the contracting authority did not conduct its evaluation in a correct and transparent manner so much so that on requesting more information on the award of this tender the company's representatives were summarily directed to file an appeal, (b) it was beyond comprehension how the appellant company had always been considered compliant whenever identical calls for tenders were issued and it was even awarded the 2009 contract but, in this instance, the offer was rejected as it was considered to be technically non-compliant for having scored very low marks, (c) the appellant company was not expecting to be awarded the contract as a matter of course but it was objecting after having been considered to be technically non-compliant and (d)

it was conceding that it did not submit the requested undertaking from the sub-contractor and neither did it's representative/s give the details requested in Form 3 for sub-contracting;

- having considered the contracting authority's representative's reference to the fact that (a) with regard to Proposal Comprehensiveness – the appellant company's (1) average mark awarded was 8/15 wherein the proposal submitted by Messrs Zaffarese failed requirement number 4.1.2 because, while listing two sub-contractors, no sample of their respective works were included in the actual proposal, (2) proposal also lacked requirement number 6.1.2 wherein the mentioned sub-contractors had to supply an undertaking to place the necessary resources at the disposal of the economic operator, (3) reference to a number of projects undertaken by Messrs Zaffarese in the past 36 months was made, yet the actual total value was not indicated in the proposal, (b) with regard to Innovation & Creativity Concepts Applied – the appellant company's (1) average mark awarded was 17/35 wherein the proposal submitted by Messrs Zaffarese contained only five photos depicting simple design backdrops and a number of tents and gazebos, (2) submission failed to demonstrate to the Evaluation Committee any signs of innovation and creativity attracting only the award of a low mark, (3) portfolio itself failed to provide a holistic view for the setting up of a high quality event/conference, (c) with regard to Quality Applied in Designs - the appellant company's (1) average mark awarded was 10/25 wherein, upon evaluating the only 2 photos of the backdrops submitted in the portfolio by Messrs Zaffarese, the evaluation board noted that these were not up to standard and failed to determine "the high quality displays" as actually stated in the Bidder's covering letter, (2) submission should have corroborated the bidder's claim mentioned in the covering letter of having set up over 60 stands "in the past 36 months", (d) judging by the photos submitted in the proposal depicting two basic backdrops, a screen projection and tent structures, the evaluation committee felt that the quality applied in design was very poor and definitely not up to the standard required by the Ministry for Infrastructure, Transport and Communications and NISCO, meriting only a low mark, (e) with regard to Bidder's Profile - the appellant company's (1) average mark awarded was 10/25 wherein the proposal submitted by Messrs Zaffarese for this particular tender failed to provide a clear indication regarding the requested proof of the ability of the tenderer to put up a quality event as expected from the Ministry for Infrastructure, Transport and Communications and NISCO, (2) claim to be one of the leading service providers in its field, with over 25 years experience failed to be supported by the same bidder with the latter providing only a very skimpy idea of the company's abilities, (f) in general, the evaluation committee felt that the quality of the bid presented by the tenderer indicated a hastily prepared presentation and not one based on professionalism and (g) instead of submitting its work experience with the details in the format requested in page 21 of the tender document, the appellant company made reference to its covering letter where it only gave a list of companies that it had worked for without indicating the nature, time frame and value of each project,

reached the following conclusions, namely:

1. The Public Contracts Review Board argues that it was more than evident that mandatory forms as requested by the contracting authority - including the undertaking by sub-contractor as well as the details requested in Form 3 for sub-

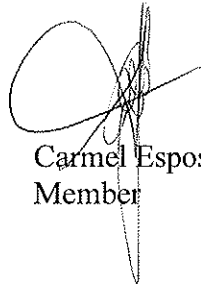
contracting - in the tender document were not submitted by the appellant company.

2. The Public Contracts Review Board acknowledges that, contrary to what was requested by tender document's specifications, the total value of works carried out by the appellant company was not mentioned.
3. The Public Contracts Review Board remarks that the appellant company had to provide what the contracting authority requested and if the tender document was not clear or superfluous in some respects then the bidder had the opportunity to seek a clarification prior to the closing date of the tender.
4. Furthermore, this Board places emphasis on the fact that the appellant company could not assume that it should be awarded the contract because it was the current contractor because, by time, standards tended to improve and competition tended to become fiercer.
5. The Public Contracts Review Board also went through the brochure/portfolio submitted by the recommended tenderer and compared it with what had been submitted by the appellant company and it could not fail to note the wide difference in terms of quality, innovation and quantity.

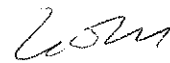
In view of the above this Board agrees with the conclusions reached by the evaluation board and thus finds against the appellant company. It also recommends that the deposit paid by the latter should not be reimbursed.



Alfred R Triganza
Chairman



Carmel Esposito
Member



Joseph Croker
Member

20 March 2012