

PUBLIC CONTRACTS REVIEW BOARD

Case No. 414

HM/22/14/2011

Tender for Restoration and Civil Works at Fort St Angelo, Birgu, including the the restoration, repair andt part-reconstruction of entrance ramp

This call for tenders was published in the Government Gazette on the 7th October 2011. The closing date for this call – which attracted no fewer than four (4) tenderers - with an estimated budget of € 99,780 incl. VAT was the 31st October 2011.

| FortRes JV filed an objection on the 2nd March 2012 against the decision of Heritage Malta to disqualify its offer as administratively non-compliant.

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 Monday 21st May, 2012 to discuss this objection.

Present for the hearing:

FortRes JV

Dr David Wain	Legal Representative
Mr Angelo Xuereb	Representative
Ms Denise Xuereb	Representative

Vaults Ltd

Mr Mario Abela	Representative
Mr Ivan Farrugia	Representative

Heritage Malta

Dr Ruth Baldacchino	Legal Representative
Mr Alex Magro	Director Corporate Services (OPM)

Evaluation Board

Perit Ruben Abela	Chairman
Mr John Galea	Member
Mr Godwin Vella	Member
Ms Anastasia Anastasi Vella	Secretary

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

Dr David Wain, legal representative of FortRes JV, the appellant joint venture, submitted that:-

- i. by a letter dated 24th February 2012, Heritage Malta informed his client that its bid was found to be administratively non-compliant "*since in the original submission, you had included the provision of a Health and Safety Officer in Form 5 of Volume 1, Section 7 but did not include this key staff in Forms 6 and 7 (i.e. CV) of Volume 1, Section 7. Following a request for clarifications on the 2nd January 2012, you included the provision of a the Health and Safety Officer, that is Mr Aldo Busuttil, in Form 7 (provision of CV) but omitted to include this key staff as per Forms 6 of Volume 1 Section 7. The provision of this information is not a clarification but a request for rectification, which according to Art. 1.1 and 16.1 of the tender document, is not allowed*";
- ii. contrary to what Heritage Malta claimed, his client did submit Form 6 and, besides, it was not correct that the missing information led to the extreme measure of disqualification on grounds of administrative non-compliance, since Clause 16 'Content of Tender' made no reference to Forms 6 and 7 and neither did Clause 1.1 make any similar reference;
- iii. likewise, it was not correct to state that no clarification or rectification could be sought with regard to Forms 6 and 7 because there was no such provision in the Notes to Clause 16.1 so much so that the contracting authority did in fact request a clarification in this respect;
- iv. Form 6 itself displayed the note that '*The Evaluation Commission reserves the right to request the curriculum vitae of key members of staff*'; which right was exercised by the request for clarification dated 2nd January 2012;
- v. the administrative compliance grid also posed the question- '*Is documentation complete as per Article 16 of the ITT*';
- vi. as per request for clarification dated 2nd January 2012, para. 2.0 Heritage Malta informed his client as follows, namely

"You included the provision of a Health and Safety Officer in Form 5 of Volume 1 – Section 7, but did not include this key staff as per Forms 6 and 7 (i.e. CV) of Volume 1, Section 7. Kindly provide the missing information."
- vii. on his part, by way of a letter dated 4th January 2012 his client paid the €50 fee and informed the contracting authority that the appointed Health and Safety Officer was Mr Aldo Busuttil and provided his CV and diploma along with a certificate from the Health and Safety Authority attesting that Mr Busuttil was duly included in the register of competent persons for the purposes of the pertinent Health and Safety legislation;



and

- viii. therefore, his client had complied in full with the request for further information made by Heritage Malta with regard to the health and safety officer and, frankly, the reason for rejection quoted by the contracting authority was incomprehensible.

Dr Ruth Baldacchino, legal representative of Heritage Malta, the contracting authority, explained that:-

- a. clause 16 of the tender document indicated the content of the tender and para. (e) (ii) requested the "*Tenderer's technical offer in response to specifications, including: ...*", which although it did not specifically mention Forms 6 and 7 but it did not exclude them either;
- b. clause 1.2.4 of Volume 3 'Technical Specifications' (page 61) requested the provision of a health and safety officer and highlighted his important function whereas clause 1.5 'Information to be submitted with tender documents' (page 66) mentioned that one of the requirements concerned 'Details of Project Manager and Health and Safety Officer';
- c. the appellant joint venture failed to provide the information about the health and safety officer (HSO) in Forms 6 and 7 in its original tender submission, namely, Form 6 was submitted by without the HSO details, and when the appellant joint venture was requested to submit the missing information the joint venture provided the CV (Form 7) but, once again, failed to submit Form 6;
- d. reiterated that the missing information was covered by clause 16 (e) and whilst, as a consequence, this should have been included in the original tender submission and no rectification thereon allowed, yet, on seeking the advice of the Departmental Contracts Committee a clarification was sought;

and

- e. Heritage Malta asked, once again, the Departmental Contracts Committee to advise whether it could request Form 6 once again from the appellant joint venture but the Departmental Contracts Committee's reply was in the negative.

The Public Contracts Review Board noted that:-

- a. evidently, in a letter dated 4th January 2012, the appellant joint venture did provide all the information requested by the contracting authority in a clarification letter dated 2nd January 2012;
- b. the contracting authority did not explicitly request the re-submission of Form 6 but only requested the submission of the missing information;

and

- c. apparently, the contracting authority was after the re-submission of Form 6, which it did not specifically request, and not the missing information which it did request

Dr Baldacchino remarked that all the forms in the tender document had to be entirely filled in and, in the case of the appellant joint venture, Form 6 was still incomplete.

The Public Contracts Review Board noted that it was clear that in Form 6 submitted in the tenderer's original tender submission and in its reply to the clarification dated 4th January 2012, the appellant joint venture provided all the information requested in Form 6.

At this point the hearing was brought to a close.

This Board,

- having noted that the appellants, in terms of their 'letter of objection' dated 1st March 2012 and also through their verbal submissions presented during the hearing held on the 21st May, 2012, had objected to the decision taken by the pertinent authorities;
- having noted all of the appellant joint venture's representatives' claims and observations, particularly, the references made to the fact that (a) by a letter dated 24th February 2012, Heritage Malta informed the appellant joint venture that its bid was found to be administratively non-compliant since in the original submission, it had included the provision of a Health and Safety Officer in Form 5 of Volume 1, Section 7 but did not include this key staff in Forms 6 and 7 (i.e. CV) of Volume 1, Section 7 and that, following a request for clarifications on the 2nd January 2012, the joint venture included the provision of a the Health and Safety Officer, that is Mr Aldo Busuttil, in Form 7 (provision of CV) but omitted to include this key staff as per Forms 6 of Volume 1 Section 7, (b) contrary to what Heritage Malta claimed, the appellant joint venture did submit Form 6 and, besides, it was not correct that the missing information led to the extreme measure of disqualification on grounds of administrative non-compliance, since Clause 16 'Content of Tender' made no reference to Forms 6 and 7 and neither did Clause 1.1 make any similar reference, (c) it was not correct to state that no clarification or rectification could be sought with regard to Forms 6 and 7 because there was no such provision in the Notes to Clause 16.1 so much so that the contracting authority did in fact request a clarification in this respect, (d) Form 6 itself displayed the note that '*The Evaluation Commission reserves the right to request the curriculum vitae of key members of staff*'; which right was exercised by the request for clarification dated 2nd January 2012, (e) on his part, by way of a letter dated 4th January 2012 the appellant joint venture paid the €50 fee and informed the contracting authority that the appointed Health and Safety Officer was Mr Aldo Busuttil and provided his CV and diploma along with a certificate from the Health and Safety Authority attesting that Mr Busuttil was duly included in the register of competent persons for the purposes of the pertinent Health and Safety legislation and (f) the appellant joint venture had complied in full with the request for further information made by Heritage Malta with regard to the health and safety officer and, frankly, the reason for rejection quoted by the contracting authority was incomprehensible;

- having considered the contracting authority's representatives' reference to the fact that (a) clause 16 of the tender document indicated the content of the tender and para. (e) (ii) requested the "*Tenderer's technical offer in response to specifications, including: ...*", which although it did not specifically mention Forms 6 and 7 but it did not exclude them either, (b) clause 1.2.4 of Volume 3 'Technical Specifications' (page 61) requested the provision of a health and safety officer and highlighted his important function whereas clause 1.5 'Information to be submitted with tender documents' (page 66) mentioned that one of the requirements concerned 'Details of Project Manager and Health and Safety Officer, (c) the appellant joint venture failed to provide the information about the health and safety officer (HSO) in Forms 6 and 7 in its original tender submission, namely, Form 6 was submitted by without the HSO details, and when the appellant joint venture was requested to submit the missing information the joint venture provided the CV (Form 7) but, once again, failed to submit Form 6, (d) reiterated that the missing information was covered by clause 16 (e) and whilst, as a consequence, this should have been included in the original tender submission and no rectification thereon allowed, yet, on seeking the advice of the Departmental Contracts Committee a clarification was sought and (e) Heritage Malta asked, once again, the Departmental Contracts Committee to advise whether it could request Form 6 once again from the appellant joint venture but the Departmental Contracts Committee's reply was in the negative,

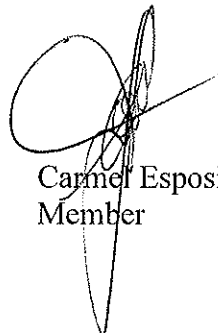
reached the following conclusions, namely:

1. The Public Contracts Review Board feels that, albeit it may have been after the re-submission of Form 6, the contracting authority did not explicitly request the re-submission of Form 6 but only requested the submission of the missing information.
2. The Public Contracts Review Board opines that it seems evident that the appellant joint venture, in a letter dated 4th January 2012, provided all the information requested by the contracting authority in the latter's clarification letter request dated 2nd January 2012

In view of the above, this Board finds in favour of the appellant joint venture and recommends that the said appellant be reintegrated in the evaluation process as well as reimbursed with the deposit paid for the appeal to be lodged.



Alfred R Triganza
Chairman



Carmel Esposito
Member



Joseph Croker
Member

31st May 2012