

PUBLIC CONTRACTS REVIEW BOARD

Case No. 421

FSWS/12/11

Tender for the Provision of Security Services during the Daytime – Foundation for Social Welfare Services

This call for tenders was published in the Government Gazette on the 6th March 2012. The closing date for this call with an estimated budget of € 85,000 (excl. VAT) was the 22nd March 2012.

Five (5) tenderers submitted their offers.

Global Security Services Ltd filed an objection on the 19th April 2012 against the decision of the Foundation for Social Welfare Services to discard its offer and to recommend tender award in favour of JF Security and Consultancy Services 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 8th June, 2012 to discuss this objection.

Present for the hearing were:

Global Security Services Ltd

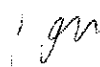
Dr Paul Felice	Legal Representative
Mr Mario Cardona	Representative

JF Security and Consultancy Services Ltd – no one was present

Foundation for Social Welfare Services

Evaluation Board

Mr Jesmond Schembri	Chairman
Mr Stephen Vella	Member
Mr Joseph Cini	Member
Mr Etienne Bonello	Secretary



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

Dr Paul Felice, legal representative of Global Security Services Ltd, the appellant company, submitted that:-

- i. by email dated 12th April 2012, the contracting authority had informed his client that its offer was discarded and that the reason cited in the evaluation report read as follows, namely "*Global Security Services Ltd - 'Non Eligible' - Volume 1, Section 2, Tender Form is not completed as originally published in the tender document*";
- ii. it transpired that the information not included in the 'tender form' submitted by his client related to whether the bidder was a consortium and to sub-contracting;
- iii. considering that his client had indicated elsewhere in the company's tender submission that Global Security Services Ltd was bidding in its own name, it was felt that there was, practically, no need to fill in that part of the 'tender form' dealing with consortia/sub-contracting;
- iv. albeit the tender document allowed the contracting authority to approach the bidder in instances concerning incomplete and/or missing information with a view to providing a clarification or rectification, yet, the contracting authority sought no such clarification/rectification from his client;
- v. the letter of rejection also indicated, among other things:
 - the criteria for award:
 - Technically and administratively compliant cheapest offer;
 - name of successful tenderer:
 - JF Security and Consultancy Services Ltd;and
 - the recommended price of the successful bidder:
 - €6.10 per hour inclusive of VAT. *His client had in fact submitted the hourly rate of €5.90 against the €6.10 quoted by the recommended bidder;*
- vi. in case of reference OPM/DCS/08/2011 (PCRB Case No. 392) the Public Contracts Review Board had decided on a similar case in favour of the bidder.

Mr Mario Cardona, also representing the appellant company, recalled that, in the past, he committed the mistake of leaving out sections of the 'Tender Form' which were not applicable to his case instead of reproducing them indicating 'Not Applicable'.

Mr Stephen Vella, a member of the adjudicating board, explained that:-

- a. bidders were required to submit the 'Tender Form' as published in the tender document, which was the standard form;



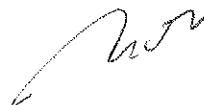
- b. the appellant company, practically, submitted the contact details only, namely the first part of Section A, Section B concerning the details of the 'Contact Person' and the last part of the 'Tender Form' indicating the details of the person authorised to sign the tender submission on behalf of Global Security;
- c. in so doing the appellant company left out the second part of Section A, dealing with sub-contracting, and Section C in its entirety whereby a bidder was required to bind oneself with declarations concerning, among other things, bankruptcy, the validity period of the tender, the provision of the performance guarantee on tender acceptance and the price;
- d. it was clearly indicated in Section C of the 'Tender Form' that it had "*To be completed and signed by the tenderer (including each partner in the consortium)*";
- e. although one might argue that the price was quoted elsewhere in the tender submission, it was not the case with regard to the other declarations requested in Section C;
- f. contrary to what the appellant company's representatives were claiming, as per Note 2 to Clause 16.1 of the 'Instructions to Tenders' and to Clause 11 of the 'Tender Form' no rectification was allowed in respect of the 'Tender Form' referred to in sub-clause (f);

and

- g. acting on the instructions issued by the Departmental Contracts Committee, the appellant company was adjudicated to be administratively non-compliant since the company did not submit the 'Tender Form' in the format and with the information provided in the tender document.

The Chairman Public Contracts Review Board remarked that:-

- i. Public Contracts Review Board Case No. 392 was not in any way similar to the case in hand because the former basically referred to an instance where the contracting authority failed to make a distinction between the 'key person' and the 'key expert';
- ii. the second paragraph of clause 1.1 of the 'Instructions to Tenderers' prohibited any alteration to or deviation from the tender document;
- iii. the Public Contracts Review Board tended to place more weight on substance rather than on the format and there were exceptional instances where a tender form was considered admissible once it contained all the information requested but which was presented in a different format to the tender from that published in the tender document;
- iv. the 'Tender Form' was a mandatory document and a very important one at that because it included declarations which were binding the tenderer including but not limited to the 'price';



and

- v. in this case it was not a matter of clarifying information already submitted but of requesting missing information which amounts to a rectification which was not permissible with regard to the 'Tender Form'.

Mr Cardona remarked that his firm was the current provider of this service to the contracting authority and, as a consequence, the latter was already in a way in possession of the 'missing' information.

The Chairman Public Contracts Review Board pointed out that all bidders had to be afforded the same treatment and the fact that the appellant company turned out to be the current contractor should, in no way, entitle the said bidder to a more favourable treatment during the evaluation process.

Dr Felice requested the Public Contracts Review Board some time to verify the reference number of the similar case on which the Public Contracts Review Board had already pronounced itself according to the information he received from his colleague, Dr Jan-Karl Farrugia, who was meant to present this case, but who could not be present due to circumstances beyond his control. The Chairman Public Contracts Review Board granted Dr Felice up to Monday 12th June 2012 to submit any such information.

No information was received by the Public Contracts Review Board relating to Dr Felice's own request.

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' filed on the 19th April 2012 and also through their verbal submissions presented during the hearing held on the 8th June, 2012, had objected to the decision taken by the pertinent authorities;
- having noted all of the appellant company's representative's claims and observations, particularly, the references made to the fact that (a) by email dated 12th April 2012, the contracting authority had informed the appellant company that its offer was discarded and that the reason cited in the evaluation report read as follows, namely "*Global Security Services Ltd - Non Eligible - Volume 1, Section 2, Tender Form is not completed as originally published in the tender document*", (b) it transpired that the information not included in the 'tender form' submitted by the appellant company related to whether the bidder was a consortium and to sub-contracting, (c) considering that the appellant company had indicated elsewhere in the company's tender submission that Global Security Services Ltd was bidding in its own name, it was felt that there was, practically, no need to fill in that part of the 'tender form' dealing with consortia/sub-contracting, (d) albeit the tender document allowed the contracting authority to approach the bidder in instances concerning incomplete and/or missing information with a view to providing a clarification or rectification, yet, the contracting authority sought no such clarification/rectification from the appellant company, (e) the appellant company had, in fact, submitted the



hourly rate of €5.90 against the €6.10 quoted by the recommended bidder, (f) in case of reference OPM/DCS/08/2011 (PCRB Case No. 392) the Public Contracts Review Board had decided on a similar case in favour of the bidder and (g) the appellant company was the current provider of this service to the contracting authority and, as a consequence, the latter was already in a way in possession of the 'missing' information;

- having considered the contracting authority's representatives' reference to the fact that (a) bidders were required to submit the 'Tender Form' as published in the tender document, which was the standard form, (b) the appellant company, practically, submitted the contact details only, namely the first part of Section A, Section B concerning the details of the 'Contact Person' and the last part of the 'Tender Form' indicating the details of the person authorised to sign the tender submission on behalf of Global Security, (c) the appellant company left out the second part of Section A, dealing with sub-contracting, and Section C in its entirety whereby a bidder was required to bind oneself with declarations concerning, among other things, bankruptcy, the validity period of the tender, the provision of the performance guarantee on tender acceptance and the price, (d) it was clearly indicated in Section C of the 'Tender Form' that it had "*To be completed and signed by the tenderer (including each partner in the consortium)*", (e) although one might argue that the price was quoted elsewhere in the tender submission, it was not the case with regard to the other declarations requested in Section C, (f) contrary to what the appellant company's representatives were claiming, as per Note 2 to Clause 16.1 of the 'Instructions to Tenders' and to Clause 11 of the 'Tender Form' no rectification was allowed in respect of the 'Tender Form' referred to in sub-clause (f) and (g) acting on the instructions issued by the Departmental Contracts Committee, the appellant company was adjudicated to be administratively non-compliant since the company did not submit the 'Tender Form' in the format and with the information provided in the tender document,

reached the following conclusions, namely:

1. The Public Contracts Review Board argues that Case No. 392 was not in any way similar to the case in hand because the former basically referred to an instance where the contracting authority failed to make a distinction between the 'key person' and the 'key expert'.
2. This Board opines that the second paragraph of clause 1.1 of the 'Instructions to Tenderers' prohibited any alteration to or deviation from the tender document.
3. The Public Contracts Review Board argues that the 'Tender Form' was a mandatory document and a very important one at that because it included declarations which were binding the tenderer including but not limited to the 'price'.
4. The Public Contracts Review Board feels that in this case it was not a matter of clarifying information already submitted but of requesting missing information which amounts to a rectification which was not permissible with regard to the 'Tender Form'.
5. This Board contends that all bidders had to be afforded the same treatment and the fact that the appellant company turned out to be the current contractor should, in no

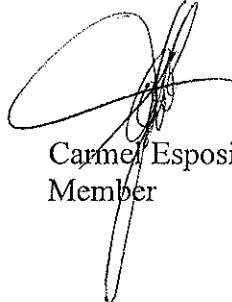
way, entitle the said bidder to a more favourable treatment during the evaluation process.

In view of the above, this Board finds against the appellant company and recommends that the said company should not be reimbursed with the deposit paid for the appeal to be lodged.

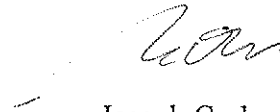


Alfred R Triganza
Chairman

19th June 2012



Carmel Esposito
Member



Joseph Croker
Member