

PUBLIC CONTRACTS REVIEW BOARD

Case No. 428

GGH/076/2011

Tender for the Supply and Delivery of Chicken Broilers for Gozo General Hospital for Year 2012

This call for tenders was published in the Government Gazette on the 7th October 2011. The closing date for this call with an estimated budget of €32,000 was the 28th October 2011.

Two (2) tenderers submitted their offers.

Continental Meat Co Ltd filed an objection on the 9th April 2012 against the decision of the Ministry for Gozo to disqualify its tender as non compliant and to recommend the cancellation of tender.

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 Wednesday, 4th July 2011 to discuss this objection.

Present for the hearing were:

Continental Meat Co Ltd

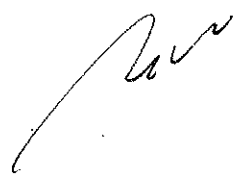
Mr Ronald Galea	Managing Director
Mr Pierre Galea	Representative

Ministry for Gozo

Mr John Muscat	Representative
Ms Joyce Dimech	Director Customer Services

Evaluation Board

Mr Noel Said	Chairman
Mr Carmel Attard	Member
Ms Rebecca Grima	Member
Ms Marylee Said	Member



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

Mr Ronald Galea, representing Continental Meat Co Ltd, the appellant company, made the following submissions:

- i. by letter dated 30th March 2012 the Ministry for Gozo had informed him that his company's offer had been discarded because page 20 of the tender document was submitted incomplete and that the tender was being recommended for cancellation;
 - ii. at Volume 4 'Financial Bid' (page 54 of the tender document), the bidder had to indicate the unit cost, which the company quoted at €2.14 per kilo, and the Total (price) including VAT, Duties and other charges delivered Duty Paid, in which instance the company was unable to give the total price since the contracting authority did not indicate the quantity requested and, as a result, Continental Meat Co Ltd inserted in the respective column a note which read '*Quantity not available*';
 - iii. page 20 of the tender document referred to the Tenderer's 'Declaration' and clause 3 thereof was titled '*Total Price of our tender (inclusive of duties, VAT, other taxes and any discounts*' and, for the same reason given earlier on, Mr Galea left the relative space blank given that the contracting authority had not indicated the quantity required;
 - iv. if the contracting authority had indicated the quantity required then the appellant company would have multiplied the quantity by the unit cost to arrive at the total price of its offer;
- and
- v. when Mr Galea was made aware of the reason for exclusion, upon informing the contracting authority that the company was not in a position to fill in clause 3 of the Tenderer's Declaration in the absence of the quantity required, the appellant company's representative was informed that he should have written down the unit price per kilo.

Mr John Muscat, representing the Ministry for Gozo, explained that:-

- a. since the consumption of chicken at the Gozo General Hospital varied from time to time depending on the number of patients at any given time and the number of patients who chose chicken as a meal, he was not in a position to indicate in the tender document the amount of chicken required for 2012;
- b. the tender document was issued as per standard template and he did not alter its contents in any way;
- c. the appellant company's representative should have asked for a clarification on this matter and not take it upon himself to refrain from filling in full the Tenderer's Declaration;



and

- d. had the appellant company's representative raised the issue with the contracting authority he would have been directed to quote the price per kilo in lieu of the total price.

At this point the Chairman Public Contracts Review Board remarked that:-

- the contracting authority could have provided the estimated quantity required for 2012 by working out the annual average of chicken consumed at the Gozo General Hospital over, say, the previous three year period;
- the tender document, as published, did not provide the necessary information for the tenderer to fill in the total price at clause 3 of the 'Tenderer's Declaration' or in the 'Financial Bid' and, as a consequence, the contracting authority was requesting information which the tenderer was not in a position to provide;

and

- as much as it was the responsibility of the contracting authority to publish a comprehensive and meaningful tender document it was the responsibility of the bidder to submit a clear and complete tender submission.

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 3rd April 2012 and also through their verbal submissions presented during the hearing held on the 4th July, 2012, had objected to the decision taken by the pertinent authorities;
- having noted all of the appellant company's representatives' claims and observations, particularly, the references made to the fact that (a) by letter dated 30th March 2012 the Ministry for Gozo had informed the company that its offer had been discarded because page 20 of the tender document was submitted incomplete and that the tender was being recommended for cancellation, (b) at Volume 4 'Financial Bid' (page 54 of the tender document), the bidder had to indicate the unit cost, which the company quoted at €2.14 per kilo, and the Total (price) including VAT, Duties and other charges delivered Duty Paid, in which instance the company was unable to give the total price since the contracting authority did not indicate the quantity requested and, as a result, Continental Meat Co Ltd inserted in the respective column a note which read '*Quantity not available*', (c) page 20 of the tender document referred to the Tenderer's 'Declaration' and clause 3 thereof was titled '*Total Price of our tender (inclusive of duties, VAT, other taxes and any discounts*' and, for the same reason given earlier on, Mr Galea left the relative space blank given that the contracting authority had not indicated the quantity required, (d) if the contracting authority had indicated the quantity required then the appellant company would have multiplied the quantity by the unit cost to arrive at the total price of its offer and (e) when Mr Galea



was made aware of the reason for exclusion, upon informing the contracting authority that the company was not in a position to fill in clause 3 of the Tenderer's Declaration in the absence of the quantity required, the appellant company's representative was informed that he should have written down the unit price per kilo;

- having considered the contracting authority's representatives' reference to the fact that (a) since the consumption of chicken at the Gozo General Hospital varied from time to time depending on the number of patients at any given time and the number of patients who chose chicken as a meal, the contracting authority was not in a position to indicate in the tender document the amount of chicken required for 2012, (b) the tender document was issued as per standard template and the contracting authority did not alter its contents in any way, (c) the appellant company's representative should have asked for a clarification on this matter and not take it upon himself to refrain from filling in full the Tenderer's Declaration and (d) had the appellant company's representative raised the issue with the contracting authority he would have been directed to quote the price per kilo in lieu of the total price;

reached the following conclusions, namely:

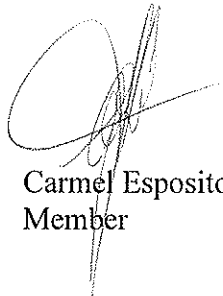
1. The Public Contracts Review Board argues that the contracting authority could have provided the estimated quantity required for 2012 by working out the annual average of chicken consumed at the Gozo General Hospital over, say, the previous three year period.
2. This Board feels that the tender document, as published, did not provide the necessary information for the tenderer to fill in the total price at clause 3 of the 'Tenderer's Declaration' or in the 'Financial Bid' and, as a consequence, the contracting authority was requesting information which the tenderer was not in a position to provide.
3. This Board opines that as much as it was the responsibility of the contracting authority to publish a comprehensive and meaningful tender document it was the responsibility of the bidder to submit a clear and complete tender submission

In view of the above, this Board finds in favour of the appellant company and recommends that (a) the latter's offer be reintegrated in the evaluation process and (b) the appellant company should be reimbursed with the deposit paid for the appeal to be lodged.

Finally, this Board recommends that the evaluation process referred to above should be carried out within the next three weeks as this Board feels that it is highly disruptive for a tender to be issued covering the supply of goods within a calendar year (2012) considering that almost 60% of the said time frame has already passed.



Alfred R Triganza
Chairman



Carmel Esposito
Member



Joseph Croker
Member

11th July 2012