

## PUBLIC CONTRACTS REVIEW BOARD

Case No. 454

T/002/12

### Call for Expression of Interest: Framework Agreement for the Provision of Local Area Network and Electrical Infrastructure Works, Services and Supply of Passive Equipment

This call for tenders was published in the Government Gazette on the 20<sup>th</sup> January 2012. The closing date for this call with an estimated budget of €122,000 was the 2<sup>nd</sup> March 2012.

Six (6) tenderers submitted their offers.

KLIKK Ltd filed an objection on the 28th June 2012 against the decision of the Malta Information Technology Agency (MITA) to disqualify its offer because of the following two shortcomings (i) proposed resources did not possess Wiremen Licences A and B for the provision of the service and (ii) did not have two years' experience in electrical servicing.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr Joseph Croker and Mr Carmel Esposito as members convened a public hearing on Friday, 17<sup>th</sup> September 2012 to discuss this objection.

Present for the hearing were:

#### **KLIKK Ltd**

Mr Jason Cutajar                      Representative

#### **A & M Muscat Ltd**

Mr Alex Muscat                      Representative

#### **Malta Information Technology Agency (MITA)**

Dr Marouska Cilia Barbara      Legal Representative  
Mr Ian Bonello                      Representative  
Mr Martin Pirota                    Suppliers Relations Manager

#### **Evaluation Board**

Mr Daniel Mangani                Member  
Mr Adrian Pisani                   Member



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


Mr Jason Cutajar, on behalf of KLIKK Ltd, the appellant company, stated that by letter dated 19<sup>th</sup> June 2012 the contracting authority informed his client that the company's offer was not successful because (i) the proposed resources did not possess wireman Licences 'A' and 'B' to provide the service and (ii) did not have two years' experience in electrical servicing.

Mr Cutajar submitted that:-

- i. the tender document did not request the submission of Wireman Licences 'A' and 'B' or their numbers but only mentioned them as required qualifications;
  - ii. in Document C 'Profile of Key Personnel' of its tender submission, KLIKK Ltd had included one of the key persons Ing. Johan Aloisio, B. Elec. Eng. (Hons), MBA (Maastricht), MIEE with 12 years specialist experience/knowledge;
  - iii. the contracting authority had retained the right to ask for the submission of the CV of the key personnel so as to verify the qualifications/experience;
  - iv. the contracting authority did not ask for the CV but requested the numbers of Wireman Licences 'A' and 'B' and KLIKK Ltd was given two hours to submit that information which request the company could not entertain in time as Mr Aloisio, the key person concerned, was abroad but, eventually, he did provide the requested MRA (Ministry Resources Authority) the pertinent licence numbers, namely Licence No. 5289B issued in the name of Mr Johan Aloisio (ID 136278M);
  - v. Eng. Aloisio had two licences issued in his name, that of engineer and the other of wireman;
- and
- vi. therefore, Eng. Johan Aloisio did possess the required qualifications and, even more, because, besides holding a wireman's licence 'B' he even held the warrant of engineer together with twelve years' experience which was more than the two years requested.

Dr Marouska Cilia Barbara, on behalf of the Malta Information Technology Agency, submitted that:-

- a. Document C 'Profile of Key Personnel' (page 13) of the tender document requested that the key personnel had to have Wireman Licences 'A' & 'B' by way of qualifications and two years' experience in large scale project for the provision of electrical services;



- b. a qualified electrical engineer did not automatically possess Wireman Licences 'A' & 'B' and she went on to quote from Legal Notice 225 of 2010 'Electrical Installations Regulations':-

*5. (1) The installation, alteration, extension and certification of single phase and three phase electrical installations shall require an authorisation. There shall be two classes of authorisations for electrical installation works:*

*authorisation A for the installation, alteration, extension and certification of single phase electrical installations;*

*and*

*authorisation B for installation, alteration, extension and certification of single phase electrical installations and three phase electrical installations rated up to 300Amps per phase. The holder of an authorisation B may also carry out installation, alteration, extension and certification work on three phase electrical installations rated more than 300Amps per phase but may not certify such electrical installations.*

*(2) Persons who are eligible to apply for an authorisation under these regulations shall be the following:*

*any person qualified as an electrical engineer and possessing a valid warrant recognized in Malta, and having one year of experience in single phase electrical installation works for authorisation A and two years experience in three phase electrical installation works for authorisation B;*

- c. Reg. 9 of this Legal Notice stated that *'the holder of an authorisation B shall be deemed to be in possession of an authorisation A;*
- d. Regulation 1 (3) of LN 225 of 2010 stressed the importance of these requirements in the following manner:-

*These regulations are being made for the safeguarding of the public interest and public safety. Any requirements contained therein including those relating to authorisations and to services are made for overriding reasons relating to the public interest.*

- e. Regulation 26 of LN 225 of 2010 also provided, among other things, as follows:-

*26. (1) The Authority shall keep a register or registers of authorisations, which shall be made public in part or in their entirety, and which shall include records of:*

- (a) all authorisations granted under these regulations, and  
(b) all applications for authorisations received and refused.*

*(2) The contents of the registers to be made public as mentioned in sub-regulation (1) shall include the following information:*

- (c) name, surname and address of the authorised provider;*

(d) *authorisation number;*

(e) *telephone or mobile number of the authorised provider, if available.*

- f. albeit the contracting authority noted that one of the key persons was Ing. Johan Aloisio, yet, it was not indicated whether Mr Aloisio possessed Wireman Licences 'A' & 'B' as requested in the tender document and although on checking with the list held by Malta Resources Authority it emerged that Mr Aloisio was not on that list, the contracting authority did not reject the offer outright but requested the appellant company to provide the licence numbers;
- g. the wiremen register was available on the website of the Malta Resources Authority and it was checked in July 2012 by the evaluation board and just before this hearing by herself and on both occasions Ing Johan Aloisio did not feature on it;
- h. the contracting authority did not ask for the CV but asked for the Wireman Licence Numbers to verify them with the Malta Resources Authority list and although it was unfortunate that the appellant company was allowed only a few hours to comply, that information should have been readily available as one either had it or not;
- i. it could be that one might have had this licence but that license might not have been renewed or for some reason had become invalid and hence it no longer featured on the Malta Resources Authority list and in which case reactivation of the licence required the filing of an appropriate application with the Malta Resources Authority by the licence holder;

and

- j. albeit, the licence submitted with the appeal dated 27<sup>th</sup> June 2012 was not quite legible, yet the document presented at the hearing indicated that Mr Aloisio had paid the licence fee for years 2012 and 2013 and was issued with licence no. 5289B. Nevertheless, the Malta Resources Authority list recently downloaded ended with licence no. 5089 and that explained why Mr Aloisio was not on the list.

The Chairman Public Review Board remarked that it could be the case that the Malta Resources Authority list was not kept up-to-date and that the contracting authority had the right and obligation to request the CV of the key person/s which apparently it did not request.

Dr Cilia Barbara remarked that:-

- i. according to the Malta Resources Authority only those persons appearing on the list displayed on its website were licensed to certify electrical installations, which list the Malta Resources Authority was obliged at law to keep up-to-date and Ing. Aloisio was not on that list whenever the Malta Information Technology Agency checked even prior to the commencement of the hearing;



- ii. although the contracting authority did not request the CV of the key personnel, it did however request the numbers of wireman licences 'A' & 'B' which would have formed part of the CV and, moreover, once in the tender document the contracting authority stated that the proposed resources 'must have' Wiremen Licences 'A' and 'B' the bidder had to somehow indicate and/or declare in one's tender submission that the key person did hold these licences;

and

- iii. in its tender submission (page 13) the appellant company indicated that Mr Aloisio was an electrical engineer but the qualifications requested by the contracting authority on that same page were Wiremen Licences 'A' & 'B' and not a degree in electrical engineering, which, contrary to what the appellant company seemed to imply, did not mean that it automatically covered/included Wiremen Licences 'A' & 'B' – vide LN 225 of 2010 cited earlier on.

*It was noted that the receipt issued by the Malta Information Technology Agency to Eng. Aloisio was dated 8<sup>th</sup> May 2012 when the closing date of the tender was 2nd March 2012.*

The Chairman Public Contracts Review Board observed that if Ing Aloisio was registered with the Malta Resources Authority prior to July 2012 then one would have expected his name to feature on the list displayed on the Malta Resources Authority's website, which was not the case, and so the person concerned should have taken up the matter with the Malta Resources Authority. He added that the evaluation board had to rest on the records kept by the Malta Resources Authority.

Dr Cilia Barbara:-

- a. whilst noting that the receipt issued by the Malta Resources Authority to Ing. Aloisio was for €47 for year/s 2012 to 2013, yet, if this were a renewal case then the sum of €47 probably represented the renewal fee of one year €35 plus €12 penalty for late payment in respect of authorisation 'A' (not 'B') as per Reg. 8 of LN 225 of 2010 which provided as follows:-

*(2) An authorised provider shall, every three years reckoned from the 1st day of January of the year in which their authorisation is granted, pay an authorisation fee of thirty-five euro (€35) per annum in case of being the holder of an authorisation A and seventy-euro (€70) per annum in case of being the holder of an authorisation B.*

*(3) If any authorisation fee payable under sub-regulation (2) is not paid within thirty days, the Authority shall after the lapse of such time, communicate with the authorised provider whose authorisation fee has not been paid, informing him about his failure to pay such fee. A fee of twelve euro (€12) shall also be due to the Authority as a late-payment fee in addition to the fee due under sub-regulation (2).*

b. stated that, in terms of Reg. 8 (5), failure to effect payment for renewal would lead to the licence being suspended and reactivation was possible on the submission of an application;

and

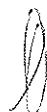
c. argued that if Ing Aloisio was licensed prior to 8<sup>th</sup> May 2012 then how could one explain that Mr Aloisio's licence number was 5289B when the last licence number on the list dated July 2012 was 5089?

*None of the parties concerned had requested that a representative of the Malta Resources Authority should be present at the hearing to give evidence.*

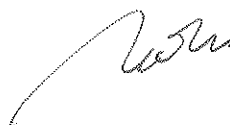
At this point the hearing was brought to a close.

This Board,

- having noted that the appellants, in terms of their 'reasoned letter of objection' dated the 28th June 2012 and also through their verbal submissions presented during the hearing held on the 17<sup>th</sup> September 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 letter dated 19<sup>th</sup> June 2012 the contracting authority informed the appellant company that its offer was not successful because the proposed resources did not (1) possess wireman Licences 'A' and 'B' to provide the service and (2) did not have two years' experience in electrical servicing, (b) the tender document did not request the submission of Wireman Licences 'A' and 'B' or their numbers but only mentioned them as required qualifications, (c) in Document C 'Profile of Key Personnel' of its tender submission, KLIKK Ltd had included one of the key persons Ing. Johan Aloisio, B. Elec. Eng. (Hons), MBA (Maastricht), MIEE with 12 years specialist experience/knowledge, (d) the contracting authority had retained the right to ask for the submission of the CV of the key personnel so as to verify the qualifications/experience, (e) the contracting authority did not ask for the CV but requested the numbers of Wireman Licences 'A' and 'B' and KLIKK Ltd was given two hours to submit that information which request the company could not entertain in time as Mr Aloisio, the key person concerned, was abroad but, eventually, he did provide the requested MRA's (Ministry Resources Authority) pertinent licence numbers, namely Licence No. 5289B issued in the name of Mr Johan Aloisio (ID 136278M), (f) Eng. Aloisio had two licences issued in his name, that of engineer and the other of wireman and (g) Ing. Johan Aloisio did possess the required qualifications and, even more, because, apart from holding a wireman's licence 'B', he even held the warrant of engineer together with twelve years' experience which was more than the two years requested;
- having considered the contracting authority's representative's reference to the fact that (a) Document C 'Profile of Key Personnel' (page 13) of the tender document requested that the key personnel had to have Wireman Licences 'A' & 'B' by way



of qualifications and two years' experience in large scale project for the provision of electrical services, (b) a qualified electrical engineer did not automatically possess Wireman Licences 'A' & 'B' as per Legal Notice 225 of 2010 'Electrical Installations Regulations', (c) Reg. 9 of Legal Notice 225 of 2010 stated that *'the holder of an authorisation B shall be deemed to be in possession of an authorisation A*, (d) albeit the contracting authority noted that one of the key persons was Eng. Johan Aloisio, yet, it was not indicated whether Mr Aloisio possessed Wireman Licences 'A' & 'B' as requested in the tender document and although on checking with the list held by the Malta Resources Authority it emerged that Mr Aloisio was not on that list, the contracting authority did not reject the offer outright but requested the appellant company to provide the licence numbers, (e) the wiremen register was available on the website of the Malta Resources Authority and it was checked in July 2012 by the evaluation board and Ing Johan Aloisio did not feature on it, (f) the contracting authority did not ask for the CV but asked for the Wireman Licence Numbers to verify them with the Malta Resources Authority list and, although it was unfortunate that the appellant company was allowed only a few hours to comply, that information should have been readily available as one either had it or not, (g) it could be that one might have had this licence but that licence might not have been renewed or for some reason had become invalid and, as a result, it no longer featured on the Malta Resources Authority list and, in which case, reactivation of the licence required the filing of an appropriate application with the Malta Resources Authority by the licence holder, (h) albeit, the licence submitted with the appeal dated 27<sup>th</sup> June 2012 was not quite legible, yet the document presented at the hearing indicated that Mr Aloisio had paid the licence fee for years 2012 and 2013 and was issued with licence no. 5289B, (i) the Malta Resources Authority list recently downloaded ended with licence no. 5089 and that explained why Mr Aloisio was not on the list, (j) according to the Malta Resources Authority only those persons appearing on the list displayed on its website were licensed to certify electrical installations, which list the Malta Resources Authority was obliged at law to keep up-to-date and Ing. Aloisio was not on that list whenever the Malta Information Technology Agency checked even prior to the commencement of the hearing, (k) although the contracting authority did not request the CV of the key personnel, it did, however, request the numbers of wireman licences 'A' & 'B' which would have formed part of the CV and, moreover, once in the tender document the contracting authority stated that the proposed resources 'must have' Wiremen Licences 'A' and 'B' the bidder had to somehow indicate and/or declare in one's tender submission that the key person did hold these licences, (l) in its tender submission (page 13) the appellant company indicated that Mr Aloisio was an electrical engineer but the qualifications requested by the contracting authority on that same page were Wiremen Licences 'A' & 'B' and not a degree in electrical engineering, which, contrary to what the appellant company seemed to imply, did not mean that it automatically covered/included Wiremen Licences 'A' & 'B' – vide LN 225 of 2010, (m) whilst noting that the receipt issued by the Malta Resources Authority to Ing. Aloisio was for €47 for year/s 2012 to 2013, yet, if this were a renewal case, then the sum of €47, probably, represented the renewal fee of one year €35 plus €12 penalty for late payment in respect of authorisation 'A' (not 'B') as per Reg. 8 of LN 225 of 2010, (n) stated that, in terms of Reg. 8 (5), failure to effect payment for renewal would lead to the licence being suspended and reactivation



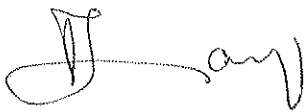
was possible on the submission of an application and (o) argued that if Ing Aloisio was licensed prior to 8<sup>th</sup> May 2012 then how could one explain that Mr Aloisio's licence number was 5289B when the last licence number on the list dated July 2012 was 5089?

reached the following conclusions, namely that the Public Contracts Review Board took full cognisance of the fact that the receipt issued by the Malta Information Technology Agency to Ing. Aloisio was dated 8<sup>th</sup> May 2012 when the closing date of the tender was 2nd March 2012.

In view of the fact that if Ing Aloisio was registered with the Malta Resources Authority prior to July 2012 then one would have expected his name to feature on the list displayed on the Malta Resources Authority's website, which was not the case, following the hearing, the Public Contracts Review Board conducted further enquiries and it was confirmed that (a) Ing Aloisio is the holder of Wireless License 5289B and that (b) the said license was issued in May 2012 but that the website has not been updated with the latest licenses issued. However, the Malta Resources Authority formally confirmed that Ing Aloisio did not hold a license prior to this date.

As a result, this Board concludes that the appellant company was not administratively compliant.

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

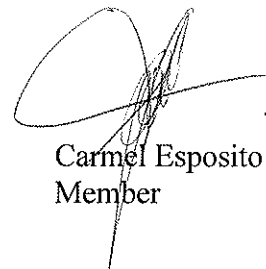


Alfred R Triganza  
Chairman

*28th September 2012*



Joseph Croker  
Member



Carmel Esposito  
Member