

## PUBLIC CONTRACTS REVIEW BOARD

Case No. 465

**MFEI/01/2012**

**Service Tender for the Provision of Consultancy Services on the Management of the Vehicles Fleet of the Government of Malta**

This call for tenders was published in the Government Gazette on the 13<sup>th</sup> January 2012. The closing date for this call with an estimated budget of € 100,000 was the 29<sup>th</sup> February 2012.

Seven (7) tenderers submitted their offers.

Nexem Fleet Management Consultants filed an objection on the 21<sup>st</sup> June 2012 against the decision of Ministry of Finance, the Economy and Investment to disqualify its offer as not the most economically advantageous tender and to recommend the award of tender to Mercury Associates Inc

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, 8<sup>th</sup> October 2012 to discuss this objection.

Present for the hearing were:

### **Nexem Fleet Management Consultants**

Dr Adrian Delia	Legal Representative
Not. Matthew Paris	Representative
Ms Anita Aloisio	Representative
Mr Adrian Said	Representative

### **VFCS Joint Venture**

Dr Henri Mizzi	Legal Representative
Dr Steve Decesare	Legal Representative
Mr Jonathan Vella	Representative

### **Mercury Associates Inc.**

Mr Paul Lauria	Representative
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### **Ministry of Finance, the Economy and Investment Evaluation Board**

Mr Herald Bonnnici	Chairman
Mr Paul Micallef	Member
Mr Blaine Camilleri	Secretary



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

Dr Adrian Delia, legal representative of Nexem Fleet Management Consultants, the appellant company, made the following submissions:

- by letter dated 14<sup>th</sup> June 2012 the contracting authority had informed his client that its tender was not successful because it obtained a technical score of 50%, against the 70% obtained by the recommended tenderer and since it did not obtain 60% at technical score level the offer was discarded and that explained the 'nil' financial score;
- he reckoned that whilst the technical score of 70 obtained by the recommended tenderer represented the maximum score and not 70% of the points available, the maximum financial score was the remaining 30 points, such that the recommended tender got 27 points out of 30 and not 27% of the points available;
- the Public Procurement Regulations provided that a tender had to be awarded on the following criteria, namely (a) the cheapest compliant tender or (b) the most economically advantageous tender (MEAT);
- he referred to page 18 of the tender document which stated that "*The Tender with the cheapest technically compliant offer will be selected. For avoidance of doubt the MFEI will select the cheapest technically compliant offer based on the global price quoted*";
- he referred to page 21 clause 32.1 of the tender document which stated that "*The most economically advantageous tender (MEAT) is established by weighing technical quality against price on a 70/30 basis respectively*";
- the same tender document included both selection criteria which, *per se*, amounted to an inconsistency;
- apart from the fact that his client's offer was the cheapest at €93,928 he contended that it was even technically compliant and, as a result, it should have been recommended for award;
- when requested, the contracting authority refused to furnish his client with the breakdown of his technical score;
- in the absence of the breakdown of his technical score, his client went over the technical criteria and allocated a score according to its tender submission, for example:-
  - a. Item 'duration of tasks and activities' carried 10 points and concerned clause 26.1 of the 'Special Tender Conditions' which provided a table laying out the different stages and relative dates of the contract, the reports and paperwork which had to be submitted together with the relative percentage payments - his client presented this information precisely as



requested and, therefore, the company should have been awarded the maximum 10 points;

- b. Item 'Experience' Clause 6.2.3.1 (i), 'Specific Professional Experience', required the Team Leader to have, at least, 10 years experience and since the team leader proposed by his client had 40 years experience in fleet management and consultancy his client should have been awarded the 10 marks in full

and

- c. the evaluation board was requested to explain the points allocated to his client under each criterion.

Mr Herald Bonnici, chairman of the evaluation board, remarked that:-

- although the information contained in the letter of rejection was according to the instructions given by the Contracts Department, yet, the contracting authority had no problem in furnishing the appellant company with the breakdown of its technical score;
- the MEAT criteria were clearly displayed at page 21 of the tender document;
- whilst, up to the closing date of the tender, bidders had the opportunity to ask for clarifications on any aspect of the tender document, yet, none were forthcoming from the appellant company not even on the inconsistency he pointed out between at pages 18 and 21 regarding the award criteria;
- each bidder was assessed on one's own, namely in isolation;
- clause 6.1 dealt with the 'Selection Criteria' and laid down the minimum requirements;
- the evaluation grid at page 19 of the tender document displayed the maximum score possible in respect of each criterion;
- the points were allocated on the basis of the documentation submitted and on how much that documentation satisfied or even exceeded the minimum requirements;
- if a bidder proposed a team leader with 10 years experience and the tender document required a minimum of 10 years experience, it did not mean that the bidder would be awarded the maximum score or the minimum score because that had to be considered in the context of other documentation required in this respect so much so that under 'Experience in Similar Projects' at page 19 of the tender document it was indicated as follows:-
  - *'Proven experience and capability in the fleet management sector, identifying the number and size of recent similar projects. Details and*



*description of projects, summary of methodology applied and names and details of contact persons will be required'*

Furthermore, he continued by stating that

- if a bidder met the minimum requirements then such bidder would get the minimum/basic pass mark;

and

- he was not in a position to indicate how the evaluation board rated the team leader with 40 years experience proposed by the appellant company against the minimum of 10 years experience.

Mr Paul Micallef, a member of the evaluation board, under oath, gave the following evidence:-

- a. he agreed that, with regard to clause 6.2.3.1 (i), 'professional qualifications' of the team leader, if the individual proposed did not possess a university degree then the bid would be disqualified for not having met the technical requirements;
  - b. if the proposed team leader possessed 40 years experience in fleet management and consultancy and even had a background in engineering he would have been awarded more or less 7 out of 10 marks given that under 'Specific Professional Experience' there is stated that the team leader should have "*at least 10 years experience in team leadership, project management and similar assignments.*";
  - c. he was not in a position to indicate how the evaluation board would differentiate between a team leader with 35 years experience and another team leader with 40 years experience or of two team leaders having different professional qualifications but he stated that one would have to examine all the relative documentation so as to assess the quality, such as their CV;
  - d. each evaluator first carried out an initial individual assessment of each bid and then, after discussing those initial assessments in plenary session, each evaluator had the chance to revise his initial assessment – as per evaluation grids attached to the evaluation report;
  - e. none of the bidders obtained full marks or no marks at all under any of the evaluation criteria;
- and
- f. this was the first time that he was sitting on an evaluation board.

With regard to the item 'Indicators' Dr Delia referred Mr Micallef to:

- clause 8.1 (page 60 of the tender document), which defined 'indicators' as: monitoring and evaluation shall be carried as specified under section 4.2 – Specific Activities;

and

- clause 4.2 'Specific Activities' which stated that "*The list below provides an overall list of activities and areas of research that the selected contractor needs to undertake during the completion of the project - the activities mentioned were clauses 4.2.1 'mail and courier service', clause 4.2.2 'transportation of officials', clause 4.2.3 'owned vehicles', clause 4.2.4 'general use vehicles' and clause 4.2.5 'fully-expensed vehicles'.*"

Mr Micallef was unable to indicate what the bidders had to submit to satisfy the requirements under 'indicators' in full and, when asked whether the points were given according to the bidder's tender submission or according to a pre-determined manner established by the evaluation board, he stated that this was the first time that he had performed tender adjudication duties.

The Chairman Public Contracts Review Board noted that, whilst the initial assessment was only amended in a few instances and that Mr Micallef made only slight amendments to the scores he awarded to the recommended tenderer, yet the overall score remained unchanged (72 points).

Dr Delia:-

- pointed out that, whilst with regard to criterion 'Duration of tasks and activities', at page 56 of the tender submission his client had indicated under 'milestones' that the main activities were, in their entirety, according to the table that featured in the tender document at clause 26.1 (page 50 of the tender document), yet his client was not awarded full marks but only two 5s and an 8;
- said that if, for the sake of the argument, the full mark was reserved to a bidder who would deliver the service ahead of schedule, then he would ask how many points would that bidder be awarded for, say, every month that he would deliver the service in advance;
- remarked that one had to keep in view that, as far as experience was concerned, the regulations, invariably, mentioned 3 or 5 years and, as a result, the 10 years experience requested in this tender went far beyond and it appeared that the evaluators did not award full marks if one met that requirement or even exceeded it by far;
- declared that the evaluation board had to allocate marks for each and every criterion and on the basis of the relative documentation submitted because that was why the evaluation criteria had been split in 8 categories;

and



- if the evaluation board was expected to allocate one general overall mark then there would have been no scope in splitting the criteria in 8 categories and allocating points against each.

The Chairman *Public Contracts Review Board*:-

- noted that, in respect of 'duration of tasks and activities', the three evaluators awarded 5, 5 and 8 out of 10 points to the appellant company and 4, 3 and 7 points to the recommended tenderer, when the appellant company, apparently, had met requirements and when subjectivity played no role when dealing with fixed dates and numbers;
  - declared that the bidding company had the right to know its technical score otherwise it would not be in a position to judge if there were enough grounds to lodge an appeal;
- and
- held the view that the board had to evaluate each criterion on its own merit, namely separate from the others, so, if a bidder met or exceeded, say, the 'experience in similar projects' then such bidder ought to have been given a suitable mark and if one would not meet the requirements in respect of 'experience in the Public Sector' then one would be penalised accordingly.

Dr Delia was provided with the following technical score which was awarded to his client:

	<b>Evaluator 1</b>	<b>Evaluator 2</b>	<b>Evaluator 3</b>
Exp. In similar projects	5	3	5
Exp. In the Pub. Sector	4	4	5
Methodology of Proposal	13	11	11
Process	8	7	7
Fin. Feasibility and Sustain.	5	5	5
Indicators	4	4	5
Risks and assum. of prop.	3	5	5
Duration of tasks & activities	5	5	8
	<b>47</b>	<b>44</b>	<b>51</b>

Dr Delia concluded by saying that:-

- even though his client proposed a team leader with 40 years experience in the field still the company was awarded half the marks by 2 evaluators and was given a failing mark ('3') by the other evaluator when this criterion concerned the number of years of relevant experience and qualifications which were not subjective at all unlike, for example, such criteria as 'methodology' or the 'process';

- it was evident that the evaluation board did not have clear criteria/workings which it intended to apply in determining the award;
  - maintained that his client met all the minimum requirements and, in certain cases, exceeded them as was the case with the requirement of 'experience' in the first two criteria;
  - no satisfactory explanations had been given as to why his client had been awarded 50% or less of the marks available in respect of 'experience', 'indicators' and 'duration of tasks and activities' which were rather objective criteria and which his client had satisfied in full;
  - the evaluation board could have operated in the following manner, namely it could have evaluated all the tenders and the best proposal allocated 100% of the marks and then the other tenders would be allocated a proportionally lesser mark according to an established formula;
  - instead, each evaluator had carried out an individual assessment of each bid and then the board met in a plenary session to discuss those initial assessments, following which, whilst evaluators could have revised their original assessments, yet, the points were practically left intact;
  - notwithstanding the fact that the methodology had to be clearly explained in the tender document such that the bidding company itself could make a self-assessment, yet, from the evidence given, one of the evaluators was not in a position to answer how certain marks were arrived at
  - it would have been easy to assess, say, the years of experience had the evaluation board established a range and attached a mark to each range;
- and
- had the board conducted its evaluation in the correct manner his client would have been found to be technically compliant and attained a good score which, coupled with having been the cheapest, would have earned him this contract.

Mr Herald Bonnici concluded that:-

- the tender document set out the requirements of the contracting authority whereas the evaluation of the offers was carried out on the merits of the tender submissions;
- and
- the evaluation board carried out individual assessments and the marks awarded by each evaluator demonstrated consistency in their assessments.

At this point the hearing came to a close.

This Board,

- having noted that the appellants, in terms of their 'reasoned letter of objection' dated the 20<sup>th</sup> June 2012 and also through their verbal submissions presented during the hearing held on the 8<sup>th</sup> October 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 14<sup>th</sup> June 2012 the contracting authority had informed the appellant company that its tender was not successful because it obtained a technical score of 50%, against the 70% obtained by the recommended tenderer and since it did not obtain 60% at technical score level the offer was discarded and that explained the 'nil' financial score (b) whilst the technical score of 70 obtained by the recommended tenderer represented the maximum score and not 70% of the points available, the maximum financial score was the remaining 30 points, such that the recommended tender got 27 points out of 30 and not 27% of the points available, (c) the Public Procurement Regulations provided that a tender had to be awarded on the following criteria, namely (1) the cheapest compliant tender or (2) the most economically advantageous tender (MEAT), (d) page 18 of the tender document stated that "*The Tender with the cheapest technically compliant offer will be selected. For avoidance of doubt the MFEI will select the cheapest technically compliant offer based on the global price quoted*", (e) page 21 clause 32.1 of the tender document stated that "*The most economically advantageous tender (MEAT) is established by weighing technical quality against price on a 70/30 basis respectively*", (f) the same tender document included both selection criteria which, *per se*, amounted to an inconsistency, (g) apart from the fact that the appellant company's offer was the cheapest at €93,928 the said appellant contended that it was even technically compliant and, as a result, it should have been recommended for award, (h) when requested, the contracting authority refused to furnish the appellant company with the breakdown of its technical score, (i) in the absence of the breakdown of the appellant company's technical score, this went over the technical criteria and allocated a score according to its tender submission, for example (1) item 'duration of tasks and activities' carried 10 points and concerned clause 26.1 of the 'Special Tender Conditions' which provided a table laying out the different stages and relative dates of the contract, the reports and paperwork which had to be submitted together with the relative percentage payments – the appellant company presented this information precisely as requested and, as a consequence, the company should have been awarded the maximum 10 points, (2) item 'Experience' Clause 6.2.3.1 (i), 'Specific Professional Experience', required the Team Leader to have, at least, 10 years experience and, since the team leader proposed by the appellant company had 40 years experience in fleet management and consultancy, the said company should have been awarded the 10 marks in full and (3) the evaluation board was requested to explain the points allocated to the appellant company under each criterion, (j) clause 8.1 (page 60 of the tender document), which defined 'indicators' as 'monitoring and evaluation' shall be carried as specified under section 4.2 – Specific Activities, (k) clause 4.2 'Specific Activities' which stated that "*The list below provides an overall list of activities and areas of research that the selected contractor needs to undertake during the completion of the project - the activities mentioned were clauses 4.2.1 'mail and courier service', clause 4.2.2 'transportation*





of officials', clause 4.2.3 'owned vehicles', clause 4.2.4 'general use vehicles' and clause 4.2.5 'fully-expensed vehicles', (l) whilst with regard to criterion 'Duration of tasks and activities', at page 56 of the tender submission the appellant company had indicated under 'milestones' that the main activities were, in their entirety, according to the table that featured in the tender document at clause 26.1 (page 50 of the tender document) yet, the said appellant was not awarded full marks but only two 5s and an 8, (m) if, for the sake of the argument, the full mark was reserved to a bidder who would deliver the service ahead of schedule, then one would have to ask how many points would that bidder be awarded for, say, every month that one would deliver the service in advance, (n) one had to keep in view that, as far as experience was concerned, the regulations, invariably, mentioned 3 or 5 years and, as a result, the 10 years experience requested in this tender went far beyond and it appeared that the evaluators did not award full marks if one met that requirement or even exceeded it by far, (o) declared that the evaluation board had to allocate marks for each and every criterion and on the basis of the relative documentation submitted because that was why the evaluation criteria had been split in 8 categories, (p) if the evaluation board was expected to allocate one general overall mark then there would have been no scope in splitting the criteria in 8 categories and allocating points against each, (q) in conclusion (•) even though the appellant company proposed a team leader with 40 years experience in the field still the company was awarded half the marks by 2 evaluators and was given a failing mark ('3') by the other evaluator when this criterion concerned the number of years of relevant experience and qualifications which were not subjective at all unlike, for example, such criteria as 'methodology' or the 'process', (•) it was evident that the evaluation board did not have clear criteria/workings which it intended to apply in determining the award, (•) maintained that the appellant company met all the minimum requirements and, in certain cases, exceeded them as was the case with the requirement of 'experience' in the first two criteria, (•) no satisfactory explanations had been given as to why the appellant company had been awarded 50% or less of the marks available in respect of 'experience', 'indicators' and 'duration of tasks and activities' which were rather objective criteria and which the appellant company had satisfied in full, (•) the evaluation board could have operated in the following manner, namely it could have evaluated all the tenders and the best proposal allocated 100% of the marks and then the other tenders would be allocated a proportionally lesser mark according to an established formula, (•) instead, each evaluator had carried out an individual assessment of each bid and then the board met in a plenary session to discuss those initial assessments, following which, whilst evaluators could have revised their original assessments, yet, the points were practically left intact, (•) notwithstanding the fact that the methodology had to be clearly explained in the tender document such that the bidding company itself could make a self-assessment, yet, from the evidence given, one of the evaluators was not in a position to answer how certain marks were arrived at, (•) it would have been easy to assess, say, the years of experience had the evaluation board established a range and attached a mark to each range and (•) had the board conducted its evaluation in the correct manner the appellant company would have been found to be technically compliant and attained a good score which, coupled with having been the cheapest, would have earned him this contract;

- having considered the contracting authority's representative's reference to the fact that (a) although the information contained in the letter of rejection was according to the instructions given by the Contracts Department, yet, the contracting authority had no problem in furnishing the appellant company with the breakdown of its technical score, (b) the MEAT criteria were clearly displayed at page 21 of the tender

document, (c) whilst, up to the closing date of the tender, bidders had the opportunity to ask for clarifications on any aspect of the tender document, yet, none were forthcoming from the appellant company not even on the inconsistency he pointed out between at pages 18 and 21 regarding the award criteria, (d) each bidder was assessed individually, (e) clause 6.1 dealt with the 'Selection Criteria' and laid down the minimum requirements, (f) the evaluation grid at page 19 of the tender document displayed the maximum score possible in respect of each criterion, (g) the points were allocated on the basis of the documentation submitted and on how much that documentation satisfied or even exceeded the minimum requirements, (h) if a bidder proposed a team leader with 10 years experience and the tender document required a minimum of 10 years experience, it did not mean that the bidder would be awarded the maximum score or the minimum score because that had to be considered in the context of other documentation required in this respect so much so that under 'Experience in Similar Projects' at page 19 of the tender document it was indicated as follows *'Proven experience and capability in the fleet management sector, identifying the number and size of recent similar projects. Details and description of projects, summary of methodology applied and names and details of contact persons will be required'*, (i) if a bidder met the minimum requirements then such bidder would get the minimum/basic pass mark, (j) the contracting authority's representative was not in a position to indicate how the evaluation board rated the team leader with 40 years experience proposed by the appellant company against the minimum of 10 years experience, (k) the tender document set out the requirements of the contracting authority whereas the evaluation of the offers was carried out on the merits of the tender submissions and (l) the evaluation board carried out individual assessments and the marks awarded by each evaluator demonstrated consistency in their assessments;

- having duly thoroughly considered Mr Micallef's testimony, especially, the fact that (a) he agreed that, with regard to clause 6.2.3.1 (i), 'professional qualifications' of the team leader, if the individual proposed did not possess a university degree then the bid would be disqualified for not having met the technical requirements, (b) if the proposed team leader possessed 40 years experience in fleet management and consultancy and even had a background in engineering he would have been awarded more or less 7 out of 10 marks given that under 'Specific Professional Experience' there is stated that the team leader should have *"at least 10 years experience in team leadership, project management and similar assignments."*, (c) he was not in a position to indicate how the evaluation board would differentiate between a team leader with 35 years experience and another team leader with 40 years experience or of two team leaders having different professional qualifications but he stated that one would have to examine all the relative documentation so as to assess the quality, such as their CV, (d) each evaluator first carried out an initial individual assessment of each bid and then, after discussing those initial assessments in plenary session, each evaluator had the chance to revise his/her initial assessment – as per evaluation grids attached to the evaluation report, (e) none of the bidders obtained full marks or no marks at all under any of the evaluation criteria and (f) this was the first time that he was sitting on an evaluation board;

reached the following conclusions, namely:

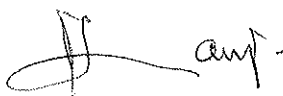
1. The Public Contracts Review Board declares that a tendering company has the right to know its technical score otherwise it will not be in a position to judge if there are sufficient grounds for it to lodge an appeal.



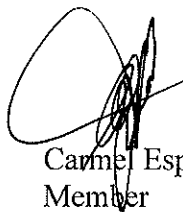
2. The Public Contracts Review Board feels that the evaluation committee had to evaluate each criterion on its own merit, namely, individually, such that if a bidder met or exceeded, say, the 'experience in similar projects' then such bidder ought to have been given a suitable mark. On the other hand, say, if one were not to meet the requirements in respect of 'experience in the Public Sector' then one would be penalised accordingly.
3. This Board notes that, in respect of the 'duration of tasks and activities', the three evaluators awarded 5, 5 and 8 out of 10 points to the appellant company and 4, 3 and 7 points to the recommended tenderer, when the appellant company, apparently, had met requirements and when subjectivity played no role when dealing with fixed dates and numbers.
4. This Board could not but notice that even though the appellant company proposed a team leader with 40 years experience in the field, still the company was awarded half the marks by 2 evaluators and was given a failing mark ('3') by the other evaluator when this criterion concerned the number of years of relevant experience and qualifications which were not subjective at all unlike, for example, such criteria as 'methodology' or the 'process'.
5. This Board cannot but demonstrate high reservations regarding the methodology adopted by the evaluation committee regarding the marking which was anything but consistent, reasonable and a true analysis of the details submitted by the tenderer, in this case the appellant company.

In view of the above, this Board finds in favour of the appellant company and, apart from being reintegrated in the evaluation process, this Board also recommends that the deposit paid by the same appellant for the appeal to be lodged should be reimbursed.

In view of the fact that this Board has found that the level attained by the evaluation board entrusted with this evaluation process left much to be desired, the Public Contracts Review Board suggests that a fresh evaluation be carried out by a new but more experienced Board.



Alfred R Triganza  
Chairman



Carmel Esposito  
Member



Joseph Croker  
Member

29 October 2012