

PUBLIC CONTRACTS REVIEW BOARD

Case No. 466

MFEl/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 13th January 2012. The closing date for this call with an estimated budget of € 100,000 was the 29th February 2012.

Seven (7) tenderers submitted their offers.

VFCS Joint Venture filed an objection on the 21st June 2012 against the decision of the Ministry of Finance, the Economy and Investment to disqualify its tender as non-compliant and to recommend the award of tender 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, 8th October 2012 to discuss this objection.

Present for the hearing were:

VFCS Joint Venture

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

Nexem Fleet Management Consultants

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

Mercury Associates Inc.

Mr Paul Lauria	Representative
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Ministry of Finance, the Economy and Investment

Evaluation Board

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



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

Dr Henri Mizzi, legal representative of VFCS Joint Venture, stated that by letter dated 14th June 2012 the contracting authority had informed his client that its offer was not successful because it was found to be non-compliant with regards to Section 16.1 (d), namely failure to submit professional experience in related fields, as specified in the tender document with regards to the sectoral experts.

Dr Mizzi invited the contracting authority to explain further the reason for his client's disqualification.

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

- i. the requirements of the sectoral experts emerged from page 9 of the tender document which provided as follows:-

6.2.3.2 Sectoral Experts

These Sectoral Experts should have adequate seniority and demonstrable experience in projects relevant to the administration and management of vehicle fleets. The Sectoral Experts shall have the following responsibilities:

- *provide technical input on the review and assessment of operational and technical information regarding Government's transport system*
- *provide management recommendations based on technical and operational analyses for Increasing efficiency in Government's vehicle fleet*
- *provide consolidated proposals on the general reform of Government transport*

Professional Qualifications and Skills

- *Individually, possess a first degree or equivalent qualification in economics, management, accounting, finance, business administration, fleet management or any related field from an internationally recognised university*
- *professional experience in fleet management, the motor vehicle sector, management consultancy and market analysis*
- *fluency in English (written and spoken)*

General Professional Experience

- *at least 7 years of general professional experience*

Specific Professional Experience

- *at least 3 years experience in market and technical analysis and management consultancy of transport,*

systems and infrastructure or other similar regulated industries;

- ii. from the CV of the sectoral expert it did not appear that the latter had all the requisites;

and

- iii. each sectoral expert had to meet the requirements listed at clause 6.2.3.2 and the appellant joint venture was rejected because its offer did not meet those requirements.

Dr Mizzi remarked that then it was not the case that his client had failed to submit the information requested but that, in the view of the contracting authority, the information provided did not satisfy requirements.

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

- a. as one of the evaluators, he did not go into the details of the issue concerning the shortcomings encountered with the sectoral expert/s proposed by the appellant joint venture because that task was primarily performed by the secretary of the evaluation board;

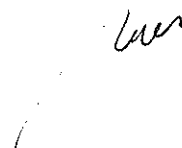
and

- b. according to the CV of the proposed sectoral expert, namely Mr John Portelli, it was evident that the experience he possessed did not cover all the areas indicated in clause 6.2.3.2 such as fleet management.

Dr Mizzi presented the following arguments:-

- i. whilst the tender document stated that there had to be a team leader, sectoral experts and administrative support, yet, his client proposed as team leader a person who could perform the function of both team leader and sectoral expert and thus satisfied the tender requirements in both respects;
- ii. under professional qualifications and skills the following was requested: (ii) *professional experience in fleet management, the motor vehicle sector, management consultancy and market analysis;*
- iii. that was indeed a very wide ranging requirement and, to say the least, it would be hard to find someone who possessed all those attributes;
- iv. it would appear that the evaluation board found that the proposed sectoral expert did not meet the requisites with regard to the required fields and not with regard to the related fields as stated in the letter of rejection;

and



- v. the most relevant experience was the 'specific professional experience', which read "*at least 3 years experience in market and technical analysis and management consultancy of transport, systems and infrastructure or other similar regulated industries*", which requirements were met by the proposed sectoral expert, namely Mr John Portelli, who, among other things, was a university lecturer.

The Chairman Public Contracts Review Board made the following remarks:-

- i. it was up to the evaluators to assess the tender submission in its entirety;
- ii. if each sectoral expert had to have all the qualifications and experience listed in clause 6.2.3.2 then a bidder could have submitted one such sectoral expert and not a team of sectoral experts;
- iii. the tender document used the terms (a) 'team leader' who, logically, would be heading a team, (b) 'sectoral experts', who, collectively, would possess the qualifications, skills and experience requested in the tender to execute this assignment;
- iv. if one were to go by the interpretation being given by the contracting authority it would be rather difficult to find an individual person who possessed all the requirements listed in clause 6.2.3.2 or, more difficult still, to find a number of such individuals (sectoral experts);

and

- v. this had to be viewed in the light that, in certain instances, bidders were allowed even to sub-contract certain specialised functions, especially given the limited resources inherent to a small state.

Dr Mizzi concluded that:-

- a. the contracting authority included fleet management under the general requirements but it did not include it under 'specific professional experience' which was the most important requirement;
 - b. the tender document did not exclude that if the team leader qualified also as a sectoral expert he could not perform a dual function;
- and
- c. there was no doubt that the proposed team leader, Mr David Spiteri Gingel, satisfied all the tender requirements and, although it could be the case that the sectoral expert concerned did not possess all that the contracting authority was expecting of him, the sectoral expert was, after all, meant to provide support to the team leader.

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 21st June 2012 and also through their verbal submissions presented during the hearing held on the 8th October 2012, had objected to the decision taken by the pertinent authorities;
- having noted all of the appellant joint venture’s representative’s claims and observations, particularly, the references made to the fact that (a) by letter dated 14th June 2012 the contracting authority had informed the appellant joint venture that its offer was not successful because it was found to be non-compliant with regards to Section 16.1 (d), namely failure to submit professional experience in related fields, as specified in the tender document with regards to the sectoral experts (b) it was not the case that the appellant joint venture had failed to submit the information requested but that the information provided did not satisfy requirements, (c) whilst the tender document stated that there had to be a team leader, sectoral experts and administrative support, yet, the appellant joint venture proposed as team leader a person who could perform the function of both team leader and sectoral expert and thus satisfied the tender requirements in both respects, (d) under professional qualifications and skills the following was requested, namely “*professional experience in fleet management, the motor vehicle sector, management consultancy and market analysis*”, (e) that was indeed a very wide ranging requirement and, to say the least, it would be hard to find someone who possessed all those attributes, (f) it would appear that the evaluation board found that the proposed sectoral expert did not meet the requisites with regard to the required fields and not with regard to the related fields as stated in the letter of rejection, (g) the most relevant experience was the ‘specific professional experience’, which read “*at least 3 years experience in market and technical analysis and management consultancy of transport, systems and infrastructure or other similar regulated industries*”, which requirements were met by the proposed sectoral expert, namely Mr John Portelli, who, among other things, was a university lecturer, (h) the contracting authority included fleet management under the general requirements but it did not include it under ‘specific professional experience’ which was the most important requirement, (i) the tender document did not exclude that if the team leader qualified also as a sectoral expert such leader could not perform a dual function and (j) there was no doubt that the proposed team leader, Mr David Spiteri Gingel, satisfied all the tender requirements and, although it could be the case that the sectoral expert concerned did not possess all that the contracting authority was expecting of him / her, the sectoral expert was, after all, meant to provide support to the team leader;
- having considered the contracting authority’s representative’s reference to the fact that (a) the requirements of the sectoral experts emerged from page 9 of the tender document, (b) from the CV of the sectoral expert it did not appear that the latter had all the requisites and (c) each sectoral expert had to meet the requirements listed at clause 6.2.3.2 and the appellant joint venture was rejected because its offer did not meet those requirements;



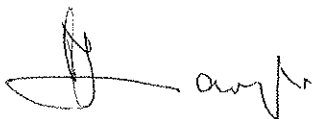
- having duly thoroughly considered Mr Micallef's testimony, especially, the fact that (a) as one of the evaluators, he did not go into the details of the issue concerning the shortcomings encountered with the sectoral expert/s proposed by the appellant joint venture because that task was primarily performed by the secretary of the evaluation board and (b) according to the CV of the proposed sectoral expert, namely Mr John Portelli, it was evident that the experience he possessed did not cover all the areas indicated in clause 6.2.3.2 such as fleet management,

reached the following conclusions, namely:

1. The Public Contracts Review Board opines that it was up to the evaluators to assess the tender submission in a holistic manner.
2. The Public Contracts Review Board argues that if each sectoral expert had to have all the qualifications and experience listed in clause 6.2.3.2 then a bidder could have submitted one such sectoral expert and not a team of sectoral experts.
3. This Board contends that the tender document used the terms (a) 'team leader' who, logically, would be heading a team, (b) 'sectoral experts', who, collectively, would possess the qualifications, skills and experience requested in the tender to execute this assignment.
4. This Board also argues that if one were to go by the interpretation being given by the contracting authority it would be rather difficult to find an individual person who possessed all the requirements listed in clause 6.2.3.2 or, more difficult still, to find a number of such individuals (sectoral experts). As a matter of fact that is why, in certain instances, bidders are allowed even to sub-contract certain specialised functions, especially given the limited resources inherent to a small state.

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

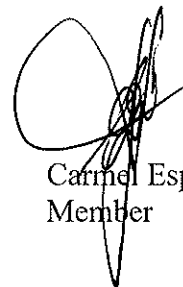
In view of the fact that this Board has found that the level attained by the evaluation board entrusted with this evaluation process left much to be desired, the Public Contracts Review Board suggests that a fresh evaluation be carried out by a new but more experienced Board.



Alfred R Triganza
Chairman



Joseph Croker
Member



Carmel Esposito
Member

29 October 2012