

PUBLIC CONTRACTS REVIEW BOARD

Case No. 485

DH/589/2012

Tender for the Refurbishment of Mosta Health Centre Flooring

This call for tenders was published in the Government Gazette on the 16th March 2012. The closing date for this call with an estimated budget of € 58,306 was the 18th April 2012.

Five (5) tenderers submitted their offers.

Anjo Ltd filed an objection on the 24th September 2012 against the decision of the Ministry for Health, the Elderly and Community Care to disqualify its offer as administratively non-compliant and to recommend the award of the tender to Lorvin Ltd.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr Carmel Esposito and Mr Paul Mifsud as members convened a public hearing on Tuesday, 6th November 2012 to discuss this objection.

Present for the hearing were:

Anjo Ltd

Mr Anthony Caruana Representative

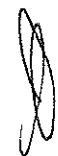
Lorvin Ltd – no representative turned up at the hearing

Ministry for Health, the Elderly and Community Care

Ing. Karl Farrugia Head, Central Procurement and Supplies Unit
Ms Stephanie Abela Representative

Evaluation Board

Mr Lawrence Vassallo Chairman
Perit Karen Satariano Member
Ms Louise Grech Member
Ms Rita Tirchett Secretary



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

Mr Anthony Caruana, representing Anjo Ltd, the appellant company, made the following submissions:

- i. by email/letter dated 14 September 2012 his company was informed that its offer was administratively non-compliant because in Volume 1 Section 4 Form 2 'Experience as Contractor' it had submitted the details of five projects instead of the six projects requested in clause 6.1.2 of the 'Instructions to Tenderers';
 - ii. whilst what the contracting authority stated was correct, yet one should perhaps also consider that the five similar projects executed over the previous three year period which it had submitted, by far exceeded the €50,000 per annum threshold indicated in clause 6.1.2 so much so that the value of each project he presented ranged from €260,000 to €310,000;
 - iii. although it had carried out more than five projects over the previous three year period, yet, due to time constraints and the value of the five projects presented, it was felt that they sufficiently demonstrated the company's experience;
- and
- iv. the value of the project originally submitted were clarified in letter/email dated July 2012 such that the figures quoted were in thousands and, to a direct question by the Public Contracts Review Board on the figures given in the clarification, Mr Caruana confirmed that the amounts were in thousands.

Mr Lawrence Vassallo, chairman of the evaluation board, explained that:-

- a. with regard to contractor's experience, clause 6.1.2 clearly stated, among other things, as follows:-

"evidence of relevant experience in execution of works of a similar nature over the past three years, including the nature and value of the relevant contracts, as well as works in hand and contractually committed. The minimum value of projects of a similar nature completed shall be not less than €50,000 per annum.

The minimum number of projects of a similar scope/nature completed in the last three years must be at least six in number.

In so listing the end clients, the tenderer is giving his consent to the Evaluation Committee, so that the latter may, if it deems necessary, contact the relevant clients, with a view to obtain from them an opinion on the works provided to them, by the tenderer."


- b. once the appellant company only provided five out of six projects requested, the evaluation board had no other option but to reject its offer on the ground that it was considered to be administratively non-compliant on the basis of the published tender conditions;
 - c. the five bids received ranged from €44,111 to €59,871, of which three bids were rejected administratively and the fourth was rejected on technical grounds;
- and
- d. the recommended tender amounted to €55,545.50 whereas that of the appellant company amounted to €48,443.

The Chairman Public Contracts Review Board remarked that:-

- i. it was the prerogative of the contracting authority to include provisions so as to ascertain that it would obtain the requested service/s at the desired standard;
 - ii. on the other hand, the list of past projects served was meant to enable the evaluation board to assess the bidder's experience and capacity to carry out the requested works successfully;
 - iii. the tender conditions requested €50,000 worth of works per annum over three years, i.e. collectively, a minimum value of €150,000 over three years, and in the case of the appellant company each one of the projects it presented exceeded the €150,000 mark, which, in itself, demonstrated that it had much more experience than a bidder who could have presented two completed projects of, say, €25,000 each per annum over the previous 3 year period which would have satisfied the tender document to the letter;
- and
- iv. the tender document as published did not seem to do justice with all potential bidders who had the capacity to undertake these works and, as a result, one should ensure that the tender conditions should strike a better balance between the number of projects and their value together with project completion certificates to back up such claims with the primary aim being to ascertain the contractor's experience while being as inclusive as possible so as to enhance competition in public procurement.

Mr Vassilo shared the view expressed by the Chairman Public Contracts Review Board but reiterated that the evaluation board was bound by the tender conditions as published and it had no alternative but to disqualify the appellant company.

The Chairman Public Contracts Review Board remarked that it was not the case that the evaluation board was erroneous in its recommendations once it was constrained with the tender conditions as published. He added that one could even question whether, had the contracting authority asked the appellant company to state if it had more than five past projects to its credit over the previous 3 year period, that would, at



face value, have amounted to a clarification or to a rectification because that would have been corroborative evidence on past works and it did not amount to any alterations to the price or to any other tender specification in its tender submission.

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 22nd September 2012 and also through their verbal submissions presented during the hearing held on the 6th November 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/letter dated 14 September 2012 the company was informed that its offer was administratively non-compliant because in Volume 1 Section 4 Form 2 'Experience as Contractor' it had submitted the details of five projects instead of the six projects requested in clause 6.1.2 of the 'Instructions to Tenderers', (b) whilst what the contracting authority stated was correct, yet one should perhaps also consider that the five similar projects executed over the previous three year period which it had submitted, by far exceeded the €50,000 per annum threshold indicated in clause 6.1.2 so much so that the value of each project he presented ranged from €260,000 to €310,000, (c) although it had carried out more than five projects over the previous three year period, yet, due to time constraints and the value of the five projects presented, it was felt that they sufficiently demonstrated the company's experience, (d) the value of the project originally submitted were clarified in the letter/email dated July 2012 such that the figures quoted were in thousands, (e) to a direct question by the Public Contracts Review Board on the figures given in the clarification, the appellant company's representative confirmed that the amounts were in thousands and (f) Mr Vassllo shared the view expressed by the Chairman Public Contracts Review Board but reiterated that the evaluation board was bound by the tender conditions as published and it had no alternative but to disqualify the appellant company,
- having considered the contracting authority's representative's reference to the fact that (a) with regard to contractor's experience, clause 6.1.2 clearly stated, among other things, as follows "*evidence of relevant experience in execution of works of a similar nature over the past three years, including the nature and value of the relevant contracts, as well as works in hand and contractually committed. The minimum value of projects of a similar nature completed shall be not less than €50,000 per annum. The minimum number of projects of a similar scope/nature completed in the last three years must be at least six in number. In so listing the end clients, the tenderer is giving his consent to the Evaluation Committee, so that the latter may, if it deems necessary, contact the relevant clients, with a view to obtain from them an opinion on the works provided to them, by the tenderer*", (b) once the appellant company only provided five out of six projects requested, the evaluation board had no other option but to reject its offer on the ground that it was considered to be administratively non-compliant on the basis of the published tender conditions, (c)



the five bids received ranged from €44,111 to €59,871, of which three bids were rejected administratively and the fourth was rejected on technical grounds and (d) the recommended tender amounted to €55,545.50 whereas that of the appellant company amounted to €48,443,

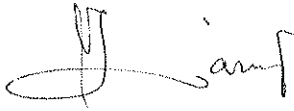
reached the following conclusions, namely:

1. The Public Contracts Review Board, whilst recognizing the fact that, it was the prerogative of the contracting authority to include provisions so as to ascertain that it would obtain the requested service/s at the desired standard, yet on the other hand, the list of past projects served was meant to enable the evaluation board to assess the bidder's experience and capacity to carry out the requested works successfully.
2. The Public Contracts Review Board argues that the tender conditions requested €50,000 worth of works per annum over three years, i.e. collectively, a minimum value of €150,000 over three years, and in the case of the appellant company each one of the projects it presented exceeded the €150,000 mark, which, in itself, demonstrated that it had much more experience than a bidder who could have presented two completed projects of, say, €25,000 each per annum over the previous 3 year period which would have satisfied the tender document to the letter.
3. This Board also opines that the tender document, as published, did not seem to do justice with all potential bidders who had the capacity to undertake these works and, as a result, one should ensure that the tender conditions should strike a better balance between the number of projects and their value together with project completion certificates to back up such claims with the primary aim being to ascertain the contractor's experience while being as inclusive as possible so as to enhance competition in public procurement.
4. The Public Contracts Review Board opines that it was not the case that the evaluation board was erroneous in its recommendations once it was constrained with the tender conditions as published (Clause 6.1.2). Nevertheless, this Board's remit allows it to consider issues which render a tender to be unjust and unequitable. With this in mind, this Board opines that emphasis played solely on the number of projects as stated in clause 6.1.2 ("*The minimum number of projects of a similar scope / nature completed in the last three years must be at least six in number*") - which clause totally refrains from comparing number of projects with the dimension of project/s embarked upon by tenderers, as well as, the financial consideration pegged to such project/s - as representing a very minimalistic view as to how a contracting authority should aim at attaining enough information from bidders to enable it to obtain the best value for money.
5. Nevertheless, this Board, whilst recommending that, in future, tender documents should consider a broader perspective than the one applied in Clause 6.1.2 in this particular instance, yet the Public Contracts Review Board cannot but take cognizance of the fact that, in this tender, no one precluded the appellant company from abiding by the requirements of the tender. The appellant company's representative stated that although it had carried out more than five projects over

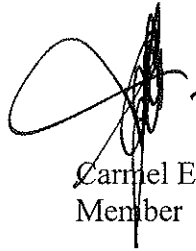


the previous three year period, yet, due to time constraints and the value of the five projects presented, the appellant company felt that it sufficiently demonstrated the company's experience. Undoubtedly, this Board has always maintained that, regardless of the perception on the minimal validity of certain requirements, no tenderer should arbitrarily decide as to what to submit or not.

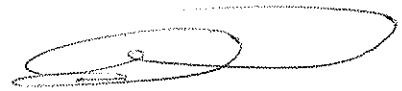
In view of the above this Board finds against the appellant company and recommends that the deposit paid by the same company for the appeal to be lodged should not be reimbursed.



Alfred R Triganza
Chairman



Carmel Esposito
Member



Paul Mifsud
Member

19 November 2012