

PUBLIC CONTRACTS REVIEW BOARD

Case No. 494

JHA/209/2011

Framework Contract - Provision of Service by Medical Doctors and Qualified Nurses – Detention Services

This call for tenders was published in the Government Gazette on the 15th June 2012. The closing date for this call with an estimated budget of € 38,136 (Lot 2 – Qualified Nurses) was the 6th July 2012.

Two (2) tenderers submitted their offers.

Health Services Group Ltd filed an objection on the 22nd October 2012 against the decision of the Ministry for Home Affairs to recommend the award of Lots 1 and 2 to the same bidder, i.e. Medicare Services Ltd.

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 Thursday, 15th November 2012 to discuss this objection.

Health Services Group Ltd

Dr Anna Mifsud Bonnici	Legal Representative
Mr Alan Bonnici	Representative
Mr Gaetano Bonnici	Representative

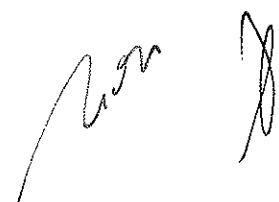
Medicare Services Ltd

Dr David Grech	Representative
Mr Jesmond Cilia	Representative

Detention Services – Ministry for Home Affairs

Evaluation Board

Lt Colonel Brian Gatt	Chairman
Mr Peter Attard	Member



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

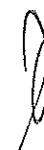
Dr Anna Mifsud Bonnici, legal representative of Health Services Group Ltd, the appellant company, made the following submissions:

- i. by email dated 16th October 2012 the appellant company was informed that Lots 1 and 2 were awarded to the same bidder, namely Medicare Services Ltd, which submitted the cheapest compliant tender;
- ii. this call for tenders was split in two lots and concerned the provision of services by medical doctors (lot 1) and qualified nurses (lot 2);
- iii. the appellant company contended that these two services should not be awarded to the same tenderer because the role of a doctor could come into conflict with the role performed by a nurse;
- iv. clause 37.3 stated that *'When putting forward a candidacy or tender, the candidate or tenderer must declare that he is affected by no potential conflict of interest, and that he has no particular link with other tenderers or parties involved in the project'*;
- v. clause 9 of the 'Tenderer's Declaration' also stated that *'We agree to abide by the ethics clauses of the instructions to tenderers and, in particular, have no potential conflict of interests or any relation with other candidates or other parties in the tender procedure at the time of the submission of this application. We have no interest of any nature whatsoever in any other tender in this procedure. We recognise that our tender may be excluded if we propose key experts who have been involved in preparing this project or engage such personnel as advisers in the preparation of our tender'*.
- vi. for the purposes of clauses 37.3 and 9 cited above the two lots should have been awarded to two different bidders so as to avoid or eliminate any conflict of interest;

and
- vii. the tender document did not prohibit a tenderer from bidding for the two lots so much so that 'Volume 1 Section 2 'Tender Form' indicated that *'A separate, distinct Tender Form must be submitted for each Option, if applicable'*, however one should not overlook the ethics clauses.

Mr Gaetano Bonnici, also representing the appellant company, remarked that:-

- a. whereas, in this case, one tender was issued calling for two services, namely, doctors and nurses, in similar other instances, two separate tenders used to be issued for each of these services;
- b. in the appellant company's opinion the two services included in this tender constituted the 'project' for the purposes of clauses 9 and 37.3 and, as a result,



the same bidder should not be concurrently involved in two bids concerning the same project, namely one bid for the provision of doctor services and another bid for nursing services, so much so that tenderers had to declare that *"We have no interest of any nature whatsoever in any other tender in this procedure"*;

and

- c. it could be argued that, for example, if in the course of duties a case would arise that a nurse would wish to report a doctor, the nurse would be, effectively, reporting the doctor to the same organisation which employed the nurse and that could give rise to conflict of interest.

The Chairman Public Contracts Review Board remarked that:-

- the provisions of clauses 37.3 and 9 cited by the appellant company prevented an entity which submitted a bid from being also a party in another bid for the same contract/service, in other words, a bidder should not be involved in two separate bids for the same tender.
- in this case the recommended bidder submitted only one tender which covered the two lots whereas the appellant company submitted only one tender which included two options for the provision of nurses and, as such, both tenderers were in line with tender conditions;
- it was rather common that doctors and nurses were employed by the same public or private hospital or clinic and they co-existed within the hierarchy of the same organisation;
- if the appellant company or any other bidder had any reservations with regard to any aspect of tender document, the regulations provided any participant with the opportunity to raise such issues prior to the closing date for the submission of tenders but not at appeal stage;

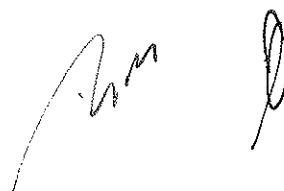
and

- by participating in the tender procedure the bidder would have declared one's acceptance of the tender conditions.

At this point the hearing came to a close.

This Board,

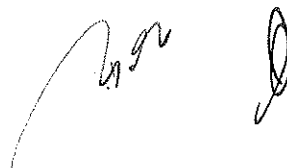
- having noted that the appellant company, in terms of its 'reasoned letter of objection' dated the 19th October 2012 and also through its representatives verbal submissions presented during the hearing held on the 15th November 2012, had objected to the decision taken by the pertinent authorities;
- having noted all of the appellant company's representative's claims and observations, particularly, the references made to the fact that (a) by email dated 16th October



2012 the appellant company was informed that Lots 1 and 2 were awarded to the same bidder, namely Medicare Services Ltd, which submitted the cheapest compliant tender, (b) this call for tenders was split in two lots and concerned the provision of services by medical doctors (lot 1) and qualified nurses (lot 2), (c) the appellant company contended that these two services should not be awarded to the same tenderer because the role of a doctor could come into conflict with the role performed by a nurse, (d) clause 37.3 stated that *'When putting forward a candidacy or tender, the candidate or tenderer must declare that he is affected by no potential conflict of interest, and that he has no particular link with other tenderers or parties involved in the project'*, (e) clause 9 of the 'Tenderer's Declaration' also stated that *'We agree to abide by the ethics clauses of the instructions to tenderers and, in particular, have no potential conflict of interests or any relation with other candidates or other parties in the tender procedure at the time of the submission of this application. We have no interest of any nature whatsoever in any other tender in this procedure. We recognise that our tender may be excluded if we propose key experts who have been involved in preparing this project or engage such personnel as advisers in the preparation of our tender'*, (f) for the purposes of clauses 37.3 and 9 cited above the two lots should have been awarded to two different bidders so as to avoid or eliminate any conflict of interest, (g) the tender document did not prohibit a tenderer from bidding for the two lots so much so that 'Volume 1 Section 2 'Tender Form' indicated that *'A separate, distinct Tender Form must be submitted for each Option, if applicable'*, however one should not overlook the ethics clauses, (h) whereas, in this case, one tender was issued calling for two services, namely, doctors and nurses, in similar other instances, two separate tenders used to be issued for each of these services, (i) in the appellant company's opinion the two services included in this tender constituted the 'project' for the purposes of clauses 9 and 37.3 and, as a result, the same bidder should not be concurrently involved in two bids concerning the same project, namely one bid for the provision of doctor services and another bid for nursing services, so much so that tenderers had to declare that *"We have no interest of any nature whatsoever in any other tender in this procedure"* and (j) it could be argued that, for example, if in the course of duties a case would arise that a nurse would wish to report a doctor, the nurse would be, effectively, reporting the doctor to the same organisation which employed the nurse and that could give rise to conflict of interest,

reached the following conclusions, namely:

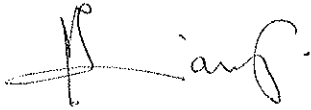
1. The Public Contracts Review Board contends that the provisions of clauses 37.3 and 9 cited by the appellant company prevented an entity which submitted a bid from being also a party in another bid for the same contract/service, in other words, a bidder should not be involved in two separate bids for the same tender.
2. The Public Contracts Review Board recognizes the fact that, in reality, it was rather common that doctors and nurses were employed by the same public or private hospital or clinic and they co-existed within the hierarchy of the same organisation
3. The Public Contracts Review Board remarks that (a) if the appellant company or any other bidder had any reservations with regard to any aspect of the tender document, the regulations provided any participant with the opportunity to raise



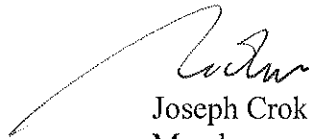
such issues prior to the closing date for the submission of tenders but not at appeal stage and (b) by participating in the tender procedure the bidder would have declared one's acceptance of the tender conditions.

4. This Board opines that the appellant company misinterpreted the relevant clauses which ended up being the subject of the appeal.

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



Joseph Croker
Member



Carmel Esposito
Member

20 November 2012