

## PUBLIC CONTRACTS REVIEW BOARD

Case No. 505

CT/3025/2012

### Services Tender for the Engagement of Experts to Design Syllabi, Teaching and Learning Resources of MCAST Courses

This call for tenders was published in the Government Gazette on the 8<sup>th</sup> June 2012. The closing date for this call with an estimated budget of €2,774,121 was the 31<sup>st</sup> July 2012.

Four (4) tenderers submitted their offers.

Strathclyde and Glasgow Educational Services Consortium (ESC) filed an objection on the 12<sup>th</sup> November 2012 against the decision of the Contracts Department to disqualify its offer as technically non-compliant.

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 Wednesday, 12th December 2012 to discuss this objection.

#### Strathclyde and Glasgow Educational Services Consortium (ESC)

Dr Antoine Cremona	Legal Representative
Mr Adrian Said	Representative
Mrs Maronna Filletti	Representative

#### Berufsforderungsinstitut Wein

Mr Goran Dordevic	Representative
Ms Carmen Tariba	Representative

#### Malta College of Arts, Science and Technology

Dr Peter Fenech	Legal Representative
Mr Stepehn Cachia	College Principal

#### Evaluation Board

Architect Deborah Borg	Chairperson
Mr Daniel Mercieca	Member
Ing Vincent Maione	Member
Mr Martin Borg	Member
Ing Damien Gatt	Secretary



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

Dr Antoine Cremona, legal representative of Strathclyde and Glasgow Educational Services Consortium, the appellant, stated that by letter/email dated 2nd November 2012 the appellant was informed that its offer was adjudicated to be not technically compliant for a number of reasons. Dr Cremona added that he intended to present his arguments to defend his client's tender submission under three separate headings.

**A) Failure to follow the published Tender Evaluation Procedure contained in the ITT**

Dr Cremona submitted the following:-

a. clause 30 "*Tender Evaluation Process*" of the tender document referred to the four stages of the tendering process, namely administrative compliance, eligibility and selection criteria, technical compliance and financial evaluation;

b. clause 30.4 stated as follows:-

*'At this step of the evaluation process, the Evaluation Committee will analyse the administratively compliant tenders' technical conformity in relation to the technical specifications (Volume 3, the documentation requested by the Contracting Authority as per sub-Clause 16(e)), classifying them technically compliant or non-compliant.*

*Tenders who are deemed to be provisionally technically compliant through the evaluation of their and technical offer (especially the specifications) shall be requested to submit samples and/or CVs and Declarations of Exclusivity and Availability (Volume 1 Section 4) so that the Evaluation Committee will corroborate the technical compliance of the offers received.'*

c. on the 27<sup>th</sup> August 2012 the contracting authority asked the appellant to provide the CVs of the proposed experts and it, therefore, followed that, by that, date the appellant had been declared provisionally technically compliant;

d. the CVs submitted by the appellant did not have anything to do with the reasons for exclusion;

e. albeit, on the 2<sup>nd</sup> November 2012 the appellant received the letter of rejection citing technical aspects as the reasons for exclusion, yet the contracting authority could not do that because, having had requested the CVs from the appellant meant that the latter had been found technically compliant, even if provisionally, as per clause 30.4 meaning that, by that stage, Strathclyde and Glasgow Educational Services Consortium had met the technical criteria;

and



- f. in this respect, the contracting authority failed to follow to the 'Instructions to Tenderers' and, as a consequence, it did not adhere to the published rules governing this tendering process.

Dr Peter Fenech, legal representative of the Malta College of Arts, Science and Technology, countered by stating that:-

- i. clause 30.3 (ii) second bullet point, which preceded clause 30.4 quoted by the appellant, requested '*Evidence of technical capacity (sub-clause 6.1.2)*';
  - ii. clause 6.1.2 under 'Other Experts' (page 8 of the tender document), among other things, provided as follows "*The Evaluation Committee reserves the right to request the tenderers to substantiate their claims in respect to the staff proposed by requesting CVs or key staff and signed Declarations of Exclusivity and Availability during the evaluation state*";
  - iii. the CVs were requested from the appellant at that stage, namely during the evaluation stage, and it was not correct for the appellant to state that the CVs could only be requested after the bid was deemed to be provisionally technically compliant;
- and
- iv. nevertheless, the CVs were not the reason for rejection because the reasons for rejection were of a technical nature and the technical evaluation was still in course at the time the CVs were requested and submitted.

## **B) Illegal Exclusion on the basis of unpublished criteria**

Dr Cremona submitted the following general comments:

- a. the letter of disqualification dated 2<sup>nd</sup> November 2012 referred to five issues in respect of which the contracting authority alleged that the appellant was not compliant;
  - b. the tender document requested the 'Integrated Management Control Plan' and it then simply provided a list of plans, among them the ones listed hereunder, but without, in any manner whatsoever, elaborating on the details to the content of those plans;
- and
- c. it was evident that these plans had been assessed by the evaluation board against non-disclosed criteria and, as a result, it was neither fair nor transparent for one to exclude a bidder on things which were not requested and/or the details of which were not elaborated upon.

### Scope Management Plan

*The Scope Management does not contain timeline planning and there is no reference to milestones that are set to be achieved. Furthermore the Scope Management Plan does not clearly define the nature and type of deliverables expected from the project.*

Dr Cremona submitted that:-

- a. the appellant had provided the 'Scope Management Plan' at pages 39 to 46 of its tender submission and he presented it with the details he deemed necessary in the absence of any details forthcoming from the contracting authority in the tender document;
  - b. it was only in the letter of refusal that the contracting authority mentioned such requirements as the 'timeline planning', which, by the way, the appellant did submit at pages 35 and 36 under 'Step-by-Step Schedule of Activities' of 'Strategy' because the timeline did not, necessarily, feature in the 'Scope Management Plan';
- and
- c. the contracting authority should have either included the details in the tender document in the first place or else, in the absence of details as to what the 'Scope Management Plan' was to include, to ask for clarification but not to exclude the appellant for the non-submission of things which were not even requested.

The Chairman Public Contracts Review Board remarked that a contracting authority could either ask for something directly, in this case 'timeline planning' and 'milestones' or else ask for some things indirectly by requesting, say, the 'Scope Management Plan', which one would expect an expert to know what it incorporated.

Dr Fenech maintained that the contracting authority should not be expected to spoon feed the experts – this tender called for the engagement of experts – as to what the 'Scope Management Plan' and the other plans were to include and the fact that the appellant did not provide certain basic requirements which were expected of all bidders made the contracting authority wonder whether the appellant was competent for the job.

Dr Cremona stated that the various plans requested under 'Integrated Management Control Plan' at pages 59 and 64 of the tender document were not definite but there were several schools of thought, such as, PRINCE2 and PMBOK, which provided different requisites as to what, for example, the 'Scope Management Plan' should consist of.

Mr Adrian Said, also representing the appellant, explained that in this instance one was dealing with project management and, at this stage, what was known were the start and finish dates as, otherwise, there were various elements which were unknown and, as a consequence, if one were to indicate when the various stages

would be implemented or concluded, the outcome would be rather theoretical and not factual/practical. He questioned whether the recommended tenderer did, in fact, provide all the details given the number of unknowns and variables in play;

Ing. Vincent Maione, a member of the evaluation board, explained that:-

- a. timeline planning within a 'Scope Management Plan' would mean a sequence or a breakdown of works indicating the start and the finish time and the relationship between the starting times of the various stages and, ideally, included also the identification of the critical parts as that would demonstrate the level of understanding of the task by the bidder;
- b. this was broken down in two levels, namely the high level, which the appellant did provide, and the details, which were found lacking;
- c. bidders were asked to concentrate on the 'Integrated Management Control Plan' which, effectively, concerned the implementation stage;
- d. the purpose of such plans and timelines was to see what resources were going to be provided and how those resources were going to be deployed to achieve the objectives within the stipulated time;

and

- e. the appellant did not even provide the co-ordination process between the local and the foreign experts.

Dr Cremona insisted that if the coordination between the local and the foreign experts and, for that matter, any other issue, were considered so crucial then the contracting authority should have requested them explicitly.

Dr Fenech stressed that the appellant was not disqualified because of any one single shortcoming mentioned in the letter of refusal but the rejection was arrived at after considering all the shortcomings put together which, effectively, led the contracting authority to conclude that the appellant had not sufficiently demonstrated the consortium's abilities to undertake this contract.

Mr Said pointed out that none of the about 150 CVs submitted with regard to the experts had been rejected and one had to keep in constant view that this tender requested the engagement of experts. He added that no adverse remarks were evident with regard to the partners of the consortium, namely Glasgow City College which catered for about 12,000 students covering about 2,600 courses.

Dr Fenech retorted that, whereas the team of experts could be satisfactory, the coordination of the team of experts and the work plan to execute the task could be deficient.

The Chairman Public Contracts Review Board argued that, in the absence of the request of specific details in the tender document, the contracting authority could not exclude a bidder because the details presented differed from the details

submitted by another bidder or from what the contracting authority had in mind but did not spell out in the tender document.

### **Quality Management Plan**

*No clear identification of indicators was included. Furthermore no Quality Assurance (QA) methodology was presented.*

Dr Cremona remarked that the Quality Management Plan, including the quality assurance, was found at pages 56 to 61 of the appellant's tender submission and, as a consequence, the contracting authority should not have declared that the quality assurance was not provided, if anything, the contracting authority could have said that it was perhaps not what it had in mind.

Mr Said insisted that the tender called for the engagement of experts and, albeit the consortium provided over 150 such experts together with the plan as to how they intended to carry out the task, yet the details were being left up to the experts to work out once the contract was awarded.

The Chairman Public Contracts Review Board observed that it would appear that the appellant submitted the macro elements of the task leaving the micro elements, the details, to be worked out by the appointed experts at a later stage, namely following the award.

Dr Fenech remarked that this task was not limited to the design of syllabi but it involved coordination of the whole process even with local experts and that was why the tender requested an 'Integrated Management Control Plan'.

### **HR Management Plan**

*Key operational responsibilities were assigned to one person - the Project Manager. This implies that the organisational work load will not be shared and will be the responsibility of one person.*

*Considering the scale of this Contract such work load cannot be handled by a single person. Furthermore there are roles of a conflicting nature that should not be under the duties of the same person such as those of the QA Manager, the Risk Manager and the Cost Control Manager.*

*The overall number of experts presented by the bidder is in line with the Tender requirements. However when one analyses in detail the information submitted on experts (number and qualifications) one notices that the experts allocated to the specific areas are not logically/effectively distributed with some cases clearly showing unacceptable weaknesses. For example 28% of all experts are dedicated to just one area - Business and Administration. On the other hand for Agriculture there is only one expert with possibly relevant qualifications.*

*Tender has not identified the essential need of training his staff (related to working in a complex project environment) and as such a plan for training was not submitted.*

Dr Cremona remarked that the 'HR Management Plan' could be found at pages 62 to 67 of the appellant's tender submission.

Dr Fenech and Ing. Maione noted that the appellant's tender submission indicated that 28% of the experts would be deployed to 'Business & Administration' whereas only one expert would be dedicated to 'Agribusiness' and that was another aspect that raised concerns with regard to the quality of the appellant's tender submission.

### **Communication Management Plan**

*Although a Communication Management Plan and a matrix outlining briefly what type of communication needs to be included in plan were presented, no documentation of how the flow of communication will be implemented was included in the offer. Moreover communication with respective teams, such as communication with expert teams has not been defined.*

### **Risk Management Plan**

*The risks identified within the plan are the risks listed in the Tender dossier, which refer to a higher level project of which this tender forms a part. The Evaluation Committee did not find evidence of risks specifically related to the implementation of this tender. As a result of the fact that risks were not identified, the methodologies presented for risk assessment do not reflect the possible project risks that may occur during the project lifetime.*

*In view that the bidder did not identify risks related to the implementation of this tender, the risk management relates to wrongly identified risks. Moreover Risk Management lacks the notion of a contingency plan.*

Ing. Maione remarked that:-

- a. at page 76 of Strathclyde and Glasgow Educational Services Consortium's tender submission the appellant, effectively, reproduced the three risks indicated in clause 3.2 'Risks' of the 'Terms of Reference' in the tender document and then stated that, at implementation stage, they would discuss the risks and how to manage them;
- b. the contracting authority wanted the bidder to identify the risks and to lay out the necessary contingency plans;
- c. a project of this sort was bound to pose certain risks such as what other resources could the bidder rely on should all of a sudden certain experts become unavailable;

and



d. the bidder was expected to, at least, include the basic or minimum risks.

Dr Cremona questioned whether a bidder could realistically anticipate all the risks and wondered what the recommended tenderer presented in this respect which, apparently, was to the satisfaction of the Malta College of Arts, Science and Technology.

Mr Said declared that the consortium could rely on the resources of such institutions as the *Glasgow City College* and the *University of Strathclyde*.

The Chairman Public Contracts Review Board remarked that the contracting authority has to be careful not to request a lot of information which would be more theoretical than practical in nature and in respect of which it would be difficult to establish the minimum and/or maximum requirements especially in the absence of clear requirements in the tender document.

Following a cursory look at the submission of the recommended tenderer by the Public Contracts Review Board, the Chairman expressed the view that it would appear that the difference between the bid of the recommended tenderer and that of the appellant was that the former was a bit more detailed.

Dr Cremona reiterated his stand that, in the absence of clear requirements being laid down in the tender document, if a bidder submitted the minimum and another bidder submitted more than the minimum then, in that case, both bidders would be compliant and both should qualify for financial consideration since the award criteria was the cheapest price.

### **C) Award Criteria**

Dr Cremona contended that the tender document was published in breach of Regulation 28 (3) of the Public Procurement Regulations and of Article 53 of Directive 2004/18/EC because these lay down only two award criteria, namely the 'cheapest offer' and the 'most economically advantageous tender' (MEAT). He added that the criterion published in Clause 32.1 of the tender document, namely the cheapest priced tender satisfying the administrative and technical criteria was not one of the two criteria laid down in legislation and that vitiated the evaluation process.

Dr Fenech remarked that, although he did not agree with the wording of clause 32.1, whenever he asked for a clarification from the Department of Contracts, the explanation given was that the tender would be awarded to the cheapest bid after having satisfied the minimum administrative and technical criteria.

Dr Cremona concluded that:-

- i. evidently, the tender document was very vague and open in its requirements and that the appellant had presented a tender submission on the lines requested and, as a result, the consortium should not be disqualified for following the tender conditions and specifications as published;



- ii. the appellant was not disputing the competence of the recommended tenderer or the compliance of its tender submission but it was contending that its tender submission was compliant and, as a consequence, both offers ought to qualify for financial consideration;

and

- iii. if the appellant were to be excluded then the contracting authority would be left with only one compliant tenderer to the detriment of competition.

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 12<sup>th</sup> November 2012 and also through its representatives verbal submissions presented during the hearing held on the 12<sup>th</sup> December 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/email dated 2<sup>nd</sup> November 2012 the appellant consortium was informed that its offer was adjudicated to be not technically compliant for a number of reasons, (b) clause 30 '*Tender Evaluation Process*' of the tender document referred to the four stages of the tendering process, namely administrative compliance, eligibility and selection criteria, technical compliance and financial evaluation, (c) clause 30.4 stated that "*At this step of the evaluation process, the Evaluation Committee will analyse the administratively compliant tenders' technical conformity in relation to the technical specifications (Volume 3, the documentation requested by the Contracting Authority as per sub-Clause 16(e)), classifying them technically compliant or non-compliant. Tenders who are deemed to be provisionally technically compliant through the evaluation of their and technical offer (especially the specifications) shall be requested to submit samples and/or CVs and Declarations of Exclusivity and Availability (Volume 1 Section 4) so that the Evaluation Committee will corroborate the technical compliance of the offers received*", (d) on the 27<sup>th</sup> August 2012 the contracting authority asked the appellant to provide the CVs of the proposed experts and it, therefore, followed that, by that, date the appellant had been declared provisionally technically compliant, (e) the CVs submitted by the appellant did not have anything to do with the reasons for exclusion, (f) albeit, on the 2<sup>nd</sup> November 2012 the appellant received the letter of rejection citing technical aspects as the reasons for exclusion, yet the contracting authority could not do that because, having had requested the CVs from the appellant meant that the latter had been found to be technically compliant, even if provisionally, as per clause 30.4 meaning that, by that stage, Strathclyde and Glasgow Educational Services Consortium had met the technical criteria, (g) in this respect, the contracting authority failed to follow to the 'Instructions to Tenderers' and, as a consequence, it did not adhere to the published rules governing this tendering process, (h) the letter of disqualification dated 2<sup>nd</sup> November 2012 referred to five issues in respect of which the contracting authority alleged that the appellant was not compliant, (i) the tender document requested the 'Integrated Management Control Plan' and it then simply provided a list of plans but, without, in any manner whatsoever, elaborating on the details to the content of those plans, (j) it was evident that these plans had been assessed by the evaluation board

against non-disclosed criteria and, as a result, it was neither fair nor transparent for one to exclude a bidder on things which were not requested and/or the details of which were not elaborated upon, (k) the appellant had provided the 'Scope Management Plan' at pages 39 to 46, (l) it was only in the letter of refusal that the contracting authority mentioned such requirements as the 'timeline planning', which the appellant claimed to have submitted at pages 35 and 36 under 'Step-by-Step Schedule of Activities' of 'Strategy' because the timeline did not, necessarily, feature in the 'Scope Management Plan', (m) the contracting authority should have either included the details in the tender document in the first place or else, in the absence of details as to what the 'Scope Management Plan' was to include, to ask for clarification but not to exclude the appellant for the non-submission of things which were not even requested, (n) the various plans requested under 'Integrated Management Control Plan' at pages 59 and 64 of the tender document were not definite but there were several schools of thought, such as, PRINCE2 and PMBOK, which provided different requisites as to what, for example, the 'Scope Management Plan' should consist of, (o) in this instance one was dealing with project management and, at this stage, what was known were the start and finish dates as, otherwise, there were various elements which were unknown and, as a consequence, if one were to indicate when the various stages would be implemented or concluded, the outcome would be rather theoretical and not factual/practical, (p) if the coordination between the local and the foreign experts and, for that matter, any other issue, were considered so crucial then the contracting authority should have requested them explicitly, (q) pointed out that none of the about 150 CVs submitted with regard to the experts had been rejected and one had to keep in constant view that this tender requested the engagement of experts adding that no adverse remarks were evident with regard to the partners of the consortium, namely Glasgow City College which catered for about 12,000 students covering about 2,600 courses. Also, the tender called for the engagement of experts and, albeit the consortium provided over 150 such experts together with the plan as to how they intended to carry out the task, yet the details were being left up to the experts to work out once the contract was awarded, (r) the 'Quality Management Plan', including the quality assurance, was found at pages 56 to 61 of the appellant's tender submission and, as a consequence, the contracting authority should not have declared that the quality assurance was not provided, if anything, the contracting authority could have said that it was perhaps not what it had in mind, (s) 'HR Management Plan' could be found at pages 62 to 67 of the appellant's tender submission, (t) one would have to question as to how a bidder could, realistically, anticipate all the risks, (u) the consortium could rely on the resources of such institutions as the *Glasgow City College* and the *University of Strathclyde*, (v) in the absence of clear requirements being laid down in the tender document, if a bidder submitted the minimum and another bidder submitted more than the minimum then, in that case, both bidders would be compliant and both should qualify for financial consideration since the award criteria was the cheapest price, (w) the tender document was published in breach of Regulation 28 (3) of the Public Procurement Regulations and of Article 53 of Directive 2004/18/EC because these lay down only two award criteria, namely the 'cheapest offer' and the 'most economically advantageous tender' (MEAT) and that the criterion published in Clause 32.1 of the tender document, namely the cheapest priced tender satisfying the administrative and technical criteria was not one of the two criteria laid down in legislation and that vitiated the evaluation process, (x) evidently, the tender document was very vague and open in its requirements and that the appellant had presented a tender submission on the lines requested and, as a result, the consortium should not be disqualified for following the tender conditions and specifications as published, (y)



the appellant was not disputing the competence of the recommended tenderer or the compliance of its tender submission but it was contending that its tender submission was compliant and, as a consequence, both offers ought to qualify for financial consideration and (z) if the appellant were to be excluded then the contracting authority would be left with only one compliant tenderer to the detriment of competition;

- having considered the contracting authority's representative's reference to the fact that (a) clause 30.3 (ii) second bullet point, which preceded clause 30.4 quoted by the appellant, requested '*Evidence of technical capacity (sub-clause 6.1.2)*', (b) clause 6.1.2 under '*Other Experts*' (page 8 of the tender document), among other things, stated that "*The Evaluation Committee reserves the right to request the tenderers to substantiate their claims in respect to the staff proposed by requesting CVs or key staff and signed Declarations of Exclusivity and Availability during the evaluation state*", (c) the CVs were requested from the appellant at that stage, namely during the evaluation stage, and it was not correct for the appellant to state that the CVs could only be requested after the bid was deemed to be provisionally technically compliant, (d) nevertheless, the CVs were not the reason for rejection because the reasons for rejection were of a technical nature and the technical evaluation was still in course at the time the CVs were requested and submitted, (e) the contracting authority should not be expected to spoon feed the experts – this tender called for the engagement of experts – as to what the '*Scope Management Plan*' and the other plans were to include and the fact that the appellant did not provide certain basic requirements which were expected of all bidders made the contracting authority wonder whether the appellant was competent for the job, (f) timeline planning within a '*Scope Management Plan*' would mean a sequence or a breakdown of works indicating the start and the finish time and the relationship between the starting times of the various stages and, ideally, included also the identification of the critical parts as that would demonstrate the level of understanding of the task by the bidder, (g) this was broken down in two levels, namely the high level, which the appellant did provide, and the details, which were found lacking, (h) bidders were asked to concentrate on the '*Integrated Management Control Plan*' which, effectively, concerned the implementation stage, (i) the purpose of such plans and timelines was to see what resources were going to be provided and how those resources were going to be deployed to achieve the objectives within the stipulated time, (j) the appellant did not even provide the co-ordination process between the local and the foreign experts, (k) the appellant was not disqualified because of any one single shortcoming mentioned in the letter of refusal but the rejection was arrived at after considering all the shortcomings put together which, effectively, led the contracting authority to conclude that the appellant had not sufficiently demonstrated the consortium's abilities to undertake this contract, (l) it was claimed that (1) key operational responsibilities were assigned to one person - the Project Manager, (2) albeit the overall number of experts presented by the bidder is in line with the Tender requirements but when one analyses in detail the information submitted on experts (number and qualifications) one notices that the experts allocated to the specific areas are not logically/effectively distributed with some cases clearly showing unacceptable weaknesses., (3) tenderer has not identified the essential need of training his staff (related to working in a complex project environment) and as such a plan for training was not submitted, (4) although a Communication Management Plan and a matrix outlining briefly what type of communication needs to be included in plan were presented, no documentation of how the flow of communication will be implemented was included in the offer, (m) at page 76 of Strathclyde and Glasgow Educational Services Consortium's tender submission the appellant, effectively, reproduced the three risks

indicated in clause 3.2 'Risks' of the 'Terms of Reference' in the tender document and then stated that, at implementation stage, they would discuss the risks and how to manage them, (n) the contracting authority wanted the bidder to identify the risks and to lay out the necessary contingency plans, (o) a project of this sort was bound to pose certain risks such as what other resources could the bidder rely on should all of a sudden certain experts become unavailable and (p) the bidder was expected to, at least, include the basic or minimum risks;

reached the following conclusions, namely:

1. The Public Contracts Review Board has taken full cognisance of the fact that the CVs were not the reason for rejection because, according to the contracting authority's representatives, the reasons for rejection were of a technical nature and the technical evaluation was still in course at the time the CVs were requested and submitted. Furthermore, this Board also took note of the fact that, also according to the contracting authority's representatives, the appellant was not disqualified because of any one single shortcoming mentioned in the letter of refusal but the rejection was arrived at after considering all the shortcomings put together which, effectively, led the contracting authority to conclude that the appellant had not sufficiently demonstrated the consortium's abilities to undertake this contract.
2. Whilst the Public Contracts Review Board acknowledges the fact that the contracting authority claims that (a) the appellant did not even provide the co-ordination process between the local and the foreign experts, (b) the purpose of such plans and timelines was to see what resources were going to be provided and how those resources were going to be deployed to achieve the objectives within the stipulated time, (c) the contracting authority should not be expected to spoon feed the experts – as to what, for example, the 'Scope Management Plan' and the other plans were to include and (d) the bidder was expected to, at least, include the basic or minimum risks, yet, in this particular instance, this Board argues that (a) if the coordination between the local and the foreign experts and, for that matter, any other issue, were considered so crucial then the contracting authority should have requested them explicitly, (b) once the 'Quality Management Plan', including the quality assurance, was found at pages 56 to 61 of the appellant's tender submission, the contracting authority should not have declared that the quality assurance was not provided, if anything, the contracting authority could have said that it was perhaps not what it had in mind, (c) the contracting authority should have either included the details in the tender document in the first place or else, in the absence of details as to what, for example, the 'Scope Management Plan' was to include, it could have asked for clarification but it should have never excluded the appellant for the non-submission of things which were not even specifically requested.

Similarly, with regard to the 'Terms of Reference' in the tender document relating to 'Risks', this Board finds that, albeit the appellant could have elaborated a bit more on content detail, yet, considering the lack of specific information provided by the contracting authority in the tender document, one has to agree with the appellant's submission which was rather generic going as far as to state in the process that, at implementation stage, the said bidder would discuss with the pertinent contracting authority both (a) the potential risks and (b) how these would be managed.

3. This Board opines that it seems more than evident that the tender document was somewhat vague and open in its requirements and that the appellant had presented a

tender submission on the lines requested. Undoubtedly, this does not imply that the appellant's bid was the best possible effort and that, when compared to that submitted by the recommended tenderer, certain detail could have not been better manifested in the appellant's submission. However, this Board acknowledges the fact that the scope and content of the tender itself did not, necessarily, make it possible for participants to be as pragmatic as the evaluation board was expecting so much so that, whilst the contracting authority aimed at receiving a more tangible submission - bidders were asked to concentrate on the 'Integrated Management Control Plan' which, effectively, concerned the implementation stage - yet both the recommended tenderer and the appellant presented a more theoretical approach with the former providing more detail than the latter.

The Public Contracts Review Board establishes that, in the absence of clear requirements being laid down in the tender document, if a bidder submitted the minimum and another bidder submitted more than the minimum then, in that case, both bidders would be compliant and both should qualify for financial consideration especially when, like this instance, the award criteria was the cheapest price. As a consequence, this Board opines that, in the absence of the request of specific details in the tender document, the contracting authority could not exclude a bidder because the details presented differed from the details submitted by another bidder or from what the contracting authority had in mind but did not spell out in the tender document.

This Board feels that, as a result of all the above, the consortium should not be disqualified for following the tender conditions and specifications as published.

In conclusion, this Board finds in favour of the appellant company and recommends that (a) the deposit paid by the same company for the appeal to be lodged should be reimbursed and (b) the offer submitted by the same appellant company should be reintegrated in the evaluation process.



Alfred R Triganza  
Chairman



Joseph Croker  
Member



Carmel Esposito  
Member

17 December 2012