

PUBLIC CONTRACTS REVIEW BOARD

Case No. 530

CT/2200/2011

Tender for the Provision of Insurance Services to all MCAST sites in Malta and Gozo

The call for tender was published in the Government Gazette of the 13th January 2012 with a closing date of the 6th March 2012. The estimated value of the tender was €300,000. The price of the recommended tender was €168,832.89 inclusive of VAT for a period of three (3) years.

Mediterranean Insurance Brokers (Malta) Ltd filed an objection on the 27th December 2012 against the decision of the Department of Contracts to recommend award of tender to Island Insurance Brokers (Malta) Ltd for the price of €168,832.89.

The Public Contracts Review Board composed of Mr Alfred Triganza (Chairman) and Mr Joseph Croker and Mr Carmelo Esposito as members convened a meeting on Thursday 28th March 2013 to discuss the appeal.

Present:

Mediterranean Insurance Brokers (Malta) Ltd

Dr Steven Decesare	Legal Representative
Ms Fiona Borg	Divisional Director

Island Insurance Brokers (Malta) Ltd

Dr Stephen Muscat	Legal Representative
Mr Lawrence Pavia	Representative
Mr Mark Spiteri	Representative
Mr David Agius	Representative

Malta College of Arts, Science and Technology (MCAST)

Dr Lena Sammut	Legal Representative
Mr Stephen Caruana	Purchasing Manager

Evaluation Board

Mr Oscar Borg	Chairman
Ms Irene Bugeja	Member
Mr John Vella	Member
Ms Audrey Farrugia	Secretary

Contracts Department

Ms Joelle Mifsud Bonnici	Representative
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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 Steven Decesare, legal representative of the appellant company, made the following submissions:

- i. in its tender submission, the appellant company had erroneously quoted the total price for one year instead of for the period of three years requested in the tender document with the consequence that the price quoted was abnormally low;
- ii. aware of this mistake in the original tender submission, the appellant company had informed the Malta College of Arts, Science and Technology that it had erroneously quoted the price for one year instead of for three years as requested and asked the Malta College of Arts, Science and Technology to take this clarification into consideration;
- iii. the prices were amended simply to reflect the three year period and not to undercut competition because it turned out that the amended prices were higher than those of the competitors;
- iv. nonetheless, whilst the tender had been awarded to the appellant company at the abnormally low price – effectively, at one third of the price following the company's clarification/amendment – yet, the same company declined to honour the contract at the awarded price and so it refused to sign the contract;
- v. the purpose of this objection was not to reintegrate the appellant company's bid in the tendering process but to dispute the award of the tender at the recommended price of €168,832.89, which price did not feature in the schedule of prices displayed on the Contracts Department's website, as, in fact, the recommended tenderer had offered two options, namely, €133,486.68 and €147,917.70;

and

- vi. the tender document also requested options with regard to 'Industrial All Risks' and 'Public Liability' policies to cover different excess limits and it turned out that only Mediterranean Insurance Brokers (Malta) Ltd submitted six options covering all the options requested whereas Island Insurance Brokers (Malta) Ltd offered two options and Allcare Insurance Brokers Ltd offered one option.

Dr Lena Sammut, legal representative of the Malta College of Arts, Science and Technology, explained that:-

- a. as per clause 1.2 of the 'General Instructions', this tender covered a period of three years (36 months) and the contracting authority requested a number of options;

- b. whilst, in the 'Financial Bid' of each of its six options the appellant company quoted the cheapest price under the column 'Aggregate Cost per policy over the duration of the contract (3 years)', yet, it later on became apparent that the appellant company had, mistakenly, quoted the price for one instead of for three years, which mistake was acknowledged by the appellant company itself through a letter of clarification it sent to the Contracts Department after the submission of its tender;

and

- c. the appellant company's request to alter the quoted prices could not be acceded to.

Mr Oscar Borg, chairman of the evaluation board, remarked that:-

- i. the contracting authority was made aware that the price quoted by the appellant actually covered one year instead of the requested period of three years by letter sent after the tender opening stage;
- ii. for all intents and purposes, in the appellant company's original tender submission the prices quoted in the respective 'Financial Bid' form clearly indicated that the quotes covered a three year period;

and

- iii. the contracting authority pressed on with recommending the award to Mediterranean Insurance Brokers (Malta) Ltd because, in its letter clarifying/amending the prices quoted, the same company did not formally declare that it was withdrawing its tender and, as a result, the evaluation board considered Mediterranean Insurance Brokers (Malta) Ltd's original offer while discarding the amended prices proposed in its letter of clarification.

Ms Fiona Borg, also representing Mediterranean Insurance Brokers (Malta) Ltd, confirmed that the company had informed the contracting authority that the quoted prices were incorrect and furnished the correct quotes without altering the annual premium originally quoted through a letter dated 8th March 2012, namely, two days after the closing date of the tender.

The Chairman Public Contracts Review Board remarked that:-

- a. it appeared that the contracting authority pressed on with the award of the tender to the appellant company even though the said company had made it aware that the prices quoted in its original tender submission were incorrect;
- b. such a written declaration/admission by the same bidder should have rendered its tender submission inadmissible from the very beginning of the evaluation process;

and

- c. it was not acceptable for anyone to alter the prices, for whatever reason, even in good faith, after the tender opening stage.

Mr Stephen Caruana, Purchasing Manager at the Malta College of Arts, Science and Technology, and Mr Borg explained that:-

- i. eventually, the Contracts Department revoked the award issued in favour of Mediterranean Insurance Brokers (Malta) Ltd and recommended the award of the tender to the second cheapest offer submitted by Island Insurance Brokers (Malta) Ltd for the price of €168,832.89;
- ii. whilst Island Insurance Brokers (Malta) Ltd had, in fact, submitted Option 1 at €133,486.68, excluding taxes and VAT, and option 2 at €147,917.70, including all taxes and VAT, yet, at pages 37 and 48 of the tender document, the contracting authority requested options with regard to two policies for different excess cover levels, namely item 1 ‘Industrial All Risks’ and item 8 ‘Public Liability’;
- iii. the recommended final price of €168,832.89 was arrived at from prices given by the tendering company in its original submission as follows:-

€147,917.70 – Option 2 because the price was requested inclusive of all taxes and VAT

less	46,095.51	– item 1 as per Financial Bid form of Option 2
less	<u>20,812.50</u>	– item 8 as per Financial Bid form of Option 2
	81,009.69	
add	61,460.70	– option 1 with regard to item 1
add	<u>26,362.50</u>	– option B with regard to item 8
	<u>168,862.89</u>	

- iv. the same methodology was applied to the other offers.

Dr Decesare remarked that:-

- a. Volume 4 ‘Financial Bid’ (page 59 of the tender document) clearly stated that:
 - (i) *(A) Total Cost to Contracting Authority for the Duration of the Contract inclusive of all taxes and including VAT* and
 - (ii) *This tender is a global priced contract as provided in clause 1.3 of the Instructions to Tenderers therefore for adjudication purposes, to establish the cheapest offer only the figure in the final box (A) will be taken into consideration;*
- b. it was evident that the calculations and modifications effected by the contracting authority with regard to the two prices quoted by the recommended tenderer in the respective ‘Financial Bid’ forms were not admissible in terms of the conditions laid down in the tender document;

and

- c. on the other hand, the appellant company had submitted six separate Financial Bid forms for each option offered (ranging from €48,980.01 to €53,595.93).

At this point the Chairman Public Contracts Review Board remarked that:-

- i. evidently, the two options submitted by the recommended tenderer were for the prices of €133,486.68 and €147,917.70 as per respective 'Financial Bid' form;
- ii. the bidder was bound by the prices quoted and signed for in the 'Financial Bid' and it was not permissible for anyone to alter or temper with those prices for whatever reason, even if in good faith, otherwise that would undermine the purpose of requesting signed declarations;
- iii. Volume 1 Section 2 'Tender Form' stated in bold print that *'A separate, distinct Tender Form must be submitted for each option – if applicable – submitted'* and, furthermore, clause 3 of the part 'C' 'Tenderer's Declaration' stated that: *The total cost to Contracting Authority for the duration of the contract (inclusive of duties, VAT, other taxes and any discounts) is as per Financial Bid in Volume 4 of the tender document;*

and
- iv. therefore, a separate 'Tender Form' and 'Financial Bid Form' had to be submitted for each option offered.

Mr Borg expressed the view that the contracting authority would act correctly if it were to discard the options offered by the recommended tendering company and to accept its option 2 of €147,917.70 as per respective 'Financial Bid Form'.

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 7th January 2013 and also through its representatives verbal submissions presented during the hearing held on the 28th March 2013, had objected to the decision taken by the pertinent authorities;
- having noted all of the appellant's representative's claims and observations, particularly, the references made to the fact that (a) in its tender submission, the appellant company had erroneously quoted the total price for one year instead of for the period of three years requested in the tender document with the consequence that the price quoted was abnormally low, (b) aware of this mistake in the original tender submission, the appellant company had informed the Malta College of Arts, Science and Technology that it had erroneously quoted the price for one year instead of for three years as requested and asked the Malta College of Arts, Science and Technology to take this clarification into consideration, (c) the prices were amended simply to reflect the three year period and not to undercut competition because it turned out that the amended prices were higher than those of the competitors, (d) nonetheless, whilst the tender had been awarded to the appellant company at the abnormally low price –

effectively, at one third of the price following the company's clarification/amendment – yet, the same company declined to honour the contract at the awarded price and so it refused to sign the contract, (e) the purpose of this objection was not to reintegrate the appellant company's bid in the tendering process but to dispute the award of the tender at the recommended price of €168,832.89, which price did not feature in the schedule of prices displayed on the Contracts Department's website, as, in fact, the recommended tenderer had offered two options, namely, €133,486.68 and €147,917.70, (f) the tender document also requested options with regard to 'Industrial All Risks' and 'Public Liability' policies to cover different excess limits and it turned out that only Mediterranean Insurance Brokers (Malta) Ltd submitted six options covering all the options requested whereas Island Insurance Brokers (Malta) Ltd offered two options and Allcare Insurance Brokers Ltd offered one option, (g) Volume 4 'Financial Bid' (page 59 of the tender document) clearly stated that: (i) (A) *Total Cost to Contracting Authority for the Duration of the Contract inclusive of all taxes and including VAT* and (ii) *This tender is a global priced contract as provided in clause 1.3 of the Instructions to Tenderers therefore for adjudication purposes, to establish the cheapest offer only the figure in the final box (A) will be taken into consideration*, (h) it was evident that the calculations and modifications effected by the contracting authority with regard to the two prices quoted by the recommended tenderer in the respective 'Financial Bid' forms were not admissible in terms of the conditions laid down in the tender document and (i) on the other hand, the appellant company had submitted six separate Financial Bid forms for each option offered (ranging from €48,980.01 to €53,595.93);

- having considered the contracting authority's representative's reference to the fact that (a) as per clause 1.2 of the 'General Instructions', this tender covered a period of three years (36 months) and the contracting authority requested a number of options, (b) whilst, in the 'Financial Bid' of each of its six options the appellant company quoted the cheapest price under the column 'Aggregate Cost per policy over the duration of the contract (3 years)', yet, it later on became apparent that the appellant company had, mistakenly, quoted the price for one instead of for three years, which mistake was acknowledged by the appellant company itself through a letter of clarification it sent to the Contracts Department after the submission of its tender, (c) the appellant company's request to alter the quoted prices could not be acceded to, (d) the contracting authority was made aware that the price quoted by the appellant actually covered one year instead of the requested period of three years by letter sent after the tender opening stage, (e) for all intents and purposes, in the appellant company's original tender submission the prices quoted in the respective 'Financial Bid' form clearly indicated that the quotes covered a three year period, (f) the contracting authority pressed on with recommending the award to Mediterranean Insurance Brokers (Malta) Ltd because, in its letter clarifying/amending the prices quoted, the same company did not formally declare that it was withdrawing its tender and, as a result, the evaluation board considered Mediterranean Insurance Brokers (Malta) Ltd's original offer while discarding the amended prices proposed in its letter of clarification, (g) confirmed that the company had informed the contracting authority that the quoted prices were incorrect and furnished the correct quotes without altering the annual premium originally quoted through a letter dated 8th March 2012, namely, two days after the closing date of the tender, (h) eventually, the Contracts Department revoked the award issued in favour of Mediterranean Insurance Brokers (Malta) Ltd and recommended the award of the tender to the second cheapest offer submitted by Island Insurance Brokers (Malta) Ltd for the price of €168,832.89, (i) whilst Island Insurance Brokers (Malta) Ltd had, in fact, submitted Option 1 at €133,486.68,

excluding taxes and VAT, and option 2 at €147,917.70, including all taxes and VAT, yet, at pages 37 and 48 of the tender document, the contracting authority requested options with regard to two policies for different excess cover levels, namely item 1 'Industrial All Risks' and item 8 'Public Liability', (j) the recommended final price of €168,832.89 was arrived at from prices given by the tendering company in its original submission and that the same methodology was applied to the other offers and (k) Mr Borg expressed the view that the contracting authority would act correctly if it were to discard the options offered by the recommended tendering company and to accept its option 2 of €147,917.70 as per respective 'Financial Bid Form',

reached the following conclusions, namely:

1. The Public Contracts Review Board argues against the fact that the contracting authority pressed on with the award of the tender to the appellant company even though the latter had made it aware that the prices quoted in its original tender submission were incorrect. Furthermore, this Board also contends that such a written declaration / admission by the same bidder should have rendered its tender submission inadmissible from the very beginning of the evaluation process.
2. The Public Contracts Review Board establishes that whilst, evidently, the two options submitted by the recommended tenderer were for the prices of €133,486.68 and €147,917.70 as per respective 'Financial Bid' form, it was also true that the bidder was bound by the prices quoted and signed for in the 'Financial Bid'. Also, this Board further argues that it is never acceptable for anyone to alter the prices, for whatever reason, even in good faith, after the tender opening stage otherwise that would undermine the purpose of requesting signed declarations.
3. The Public Contracts Review Board notes that Volume 1 Section 2 'Tender Form' stated in bold print that '*A separate, distinct Tender Form must be submitted for each option – if applicable – submitted*' and, furthermore, clause 3 of the part 'C' 'Tenderer's Declaration' stated that '*The total cost to Contracting Authority for the duration of the contract (inclusive of duties, VAT, other taxes and any discounts) is as per Financial Bid in Volume 4 of the tender document*'. As a consequence, in this particular instance, a separate 'Tender Form' and 'Financial Bid Form' had to be submitted for each option offered.

In view of the above this Board finds in favour of the appellant company to the extent that the Contracting Authority had taken erroneous administrative decisions which resulted in the bid offered by the recommended tenderer being, to all intents and purposes, unlawfully modified. The Board, however, recommends that once the Contracting Authority is satisfied with the cover offered by the recommended tenderer strictly at the cost and conditions as originally tendered in the Financial Bid form, then the award of the tender may proceed. The Board also recommends that the appellant company be reimbursed with the deposit paid to lodge the appeal.

Alfred R Triganza
Chairman

Joseph Croker
Member

Carmelo Esposito
Member

17 April 2013