

PUBLIC CONTRACTS REVIEW BOARD

Case No. 610

TSE/1/2012

Tender for the Service of a Structural Engineer (building diagnosis).

The tender was published on the 23rd October 2012. The closing date was the 13th November 2012.

The estimated value of the Tender was: €50,000 (Exclusive of VAT).

Thirteen (13) bids were received for this tender.

On the 9th August 2013 EMDP Limited filed an objection against the decision to discard its offer as being technically non-compliant and against the award of the tender to Perit Ivan Buttigieg.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Richard A. Matrenza as members convened a hearing on Thursday 10th October 2013 to discuss the appeal.

Present for the Hearing:

EMDP Limited - Appellant

Arch Mariello Spiteri	Representative
Arch Vanessa Pisani	Representative
Dr Franco Galea	Legal Representative

Architect Ivan Buttigieg - Preferred Bidder

Arch Ivan Buttigieg	Representative
Dr Mark Refalo	Legal Representative

Housing Authority - Contracting Authority

Arch Andre Pizzuto	Chairman Evaluation Board
Ms Graziella Calleja	Secretary Evaluation Board
Mr Aldo Ellul	Member Evaluation Board
Arch Alison Attard	Member Evaluation Board

The Chairman made a brief introduction and appellant's representative was invited to make his submissions on the objection.

Dr Franco Galea on behalf of the appellant said that the requisites of this tender were either the architect has ten years experience as a structural engineer or he has to have five years experience plus post graduate qualification level 7 or 8. Appellant had been asked for a clarification and had answered as required. From the documents appellant submitted with clarification it is clear that Perit Barbara was qualified under the two options. Furthermore, Perit Barbara was not the only architect listed by appellant in the tender offer. There were other architects employed with appellant. Dr Galea contended that the required thresholds were achieved by appellant's bid.

Arch. Andre Pizzuto on behalf of the contracting authority replied to a question by the Board that the preferred bidder had the ten years necessary experience and was the cheapest compliant bidder. Appellant's offer was not technically compliant and his financial offer was not taken into consideration. When the evaluation committee was examining appellant's bid, it was noted that Perit Joe Barbara's CV, submitted with the tender did not show that he had a master's degree in structural engineering; therefore to be compliant he had to have ten years experience. His CV showed that he possessed a Diploma in Bridge Engineering. The evaluation committee felt the need to ask appellant if Perit Barbara had the MQF 7 and so a clarification was issued to appellant about this. Instead of a clarification, appellant submitted a rectification of its bid. The CV was changed and certificates were produced. The new CV submitted with the clarification showed that Perit Barbara possessed a Master's degree. But this was not acceptable since this was a rectification. It should have been submitted in the first place. The CV was not something that was not submitted but was changed after the clarification. In the CV originally submitted with the tender it was stated that Perit Barbara "was reading for a master's in bridge and structural engineering at the University of Surrey." With the clarification this was changed and a new CV was submitted. Instead of replying to the clarification request by the evaluation committee to state whether the diploma was MQF 7, appellant submitted a new CV containing new data that was not in the original. Appellant also submitted a certificate that was not enclosed with the original bid. Original submissions cannot be changed after the closing date of the tender.

Dr Franco Galea for the appellant stated that the original certificate showed that Perit Barbara qualified for his master's degree in September 2011. This certificate was submitted with the clarification. In any case, Perit Joseph Barbara also qualified just the same because he had experience as a structural engineer. In his CVs, both originally submitted and the later one, Perit Barbara has shown that he had passed the threshold. This was not a rectification, because rectification was when the bid is changed. Perit Barbara was in possession of a master's degree, and appellant replied to the clarification to explain this. The master's degree was not obtained after the closing dated of the tender.

Perit Joseph Barbara affirmed that his master's degree was obtained in September 2011.

Arch. Mariello Spiteri said that when the tender was submitted, perit Barbara was already in possession of master's degree but an older version of his CV was inadvertently submitted with the tender.

Arch. Andre Pizzuto said that Perit Barbara did not qualify on the basis of ten years experience because one cannot practice as a structural engineer unless warranted. The

experience he acquired before he received the warrant cannot be counted for the experience needed. Contended that when the CV was changed it means that appellant's bid was changed. The certificates had not been submitted with the bid. It was only following the clarification that these certificates had been produced. This was new information and thus is considered as rectification. The evaluation board had asked the DCC and was informed that clarification could not include any new information.

Dr Charles Cassar, member of the Board remarked that probably, an old version of the CV had been submitted. In the clarification, appellant had been asked to state whether Perit Barbara's diploma was MQF 7. Appellant did not need to refer to the MQF at that stage as Perit Barbara had a master's degree. And so the new CV was submitted in reply to the clarification.

Arch Mariello Spiteri on behalf of appellant explained that in the first CV, Perit Barbara already had a post-graduate diploma that is level 7, from the University of Surrey. It can be clearly seen from the MQRIC website that a post graduate diploma is level 7. Thus Perit Barbara conformed to the requisites of the tender document. This diploma was enclosed with the original tender.

Dr Franco Galea said that the tender document makes a distinction between qualification and experience. There was what is called a grandfather clause. You had either to graduate or if you are not already a graduate, you could show that you have experience. This experience does not only mean after the graduation and warrant because otherwise it makes no sense.

Dr Mark Refalo on behalf of the preferred bidder contended that the value of the tender is less than €12,000 and therefore according to the Regulations the objection is null. Regarding the matter of the master's degree, the clarification asked appellant to state whether the diploma was level 7 or not. Instead of replying, appellant produced other certificates. He also contended that the tender required experience as a structural engineer and this meant that after a warrant was obtained.

Arch Andre Pizzuto explained that the contracting authority did not ask for a diploma, it asked for a master degree. Appellant was asked to state whether Perit Barbara's diploma reached level 7, as an alternative but appellant submitted a new certificate and CV.

Arch Mariello Spiteri stated that MQRIC does not issue certificates within 2 days. MQRIC in its website also shows that a diploma from Surrey University is equivalent to level 7.

Arch. Andre Pizzuto reiterated that the qualifications were submitted only at the clarification stage. This meant that to accept them would be rectification and the evaluation board was advised in writing that this was not allowed.

At this point the hearing was brought to a close.

This Board,

Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 9th August 2013 and also through the Appellant's submissions during the hearing held on 10th October 2013, had objected to the decision taken by the pertinent

Authority, in that:

- a) **The requisites of the tender stated that “ the Architect had to have either a minimum of ten years experience in structural engineering or a minimum of 5 years together with a Masters Degree at level 7 or 8”.**
- b) **The Appellant was asked for clarifications by the Evaluation Board to which Appellant complied. In this regard, Appellant contends both optional requisites were met.**
- c) **From documentation submitted to the Evaluation Board (upon being requested), there exists enough proof that the Appellant satisfied the qualification and experience criteria of the tender.**
- d) **Inadvertently, an old version of the Appellant’s CV was submitted with the tender. However, upon being asked for clarifications, the Appellant did submit a copy of the Masters Degree.**
- e) **The experience obtained prior to the attainment of the Masters Degree should also be considered as valid experience.**

Having considered the Contracting Authority’s verbal submissions during the hearing held on 10th October 2013, in that:

- a) **During the evaluation process, the Evaluation Board noted that the Appellant did not comply with the mandatory 10 years experience criteria, as stipulated in the tender document.**
- b) **Upon being asked for clarification by the Evaluation Board, the Appellant submitted a rectification of the Appellant’s qualifications. The rectified qualification should have been submitted with the tender, in the first place.**
- c) **The rectified submission was not admissible in accordance with the prevailing regulations.**
- d) **The Appellant could not qualify with regards to experience as the requirement in this regard was ‘experience after having obtained the Post Graduate qualification’.**

Reached the following conclusions:

1. **This Board considers that the experience obtained by the Appellant does in fact count, however the mandatory condition of experience obtained after obtaining the Masters degree has to be respected. Mandatory conditions in a Tender**

document should be strictly abided by. In this regard the Appellant was technically non compliant.

2. The Preferred Bidder's offer was fully compliant and the cheapest.

In view of the above, this Board finds against the Appellant Company and recommends that the deposit paid by the Appellant should not be reimbursed.

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Richard A. Matrenza
Member

13 November 2013