

PUBLIC CONTRACTS REVIEW BOARD

Case No. 663

TM 24/2013

Health and Safety Services for the Deep Water Quay Project.

The tender was published on the 26th July 2013 and the closing date was on the 23rd August 2013.

The estimated value of the tender was €16,949.15 (Exclusive of VAT)

Three (3) bidders had submitted an offer for this tender.

On the 11th December 2013 AME Health and Safety Services Limited filed an objection against the proposed award of the tender to Mr Darren Micallef.

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 Tuesday 4th February 2014 to discuss this objection.

Present for the hearing were:

AME Health and Safety Services Limited - Appellant

Mr Mario Camilleri	Representative
Dr Michael Tanti Dougall	Legal Representative
Dr Rebecca Tanti Dougall	Legal Representative

Mr Darren Micallef - Preferred Bidder

Mr Darren Micallef	Representative
Dr John L. Gauci	Legal Representative

Transport Malta - Contracting Authority

Mr Ivan Gatt	Chairman Evaluation Board
Ms Sharon Balzan	Secretary Evaluation Board
Perit Noel Gauci	Member Evaluation Board
Mr Ludwig Xuereb	Member Evaluation Board
Mr Raymond Zammit	Member Evaluation Board
Mr Ray Stafrace	Representative
Ms Liz Markham	Representative
Dr Joseph Camilleri	Legal Representative

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

Dr Michael Tanti Dougall on behalf of the appellant said that his client has been specialized for a number of years in the field of Health and Safety. There was a great discrepancy in the prices of the bids submitted for this tender. He contended that the preferred bidder is not the right person to be awarded the contract in question, and insisted that his client, the appellant, was one of the two firms that are qualified to be awarded this tender. The two other bids from qualified companies in the field disagreed by only around two thousand euro in their offers.

Dr Joseph Camilleri on behalf of the contracting authority claimed that the letter of objection contained generic allegations about the suitability of the preferred bidder and gave no clear explanations of the reasons for the objection. Even in his submissions just now the legal representative of the appellant still failed to give the reasons why the preferred bidder is not the right person for the tender. The Evaluation Board had done its work properly and had examined the Curriculum Vitae of the employees of the preferred bidder. Both the required experience and the qualifications were in order. That a bid was low in price did not in itself mean that the service offered by the bidder was not up to standard. The estimated value of the tender was after all €16,000 and the preferred bidder's offer was nearer to this than that of the other bidders. The preferred bidder's tender was totally compliant with the requisites. Replying to a question by the Chairman whether the contracting authority is satisfied that the preferred bidder would be able to provide the requested service at the price he offered, Dr Camilleri replied that the evaluation board had examined the preferred bidder's offer in detail and came to the conclusion that the preferred bidder would be able to offer the service.

Mr Ivan Gatt, the Chairman of the Evaluation Board, on behalf of the contracting authority stated that when the board examined the bids, it was found that the preferred bidder had all the necessary qualifications. The preferred bidder is a single bidder who works alone and thus could maybe submit a better price while the other bidders were companies. The experts submitted by the other bidders had the same qualifications as the successful bidder. The preferred bidder's experience reached and surpassed the required level according to the tender criteria, and there was no indication that the preferred bidder was not competent to provide the service.

Dr Michael Tanti Dougall for the appellant said that Health and Safety requisite is an essential and indispensable factor in any project. It is not a part time issue. He contended that the preferred bidder is employed full-time with the Water Services Corporation. He asked if the service the preferred bidder is going to supply on a part-time basis, thus explaining the low €7,000 offer he made. His client, he is sure is more qualified and has more experience and furthermore his client has a team. The preferred bidder could not give a full time service since he worked full time at the WSC. To provide Health and Safety Services at the Deep water Quay he has to be on site, and yet he is providing a one man job.

Dr Joseph Camilleri for the contracting authority said that the contractor who obtained the tender had to provide services of Health and Safety Officer on site, but there was a clarification note issued that stated that the officer had no need to be on site on a daily basis. He was expected to be at least a minimum of eight hourly (8) weekly contact time on site, including attending the weekly progress project on site meetings and to be on call twenty four hours a day seven days a week. The service is already being provided and the contracting authority was aware of the service required. The preferred bidder has agreed and bound

himself with the tender conditions and he has to provide these services. The CV provided by the preferred bidder shows him to be a free lancer who had also provided Health and Safety Services to the Water Services Corporation. What the contracting authority was after was that the contractor bound himself to provide the service and be available according to the tender.

Dr Michael Tanti Dougall insists that Health and Safety Service means the life of the employees, and this cannot be part time. The project in question has already started and appellant has provided the service since June and is therefore aware of all the implications, risks and requirements of the job. That is why the appellant's offer asked for €43,000. Appellant knows that the job cannot be performed part-time. The tender should not have been issued on a part-time basis.

Dr Joseph Camilleri explained that the present contract, being provided by appellant was done through a call for quotations on a temporary basis. If it is being contended that the tender specifications, regarding the hours of service required, were erroneous, then the matter should have been raised before, prior to the closing date and adjudication of the tender.

Mr Mario Camilleri on behalf of the appellant said that the project involved piling works and diving works, both high risk activities. Presently appellant firm is 24x7 standby and provides service 2 to 3 hours daily plus meetings. Appellant has three employees on the job which has three areas to be covered. The project is evolving and increasing on a daily basis.

The Chairman asked if the contracting authority was sure that the same services being given today would still be offered following the award of the tender.

Dr Joseph Camilleri replied that the evaluation was made on what was requested in the call for tenders and adjudicated according to the tender specifications. The evaluation board is convinced that the preferred bidder reaches the required requisites.

Dr John Gauci on behalf of the preferred bidder said that the tender was specifically issued intended for a one man job. The tender specifications stated so. The law allows for a pre-contractual concern to be raised whenever bidders did not agree with the tender specifications and appellants should have done so and not leave it all until after the adjudication has been completed. The tender was for a one man job. One Key Expert had to be provided, and the price offered by the preferred bidder was nearer the estimate than that of the appellant. He contended that the tender did not ask for a team and the appellant's offer was for one man and not for a team.

Mr Ivan Gatt explained that the tender specifications called for a minimum 8 hours per week. The appellant is presently working according to him about two hours daily and this is not far more than the eight hours as requested.

Mr Ray Stafrace on behalf of the contracting authority remarked that the remit of the evaluation board was to adjudicate according to the specifications. He contended that the Public Contracts Review Board had to see whether the evaluation board had acted according to the regulations.

Dr Michael Tanti Dougall contended that in matters of Health and Safety the estimated budget should not be a constraint. Health and Safety Service entails 24x7 presence since it is

required even at times when the actual work was not being done, as the officer should ensure that the public could not access the site.

Mr Richard Matrenza a Board member remarked whether the matter should have been raised before the closing date of the tender.

Dr Michael Tanti Dougall said that according to his client, the preferred bidder lacked one of the qualifications required by the tender document.

Mr Mario Camilleri on behalf of appellant said that the tender at page seven requested that the project supervisor should have experience in similar works. Since the present project involves diving, then the preferred bidder should have had experience in works involving diving, which he did not have.

Dr Joseph Micallef said that according to clause 6.1.2 of the selection criteria the requirements were: “minimum of one health and safety officer in possession of a tertiary level qualification and five years experience in the construction industry in Malta. In addition the key expert should have experience in the role of Principal H&S Officer manager on one construction project having the value of not less than five million.” And the preferred bidder submitted these.

The hearing was brought to a close at this point.

This Board,

Having noted the Appellant’s objection, in terms of the ‘Reasoned Letter of Objection’ dated 11th December 2013 and also through Appellant’s verbal submissions during the hearing held on 4th February 2014, had objected to the decision taken by the pertinent Authority, in that:

- a) The Preferred Bidder does not possess the necessary qualifications and experience in the field of health and safety.**
- b) Appellant contends that this important professional service cannot be applied on a part time basis.**

Having considered the Contracting Authority’s verbal submissions during the hearing held on 4th February, in that:

- a) The Evaluation Board were completely satisfied that the Preferred Bidder had all the necessary experience and qualification to render the required services as stated in the tender document.**
- b) The successful tenderer had to attend on site for a minimum of 8 hours weekly and had to be on call. This service is already being provided and in this regard the Contracting Authority were well aware of the actual requirements of this service.**

c) The Preferred Bidder's offer was the cheapest.

Reached the following conclusions:

- 1. The fact that this type of service is already being provided, in itself does establish a sound basis to dictate the actual requirements to be stipulated in the tender document. In this regard, the Evaluation Board acted diligently in evaluating the tenders.**
- 2. All tenderers were notified by the Contracting Authority that this service was required on a part-time basis. In this respect, the Appellant Company should have taken this factor into account prior to the submission of his offer.**
- 3. From the submissions made by the Evaluation Board during the hearing held on 4th February 2014, the Preferred Bidder 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 Appellant should not be reimbursed.

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Richard A. Matrenza
Member

3 March 2014