

PUBLIC CONTRACTS REVIEW BOARD

Case No. 710

MRA 157/2013

Tender for Accountancy Services in Connection with Project ERDF 288.

The tender was published on the 4th February 2014. The closing date was the 25th February 2014.

The estimated value of the Tender was €21,000 (Exclusive of VAT).

Three (3) bids had been received for this tender.

On the 4th April 2014 PKF Malta filed an objection against the cancellation of the tender and demanding that the tender be awarded to PKF Malta.

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 the 27th May 2014 to discuss the objection.

Present for the hearing were:

PKF Malta - Appellant

Mr George Mangion
Dr Marilyn Mifsud

Representative
Legal Representative

Malta Resources Authority - Contracting Authority

Ing. George Cassar
Mr Brian Borg
Mr Carmel Schembri
Mr Philip Caruana
Mr Carmel Farrugia
Dr John Gauci

Chairman Evaluation Board
Member Evaluation Board
Member Evaluation Board
Member Evaluation Board
Member Evaluation Board
Legal Representative

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

Dr Marilyn Mifsud on behalf of her clients PKF Malta, the appellant, said that the tender had been cancelled because none of the bidders had been administratively compliant. Appellant's offer had been disqualified because of an incomplete tender form and failing to submit the qualification documents of Mr Darren Agius. She claimed that the part of the tender form that appellant failed to complete referred to Lots and this tender was not divided into lots. The documents relating to Mr Darren Agius were not submitted because the tender only requested one Accounts Officer. Appellant had submitted Donna Greaves Bonello as this officer, and had submitted all her warrants and certificates as required. However appellant had gone beyond what was requested and submitted additional personnel beyond requirements.

Dr John L Gauci on behalf of the contracting authority raised a preliminary plea that the appellant PKF Malta was not one of the bidders for the tender and was not involved. The tender falls under Regulation 21 of the Public Procurement Regulations and this regulation only give the right to file an objection to tenderers or candidates. Appellant firm who is now objection, and who is demanding to be awarded the tender, was not one of the bidders participating in the tender. He therefore claims that this Board should not examine the objection further. He asked whether the Board would decide on this point now or after hearing submissions on the merits of the case.

The Chairman explained that Audit firms, like PKF, cannot provide any accountancy services. Most Audit firms have other companies that provide accountancy services. He asked whether there was any reference to PKF Malta in the tender submitted by GMM & Associates (Malta) Ltd.

Dr John L Gauci replied that there was nothing in the tender submitted by GMM & Associates (Malta) Ltd to indicate any connection with PKF Malta. The evaluation board had even checked with the MFSA and the relationship did not result. After all there was nothing to keep the bidder GMM & Associates from filing an objection under its own name. Since GMM & Associates had participated in the tender it should have objected in its name.

Dr Marilyn Mifsud on behalf of the appellant said that the tender bid was submitted by GMM & Associates but there was a clerical typing error when the objection was made. However the contracting authority itself had issued the deposit receipt on PKF and it should have realised that PKF was not a bidder. She had explained the matter to the clerk at the Public Contracts Review Board. She contended that this clerk should have informed her that PKF could not file an objection.

Dr John L Gauci explained that the receipt had to be issued on PKF because PKF had filed the objection. The contracting authority has to accept all objections accompanied by a deposit, and it is immaterial who the appellant is, the receipt is always drawn up on the appellant. It was then up to the PCRFB to see who was eligible to file objections or not. In the present case it was more so since accountancy firms should be independent from auditor firms. GMM had been disqualified on two points. GMM's tender form had been left completely blank and did not have the financial bid filled in. In spite of having indicated lots, the form should have been filled in showing the financial offer. The other bidders complied and filled up the form. The other point of disqualification was that while GMM had instead of offering one accounting officer, offered two. But while the documents regarding one of

these had been regularly submitted, there were no documents produced in relation to the other accounting officer, Darren Agius. GMM had submitted a document called “Assignment of Staff” where it was indicated that the services would be provided both by Donna Greaves Bonello and by Darren Agius. The warrant and certificates in respect of the first were submitted while those of the other were not. Since GMM had chosen to submit two persons then it follows that certificates for both of these persons had to be included. GMM had submitted a team but of this team, only one person was warranted. It was for these reasons that GMM’s tender had been disqualified like that of other bidders who also failed to produce documents. He reiterated however that GMM is not the present appellant.

Mr George Mangion on behalf of the appellant remarked that his tender had been disqualified because the tender form was not filled in, however the schedule of prices showed clearly appellant’s financial bid. This had to be obtained from the tender itself. This points, to a contradiction by the contracting authority. The tender was for the provision of an accounting officer and not for a team of officers. Appellant had enriched the offer by offering a substitute accounting officer. When appellant had asked for more information regarding the software being used by the contracting authority and asked to meet with the contracting authority, No reply was forthcoming. The contracting authority failed to meet with the appellant during the two months since the letter of objection was filed.

Dr John L Gauci explained that the letter of objection demands that PKF Malta be awarded the tender and this can never be possible, since PKF was not one of the bidders. Appellant had proposed a team but did not enclose documents for all members of the team. It is true that the appellant’s financial offer could be obtained from other parts of the tender but omission of filling in the price in the tender form was essential. The “Instructions to tenderers” make it clear in clause 1.2.4 that “failure to submit this form completed in all respects shall disqualify the bid.” The financial offer should have been written down in the tender form under Lot 1.

Mr George Mangion on behalf of the appellant remarked that article 8.5.1 does not refer to accountancy services and thus the tender is vitiated. The tender states that the contracting authority is seeking to recruit an accounting officer, and an officer is not a team. The tender title was wrongly designated; the contracting authority wanted a chartered accountant employed full time.

Dr John L Gauci for the contracting authority said that clause 8.4.2 is clear that in case of a bidder who is a firm, this should indicate the name and details of the person/persons who would be performing the service. Thus the tender is for accountancy services.

At this point the hearing was closed.

This Board,

Having noted the ‘Preliminary Plea’ raised by the Contracting Authority, in that, the Appellant who filed the objection to this tender was not one of the tenderers or interested party, who could file an Appeal under Regulation 21 of the Public Procurement Regulations.

This Board notes the following issues and events:

- 1. The tender submitted was in the name of GMM & Associated (Malta) Ltd.**
- 2. The Objection lodged to the same tender was in the name of PKF, which is obviously not the same tenderer and in actual fact a totally separate entity, who did not participate in the tendering process.**
- 3. In accordance with Regulation 21 (5), of the Public Procurement Regulations, the right to file an objection, under this regulation, only tenderers or candidates are in a position to do so. In this regard, Appellant Firm does not fall in this category for entitlement for an Appeal.**

In view of the above, this Board finds that the Appeal lodged by the Appellant Company to be not in conformity with clause 21 (5), of the Public Procurement Regulations, and thus this same Board finds that this Appeal to be null and void. However, this Board recommends that the deposit paid by the Appellant should be reimbursed.

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Richard A. Matrenza
Member

29 July 2014