

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 732**

**CT 3005/2014**

**Tender for the Design, Print and Distribution of “L-Ghazla” Magazine.**

The tender was published on the 8<sup>th</sup> April 2014. The closing date was the 20<sup>th</sup> May 2014.

The estimated value of the Tender was €46,383.64 (Exclusive of VAT).

Three (3) bidders had submitted bids for this tender.

On the 17<sup>th</sup> July 2014 Velprint Limited filed an objection against the proposed award of the tender to Pure Concepts Limited.

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 the 4<sup>th</sup> September 2014 to discuss the objection.

Present for the hearing were:

### **Velprint Limited - Appellant**

Mr Vince Vella	Director
Dr Reuben Farrugia	Legal Advisor

### **Pure Concepts Limited - Preferred Bidder**

Dr Simon Micallef Stafrace	Legal Representative
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### **MCCAA - Contracting Authority**

Mr Godwin Mangion	Chairperson Evaluation Board
Ms Josephine Borg	Member Evaluation Board
Ing Francis P Farrugia	Member Evaluation Board
Ms. Odette Vella	Member Evaluation Board

### **Department of Contracts**

Mr Kevin Duca	Procurement Manager
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The Chairman made a brief introduction and asked the appellant's representative to make his submissions.

Dr Reuben Farrugia on behalf of his client Velprint Limited, the appellant explained that appellant had two grievances: i) that the preferred bidder should be disqualified and ii) that appellant should be awarded the tender.

The selection criteria of a tender regulate the award of the tender – those bidders that satisfy the criteria may be awarded, while those that do not are excluded. The present tender's selection criteria are found at Section 7. - 'Selection and Award Requirements'. Clause 7.1 (B) (ii) (1) states that "The maximum amount of sub-contracting must not exceed 40% of the total contract value. The main contractor must have the ability to carry out at least 60% of the contract works by his own means." Appellant knows for a fact that the preferred bidder does not have printing capabilities. In fact appellant provides printing services for the preferred bidder regularly. Thus the preferred bidder does not have printing capabilities and the value of the printing factor in the tender exceeds 60%. Therefore the preferred bidder does not satisfy the above selection criterion. It follows therefore that the preferred bidder's tender should be disqualified.

Dr Reuben Farrugia continued that the tender's sole award criterion is found in Clause 9.1 and this is that the cheapest priced tender satisfying the administrative and technical criteria. Appellant satisfied both the administrative and the technical criteria, and thus only the financial aspect remains. After excluding the preferred bidder only two tenders remain – appellant's and Gutenberg Press Ltd. Since appellant's offer is €46,940 and Gutenberg's is €56,286, it follows that the tender should be awarded to the appellant.

Mr Vince Vella, ID No. 421566M on behalf of the appellant said that appellant does regular printing works, as sub-contractor, for the preferred bidder Pure Concepts Limited. Pure Concepts do not have the capability to print offset sheets, but are designers and advertising agency. He knew it for a fact that the preferred bidder does not have printing facilities. He submitted a list of invoices running from January 2013 to July 2014 issued by appellant to the preferred bidder for printing works. He would estimate that the cost of printing, including the cost of paper, in the present tender, would account to around 75%. Distribution and audit factors would normally account to 26%.

Mr Godwin Mangion, Acting Director of the Department of Consumer Affairs and Chairperson of the evaluation board said bidders had to declare whether they would resort to sub-contracting, and that this would not exceed 60%. The tender was for the design, printing and distribution. The preferred bidder, Pure Concepts Limited in the tender submission declared that the only sub-contracting it would make was for the distribution.

The Chairman insisted to know from the preferred bidder, who would be doing its printing.

Dr Reuben Farrugia insisted that the testimony of the appellant that the preferred bidder does not have printing capabilities now constitutes a state of fact because it was not contradicted by the preferred bidder who chose not to be present.

Dr Simon Micallef Stafrace on behalf of the preferred bidder contended that what the Chairperson of the evaluation board said also constitutes a state of fact and the Board had to choose between these two. The evaluation was carried out on the documents submitted and declarations. He could not state who would be doing the preferred bidder's printing.

Board member Mr Richard A Matrenza remarked that the preferred bidder was notified of the hearing and chose not to be present. He asked the appellant whether he had been approached by the preferred bidder to be the sub-contractor for this tender.

Mr Vince Vella for the appellant, still under oath, replied that the preferred bidder did not approach appellant for the printing works of this tender.

Dr Reuben Farrugia reiterated that now the Board had an uncontested state of fact. The preferred bidder had all the chance to contest it but chose not to attend and do so.

At this point the hearing was closed.

**This Board,**

**Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 17<sup>th</sup> July 2014 and also through Appellant's verbal submissions during the hearing held on 4<sup>th</sup> September 2014, had objected to the decision taken by the pertinent Authority, in that :**

- a) Appellant contends that, in accordance with clause 7.1 (B) (ii) (1) of the tender document, this same clause states that "The maximum of sub-contracting" should not exceed 40% of the tender value.**
- b) Appellant claims that the Preferred Bidder does not possess the capacity of the printing process, so that, same bidder has to subcontract for the printing application. Appellant contends that the Printing process does indeed exceed the mandatory percentage of subcontracting as stipulated in the tender document.**

**Having considered the Contracting Authority's verbal submissions during the hearing held on 4<sup>th</sup> September 2014, in that:**

- a) The Contracting Authority confirmed that the Preferred offer declared that the only sub-contracting element in his bid was the distribution factor.**

**Reached the following conclusions:**

- 1. This Board notes that it is highly unusual for the Preferred Bidder not to attend for the hearing of this Appeal. This same Board was not in a position to confirm whether the Preferred Bidder had the facility to carry out the printing process or same Preferred Bidder was going to subcontract the printing process to third parties. This Board could only confirm that on previous occasions, the Preferred Bidder did not carry out the 'printing process' himself but subcontracted such activity to third parties.**
- 2. Through past similar tenders for the same tendered works, this Board established that the 'printing content' of this tender represented 80% of the**

**the Bid price, so that it exceeds by far the benchmark of the maximum 40% which the tenderer is allowed to subcontract. The crux of the matter is to establish whether the Preferred Bidder does have his own printing facility or not. In this regard, this Board opines that:**

**“The Evaluation Board should be convinced that the Preferred Bidder does have his own printing facilities as otherwise he would definitely and without any doubt, be contravening Clause 7.1 (B) (ii) (1) of the tender document.”**

**In view of the above, this Board finds in favour of the Appellant Company and recommends that:**

- a) The tender process be re-opened so that the Evaluation Board should obtain concrete confirmation, that the Preferred Bidder will be carrying out the ‘Printing element’ of the tendered works via his own facilities and not through subcontracting.**
  
- b) The deposit paid by Appellant be fully reimbursed.**

Dr Anthony Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Richard A. Matrenza  
Member

*18<sup>th</sup> September 2014*