

PUBLIC CONTRACTS REVIEW BOARD

Case No. 926

CT 2048/2014

Tender for the Cleaning Services for the Mental Health Services in a Environmentally Friendly Manner.

The Tender was published on the 2nd November 2015. The closing date was on the 12th November 2015. The estimated value of the Tender is €4,700,000.50.

On the 12th November 2015 Servizi Malta Limited filed an objection raising pre-contractual concerns about certain aspects of the Tender Document.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a hearing on Thursday the 14th April 2016 to discuss the objection.

Present for the hearing were:

Servizi Malta Limited:

Ms Claudine Ellul Sullivan
Dr Ronald Aquilina

Representative
Legal Representative

Mental Health Services:

Dr Clifton Grima
Mr Gilbert Bonnici
Dr Alexia Farrugia Zrinzo

C E O
Finance Director
Legal Representative

Department of Contracts:

Ms Susan Camilleri
Dr Christopher Mizzi

Procurement Manager
Legal Representative

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

Dr Ronald Aquilina on behalf of the Appellant explained that his client felt that certain Tender conditions were prejudicial and so had filed this pre-contractual concern. The first grievance was that the Tender required that the cleaning staff to be Maltese speaking. The second was that bidders had to provide a list of successful contracts, at least three, that must be over €100,000 and made between the years 2012 and 2014. It can be seen from the Contracting Authority's Letter of Reply that the first grievance was accepted and remedied. The second one however was not.

Dr Ronald Aquilina for the Appellant pointed out that his client has been appointed since 2007 to provide similar services at Mater Dei hospital. The value of that Tender exceeded €6,000,000.00 and the Appellant had over 400 employees in order to provide the service. Yet his client is precluded, as things stand, from bidding for the present Tender because of the 2012 to 2014 condition. His client had been awarded other Tenders since but during 2015 and so would not qualify under the present conditions. He stressed that his client was qualified to offer a competent service as was being presently provided to Mater Dei, yet Appellant felt that the present Tender discriminated against Appellant.

Dr Christopher Mizzi on behalf of the Department of Contracts stressed that after the publication of Tenders, the Tenders' selection criteria should never be changed since some bidders may have decided not to apply under the issued criteria. The present selection criteria had been added following the issue of a Government Circular 19/2013 and the amount involved was relatively small at €100,000 over three years. The number of effective contracts in order to prove experience was also small. The Board has to see whether the present conditions are in breach of the Procurement Regulations or not. He suggested that perhaps the range of dates for successful contracts could be extended by another year thus making contracts awarded between 2012 and 2015 valid for this Tender.

Dr Ronald Aquilina for the Appellant stated that his client had recently been awarded other contracts and the opening of the range in this way would be satisfactory. Ideally the range should be opened till the closing date of the Tender or till the 31st March 2016.

Dr Christopher Mizzi for the Department of Contracts declared that the range of years to qualify for experience would be changed from 2012 to 2015.

At this point the hearing was closed.

This Board,

Having noted the Appellant's "*Pre-Contractual Concern*" in terms of the "*Reasoned Letter of Objection*" dated 12 November 2015 and also through

their verbal submissions during the Public Hearing held on 14 April 2016 had objected to the decision taken by the Pertinent Authority, in that:

- a) The Appellant maintains that one of the conditions in the Tender Document was that the cleaning staff allotted for the service had to speak Maltese. In this regard, the Appellant Company insisted that this is a prejudicial condition which would deter the latter from submitting his offer;**

- b) The Appellant also contends that another condition dictated that bidders had to provide proof of successful contracts carried out amounting over € 100,000 which were executed between 2012 and 2014. In this regard, Servizi Malta Ltd maintains that this dictated condition is precluding the Appellant from bidding due to the said range between 2012 and 2014. The latter maintains that the range should be broader.**

Having considered, the Contracting Authority's "*Letter of Reply*" dated 4 April 2016 and also through their verbal submissions during the Public Hearing held on 14 April 2016, in that:

- a) With regards to the Appellant's First Grievance, the Contracting**

Authority through Paragraph 12 of its “*Letter of Reply*”, has already conceded to this request;

- b) With regards to the Appellant’s Second Grievance, the Contracting Authority is prepared to widen the range of years for which experience of similar works is to be considered.**

Reached the following conclusions:

- 1. On a general note, this Board would justifiably assert that the selection criteria imposed in this Tender is in accordance with the “*Public Procurement Regulations*”, so that any claims made by the Appellant Company, in that “*The Conditions on which were raised these concerns, were discriminatory specifications*”, is not being upheld by this Board;**

- 2. This Board notes that there is agreement between the Contracting Authority and the Appellants so that “*Cleaning Staff so deployed should be able to speak English or Maltese*”. In this regard, this Board recommends that such a minor change should be executed through a clarification;**

3. Again, this Board credibly notes that during the Public Hearing, with special reference to the Appellant’s Second Grievance, an agreement was reached in that “*the range of years (2012-2014) should be amended to read 2012-2015.*” In this regard, this Board recommends that this change is to be executed through a clarification.

In view of the above, this Board recommends that the clarifications which were agreed upon are to be issued without further delay.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

19 April 2016