

PUBLIC CONTRACTS REVIEW BOARD

Case No. 970 – MTA 896/2016: Tender for the Construction of Stands at the Following International Travel Fairs – 1) England World Travel Market (WTM) Lomdon, 2) France – IFTM Top Resa, 3) Italy – TTG Incontri – Rimini, 4) IBTM World – Barcellona.

The Tender was published on the 15th July 2016. The closing date was on the 5th August 2016. The estimated value of the Tender was €110,000 (Exclusive of VAT)

Five (5) offers had been submitted for this Tender.

On the 17th August 2016 Casapinta Design Group Limited filed an Objection against the decision taken by the Contracting Authority to award the Tender to C. Liasides Exhibitionwise Limited for the amount of €83,920 exclusive of VAT .

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 25th August 2016 to discuss the Objection.

Present for the hearing were:

Casapinta Design Group Limited:

Mr Tonio Casapinta
Dr Carlo Bisazza

Representative
Legal Representative

C. Liasides Exhibitionwise Limited:

No representatives were present

Malta Tourism Authority:

Mr Carlo Micallef
Mr Patrick Attard
Mr Bryan Azzopardi
Mr Arthur Grima
Mr Claude Mallia
Dr Maria Lisa Buttigieg
Dr Frank B Testa

Chairperson Evaluation Board
Secretary Evaluation Board
Member Evaluation Board
Member Evaluation Board
Consultant
Legal Representative
Legal Representative

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

Dr Carlo Bisazza on behalf of Casapinta Design Group Ltd explained that the Tender had been awarded to a bidder who offered a much cheaper price. The discrepancy between the Recommended Bidder's offer and that of the Appellant and the other bidders was enormous and he contended that this fact should have sounded alarm bells to the Contracting Authority.

Dr Bisazza explained that the Appellant was objecting to the award because it was anticipating, and basing the Objection on a similar occurrence with a previous Tender. He contended that it was almost impossible to offer the required service at the Recommended Bidder's price, and this would lead to a loss of time for the Contracting Authority. The Appellant had gone abroad on previous occasions to check whether the Recommended Bidder was compliant at his own expense.

Dr Frank B Testa on behalf of Malta Tourism Authority pointed out that the matter of the previous Tender raised by Dr Bisazza had not in fact been raised in the Letter of Objection and furthermore the case is still pending and has not yet been decided. He contended that the Appellant is just making assumptions about the Recommended Bidder's ability to provide the service, and one must never make any assumptions.

Decisions had to be based on facts and not assumptions. The Appellant had not in fact identify any part of the Recommended Bidder's offer as being non-compliant to the Tender conditions or which services the latter would not be able to provide. While the Appellant claimed experience, C Liasides Exhibitionwise Ltd is also known to have had experience in the matter.

Where something was not clear in the Recommended Bidder's Tender, a clarification was asked for and an acceptable reply was provided accordingly.

The Chairman remarked that in the Board's opinion, whoever makes allegations of any kind must be prepared to provide proof of such allegations. He asked about the circumstances of the second grievance of the Appellant – that the Recommended Bidder does not have a clean track record with the Contracting Authority.

Mr Tonio Casapinta on behalf of the Appellant contended that the C Liasides Exhibitionwise Ltd had been awarded a similar contract in 2013 by the Contracting Authority and had not finished setting up the stand by the opening day of the fair.

Mr Carlo Micallef, Id No. 253971M, Chief Marketing Officer with the Contracting Authority, and chairperson of the Evaluation Board, under oath testified that he was cognizant of the 2013 case mentioned by Mr Casapinta. He declared that although there had been some difficulties, the works necessary had been completed on time according to the Tender requirements.

Mr Micallef also said that during the evaluation process, the Evaluation Board had discovered that most of the offers were over budget and had asked for directives from the Department of Contracts regarding the matter. The Evaluation Board had been directed to continue with the evaluation and not to reject the offers that were over the budget.

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 August 2016 and also through their verbal submissions during the Public Hearing held on 25 August 2016 had objected to the decision taken by the Pertinent Authority, in that:

- a) Casapinta Design Group Ltd maintains that since the difference between the price they quoted and the price quoted by C Liasides Exhibitionwise Ltd amounted to approximately 68% cheaper, the Appellant contends that the Recommended Bidder cannot perform the services satisfactorily, as dictated in the Tender Document;**

- b) The Appellants also maintains that based on past performances, the Recommended Bidder does not have a clean record with the Contracting Authority.**

Having considered the Contracting Authority’s “*Letter of Reply*” dated 18 August 2016 and also their submissions during the Public Hearing held on 25 August 2016, in that:

- a) **Malta Tourism Authority insist that the allegations made by the Appellants, in that C Liasides Exhibitionwise Ltd would not be able to render the desired results at the quoted price, was purely an assumption and in this regard, no proof of any shortcomings was forthcoming by the Appellant;**
- b) **The Contracting Authority also maintains that the Recommended Bidder does have a clean record with them.**

Reached the following conclusions:

- 1. With regards to the Appellant's First Grievance, this Board, after having examined the relative documentation and the submissions made by the parties concerned, opines that the fact that the Recommended Bidder quoted a price lower by 68% of the Appellant's quote does not give any evidence that C Liasides Exhibitionwise Ltd will not honour his commitments with Malta Transport Authority.**

At the same instance, this Board is also conformed by the fact that C Liasides Exhibitionwise Ltd gave assurances to the Contracting

Authority that they will carry out the service/works as stipulated in the Tender Document.

This Board would also like to refer to the fact that the Estimated Value of this Tender was fixed at € 110,000 so that the quoted price of the Recommended Bidder, which stands at € 83,920 cannot be considered to be classified as “*abnormally low*”.

This Board opines that the same argument can be applied to the quotes of other bidders, in that; they can be classified as “*abnormally high*”. One cannot assume that due to a much lower quote from the other bids, the Recommended Bidder will not honour his commitments.

It is up to the Contracting Authority to ensure that the services/works tendered for are carried out in accordance with the stipulated conditions as dictated in the Tender Document. In this regard, this Board does not uphold the Appellant’s First Grievance.

- 2. With regards the Appellant’s Second Grievance, in that C Liasides Exhibithionwise Ltd does not have a clean record with Malta Transport Authority, Casapinta Design Group Ltd, in this regard,**

was referring to a previous Tender, wherein, it is being alleged that the Recommended Bidder did not execute the Tendered Works on time.

Apart from the fact that the Appellant's allegations have no bearing on this particular Tender, this Board after having heard the "*Chief Marketing Officer*", under oath, confirming that the Tender works which the Appellants were referring to, were in fact finished on time and that there were no litigations, opines that these allegations made by Casapinta Design Group Ltd were totally unfounded at law.

In fact, as no proof of such a shortcoming was presented during this Public Hearing, this Board also considers these allegations to be "*frivolous*". In this regard, this Board does not uphold the Appellant's Second Grievance.

In view of the above, this Board finds against Casapinta Design Group Ltd and recommends that the deposit paid by the latter should not be refunded.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Richard A Matrenza
Member

2 September 2016