

PUBLIC CONTRACTS REVIEW BOARD

Case 1985 – SPD7/2022/082 – Services – Tender in Lots for the Provision of Group and Health Insurance Policies for Malta Enterprise and its Subsidiaries

8th April 2024

The tender was issued on the 26th May 2023 and the closing date was the 26th June 2023.

The estimated value of this tender on Lot 1, Group Life Insurance, excluding VAT, was € 90,000.

On the 19th October 2023 AIB Insurance Brokers Ltd filed an appeal against Malta Enterprise objecting to their disqualification on the grounds that their bid on Lot 1, was deemed to be not technically compliant.

A deposit of € 450 was paid on Lot 1.

There were five bids on this Lot.

On the 4th April 2024 the Public Contracts Review Board composed of Dr Charles Cassar as Chairman, Dr Vincent Micallef and Ms Stephanie Scicluna Laiviera as members convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – AIB Insurance Brokers Ltd

Dr Reuben Farrugia	Legal Representative
Mr Ramon Mizzi	Representative

Contracting Authority – Malta Enterprise

Dr Christopher Vella	Legal Representative
Mr Joseph Zammit	Chairperson Evaluation Committee
Ms Ruth Degiorgio	Secretary Evaluation Committee
Mr Simon Caruana	Evaluator
Mr Johann Caruana	Representative
Mr Brian Camilleri	Representative
Mr John Buttigieg	Representative

Preferred Bidder – Antes Insurance Brokers Ltd

Mr Adrian Cumbo	Representative
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Department of Contracts

Dr Audrey Marlene Buttigieg Vella	Legal Representative
Dr Mark Anthony Debono	Representative

Dr Charles Cassar Deputy Chairman of the Public Contracts Review Board welcomed the parties and invited submissions.

Dr Reuben Farrugia Legal Representative for AIB Insurance Brokers Ltd (AIB) stated that the technical offer under Section 3 Article 4.2 required bidders to confirm on a 'Yes' or 'No' basis certain terms plus the number of the section tallying with the literature list. Appellant's bid did not include the section number and therefore there was no cross referencing. It is normal practice that insurance schedules are not issued until the policy itself is issued – hence this information could not be provided at the time of placing the bid. The only document that could be provided was the self-declaration.

Dr Christopher Vella Legal Representative for Malta Enterprise said that the facts were not contested as Appellant agrees that part of the tender requirements were not met.

Dr Mark Anthony Debono representing the Department of Contracts said that the question was whether the Appellant was entitled to correct the submission. A tender has to be submitted fully and completely.

Mr Joseph Zammit (084072M) called to testify by the Appellant stated on oath that he was the Chairperson of the Evaluation Committee (EV) and had been involved in previous insurance tenders. He confirmed that the preferred bidders, Antes, had provided full replies to the technical bid. There were five bids in all but one bidder had not provided full technical information. Referred to the technical offer of the Appellant, witness said that it had replied correctly to all questions and had provided literature lists but had failed to cross reference the answers to the literature pages. Referred to the preferred bidder's offer, witness said that in this case the technical questions had been answered by a cross reference to the literature pages but without indicating a 'yes' or 'no' answer. The EV had decided that this answer was sufficient to meet the tender requirements.

In reply to a question from Dr Vella, witness stated that since the technical offer came under Note 3 any changes meant that the result would be a new technical offer.

Further questioned by Dr Farrugia, witness stated that Antes had submitted a Lifestyle policy document and agreed that this document shows a period of insurance of only 12 months when the tender asked for a period of three years.

This concluded the testimony.

Dr Farrugia said that only now through the testimony of the witness has it been discovered that the offer of the preferred bidder was faulty. The EV claims that page 3 of the technical offer is sacrosanct but in fact it accepted an offer that lacked 'yes' replies and only gave page numbers. Why was this not noticed? Further their insurance period provided flies in the face of the fact that a three year period was required. This is a clear case of faulty evaluation and a re-evaluation of the tender is required. AIB's bid indicated agreement by stating 'yes' without quoting page number on the basis of which it was excluded. Was this a question of a clarification or a rectification? Court of Appeal decisions in Cases 348/21 and 281/20 support the requirement to seek clarification if the bid is not clear and it would to change the offer. This is also confirmed in CJEU jurisprudence. An explanation should have been sought and that would not have changed the offer.

Dr Vella stated that the facts of this case were simple – a correction to add the page numbers would have led to a change of offer. The EV is not obliged to go searching for information throughout the submissions and the bid must be complete from start to finish.

Dr Debono re-iterated that the technical form was subject to Note 3 and the onus is on the bidder to submit a complete bid. Once information was not submitted it could not be requested.

There being no further submissions the Chairman thanked the parties and declared the hearing closed.

End of Minutes

Decision

This Board noted the objection filed by AIB Insurance (herein after referred to as the appellant). The objection refers to the claims filed on the 19th October 2023 made by the same appellant against Malta Enterprise and its Subsidiaries (herein after referred to as the Contracting Authority) regarding the tender SPD7/2022/082 listed as case No.1985 in the records of the Public Contracts Review Board, and its verbal submissions during the hearing held on 04th April 2024.

The Board also noted the Contracting Authority's letter of reply filed on the 27th October 2023 and their verbal submissions and those of the Department of Contracts during the hearing on 04th April 2024, as well as the testimonies of:

Mr Joseph Zammit cited by the Appellant.

Appellant contended that;

The technical offer as outlined (Section 3, Article 4.2) required bidders to confirm terms with 'Yes' or 'No' answers and provide section numbers of the literature lists for reference. Their bid did not include literature section numbers for cross reference. Insurance schedules are usually given only when the policy is issued, so Appellant could not provide this information at the bidding stage. The only document that Appellant could provide was the self-declaration.

The above was counter argued by the Contracting Authority as follows:

The technical offer, as outlined (Section 3, Article 4.2), required bidders to confirm terms with 'Yes' or 'No' responses and furnish corresponding literature section numbers for cross reference. Both requisites were obligatory. However, the Appellant only fulfilled one requirement, i.e., confirming terms, (Yes), resulting in the rejection of the bid.

The Board view is that;

Given that, according to the evaluation committee, the applicant was excluded on the basis of Section 3, and in line with section 3 terms of reference, under "specific activities", the Board's focal point should be on the evaluation of this Section.

The Board notices that the preferred bidder's reply under the heading "Agreement to terms of reference" in technical offer form where item specification had to be verified, indicated only the page number without confirming agreement by stating 'Yes'. In his testimony the Chairperson of the Evaluation Committee Mr Zammit, stated that it was the Evaluation Committee that decided that this answer was sufficient to meet the tender requirements.

On the other hand, the appellant indicated the word 'yes', but failed to indicate the page number.

It is pertinent to point out the decision yardstick was not applied equally to both parties in the evaluation process.

Furthermore, in the course of the hearing it was brought to the Board's attention that under the heading "Period" for Group Life Insurance the insurance offered by the preferred bidder was for duration of 12 months whereas that required by the tender under Section 3 Article 4.2 was for a period of 36 months and thus conflicted with the tender requirements.

Having evaluated all the above and based on the above considerations, the Board concludes, and decides:

- a. To uphold the Appellant's concerns and grievances in regard to Lot 1.
- b. To cancel the notice of award dated 10th October 2023 sent to Antes Insurance Brokers Ltd
- c. To cancel the letter of rejection dated 10th October 2023 sent to AIB Insurance Brokers Ltd
- d. To order the contracting authority to initiate a re-evaluation of both the Appellant's and Preferred Bidder's bids on Lot 1 ensuring strict adherence to the tender requirements and to take into consideration the above findings of the Board. This re-evaluation shall be conducted by a newly constituted Evaluation Committee, comprising members who have not been previously involved in any aspect of the original evaluation process. Furthermore, it is mandated that at least one member of this newly formed committee possesses expertise in the field of insurance.
- e. To refund the deposit paid by the Appellant.

Dr Charles Cassar
Chairman

Dr Vincent Micallef
Member

Ms Stephanie Scicluna Laiviera
Member