

PUBLIC CONTRACTS APPEALS BOARD

Case 64

CT 2070/2005 Advert No 208/2005: Tourism and Support Services Training Programme

This call for tenders, published in the Maltese Government Gazette and the EU Official Journal on 17.06.2005 was issued by the Contracts Department following a request transmitted to the latter by the Malta Tourism Authority.

The closing date for this call for offers was 09.08.2005 and the global estimated value of the contract (project part-financed by the European Union) was Lm 170,938 inclusive of VAT.

The Malta Tourism Authority appointed an Evaluation Committee consisting of:

Dr J Zammit Maempel	- Chairperson
Ms Audrey Grima Baldachino	- Secretary
Mr Carmel Portelli	- Member
Mr Charles Visanich	- Member
Mr Anthony J Cachia	- Member
Mr Joe Tanti	- Member
Ms Antoinette Caruana	- Member

to analyse a total of six (6) offers submitted by different tenderers.

Following recommendations made by the Evaluation Committee to the Contracts Committee for the latter to award the tender to Messrs Misco Limited (Lm 159,300), Messrs *Santucci & Brown International Ltd as Leader of Habib Consortium*, filed an objection on 19.01.2006 which was subsequently followed by a reasoned letter of objection dated 25.01.2006.

The Public Contracts Appeals Board (PCAB) made up of Mr Alfred Triganza (Chairman) with Mr Anthony Pavia and Mr Edwin Muscat, respectively, acting as members, convened a public hearing on 21.02.2006 to discuss this objection.

Present for the hearing were:

Santucci & Brown International Ltd/ Habib Consortium

Ms Anne Maria Darmanin
Mr Lorenzo Mule Stagno
Mr Daryl Grima

Misco Ltd

Mr Morgan Parnis
Dr Henri Mizzi
Mr Anthony Carabott
Mr Chris Bianco
Ms Veronica Diacono

Malta Tourism Authority

Dr Michael Psaila – Legal Representative
Mr Alan Vella

Evaluation Committee

Dr J Zammit Maempel - Chairperson
Ms Audrey Grima Baldachino – Secretary
Mr Carmel Portelli – Member
Mr Charles Visanich – Member
Mr Anthony J Cachia – Member
Mr Joe Tanti – Member
Ms Antoinette Caruana – Member

After the Chairman’s brief introduction, the representatives of Santucci & Brown International Ltd, acting as Leader of the *Habib Consortium* were invited to explain the motive behind their objection.

Mr Lorenzo Mule Stagno started by stating that they were motivated to file their objection because according to clause 14 under *Instructions to Tenderers* they should have been furnished with detailed information which lead to the disqualification of their tender. Furthermore, they felt that for a 280-page document and a Lm 170,000 tender such information should have been outlined in more detail.

The appellants’ representative, however, placed major emphasis on the fact that they were not contesting the Contract Committee’s decision to award the tender to another bidder but were more after seeking clarification as to why their offer was not positively considered.

Mr Mule Stagno claimed that in the Evaluation Committee’s report Messrs *Habib Consortium*’s proposal ‘*was very well researched and presented.*’ Furthermore, it was also stated that ‘*detailed information has been provided, particularly about the following:*

- *Risks and concerns arising from the Project and assumptions;*
- *Project administration and management – timetable of activities, detailed milestones and activities (Gantt chart provided)*

Yet, it was also stated that

‘Although the bidders presented a strong partnership, it was noted that different project leaders were assigned for the different activities. We felt that this result in difficulties in the overall project management.’

Mr Mule’ Stagno contended that the only criticism made on their tender was related to the provision of five Key Experts for the five different activities of the project. He maintained that they should not have been penalised on this issue because the inclusion of a Project Manager under each activity was exactly in accordance with the terms of reference of the tender.

Furthermore he questioned the fact that the score of three out of five evaluators were exactly the same and that during the adjudication process the voting members of the evaluation committee, excluding the Chairman and Secretary, increased from five (5) to six (6). He claimed that according to the normal tender adjudication procedures the number of the voting member should always be in odd numbers. Finally, he said that it was noted that page six (6) in the *Instructions to Tenderers* was missing in the original tender document

Dr Michael Psaila, representing the Malta Tourism Authority, replied by stating that the Evaluation Committee based their decision on technical and financial aspects as specified in the tender document. He explained that Misco Ltd (the selected tenderer) and Habib Consortium (the appellant who classified third) obtained 81 and 71 points respectively for their technical offers. Dr Psaila said that the financial bids of these two tenderers amounted to Lm 159,300 and Lm 201,706.84 respectively.

As regards the issue of the Project Manager/s, Dr Psaila said that the Evaluation Grid in the tender document indicated that there was a requirement of one Project Manager and five experts. He explained that according to the *General Conditions for service contracts for EC external actions* of the tender document a 'Project Manager' was defined as '*the natural or legal person responsible for monitoring the implementation of the contract on behalf of the Contracting Authority.*'

However, when the PCAB asked the members of the Evaluation Committee present in the hearing whether the issue of the Project Manager/s affected the exclusion of the appellant, the reply given was in the negative.

Dr Psaila pointed out that this issue and that regarding the 'missing page' could have been mentioned in the clarifications meeting that was scheduled for 8 July 2005, yet, he remarked that none of the tenderers attended this meeting.

Dr Zammit Maempel, Chairperson of the Evaluation Committee, declared that they initially focused on the technical aspect of the offers and then analysed the financial bids. He said that although in the tender document it was specified that '*the maximum budget available for this tender is Lm 170,940 (including VAT)*' and that '*Any offer exceeding this budget will not be taken into consideration*', the offer submitted by the appellants was not eliminated even though its value amounted to Lm 201,706.84. The reason given was that the offers submitted by Messrs Misco Ltd, Outlook and Habib Consortium, respectively, were technically of a very high standard and having considered that participants could have been misled due to the missing page (a direct result emanating from a mistake in the compilation of the tender dossier), the Committee decided to consider all of them. However, Dr Zammit Maempel proceeded by stating that, after the opening of the financial bids, they focused on the first two offers because that of the appellants was substantially higher.

With regard to the composition of the Board, the Chairman of the Evaluation Committee declared that there were only five voting members. He explained that Mr Alan Vella, who attended the final meeting and also signed the report, was the liaison officer between the Ministry of Tourism and the Malta Tourism Authority. Dr

Zammit Maempel contended that the said official was not involved in any way in the evaluation process or in the granting of points. He said that the points were given on the grid by each individual evaluator and then they worked out the final average scores.

Following some discussion, it was acknowledged that in such evaluations there was an element of subjectivity.

In reply to Mr Mule Stagno's remark that although their proposal was lauded they achieved 10 points less than the recommended tenderer, Dr Zammit Maempel explained that when contenders were very close it was very unfortunate that only one of the contestants had to be chosen.

At this stage, the public hearing was brought to a close and the PCAB proceeded with its deliberations before reaching its decision.

This Board,

- having noted that the appellants, in terms of their 'reasoned letter of objection' dated 25.01.2006 and also through their verbal submissions presented during the public hearing held on 21st February, 2006, had objected to the decision taken by the General Contracts Committee, formally communicated via a letter, informing them that the tender submitted by them was not successful;
- having considered the fact that the appellants were not contesting the Contract Committee's decision to award the tender to another bidder but were more after seeking clarification as to why their offer was not positively considered;
- having noted that according to Mr Mule' Stagno the only criticism made on their tender was related to the provision of five Key Experts for the five different activities of the project;
- having attained assurances from the Evaluation Committee that the issue of the Project Manager did not give rise to the appellants' ultimate exclusion;
- having also considered Dr Zammit Maempel's statement that despite the fact that the Tender Document specified that any offer exceeding the budget allocated to this call for offers, namely, Lm 170,940 inclusive of VAT, will not be taken into consideration, the offer submitted by the appellants was not eliminated even though its value amounted to Lm 201,706.84 due to the Committee considering the issue of appellants as, possibly, having been misled;
- having confirmed that after the opening of the financial bids the Evaluation Committee focused on the first two offers because that pertaining to the appellants was substantially higher;

reached the following conclusions:-

The Public Contract Appeals Board, having considered the proceedings during the hearing, feels that the arguments brought forward by appellants do not provide sufficient proof that the Evaluation Committee, have either overlooked, or underestimated the importance of or discriminated in any manner against the appellants whilst deliberating prior to their ultimate recommendation for the tender to be awarded to Messrs Misco Limited.

In consequence to the above, the appellants' objection to the decision reached by the General Contracts Committee to award the Contract to Messrs Misco Limited, cannot be upheld by this Board.

Finally, this Board feels that, in filing their objection, appellants were doing so due to their lack of experience in tendering as they could have easily sought clarifications required without resorting to a formal appeal. However, this Board still feels that appellants should be held responsible for not attending clarification meetings as such attendance could have easily enabled them to clarify issues. As a result this Board has decided that appellants may be reimbursed 25 % of the amount deposited in filing the objection.

Alfred R Triganza
Chairman

Anthony Pavia
Member

Edwin Muscat
Member

March 13, 2006