

PUBLIC CONTRACTS REVIEW BOARD

Case No. 266

DH/2899/2010 - Adv No CAPT/57/10

Tender for Additional Electrical Supply to Sir Paul Boffa Hospital

This tender was published on the 8th October 2010. The closing date for this call for offers was 9th November 2010.

The department's estimated value of this tender was Euro 52,000.

Three (3) tenderers submitted their offers.

Messrs Electrical & Mechanical Manufacturers Ltd filed an objection on the 8th February 2011 against the decisions by the Health Division, the contracting authority, to disqualify its offer on being found administratively and technically non-compliant and to recommend tender award to Messrs F M Core Ltd for the price of €50,850.55, inclusive of VAT.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman and Mr. Edwin Muscat and Mr. Carmel J Esposito as members convened a public hearing on Monday, 21st March 2011 to discuss this objection.

Present for the hearing were:

Messrs Electrical & Mechanical Manufacturers Ltd (EMM Ltd)

Mr Jack Mifsud Representative

Messrs F M Core Ltd

Mr Edward Cauchi Representative
Mr John Gauci Representative

Health Division (Ministry of Health, the Elderly and Community Care)

Dr Adrian Mallia Legal Representative

Evaluation Committee

Ms Phyllis Mercieca Chairperson
Ing. Edith Debono Member
Ing. Oliver de Giorgio Member
Ing. Paul Vassallo Member
Mr Norman S Alexander Secretary

After the Chairman's brief introduction, the appellant company was invited to explain the motives which led to it filing an objection.

Mr Jack Mifsud, representing Electrical & Mechanical Manufacturers Ltd, the appellant company, stated that the contracting authority had listed three reasons for the rejection of his company's offer, which he opted to tackle one at a time as follows:

A) The appellant failed to visit the site of installation to ensure that the proposed panel board can be physically transported to the place of installation and that it fits in the electrical meter room with suitable space for opening of access doors and maintenance.

Mr Mifsud conceded that albeit no representative of his firm did attend the site meeting, however, he contended that it was not a must for the tenderer to attend the site visit and, as a result, that should not have led to the rejection of his company's tender. He argued that, if anything, if eventually any extra works would have resulted then the tenderer would have been obliged to provide for those extra works. At this point, replying to a question made by the Public Contracts Review Board, Mr Mifsud admitted that he did not ask for a site visit.

Dr Adrian Mallia, representing the Health Division (Ministry of Health, the Elderly and Community Care), explained that this tender was issued for the supply of additional electricity supply in connection with other works under execution by another contractor and, therefore, in this case, the delivery timeframe of this additional electrical supply was quite important. Dr Mallia remarked that, contrary to what the appellants had stated, the tenderer was obliged to visit the site because the room that was going to house this electrical supply was quite limited in terms of space, so much so that clause 3.6.2.1 of the "Technical Specifications" stated that:

"The Tenderers are to visit the site of installation and are to ensure that the proposed panel board can be physically transported to the place of installation and that it fits in the electrical meter room with suitable space for opening of access doors and maintenance."

B) The completion period indicated by the appellant was between 5 to 11 weeks whereas that requested in the clarification issued during the tendering period was within 5 weeks

Mr Mifsud stated that since the closing date of the tender was the 9th November 2010, he figured out that the tender would be awarded during the Christmas period and, as a consequence, he proposed a delivery period of between 5 to 11 weeks to take into account shutdowns at that particular period of the year. He added that the contracting authority could have asked as to whether he could carry out delivery within 5 weeks.

Dr Mallia remarked that, whilst no delivery date was indicated in the original tender document, yet, during the tendering period, the contracting authority had issued a clarification which was brought to the attention of all tenderers that the contract had to be executed within

5 weeks and, as a matter of fact, the appellant company had attached that clarification with its tender submission. Dr Mallia stated that 5 to 11 weeks was quite a departure from the 5 weeks stipulated in the said clarification.

C) According to the tender conditions, the dimensions of the panel board were to be kept to a minimum without compromising safety, however, the one offered by the appellant was a floor standing board which, when installed, would not allow safe operations.

Mr Mifsud explained that the contracting authority did not provide specific measurements to describe what it referred to as “minimum” dimensions, because the term ‘minimum’ was, in itself, a relative term and hence subject to different interpretations. He added that the tender document did not indicate if the equipment was to be wall mounted or floor standing.

Dr Mallia remarked that the contracting authority left it up to tenderers to provide either floor standing or wall mounted equipment so as not to limit competition for the simple reason that so long as the tenderer offered equipment according to specifications that would fit in the room then it would have been acceptable, be it wall mounted or floor standing. Dr Mallia declared that the appellants were disqualified because the equipment they offered was too bulky and it did not fit in the room indicated in the tender.

Reacting to an observation by the Public Contracts Review Board, Dr Mallia admitted that, ideally, apart from the site visit, the contracting authority ought to have indicated minimum dimensions so as to guide the tenderers further. However, he reiterated that that was the main reason why it was mandatory for tenderers to visit the site.

On her part Ing. Edith Debono, a member of the evaluation committee, explained that if the contracting authority had given the exact dimensions of the equipment then that might have imposed certain restrictions on the tenderers in the choice/type of equipment they offered. Ing. Debono also stated that a site plan (to scale) of the room where this equipment was to be housed was attached to the tender document and, as a result, tenderers could have worked out the space available of the installation of this equipment.

By way of conclusion, Dr Mallia remarked that if it would result that even if one out of the three reasons for rejection had been proved, then the adjudicating committee’s recommendation to disqualify the appellant company should be confirmed.

At this point the hearing was brought to a close.

This Board,

- having noted that the appellants, in terms of their ‘reasoned letter of objection’ dated 8th February 2011 and also through their verbal submissions presented during the public hearing held on 21st March 2011 had objected to the decision taken by the General Contracts Committee;
- having taken note of the appellants’ representatives’ (a) reference to the fact that albeit no representative of the said appellant did attend the site meeting, yet it was not a must for the tenderer to attend the site visit and, as a result, that should not have led to the rejection of the appellant company’s tender submission, (b) admittance that, at no stage, did the appellant company ask for a site visit, (c) claim that, since the closing date of the tender was the 9th November 2010, it was assumed that the tender would be awarded during the Christmas period, (d) claim that, as a result of (c) the appellant company had proposed a delivery period of between 5 to 11 weeks to take into account shutdowns at that particular period of the year, (e) contention that the contracting authority could have asked as to whether he could carry out delivery within 5 weeks, (f) claim that the contracting authority did not provide specific measurements to describe what it referred to as “minimum” dimensions, because the term ‘minimum’ was, in itself, a relative term and hence subject to different interpretations and (g) claim that the tender document did not indicate if the equipment was to be wall mounted or floor standing
- having heard the contracting authority’s counter arguments, particularly, those referring to the fact that (a) this tender was issued for the supply of additional electricity supply in connection with other works under execution by another contractor which rendered the delivery timeframe of this additional electrical supply as quite important, (b) contrary to what the appellants had stated, the tenderer was obliged to visit the site as specifically highlighted in clause 3.6.2.1 of the ‘Technical Specifications “which, *inter alia*, stated that the tenderers “*are to visit the site of installation and are to ensure that the proposed panel board can be physically transported to the place of installation and that it fits in the electrical meter room with suitable space for opening of access doors and maintenance.*”, (c) whilst no delivery date was indicated in the original tender document, yet, during the tendering period, the contracting authority had issued a clarification which was brought to the attention of all tenderers that the contract had to be executed within 5 weeks and, as a matter of fact, the appellant company had attached that clarification with its tender submission, (d) in the contracting authority’s view, 5 to 11 weeks was quite a departure from the 5 weeks stipulated in the clarification, (e) the contracting authority left it up to tenderers to provide either floor standing or wall mounted equipment so as not to limit competition for the simple reason that so long as the tenderer offered equipment according to specifications that would fit in the room then it would have been acceptable, be it wall mounted or floor standing, (f) the appellants were disqualified because the equipment they offered was too bulky and it did not fit in the room indicated in the tender, (g) albeit, ideally, apart from the site visit, the contracting authority ought to have indicated minimum dimensions so as to guide the tenderers further, yet, one had to take into consideration that that was the main reason why it was mandatory for tenderers to visit the site and (h) a site plan (to scale) of the room where

this equipment was to be housed was attached to the tender document and, as a result, tenderers could have worked out the space available of the installation of this equipment,

reached the following conclusions, namely:

1. The Public Contracts Review Board notes that a tenderer is never at liberty to assume anything including, as in this case, that the tender would have been awarded during the Christmas period.
2. The Public Contracts Review Board opines that the appellant company was wrong to propose a delivery period of between 5 to 11 weeks to take into account shutdowns at that particular period of the year, especially, when the contracting authority had, by way of a clarification which was duly and timely received by the appellant company, formally requested delivery to take place within 5 weeks.
3. The Public Contracts Review Board also notes that the appellant company was obliged to visit the site as specifically highlighted in clause 3.6.2.1 of the 'Technical Specifications.
4. The Public Contracts Review Board, whilst noting that the contracting authority ought to have indicated minimum dimensions so as to better guide the tenderers, yet, it is also pertinent to note that one had to take into consideration that that was one of the main reasons why it was mandatory for tenderers to visit the site, something which the appellant company refrained from doing.

As a consequence of (1) to (4) above this Board finds against the appellant company.

In view of the above and in terms of existing public contracts regulations this Board recommends that the deposit submitted by the said appellants should not be reimbursed.

Alfred R Triganza
Chairman

Edwin Muscat
Member

Carmel J Esposito
Member

7 April 2011