

PUBLIC CONTRACTS REVIEW BOARD

Case No. 270

UM/1560

Tender for the Upkeep and Cleaning of the Outside Areas on Campus at the University of Malta

This call for tenders was published in the Government Gazette on 7th December 2010. The closing date for this call with an estimated budget of € 54,000 (excl. VAT) was 12th January 2011.

Five (5) tenderers submitted their offers.

FM Core Ltd filed an objection on 25th February 2011 against the decision taken by the University of Malta to recommend the award of the tender to Clentec Ltd for the price of €50,756.99 when it had submitted a cheaper offer.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr Edwin Muscat and Mr. Carmel Esposito as members convened a public hearing on Wednesday, 6th April 2011 to discuss this objection.

Present for the hearing were:

FM Core Ltd

Mr Edward Cauchi	Managing Director
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Clentec Ltd

Dr Anton Naudi	Legal Representative
Mr Simon Turner	Representative
Ms Roanne Avallone	Representative
Mr Victor Asciak	Representative

University of Malta

Dr Oriella Degiovanni	Legal Representative
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Evaluation Board:

Mr Tonio Mallia	Chairman
Mr Karm Saliba	Member
Mr Elton Baldacchino	Secretary

After the Chairman's brief introduction, the appellant company was invited to explain the motives of its objection.

Mr Edward Cauchi, engineer and managing director representing FM Core Ltd, explained that he had been informed that his company's offer had been disqualified due to the fact that:

“The liability insurance policy attached in the tender document is not in the name of the FM Core Ltd but in the name of Med Tech Services Ltd. Although the tenderer mentioned in the Company's Profile that FM Core Ltd “took over the business of OMED and the building services division of MTS's; this does not mean that it forms part of Med Tech Services Ltd.”

Mr Cauchi remarked that the insurance cover submitted with the tender was issued in the name of Med. Tech Services Ltd (MTS) which had been in this line of business for about 35 years and had the same owners as FM Core Ltd. He added that in 2010 it was decided to set up a new company, FM Core Ltd, to handle the servicing business of Med. Tech Services Ltd. Mr Cauchi pointed out that the insurance policy covered third party liability in respect of personnel of Med. Tech Services Ltd and of FM Core Ltd and he claimed to have a document to this effect which, however, admittedly, had not been submitted with the original tender. Mr Cauchi further explained that Med. Tech Services Ltd and FM Core Ltd were going through a period of transition at the time that this tender was in the process.

Dr Oriella Degiovanni, legal representative of the University of Malta, explained that it was FM Core Ltd that was taking over from Med. Tech Services Ltd and, as a result, the appellant company was obliged to produce an insurance policy in the name of the tenderer as requested, namely, FM Core Ltd. Dr Degiovanni added that the contracting authority was not furnished with any documentation other than a statement that FM Core Ltd was taking over this line of business from Med. Tech Services Ltd and, effectively, as things stood, the University of Malta had no option but to consider that insurance policy submitted as irrelevant because the University of Malta would have eventually had to enter into a contract with FM Core Ltd and not with Med. Tech Services Ltd. The contracting authority's legal advisor argued that had Med. Tech Services Ltd taken over from FM Core Ltd then one might perhaps have considered the insurance document submitted in a different light. Dr Degiovanni explained that the non submission of a proper insurance policy rendered the offer administratively non-compliant from the very start and that it was not a question of seeking a clarification thereon.

Dr Anton Naudi, legal representative of Clentec Ltd, the recommended tenderer, pointed out that the appellant company had based its letter of objection on the issue of price, claiming that its offer was cheaper than that of the recommended tenderer, whereas at the hearing it was observed that the appellant company's representative made no mention of the issue of price, presumably because the appellant company had later on realised that the reason for the rejection of its bid was administrative non-compliance rather than price.

Mr Cauchi complained that the University of Malta had failed to inform the company in the first instance of the reason/s for the tendering company having failed to win this contract and that it was at a later stage and in an informal manner that he, personally, learned of the reason

why his company was unsuccessful in its bid to secure this contract.

Mr Mallia, chairman of the evaluation board, explained that, following the issue of the notice of tender award then aggrieved bidder/s had the opportunity to seek relevant explanations from the contracting authority and even to lodge an appeal.

The Public Contracts Review Board remarked that contracting authorities have to inform unsuccessful bidders of the outcome of the tendering process and to furnish them with the reason/s for being rejected or unsuccessful. However, the Board added that, evidently, in this case, the appellant company's representative/s still had the opportunity to obtain this information and to lodge an appeal.

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 25th February 2011 and also through their verbal submissions presented during the hearing held on 6th April 2011, had objected to the decision taken by the pertinent authorities;
- having noted all of the appellant company's representatives' claims and observations, particularly, the references made to the fact that (a) the company was informed that its offer had been disqualified due to the fact that the "*liability insurance policy attached in the tender document is not in the name of the FM Core Ltd but in the name of Med Tech Services Ltd*" and this despite of the fact that "*the tenderer mentioned in the Company's Profile that FM Core Ltd "took over the business of OMED and the building services division of MTS's; this does not mean that it forms part of Med Tech Services Ltd.*", (b) the insurance policy covered third party liability in respect of personnel of Med. Tech Services Ltd and of FM Core Ltd and (c) the University of Malta had failed to inform the company in the first instance of the reason/s for the tendering company having failed to win this contract and that it was at a later stage and in an informal manner that he, personally, learned of the reason why his company was unsuccessful in its bid to secure this contract,
- having considered the contracting authority's representative's reference to the fact that (a) it was FM Core Ltd that was taking over from Med. Tech Services Ltd and, as a result, the appellant company was obliged to produce an insurance policy in the name of the tenderer as requested, namely, FM Core Ltd, (b) the contracting authority was not furnished with any documentation other than a statement that FM Core Ltd was taking over this line of business from Med. Tech Services Ltd and, effectively, as things stood, the University of Malta had no option but to consider that the insurance policy submitted as irrelevant because the University of Malta would have eventually had to enter into a contract with FM Core Ltd and not with Med. Tech Services Ltd, (c) the non submission of a proper insurance policy rendered the offer administratively non-compliant from the very start and that it was not a question of one seeking a clarification thereon and (d) following the issue of the notice of tender award then aggrieved bidder/s had the opportunity to seek relevant explanations from the contracting authority and even to lodge an appeal

reached the following conclusions, namely:

1. The Public Contracts Review Board argues that contracting authorities have to inform unsuccessful bidders of the outcome of the tendering process and to furnish them with the reason/s for being rejected or unsuccessful.
2. The Public Contracts Review Board concurs with the argument brought forward by the contracting authority, namely that since it was FM Core Ltd that was taking over from Med. Tech Services Ltd, the appellant company was obliged to produce an insurance policy in the name of the tenderer as requested, namely, FM Core Ltd. Furthermore, one has to also agree with the fact that, as things stood, the University of Malta had no option but to consider that the insurance policy submitted as irrelevant because the University of Malta would have eventually had to enter into a contract with FM Core Ltd and not with Med. Tech Services Ltd.
3. The Public Contracts Review Board also agrees that the non submission of a proper insurance policy rendered the offer administratively non-compliant from the very start and that it was not a question of one seeking a clarification thereon.

In view of the above this Board finds against the appellant company and also recommends that the deposit paid by the appellants should not be reimbursed.

Alfred R Triganza
Chairman

Edwin Muscat
Member

Carmel Esposito
Member

11April 2011