

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 276**

**ETC/EURES/15A/10**

**Tender for the Hire, Installation and Removal of Fair Stands, Furniture and Equipment**

This call for tenders was published in the Government Gazette on 3<sup>rd</sup> December 2010. The closing date for this call with an estimated budget of €72,000 was 23<sup>rd</sup> December 2010.

Three (3) tenderers submitted their offers.

Casapinta Design Group Ltd filed an objection on 15<sup>th</sup> February 2011 against the decision by the Employment and Training Corporation (ETC) to disqualify its offer and to recommend the award of the tender to Zaffarese Exhibitions and Events Ltd.

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 Monday, 18<sup>th</sup> April 2011 to discuss this objection.

Present for the hearing were:

### **Casapinta Design Group Ltd**

Mr Tonio Casapinta	Representative/Chairman
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### **Zaffarese Exhibitions and Events Ltd**

Mr Benny Zaffarese	Representative
Mr Thomas Farrugia	Representative

### **Employment and Training Corporation (ETC)**

Dr Ian Spiteri Bailey	Legal Representative
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### **Evaluation Board**

Mr Rafael Scerri	Chairman
Mr Edwin Camillieri	Member
Ms Nicola Cini	Member
Mr Martin Casha	Secretary

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

Mr Tonio Casapinta, representing Casapinta Group Ltd, the appellants, explained that

- the *Explanatory Notes* in the tender document's Point 10 dealt with 'On Site representative' which read as follows:

*"The contractor's representative shall be present at the venue of the fair/s for the whole duration of the fair/s, which is normally two days for each fair, and would be required to be present between 08:00 till 20:00 hours. This representative shall also be on site during the setting up/removal of the stands, equipment, etc. on the day preceding the official opening of the fair, and the removal of the same stands, equipment, etc at the end of the fair or on the following day"*

- inadvertently, in his company's submission, the words "on call" under Item 15 of Volume 4 'Financial Bid' were added;
- in view of the fact that the tender closed on the 23<sup>rd</sup> December when his firm would have been closed for the Christmas holidays, it was decided that the company's tender document would be submitted on the 14<sup>th</sup> December 2010;
- the Employment and Training Corporation had sent a clarification note on the 14<sup>th</sup> December 2010 precisely on the issue of "On Site Representative", namely, when his firm had already submitted its tender document in which it had mistakenly overlooked to cross out the words 'on call';
- elsewhere in the tender submission, his firm's submission did not include any reference to 'on call site representative', such as in the other schedule that was, admittedly, used by the contracting authority only for evaluation purposes;
- the inclusion of the term 'on call' was a genuine mistake on his company's part and that it was unfortunate that due to this error the firm's tender was recommended for rejection when, otherwise, it was a compliant tender and the cheapest one submitted;
- the site representative was required for such petty tasks as that of the replacement of a bulb here and there and the like;
- no blame was attributed to the adjudication committee as it was appreciated that it had to evaluate in line with regulations.

Dr Ian Spiteri Bailey, legal representative of the contracting authority, noted that the appellant company had already admitted his company's mistake in submitting erroneous information and that no corrective action was taken on the appellants' part between the 14<sup>th</sup> December 2010, being the date the appellant company submitted its tender and the date of the clarification issued by the Employment and Training Corporation, and the 23<sup>rd</sup> December 2010, being the

closing date of the receipt of tenders. Dr Spiteri Bailey added that in the tender document it was clearly indicated that the site representative had to be present for the whole duration of the fair and certainly not to be 'on call' and go on site when something went wrong. Dr Spiteri Bailey also remarked that out of the three participating tenderers, another tenderer was disqualified, more or less, for the reason as the said tenderer had indicated this representative would be on site 'for the set-up'.

Mr Martin Casha, secretary to the adjudicating board, explained that, contrary to what the appellant company was saying, there were two and not three schedules, namely Volume 4 'Financial Bid (*fee/rate price based contract*)' and another schedule which was used by the board strictly for evaluation purposes. Mr Casha pointed out that, whilst the appellant company was not required to add anything to the description of item 15 of Volume 4, yet it was the same appellant company which decided to include the phrase 'on call' which was incompatible with Explanatory Note no. 10.

Mr Casapinta by way of conclusion reiterated that it was a genuine mistake on his company's part but otherwise the company's tender was compliant and the cheapest.

The Chairman Public Contracts Review Board remarked that (i) clarifications issued by the contracting authority formed an integral part of the tender document, (ii) it was the responsibility of the participating tenderer to make sure that such tenderer presented a fully compliant tender and (iii) that the reason for rejection did not concern the price and that the price element would be considered once the tender was compliant with requirements.

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 15<sup>th</sup> February 2011 and also through their verbal submissions presented during the hearing held on 18<sup>th</sup> 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) inadvertently, in his company's submission, the words "on call" under Item 15 of Volume 4 'Financial Bid' were added, (b) in view of the fact that the tender closed on the 23<sup>rd</sup> December when his firm would have been closed for the Christmas holidays, it was decided that the company's tender document would be submitted on the 14<sup>th</sup> December 2010, (c) the Employment and Training Corporation had sent a clarification note on the 14<sup>th</sup> December 2010 precisely on the issue of "On Site Representative", namely, when his firm had already submitted its tender document in which it had mistakenly overlooked to cross out the words 'on call', (d) elsewhere in the tender submission, his firm's submission did not include any reference to 'on call site representative', such as in the other schedule that was, admittedly, used by the contracting authority only for evaluation purposes, (e) the inclusion of the term 'on call' was a genuine mistake on his company's part and that it was unfortunate that due to this error the firm's tender was recommended for rejection when, otherwise, it was a compliant tender and the cheapest one submitted and (f) the site representative was required for such petty tasks as that of the replacement of a bulb here and there and the like;

- having considered the contracting authority's representative's reference to the fact that (a) the appellant company had already admitted his company's mistake in submitting erroneous information and that no corrective action was taken on the appellants' part between the 14<sup>th</sup> December 2010, being the date the appellant company submitted its tender and the date of the clarification issued by the Employment and Training Corporation, and the 23<sup>rd</sup> December 2010, being the closing date of the receipt of tenders, (b) in the tender document it was clearly indicated that the site representative had to be present for the whole duration of the fair and certainly not to be 'on call' and go on site when something went wrong and (c) out of the three participating tenderers, another tenderer was disqualified, more or less, for the reason as the said tenderer had indicated this representative would be on site 'for the set-up',

reached the following conclusions, namely:

1. The Public Contracts Review Board considers that it remains the responsibility of the participating tenderer to make sure that one presented a fully compliant tender as well as abiding by the specifications, terms and conditions as stated in the said document and any clarifications resulting thereto. As a consequence, this Board cannot accept the argument raised by the appellant company's representative relating to the fact that, in similar circumstances, the contracting authority has to close an eye in view of the fact that a firm decides to close for its Christmas holidays during the term within which the call for the tender in question is still open rendering a pivotal 'clarification note' circulated in the 'interim' as unimportant.
2. The Public Contracts Review Board opines that clarifications issued by contracting authorities form an integral part of a tender document.
3. Furthermore, this Board also feels that any negligence demonstrated by tendering companies, regardless of all the good intentions shown, should not be interpreted as one having a free hand to arbitrarily refrain from (a) submitting or signing mandatory information, ancillary documents and declarations and (b) including terms which go contrary to the overall spirit of the contracting authority's tender specifications.
4. The Public Contracts Review Board agrees with the appellant company that no blame should be attributed to the adjudication committee as the latter had to evaluate in line with regulations.

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

28 April 2011