

Public Contracts Review Board

Case No. 293

T 092/10

Invitation to Tender for the Provision of Consultancy Services for Business Cluster Thematic Strategies and related services

This call for tenders was published in the Government Gazette on 20th August 2010. The closing date for this call for offers was 11th October 2010.

The estimated value of tender was Euro 230,000

Two bidders submitted **their** offers.

Angelou Economic Advisers Inc. filed an objection on 21st February **2011** against the decision by Malta Information Technology Agency (MITA), “not to award this tender to any of the bidders participating in this procurement process” as the Agency deems that the experts proposed by Angelou Economic Advisers Inc “did not have the extent of sectoral ICT experience considered to be required for the effective performance of the contract.”

The Public Contracts Review Board composed of Mr Edwin Muscat as Acting Chairman, and Mr Joe Croker and Mr Carmel J Esposito as members convened a public hearing on Wednesday, 25th May, 2011 to consider this objection.

Present for the hearing were:

Angelou Economic Advisors Inc.

Dr Malcolm Mifsud	Legal Representative
Mr David Spiteri Gingell	Representative
Mr George Papagiorcopulo	Representative

Malta Information Technology Agency (MITA)

Dr Pauline Debono	Legal Representative
Dr Marouska Cilia Barbara	Legal Representative

Evaluation Board

Mr Carmelo Formosa	Member
Ms Joanna Azzopardi	Member
Mr Richard Schembri	Member

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

Dr Malcolm Mifsud, on behalf of Angelou Incorporation, explained that by letter dated 14th February, 2010, his client was informed that "MITA has decided not to award this tender to any of the bidders participating in this procurement process" and that "Angelou Economic Advisors Inc. was not successful because MITA deems that the experts proposed by Angelou Economic Advisors Inc. did not have the extent of sectoral ICT experience considered to be required for the effective performance of the contract".

Dr Mifsud proceeded to explain that the tender specifications required a minimum of seven years experience in a number of business areas. According to the contracting authority, the only shortcoming in his client's offer concerned the ICT area, which meant that the experts in the other areas satisfied the requirements of the contracting authority. Hence, the purpose of this appeal was being limited to that issue only. He reiterated that all the experts proposed by his client for this contract were capable, in varying measures, to contribute in the area of ICT, however, his client had specifically proposed Mr David Spiteri Gingell for this area. Mr Spiteri Gingell's vast experience in ICT was amply documented in the tender submission.

On being invited to give an account of his extensive experience in drafting and implementing ICT policies and strategies, Mr Spiteri Gingell proceeded to give a long list of projects in which he was protagonist. This list included:

Experience in drafting Policy/Strategy Documents

1988-1989 He drew policy paper for the creation of the Staff Development Organisation as a supplementary paper to work of the Public Service Reform Commission.

1990-1996 He prepared all strategy and policy papers on public service reform presented by the Management System Unit to the Cabinet Committee on Public Service Reform.

1997-1998 He prepared all the strategy papers to Cabinet Committee on (a) Public Service Modernisation, and (b) Public Finance and (c) Human Resource Management

1998-2000 and 2002-2004 He directed and prepared the introduction of ICT policies, standards and guidelines within the Public Service and MITTS Ltd.

2005-2007 He directed and led the drafting of the White Paper on pensions

2005-2007 He drafted the National strategy for Research and Innovation

2007-2010 He drafted the National Strategy for Industry for 2007-2010.

Experience in drafting ICT Master Plans

1992-1994 He played a key part in the design of the strategy of the National Strategy for IT

1994-1996 With the assistance of officials from the Ontario Government, Canada, he led the design and implementation of a strategy on ICT for Education

1997-1998 He drafted the 1999-2001 Information Systems Strategic Plan for the Government of Malta and subsequently was responsible for its implementation.

1999-2000 He drafted the Vision and Strategy for the attainment of e-Government and was subsequently responsible for its implementation.

2001-2002 He co-authored the 2003-2005 Information Systems Strategic Plan for the Malta Government.

2006-2007 As Executive Chairman of MITTS LTD he directed the design of a new Information Systems Strategic Plan for Government of Malta.

2009 On behalf of the Commonwealth Secretariat, he worked with the Government of Belize to design a strategy that established the foundations for the implementation of an e-Government Strategy.

2010 Appointed by the Commonwealth Secretariat to design a Handbook for Good Practices for e-Government design and implementation. He was also commissioned by the Ministry of Health, Elderly and Community Care to review the ICT strategy and propose short and long term e-health recommendations.

Dr Pauline Debono, legal representative of MITA replied that the contracting authority acknowledged the competence of all the experts proposed by appellant in the various sectors requested in the tender document, including Mr Spiteri Gingell as an expert in ICT. Dr Debono pointed out that the problem stemmed from the fact that ICT was not a stand alone pillar, but it was a common element in the various business areas in order to achieve one of the objectives set out in Section 3 of the tender document, that is, to transform public service delivery through the application of ICTs

Dr Debono declared that there was no problem with the experts in their individual areas, but the problem cropped up with regard to the particular skill required to bridge the business area and the ICT. She added that from the tender documentation, it did not emerge that the individual experts had the skill to bridge the manual process to the electronic process except for Mr Spiteri Gingell who undoubtedly possessed that expertise, however it was doubtful if he could provide the required input in each of the seven business areas. Dr Debono concluded that the MITA board was not being provided with the desired comfort that the objectives set out in the tender document could effectively be achieved.

At this point, the Acting Chairman, Public Contracts Review Board intervened to make the following observations:

- the evaluation board that had been appointed by MITA , had recommended the award of this tender to appellants once the company met all the technical requirements and offered the most economically advantageous bid.
- this recommendation was eventually endorsed both by the Chief Executive Officer of MITA as well as by the Department Manager for Strategy, Planning Performance and CIO Liaison of the same Agency.
- in spite of these positive recommendations in favour of appellants, the MITA Board decided to reject this offer on the grounds that the experts proposed by recommended tenderer did not have the necessary ICT experience.
- such decision was neither adequately explained nor transparent enough for the purpose of the tendering process.

In her reply, Dr Debono explained that the tendering procedure adopted by MITA passes through various stages. Once the evaluation board assesses tender submissions and decides to make a recommendation, it forwards same to the Chief Executive Officer who acts as a link between the adjudication board and the MITA Board. Eventually, it is this latter board that takes the final decision to award or reject a tender. This process is necessitated by the fact that the MITA Board has a wider overview of the aims and objectives of the Agency.

Dr Debono maintained that on the basis of the documentation submitted, it was clear that the ICT aspect of the project depended mainly on one expert, Mr Spiteri Gingell, which in itself constituted a risk to the contracting authority. Dr Debono declared that she would have preferred if the Chief Executive Officer of MITA were present to give his version of events but unfortunately he was caught in other urgent business.

Dr Mifsud reiterated that the tender document set out the minimum requirements and, contrary to what Dr Debono had indicated, Query No 09 of Clarification No 2 which was communicated to members at the briefing meeting held on 10 September 2010 stated that “each expert proposed has to have 7 years experience in that particular area (i.e. we are not expecting one expert to have 7 years experience in all areas). Dr Mifsud insisted that his client’s submission not only met the minimum requirements of the tender but even exceeded them. He added that the tender document bound both the tenderer and the contracting authority, so that the latter was not at liberty to change the tender criteria.

Mr Spiteri Gingell intervened to explain that:

1. as part of the methodology used in the tender submission, a core working group was set up with a carefully selected expert for each business sector according to a planned strategy.
2. when speaking about ICT one did not refer to the technological aspect but one referred to business and his role as government chief information officer

had been to introduce strategic planning for ICT which included the bridging aspect mentioned by Dr Debono.

3. he was the author of the e-Government Strategy which was introduced in 1990 and which he supervised up to 2005 and as a result of which Malta ranked number one within the EU for its e-government solutions.
4. whereas the Commonwealth Secretariat had appointed him as expert on the implementation of such strategies overseas, it appeared that MITA had decided that he was not capable of implementing such strategies at the local level.
5. technology was not that important for the purposes of policy and strategy design and the tender document did not deal with the technical aspects but it dealt with an ICT Master Plan as a policy document.
6. confirmed that the proposed experts possessed the necessary background to apply ICT for business as a policy.

Dr Debono concluded by reiterating that the competence of the proposed experts was at no point questioned.

At this point the hearing was brought to a close.

This Board,

- having noted the appellants in terms of their reasoned letter of objection dated 21st February 2011 and also through their verbal submissions presented during the hearing held on Wednesday 25th May 2011 had objected to the decision taken by the pertinent authorities;
- having noted appellants' representative's insistence that (a) all the experts proposed by his client had the required experience in their business areas, and (b) that they were all capable in varying measures to contribute in the area of ICT, and (c) that Mr Spiteri Gingell, besides having vast ICT experience had also the necessary credentials to perform the activities requested under this service tender;
- having taken note of Mr Spiteri Gingell's extensive experience in drafting and implementing ICT policies as well as master plans;
- having taken note of MITA's legal representative statement that (a) the contracting authority acknowledged the competence of all the experts proposed by the appellant, and (b) from the documentation submitted by the appellant, it did not emerge that the individual experts had the skill to bridge the manual process to the electronic process except for Mr Spiteri Gingell., and (c) that the MITA Board had doubts whether Mr Spiteri Gingell could provide the required input in each of the seven business areas – a risk that the Agency was wary to take, and (d) that appellants failed to provide MITA

Board with the comfort that the objectives set out in the tender document would be met;

- having taken note that the adjudication board had unanimously recommended the award of the tender to appellants as their bid met all the technical requirements and also was the most economically advantageous offer;
- having taken note that the adjudication board's recommendation was endorsed by the Agency's Chief Executive Office and by the Department Manager for Strategy, Planning, Performance and CIO Liaison;
- having taken note of MITA's legal advisor's explanation of the Agency's procedure in awarding tenders;
- having taken note of Mr Spiteri Gingell's explanation regarding (a) appellants methodology used in their tender submission, and (b) that, when speaking about ICT one referred to business and not to technological aspects, and (c) that as Chief Information Officer, his role in introducing strategic planning for ICT included the bridging aspect mentioned by Dr Debono and (d) that technology was not that important for the purposes of policy and strategy design and the tender document did not deal with technical aspects as such but it dealt with an ICT master plan as a policy document;

reached the following conclusion,

MITA's Board decision to reject appellant's offer lacks details and it is neither convincing nor transparent. The Agency's adjudication board had gone into great detail in evaluating appellants' offer and did not hesitate to express concern where it was necessary (re company's financial standing). As regards to technical aspects of this tender, the adjudication board's comments were mostly favourable as expressed by the marks scored against each technical requirement. Again, this Board (PCRB) noted that neither MITA's Chief Executive Officer nor the Department Manager for Strategy, Planning, Performance and CIO (two senior officials, who must have had at least, a general idea of the "wider overview of the aims and objectives" of the Agency as MITA's legal adviser professed that the MITA's Board have) had offered any qualifying comment on the adjudication board's recommendation. This Board concludes that MITA Board's decision to reject appellants' offer was not sufficiently substantiated during the hearing unlike appellants' submissions which were forceful and convincing.

In view of the above, this Board finds in favour of appellants and recommends the reintegration of appellants' offer in the tendering process. This Board also recommends that the deposit submitted by appellants should also be reimbursed.

Edwin Muscat
Acting Chairman

Carmel J Esposito
Member

Joe Croker
Member

6 June 2011