

PUBLIC CONTRACTS REVIEW BOARD

Case No. 335

MGTIL/T01/2011

Tender for the Provision of Accounts and Payroll

This call for tenders was published in the Government Gazette on 28th January 2011. The closing date for this call was the 11th March 2011.

Eight (8) tenderers submitted their offers.

RSM Malta Consulting Ltd filed an objection on the 11th April 2011 against the decision by the Malta Government Technology Investments Ltd (MGTIL) to disqualify its tender on being found administratively non-compliant.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr Carmel Esposito and Mr Joseph Croker as members convened a public hearing on Friday, 21st October 2011 to discuss this objection.

Present for the hearing were:

RSM Malta Consulting Ltd

Ms Maria Micallef	Representative
Mr V Comodini	Representative

KPMG Ltd

Mr Pierre Portelli	Representative
Mr F. Clark	Representative

Malta Government Technology Investments Ltd

Evaluation Board:

Mr Dennis Attard	Chairman
Mr Noel Borg	Member
Mr Mark Vella	Member
Ms Amanda Sciortino	Secretary

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

Ms Maria Micallef, representing RSM Malta Consulting Ltd, the appellant company, stated that by letter dated 7th April 2011, the Malta Government Technology Investments Ltd informed her that the offer was found administratively not compliant because "*the evaluation board noted in its observations that your tender submission indicated a number of companies for whom similar services were provided it failed to adhere to the minimum criteria of 20 companies as requested at Volume 1 Section 1 clause 6.1.2 nor did it indicate that such existed or that you were willing to provide such information*".

Ms Micallef put forward the following arguments:-

- i. in its tender submission RSM Malta Consulting Ltd had described itself as a firm which had 40 professional employees on its books, which, in itself, was indicative that it was capable to undertake this contract;
- ii. with regard to the requirement of a minimum number of 20 companies for which similar services had been provided, her firm had indicated 3 public entities, namely the Ministry of Finance the Economy and Investment, the *Malta Council for Economic and Social Development* and the *Kunsill Malti għall-Isport*, and then included private companies under the term 'various';
- iii. if this were to involve audit work then the information as to who the auditors of a firm were would be publicly available at the Malta Financial Services Authority. Nevertheless, in this particular instance only accounting work was involved and, as a consequence, one needed to obtain clearance from private clients to include their company's name in the tender submission and to be made aware that they could be approached by the contracting authority;
- iv. in the covering letter attached to the tender submission it had been stated that, on request, RSM Malta Consulting Ltd was prepared to furnish the list of the private companies referred to under 'others';
- v. during the process the Malta Government Technology Investments Ltd had requested a clarification regarding the price quoted in the sense that RSM Malta Consulting Ltd quoted a rate whereas the Malta Government Technology Investments Ltd requested a global amount, which issue had been settled, and, at that point in time, RSM Malta Consulting Ltd reasoned out that its offer had been found administratively and technically compliant once the contracting authority was verifying the price, which, usually, was the last item to be considered;
- vi. eventually, RSM Malta Consulting Ltd was informed that its tender had been rejected since it did not provide the list of, at least, 20 companies and that the tender had been awarded to another firm at a higher price keeping in view that the award was to be made to the cheapest compliant offer; and

- vii. the appellant company felt aggrieved by the Malta Government Technology Investments Ltd's decision because, once a clarification had been requested on the price, then a clarification ought to have, likewise, been sought on the list of at least 20 companies to demonstrate experience.

At this point the Chairman, Public Contracts Review Board enquired (a) why the appellant company had not supplied the names of the firms once this appeared to have been a mandatory requirement and (b) at what stage of the process the appellant company would have been willing to furnish such names.

Ms Micallef had expected that if her firm's offer would have qualified for award then the contracting authority would ask, by way of a clarification, for the names of the firms referred to as 'others', otherwise, if her firm were not to be so shortlisted, then it was useless to provide the details of her company's clients. She insisted that in the covering letter accompanying the tender submission she had personally indicated that the company names would be given if the contracting authority were to make such a request. Ms Micallef failed to understand the logic behind the contracting authority's action to request a clarification on the price if her company's offer had been found administratively non-compliant in the first place.

The Chairman Public Contracts Review Board remarked that a clarification was aimed at obtaining an explanation with regard to information already submitted but it should not be resorted to in order to obtain mandatory information which should have been submitted in the first instance or to obtain additional information. He added that, although one could perhaps argue that the requirement of 20 clients was not arrived at scientifically, the way things were presented, the adjudicating board only had 3 out of a minimum of 20 companies on which to evaluate the appellant company, namely it might have been a different scenario had the appellant company identified, say, 17 firms out of 20 and the rest were referred to as 'others'.

Mr Dennis Attard, chairman of the adjudicating board, submitted the following reactions:-

- a. the tender document requested a global amount whereas the appellant company quoted an hourly rate and, as a result, the contracting authority sought to sort out this issue from the very beginning so that it would be in a position to evaluate the tenders on a like-with-like basis, namely the fact that it had sought that clarification about the price did not mean that all was well with the administrative and technical compliance;
- b. with regard to the minimum requirement of 20 clients, the appellant company only named three public entities and 'various clients from the public sector, remote gaming, food processors, importers and retailers' without naming them; and
- c. the other tenderers seemed to have had no problem with the submission of this information concerning public or private entities.

Mr Noel Borg, a member of the adjudicating board, remarked that the board had to adjudicate on given information and that it did not have to assume anything in the process.

The Chairman, Public Contracts Review Board felt that the six-week period between the publication date and the closing date of the tender was sufficient for the tenderer to obtain clearance from its clients for their inclusion in the tender submission. He added that one should not expect the contracting authority to chase all tenderers to submit data which should have been submitted in the first instance.

At this point the hearing was brought to a close.

This Board,

- having noted that the appellant's company, in terms of the reasoned letter of objection of the 11th April 2011, and through the verbal submissions made during the hearing held on the 20th October 2011, had objected against the decision by the Malta Government Technology Investments Ltd to disqualify its tender on being found administratively non-compliant;
- having noted the appellant firm's representative's claims and observations regarding the fact that (a) by letter dated 7th April 2011, the Malta Government Technology Investments Ltd informed the said tenderer that the offer was found administratively not compliant because "*the evaluation board noted in its observations that your tender submission indicated a number of companies for whom similar services were provided it failed to adhere to the minimum criteria of 20 companies as requested at Volume 1 Section 1 clause 6.1.2 nor did it indicate that such existed or that you were willing to provide such information*", (b) in its tender submission RSM Malta Consulting Ltd had described itself as a firm which had 40 professional employees on its books, which, in itself, was indicative that it was capable to undertake this contract, (c) with regard to the requirement of a minimum number of 20 companies for which similar services had been provided, her firm had indicated 3 public entities, namely the Ministry of Finance the Economy and Investment, the *Malta Council for Economic and Social Development* and the *Kunsill Malti għall-Isport*, and then included private companies under the term 'various', (d) whilst if this were to involve audit work then the information as to who the auditors of a firm were would be publicly available at the Malta Financial Services Authority, yet, in this particular instance only accounting work was involved and, as a consequence, one needed to obtain clearance from private clients to include their company's name in the tender submission and to be made aware that they could be approached by the contracting authority, (e) in the covering letter attached to the tender submission it had been stated that, on request, RSM Malta Consulting Ltd was prepared to furnish the list of the private companies referred to under 'others', (f) during the process the Malta Government Technology Investments Ltd had requested a clarification regarding the price quoted in the sense that RSM Malta Consulting Ltd quoted a rate whereas the Malta Government Technology Investments Ltd requested a global amount, which issue had been settled, and, at that point in time, RSM Malta Consulting Ltd reasoned out that its offer had been found administratively and technically compliant once the contracting authority was verifying the price, which, usually, was the last item to be considered, (g) eventually, RSM Malta Consulting Ltd was informed that its tender had been rejected since it did not provide the list of, at least, 20 companies and that the tender had been awarded to another firm at a higher price keeping in view that the award was to be made to the cheapest compliant offer, (h) the appellant company felt aggrieved by the Malta Government Technology Investments Ltd's decision because, once a clarification had been requested on the price, then a clarification ought to have, likewise, been sought on the list of at least 20 companies to demonstrate

experience and (i) if her firm's offer would have qualified for award then the contracting authority would ask, by way of a clarification, for the names of the firms referred to as 'others', otherwise, if her firm were not to be so shortlisted, then it was useless to provide the details of her company's clients;

- having considered the contracting authority's representative's submissions, namely that (a) the tender document requested a global amount whereas the appellant company quoted an hourly rate and, as a result, the contracting authority sought to sort out this issue from the very beginning so that it would be in a position to evaluate the tenders on a like-with-like basis, (b) the fact that it had sought that clarification about the price did not mean that all was well with the administrative and technical compliance, (c) with regard to the minimum requirement of 20 clients, the appellant company only named three public entities and 'various clients from the public sector, remote gaming, food processors, importers and retailers' without naming them, (d) the other tenderers seemed to have had no problem with the submission of this information concerning public or private entities and (e) the board had to adjudicate on given information and that it did not have to assume anything in the process;

reached the following conclusions:

1. The Public Contracts Review Board opines that a clarification is only aimed at obtaining an explanation with regard to information already submitted and that it should never be resorted to in order for one to obtain mandatory information which would have had to be submitted in the first instance or to obtain additional information.
2. The Public Contracts Review Board finds that, although one could perhaps argue that the requirement of 20 clients was not arrived at scientifically, yet the way things were presented by the appellant company left the adjudicating board with only 3 out of a minimum of 20 companies from which to evaluate the said company's tender submission and that was a very minimal sample size when compared to required level.
3. This Board also feels that the six-week period between the publication date and the closing date of the tender was sufficient for the tenderer to obtain clearance from its clients for their inclusion in the tender submission and that one should not expect the contracting authority to chase all tenderers to submit data which should have been submitted in the first instance.

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

Alfred R Triganza
Chairman

Carmel Esposito
Member

Joseph Croker
Member

31 October 2011