

PUBLIC CONTRACTS REVIEW BOARD

Case No. 341

DH/81/2010

Tender for the Supply of Bread for the Service of all Government Hospitals and Institutions in Malta

This call for tenders was published in the Government Gazette on 3rd September 2010. The closing date for this call with an estimated budget of €118,600 was the 6th October 2010.

One (1) tenderer submitted their offers.

Golden Harvest Manufacturing Co. Ltd filed an objection on the 18th May 2011 against the decisions by the Health Division - Ministry of Health, the Elderly and Community Care - to disqualify its offer and to cancel the tendering process.

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, 2nd November 2011 to discuss this objection.

Present for the hearing were:

Golden Harvest Manufacturing Co. Ltd (Golden Harvest)

Dr Frank Testa	Legal Representative
Mr Mark Aquilina	Representative
Mr Alfred Portelli	Representative
Mr Adrian Said	Representative

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

Evaluation Board:

Ms Frances Muscat	Chairperson
Mr John Bottiglieri	Member
Mr Anthony Cohen	Member
Ms Monica Gaglione	Member
Mr Mario Camilleri	Member
Ms Lorraine Muscat	Secretary

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

Dr Frank Testa, legal representative of Golden Harvest, the appellant company, explained that through letter dated 12th May 2011, the Health Division had informed his client that his tender had been disqualified because the food premises and food handlers' registrations had not been provided and that the tendering process was being cancelled. Dr Testa submitted that:-

- i. clause 4 of the tender document stipulated that the *“bakery and the mode of transport should conform with EC Regulation 852 of 2004 of the European Parliament and Council of 29th April 2004 on the hygiene of foodstuffs. The bakery and all the food handlers therein should be registered with the Health Authority in terms of Regulation of Food Premises Regulations (L.N. 180 of 2011) as amended by L.N. 136 of 2007 and Registration of Food Handlers Regulations (L.N. 178 of 2001) as amended by L.N. 137 of 2007 respectively”*;
 - ii. the documents that, according to the contracting authority, had not been submitted were not actually requested in the tender document and, as a consequence, his client should not have been disqualified for failing to provide documentation which it was not required to provide;
 - iii. the document referred to by the contracting authority in its letter of rejection consisted of food premises and food handlers without which his client company could not operate its business;
- and
- iv. the previous contract had expired and bread to government hospitals and institutions was being provided by his client through contracts awarded to the appellant company under the same conditions as those featuring in the call for tenders under review.

Ms Frances Muscat, chairperson of the evaluation board, explained that the tender document requested in bold print the bidder to provide the location where the bread was produced and stored. She added that the evaluation board had sought approval from the Ministry's DCC to request the appellant company to furnish the food premises and food handlers' registrations but the request was turned down and the DCC, eventually, agreed with the recommendation of the evaluation board to cancel the tender.

Mr Emanuel Camilleri, member of the evaluation board, remarked that the appellant company had indicated that the bread was going to be produced and stored at its company's factory but the contracting authority expected the submission of an official document to confirm that the premises in question were duly registered.

The Chairman, Public Contracts Review Board, remarked that it appeared that the tender document requested from the appellant company, which was the only bidder in this tendering process, a kind of declaration that the bakery and food handlers conformed to EC regulations

but the tender document stopped short of explicitly requesting certificates/documentation to that effect which was the reason given for the disqualification of the appellant company's offer.

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 dated 18th May 2011 and through the verbal submissions made during the hearing held on the 2nd November 2011, had objected against the decisions by the Health Division - Ministry of Health, the Elderly and Community Care - to disqualify its offer and to cancel the tendering process;
- having noted the appellant firm's representatives claims and observations regarding the fact that (a) through letter dated 12th May 2011, the Health Division had informed his client that his tender had been disqualified because the food premises and food handlers' registrations had not been provided and that the tendering process was being cancelled, (b) clause 4 of the tender document stipulated that the *"bakery and the mode of transport should conform with EC Regulation 852 of 2004 of the European Parliament and Council of 29th April 2004 on the hygiene of foodstuffs. The bakery and all the food handlers therein should be registered with the Health Authority in terms of Regulation of Food Premises Regulations (L.N. 180 of 2011) as amended by L.N. 136 of 2007 and Registration of Food Handlers Regulations (L.N. 178 of 2001) as amended by L.N. 137 of 2007 respectively"*, (c) the documents that, according to the contracting authority, had not been submitted were not actually requested in the tender document and, as a consequence, the appellant company should not have been disqualified for failing to provide documentation which it was not required to provide, (d) the document referred to by the contracting authority in its letter of rejection consisted of food premises and food handlers without which the appellant company could not operate its business and (e) the previous contract had expired and bread to government hospitals and institutions was being provided by the appellant company through contracts awarded to it under the same conditions as those featuring in the call for tenders under review;
- having considered the contracting authority's representative's submissions, namely that (a) the tender document requested in bold print the bidder to provide the location where the bread was produced and stored, (b) the evaluation board had sought approval from the Ministry's DCC to request the appellant company to furnish the food premises and food handlers' registrations but the request was turned down and the DCC, eventually, agreed with the recommendation of the evaluation board to cancel the tender and (c) the appellant company's representative had indicated that the bread was going to be produced and stored at its company's factory but the contracting authority expected the submission of an official document to confirm that the premises in question were duly registered;

reached the following conclusions:

The Public Contracts Review Board feels that the tender document requested from the appellant company - which was the only bidder in this tendering process - a kind of declaration that the bakery and food handlers conformed to EC regulations. Nevertheless, this Board opines that the tender document stopped short of explicitly requesting certificates/documentation to that effect which was the reason given for the disqualification of the appellant company's offer.

In view of the above this Board finds in favour of the appellant company and recommends that, apart from recommending that the deposit paid by the latter should be reimbursed, the said appellant company should also be reinstated in the tendering process for further evaluation.

Alfred R Triganza
Chairman

Edwin Muscat
Member

Carmel Esposito
Member

14th November 2011