

PUBLIC CONTRACTS REVIEW BOARD

Case No. 378

QINF/77/2011

Tender for the Supply and Installation of a Key Management System

The closing date for this tender which was published on the 26th September 2011 was the 10th October 2011.

The estimated value of this tender was € 15,000.

Five (5) tenderers submitted twelve offers.

Messrs J. Grima & Co Ltd filed an objection on 3rd November 2011 against the decisions of the Malta Information Technology Agency to disqualify its offer as technically non-compliant and to recommend the award to Alberta Fire and Safety Ltd.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman and Mr Carmel Esposito and Mr Joseph Croker as members convened a meeting on Tuesday, 7th February 2012 to discuss this objection.

J. Grima & Co Ltd

Mr Claude Grima Director

Alberta Fire and Safety Ltd

Mr Dusan Pajic Representative
Mr Adrian Cutajar Representative

Malta Information Technology Agency (MITA)

Dr Danielle Cordina Legal Representative
Dr Pauline Debono Legal Representative

Evaluation Board

Mr Wayne Valentine Chairman
Mr Daniel Dobono Member
Mr James Coleiro Member



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

Mr Claude Grima, representing J. Grima & Co Ltd, the appellant company, made the following submissions:

- i. by letter dated 31st October 2011 Malta Information Technology Agency had informed him that his company's offer was disqualified as it was considered to be technically non-compliant because all the options failed to meet the specification referred to as '*Re-usable Key Rings*' and this followed the reply given in his company's submission wherein it was stated that '*No – once cut, cannot be reused*';
- ii. the type of key ring that his company was offering was made of steel and very robust such that it could be re-used for an infinite number of times;

and
- iii. the recommended tenderer offered key rings which could be re-used for only three times, whereas his company's interpretation of the term 're-usable' was not for such a limited number of times and, as a consequence, the recommended bid was, in his company's opinion, non-compliant.

Dr Danielle Cordina, legal representative of the Malta Information Technology Agency, the contracting authority, explained that:-

- a. the section marked 'Key Cabinet Specifications' of the tender document requested the bidder to indicate against each item a 'Yes' or 'No' by way of reply;
- b. with regard to the request that '*Each key ring shall be 're-usable''*', the appellant company indicated in its answer that '*No - once cut, cannot be reused*';

and
- c. regarding the appellant company's claim that the key ring offered by the recommended tenderer was reusable for 3 times only, the tender document did not request the number of times that the key ring could be used but, simply requested 'reusable' key rings and, as a result, the recommended bid was according to specifications.

Mr Gima explained that he considered the key ring to be inclusive of the plastic seal and that his firm's answer, namely, '*No – once cut, cannot be reused*' against the term 'Reusable', in fact, referred to the *plastic seal*, which had to be cut, and not to the *key ring* itself.

Dr Cordina stated that:-

- i. the tender document was quite clear in requesting a reusable key ring so much so that the appellant company felt no need to ask for any clarifications.

She added that the tender document requested a reusable key ring and the appellant company's indication was quite clear as to the key ring's reusability, namely, 'No- once cut, cannot be reused';

and

- ii. the adjudicating board had to evaluate on the tender documentation submitted and, at adjudicating stage, the board was not aware of the explanations being furnished by the appellant company at the hearing.

The Chairman Public Contracts Review Board noted that, in one instance, against the term 'Reusable' the appellant company indicated

'Depends on the option chosen. Tamper Proof seals must be cut to remove therefore, by implication, are not re-usable.'

He added that, whilst, in this particular option, the appellant company was clearly referring to the 'seals' and not to the 'key ring', yet, the appellant company also stated that it depended on the option chosen and, as a result, that statement did not apply to all options.

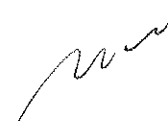
The Chairman Public Contracts Review Board observed that it appeared that the appellant company might have the right product but its representative/s failed to present it properly to the satisfaction of the contracting authority.

Dr Cordina remarked that, whilst it was a fact that the appellant company submitted seven different options, yet only Option 3C, with the quoted price of €11,650, was cheaper than the recommended offer. Furthermore, with regard to Option 3C, the appellant company clearly indicated that, once cut it cannot be reused. She added that, in the tender document, the term 'reusable' clearly referred to the *key ring* and not to the *plastic seal*. Dr Baldacchino explained that the adjudicating board did not delve into the technical details of the appellant company's other options once they were not competitive as far as price was concerned.

Mr Grima insisted that when his company indicated 'not reusable' it was referring to the seal and not to the key ring which was reusable for an infinite number of times as demonstrated in the literature submitted. On being pressed, Mr Grima conceded that Option 3C, his firm's cheapest option, was not according to specifications but, for that matter, even the recommended solution was not according to specifications with the difference being that his company's offer was cheaper.

Mr Dusan Pajic, representing the recommended tenderer, explained that the recommended key ring could be used many times over and that it was the 'hook' that could be used only three times.

At this point the hearing was brought to a close.



This Board,

- having noted that the appellant company, in terms of the reasoned letter of objection dated 3rd November 2011 and through the verbal submissions made during the hearing held on 7th February 2012, had objected against the decisions of the Malta Information Technology Agency to disqualify its offer as technically non-compliant and to recommend the award to Alberta Fire and Safety Ltd;
- having noted the appellant firm's representatives' claims and observations regarding the fact that (a) by letter dated 31st October 2011 Malta Information Technology Agency had informed the appellant company that its offer was disqualified as it was considered to be technically non-compliant because all the options failed to meet the specification referred to as '*Re-usable Key Rings*' and this followed the reply given in the company's submission wherein it was stated that '*No – once cut, cannot be reused*', (b) the type of key ring that the company was offering was made of steel and very robust such that it could be re-used for an infinite number of times, (c) the recommended tenderer offered key rings which could be re-used for only three times, whereas the appellant company's interpretation of the term 're-usable' was not for such a limited number of times and, as a consequence, the recommended bid was, in the appellant company's opinion, non-compliant, (d) considered the key ring to be inclusive of the plastic seal and that the appellant company's answer, namely, '*No – once cut, cannot be reused*' against the term 'Reusable', in fact, referred to the *plastic seal*, which had to be cut, and not to the *key ring* itself and (e) Option 3C, the appellant company's cheapest option, was not according to specifications but, for that matter, even the recommended solution was not according to specifications with the difference being that the appellant company's offer was cheaper;
- having considered the contracting authority's representative's submissions, namely that (a) the section marked 'Key Cabinet Specifications' of the tender document requested the bidder to indicate against each item a 'Yes' or 'No' by way of reply, (b) with regard to the request that '*Each key ring shall be 're-usable''*', the appellant company indicated in its answer that '*No - once cut, cannot be reused*', (c) regarding the appellant company's claim that the key ring offered by the recommended tenderer was reusable for 3 times only, the tender document did not request the number of times that the key ring could be used but, simply requested 'reusable' key rings and, as a result, the recommended bid was according to specifications, (d) the tender document was quite clear in requesting a reusable key ring so much so that the appellant company felt no need to ask for any clarifications, (e) the tender document requested a reusable key ring and the appellant company's indication was quite clear as to the key ring's reusability, namely, '*No- once cut, cannot be reused*', (f) the adjudicating board had to evaluate on the tender documentation submitted and, at adjudicating stage, the board was not aware of the explanations being furnished by the appellant company at the hearing, (g) whilst it was a fact that the appellant company submitted seven different options, yet only Option 3C, with the quoted price of €11,650, was cheaper than the recommended offer, (h) with regard to Option 3C, the appellant company clearly indicated that, once cut it cannot be reused and (i) in the tender document, the term 'reusable' clearly referred to the *key ring* and not to the *plastic seal* and the adjudicating board did not delve into the technical details of the appellant company's other options once they were not competitive as far as price was concerned,

- having also considered the recommended tenderer's representative's submission, namely that the recommended key ring could be used many times over and that it was the 'hook' that could be used only three times,

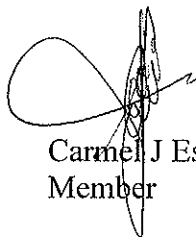
reached the following conclusions,

1. The Public Contracts Review Board argues that, in one instance, against the term 'Reusable' the appellant company, stated "*Depends on the option chosen. Tamper Proof seals must be cut to remove therefore, by implication, are not re-usable.*", wherein this Board concludes that the appellant company was clearly referring to the 'seals' and not to the 'key ring'. However, one could not let it pass unnoticed that, at the same time, the appellant company was also stating that it depended on the option chosen. As a result, this Board feels that this statement did not apply to all options thus giving rise to an ambiguous interpretation of claim being made.
2. The Public Contracts Review Board considers the fact that the appellant company's representative publicly admitted that Option 3C, his firm's cheapest option, was not according to specifications, as corroborating evidence which reinforces the evaluation board's correct interpretation of facts whilst deliberating on subject matter.
3. The Public Contracts Review Board opines that the appellant company, erroneously, placed more emphasis on its perceived idea as to the fact that, in its opinion, even the recommended solution was not according to specifications with the difference being that his company's offer was cheaper. This Board, having deliberated on all issues presented to it, including by the recommended tenderer, concludes that the offer made by the recommended tenderer was, not only according to specifications, but also the cheapest eligible offer considering that the appellant company's 'perceived' cheaper bid, Option 3C, was not even according to specifications.

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 J Esposito
Member



Joseph Croker
Member

13 February 2012