

## PUBLIC CONTRACTS REVIEW BOARD

Case No. 418

Adv No: CPSU/PH/01/2012 - DH/236/2012

**Tender for the Provision of Services of a Destination Management Company (DMC) to provide coordination services, and to organise all the necessary logistical arrangements associated with the 62nd Session of the World Health Organisation Regional Committee**

This call for tenders was published in the Government Gazette on the 21<sup>st</sup> February 2012. The closing date for this call – which attracted no fewer than four (4) tenderers - with an estimated budget of €120,000 (excl VAT) was the 21<sup>st</sup> March 2012.

On Site Malta Ltd filed an objection on the 2<sup>nd</sup> May 2012 against the decision of the Ministry for Health, the Elderly and Community Care to reject its offer as non-compliant and to recommend tender award in favour of Messrs Culture 3 Sixty Ltd and Events Solutions Malta.

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 Tuesday 29<sup>th</sup> May, 2012 to discuss this objection.

Present for the hearing:

### **On Site Malta Ltd**

Ms Helga Ebejer	Representative
Ms Lara Caruana	Representative

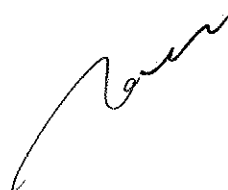
### **Culture 3 Sixty and Event Solutions Malta**

Dr John Gauci	Legal Representative
Mr David Zahra	Representative
Mr Trevor Zahra	Representative
Ms Natasha Borg	Representative

### **Central Procurement & Supplies Unit (CPSU) – Ministry for Health, the Elderly and Community Care**

### **Evaluation Board**

Dr Miriam Dalmas	Chairperson
Ms Inez Cassar	Member
Ms Audrey Galea	Member
Ms Ruth Spiteri	Secretary



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

Ms Helga Ebejer, representing On Site Malta Ltd, the appellant company, submitted that:-

- i. by email/letter dated 25<sup>th</sup> April 2012, the contracting authority had informed On Site Malta Ltd that its offer was disqualified as it was considered to administratively non compliant since the 'Organisation and Methodology' requested at clause 16.1 (e) (i) was not submitted;
  - ii. although the 'Organisation and Methodology' was not submitted as a separate document, still it was being contended that the same information was included in the 'Financial Bid' at Appendix 11;
  - iii. in terms of Note 3 to clause 16.1 of Volume 1 Section 1 'Instructions to Tenderers', the contracting authority could have asked for a clarification on this matter;
- and
- iv. as per clause 32.1 the award criterion was the price and the appellant company's bid was about €10,000 cheaper than the recommended offer.

Dr Miriam Dalmas, chairperson of the adjudicating board, remarked that:-

- a. at evaluation stage the adjudicating board noted that the appellant company did not submit the 'Organisation and Methodology' and since that represented missing documentation the board felt that it could not ask for a clarification in terms of Note 3 to clause 16.1, which referred to the technical offer, once it stated that:-  

*'No rectification shall be allowed. Only clarifications on the submitted information may be requested.'*
- b. contrary to what the appellant company was claiming this information was omitted and not provided elsewhere in the tender submission.

Ms Ebejer claimed that:-

- i. at Appendix 11 'Financial Bid' of the appellant company's tender submission one could find a detailed description of how the service was going to be provided except, perhaps, for the timetable – for example, one could refer to the detailed information given at page 2 concerning the registration and hospitality desk at the hotel;
- ii. the details provided in the financial bid was, in itself, evidence that the appellant company understood what was required and then described exactly the services that were going to be provided;
- iii. the tender document did not provide a template in which one had to submit the requested 'organisation and methodology';



- iv. the power point presentation under 'other support' included detailed information with regard to the personnel in charge and back-up;
- and
- v. the appellant company was going to provide the service in-house and, as a consequence, required no back-stopping or sub-contracting.

Dr Dalmas pointed out that:-

- a. the 'organisation and methodology' should have been submitted as a separate appendix with details reflecting the instructions/guidelines provided at Volume 3 Section 2 'Tenderer's Technical Offer (Organisation and Methodology)' (page 51 of the tender document);
- b. albeit, perhaps one could have extracted some of the information requested at Volume 3 Section 3 para. 3 'Timetable of Activities' from Appendix 11 'Financial Bid' of the appellant company's tender submission, yet it would have been clearer had it been provided separately,
- c. however, other information was unavailable, e.g. under 'Strategy' the contracting authority required the professional approach that the bidder was going to adopt in the management of conference activities, including transfers, hospitality, accompanying persons, logistics and communication back-ups;
- d. the information in the appellant company's financial bid did not cover all that was requested in Volume 3 Section 2, for example 'related inputs and outputs', which referred to the communication between the contracting authority and the contractor, written or otherwise, and, 'an explanation on the risks and assumptions affecting the execution of the contract – bullet 3 under 'rationale' at page 51 – had not been provided;
- and
- e. it was very important for evaluation purposes for one to present a tender submission in a complete and orderly manner as per instructions given in the tender document.

Dr John Gauci, legal advisor of Culture 3 Sixty and Event Solutions Malta, the recommended tenderer, explained that:-

- i. the 'organisation and methodology' at Volume 3 Section 2 should be considered in conjunction with Clause 16.1 which stipulated the content of the tender document where one of the mandatory requisites was the 'technical offer - organisation and methodology';
- ii. the appellant company has admitted not to have submitted the technical offer and one should not expect the contracting authority to extract the relevant information from the financial bid, which was another separate and distinct mandatory requirement;
- iii. Volume 3 Section 2 "Tenderer's Technical Offer' (Organisation and Methodology) was clearly indicated as follows:

*To be completed by the tenderer;*

and

- iv. on the other hand, his client, the recommended tenderer, had submitted a 19-page comprehensive document covering the items listed under Volume 3 Section 2.

The Chairman Public Contracts Review Board:-

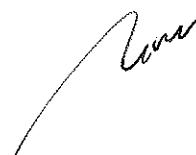
- a. opined that it could be that the appellant company did provide all or most of the information requested in the technical offer but it surely failed to present it in the manner expected, according to the tender document;
- b. stated that the details concerning the technical offer and the financial bid should have been submitted separately for evaluation purposes with the latter reflecting the cost of the former;
- c. remarked that it was the responsibility of the bidder to present a complete and clear tender submission and that it was not up to the contracting authority to put together bits and pieces of information when it should have been presented in a comprehensive manner in the first place;
- d. pointed out that if the contracting authority required specific information then, ideally, it should ask for it in a clear manner, even by providing a template for the purpose;
- e. noted, as a fact, that the appellant company did not submit the technical offer ('organisation and methodology') which was mandatory even though most of the information might have been provided elsewhere, e.g. in the financial bid;
- f. observed that, in its financial bid, the appellant company stated '*On Site Malta reserves the right to change the rates in accordance with changes of level of taxation that may be imposed by the government*' and that rendered the bid conditional, namely that the price might vary, when the contracting authority was after the procurement of a service at a fixed price;
- g. remarked that it was up to the bidding company to take into account the variables when quoting its price as part of the commercial risk;

and

- h. declared that the contracting authority had to evaluate prices on a like-with-like basis, namely prices had to be fixed and the public procurement regulations did not allow the inclusion of conditions/reservations.

Dr Gauci referred to clause 1.1 of the 'Instructions to Tenderers' which, among other things, stated that:

*"No account can be taken of any reservation in the tender as regards the tender document; any disagreement, contradiction, alteration or deviation shall lead to the tender offer being considered any further."*



At this point the hearing was brought to a close.

This Board,

- having noted that the appellants, in terms of their ‘letter of objection’ dated 2<sup>nd</sup> May 2012 and also through their verbal submissions presented during the hearing held on the 29<sup>th</sup> May, 2012, had objected to the decision taken by the pertinent authorities;
- having noted all of the appellant’s representative’s claims and observations, particularly, the references made to the fact that (a) by email/letter dated 25<sup>th</sup> April 2012, the contracting authority had informed On Site Malta Ltd that its offer was disqualified as it was considered to administratively non compliant since the ‘Organisation and Methodology’ requested at clause 16.1 (e) (i) was not submitted, (b) although the ‘Organisation and Methodology’ was not submitted as a separate document, still it was being contended that the same information was included in the ‘Financial Bid’ at Appendix 11, (c) in terms of Note 3 to clause 16.1 of Volume 1 Section 1 ‘Instructions to Tenderers’, the contracting authority could have asked for a clarification on this matter, (d) as per clause 32.1 the award criterion was the price and the appellant company’s bid was about €10,000 cheaper than the recommended offer and (e) the appellant company was going to provide the service in-house and, as a consequence, required no back-stopping or sub-contracting;
- having considered the contracting authority’s representatives’ reference to the fact that (a) at evaluation stage the adjudicating board noted that the appellant company did not submit the ‘Organisation and Methodology’ and since that represented missing documentation the board felt that it could not ask for a clarification in terms of Note 3 to clause 16.1, (b) contrary to what the appellant company was claiming this information was omitted and not provided elsewhere in the tender submission, (c) the ‘organisation and methodology’ should have been submitted as a separate appendix with details reflecting the instructions/guidelines provided at Volume 3 Section 2 ‘Tenderer’s Technical Offer (Organisation and Methodology)’ (page 51 of the tender document), (d) albeit, perhaps one could have extracted some of the information requested at Volume 3 Section 3 para. 3 ‘Timetable of Activities’ from Appendix 11 ‘Financial Bid’ of the appellant company’s tender submission, yet it would have been clearer had it been provided separately, (e) other information was unavailable, e.g. under ‘Strategy’ the contracting authority required the professional approach that the bidder was going to adopt in the management of conference activities, including transfers, hospitality, accompanying persons, logistics and communication back-ups, (f) an explanation on the risks and assumptions affecting the execution of the contract – bullet 3 under ‘rationale’ at page 51 – had not been provided and (g) it was very important for evaluation purposes for one to present a tender submission in a complete and orderly manner as per instructions given in the tender document;
- having considered the recommended tenderer’s representatives’ reference to the fact that (a) the ‘organisation and methodology’ at Volume 3 Section 2 should be considered in conjunction with Clause 16.1 which stipulated the content of the tender document where one of the mandatory requisites was the ‘technical offer - organisation and methodology’, (b) the appellant company has admitted not to have submitted the technical offer and one should not expect the contracting authority to extract the relevant information from the financial bid, which was another separate and distinct mandatory requirement, (c) in Volume 3 Section 2 “Tenderer’s Technical Offer”



(Organisation and Methodology) there was clearly indicated *'To be completed by the tenderer'*, (d) the recommended tenderer, had submitted a 19-page comprehensive document covering the items listed under Volume 3 Section 2 and (e) clause 1.1 of the *'Instructions to Tenderers'*, among other things, stated that *"No account can be taken of any reservation in the tender as regards the tender document; any disagreement, contradiction, alteration or deviation shall lead to the tender offer being considered any further."*,

reached the following conclusions, namely:

1. The Public Contracts Review Board opines that it could be that the appellant company did provide all or most of the information requested in the technical offer but it surely failed to present it in the manner expected according to the tender document.
2. This Board confirms its opinion that the details concerning the technical offer and the financial bid should have been submitted separately by the appellant company for evaluation purposes with the latter reflecting the cost of the former.
3. The Public Contracts Review Board remarks that it was the responsibility of the bidder to present a complete and clear tender submission and that it was not up to the contracting authority to put together bits and pieces of information when it should have been presented in a comprehensive manner in the first place. Furthermore, this Board also remarks that it was up to the bidding company to take into account the variables when quoting its price as part of the commercial risk.
4. The Public Contracts Review Board finds that the fact that, in its financial bid, the appellant company stated *'On Site Malta reserves the right to change the rates in accordance with changes of level of taxation that may be imposed by the government'* renders the bid conditional which is unacceptable in public procurement regulations. This Board observes that the contracting authority had to evaluate prices on a like-with-like basis, namely prices had to be fixed and the public procurement regulations did not allow the inclusion of conditions / reservations.

In view of the above, this Board finds against the appellant company but recommends that the deposit paid for the appeal by the appellant company to be lodged should be reimbursed since the Contracting Authority should have dismissed the quote submitted seeing that the pricing was conditional on the tax regime remaining as is.



Alfred R Triganza  
Chairman



Carmel Esposito  
Member



Joseph Croker  
Member

4<sup>th</sup> June 2012