

PUBLIC CONTRACTS REVIEW BOARD

Case No. 419

ECCD/75/2011

Tender for the Maintenance and Upkeep of Air-Conditioning system for One Year at St Vincent de Paule Residence

This call for tenders was published in the Government Gazette on the 15th July 2011. The closing date for this call with an estimated budget of € 29,382.20 (excl. VAT) was the 5th August 2011.

Three (3) tenderers submitted their offers.

Messrs Engenuity Ltd filed an objection on the 13th April 2012 against the decision of the Department of the Elderly and Community Care to reject its offer as non-compliant and to recommend tender award in favour of Titan International Ltd.

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 8th June, 2012 to discuss this objection.

Present for the hearing were:

Engenuity Ltd

Ing Jonathan Cauchi	Managing Director
Mr Mario Vella	Representative

Titan International Ltd

Dr Louis Thompson	Legal Representative
Ing Robert Refalo	Representative

Department for the Elderly and Community Care

Mr Raymond Mamo	Assistant Director
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Evaluation Board

Mr Joseph Piscopo	Chairman
Ing Franco Cassar	Member
Mr John Bottiglieri	Member

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

Ing Jonathan Cauchi, representing Engenuity Ltd, the appellant company, submitted that:-

- i. by letter dated 3rd April 2012, the contracting authority had informed Engenuity Ltd that its offer was disqualified since the quantity and rate of item 3.01 of the Bill of Quantities were not filled in;
 - ii. Engenuity Ltd had filled in all the information requested in the Bill of Quantities however it turned out that with regard to item 3.01, unlike all other items, the contracting authority had not indicated the quantities required or the unit and since the tenderer was not allowed to alter the quantities or any other given information in the tender document then Engenuity Ltd decided to leave the spaces relative to item 3.01 blank;
 - iii. in the case of item 8.01 the contracting authority clearly and specifically indicated that it wanted the 'rate only' however in the case of item 3.01 no such indication was given and therefore Engenuity Ltd opted to give no information in the absence of instructions to do so by the contracting authority;
 - iv. at no stage did the contracting authority approach Engenuity Ltd to clarify the kind of information which was requested in respect of item 3.01;
- and
- v. the price quoted by Engenuity Ltd amounted to €27,984.70 whereas that quoted by the recommended bidder was €32,545.50, both exclusive of item 3.01.

The Chairman Public Contracts Review Board remarked that:-

- a. once item 3.01 was included in the Bill of Quantities then it was rather clear that the contracting authority required information in that regard;
- b. in the absence of indications under 'quantity' or 'unit', the bidding entity could or should have availed itself of the opportunity permissible by regulations to seek a clarification, preferably in writing, from the contracting authority and, if the matter required clarification, the contracting authority would have informed all prospective bidders;
- c. it was not unheard of that published tender documents did contain inconsistencies or errors and that was why regulations allowed clarifications to be made prior to the closing date of the tender;
- d. the responsibility to present a clear and complete tender submission rested with the tenderer and not with the contracting authority;

and



- e. it was unreasonable to leave spaces blank when such spaces were meant to be filled in, especially in such an important document as the *Bill of Quantities*.

Mr Joseph Piscopo, chairman of the adjudicating board, stated that the contracting authority received no requests for clarification from bidders in respect of item 3.01 and that the other bidders had included the unit rate against item 3.01 - a case in point was that of the recommended bid. Mr Piscopo added that the unit rate requested in respect of items 3.01 and 8.01 were not included in the total price.

Ing. Cauchi conceded that with regard to item 3.01 Engenuity Ltd should perhaps have sought a clarification however he maintained that for evaluation purposes Engenuity Ltd had provided all the requested information except where no specific information was requested, namely in the case of item 3.01. Mr Cauchi remarked that there were instances where the tender document requested information/rates which were not included in the bill of quantities.

The Chairman Public Contracts Review Board concluded that the contracting authority had to evaluate the bids on the documentation submitted and on a like-with-like basis and the non-submission of information by a bidder rendered that task not possible.

At this point the hearing was brought to a close.

This Board,

- having noted that the appellants, in terms of their 'reasoned letter of objection' dated 12th April 2012 and also through their verbal submissions presented during the hearing held on the 8th June, 2012, had objected to the decision taken by the pertinent authorities;
- having noted all of the appellant company's representative's claims and observations, particularly, the references made to the fact that (a) by letter dated 3rd April 2012, the contracting authority had informed Engenuity Ltd that its offer was disqualified since the quantity and rate of item 3.01 of the Bill of Quantities were not filled in, (b) whilst Engenuity Ltd had filled in all the information requested in the Bill of Quantities yet it turned out that with regard to item 3.01, unlike all other items, the contracting authority had not indicated the quantities required or the unit and since the tenderer was not allowed to alter the quantities or any other given information in the tender document then Engenuity Ltd decided to leave the spaces relative to item 3.01 blank, (c) whilst in the case of item 8.01 the contracting authority clearly and specifically indicated that it wanted the 'rate only' yet in the case of item 3.01 no such indication was given and as a result Engenuity Ltd opted to give no information in the absence of instructions to do so by the contracting authority, (d) at no stage did the contracting authority approach Engenuity Ltd to clarify the kind of information which was requested in respect of item 3.01, (e) the price quoted by Engenuity Ltd amounted to €27,984.70 whereas that quoted by the recommended bidder was €32,545.50, both exclusive of item 3.01 and (f) whilst conceding that whilst, with regard to item 3.01 Engenuity Ltd should perhaps have sought a clarification, yet it was also a fact that, for evaluation purposes, Engenuity Ltd had provided all the requested information except where no specific information was requested, namely in the case of item 3.01;

- having considered the contracting authority's representatives' reference to the fact that (a) the contracting authority received no requests for clarification from bidders in respect of item 3.01 and that the other bidders had included the unit rate against item 3.01 and (b) the unit rate requested in respect of items 3.01 and 8.01 were not included in the appellant company's total price,

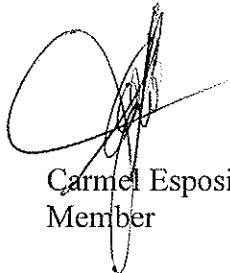
reached the following conclusions, namely:

1. The Public Contracts Review Board opines that once item 3.01 was included in the 'Bill of Quantities' then it was rather clear that the contracting authority required information in that regard.
2. The Public Contracts Review Board argues that, in the absence of indications under 'quantity' or 'unit', the bidding entity could or should have availed itself of the opportunity permissible by regulations to seek a clarification, preferably in writing, from the contracting authority and, if the matter required clarification, the contracting authority would have informed all prospective bidders.
3. The Public Contracts Review Board feels that it was not unheard of that published tender documents did contain inconsistencies or errors and that was why regulations allowed clarifications to be made prior to the closing date of the tender.
4. This Board also argues that the responsibility to present a clear and complete tender submission always rests with the tenderer and not with the contracting authority.
5. The Public Contracts Review Board cannot but agree with the contracting authority that it was unreasonable for any bidder to leave spaces blank when such spaces were meant to be filled in, especially in such an important document as the 'Bill of Quantities'.
6. The Public Contracts Review Board would also like to manifest its concern as to the contracting authority's shortfall in not clearly specifying the rate in the tender document.

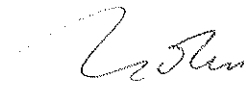
In view of the above, this Board finds against the appellant company but recommends that the appellant company be reimbursed with the deposit paid for the appeal to be lodged.



Alfred R Triganza
Chairman



Carmel Esposito
Member



Joseph Croker
Member

19th June 2012