

PUBLIC CONTRACTS REVIEW BOARD

Case No. 471

MTA/822/2012

Tender for the Provision of a National Audit to Assess Accessibility of Tourist Establishments and Relative Public Areas within Established Tourism Zones in Malta and Gozo

This call was published in the Government Gazette of the 10th April, 2012 with a closing date of the 3rd May, 2012. The estimated value of the tender was €37,500 (excluding VAT).

Three (3) offers were submitted for this tender.

EMDP filed an objection on 27th September 2012 against the decision of Malta Tourism Authority (MTA) to disqualify its tender as administratively non-compliant and to recommend award to Doric Studio.

The Public Contracts Review Board composed of Mr Joseph Croker as Acting Chairman and Messrs Carmel Esposito and Paul Mifsud as members convened a public hearing on the 16th October 2012 to discuss the objection.

Present for the hearing were:

EMDP

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| Dr Franco Galea | Legal Representative |
| Perit Mariello Spiteri | Representative |
| Perit Vanessa Pisani | Representative |

Doric Studio

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| Dr Peter Fenech | Legal Representative |
| Perit Frank Muscat | Representative |

Malta Tourism Authority

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| Dr Martha Farrugia | Legal Representative |
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Evaluation Board

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| Mr Francis Albani | Chairman |
| Ms Marie Louise Mangion | Member |
| Mr Andre Vella | Member |
| Mr Patrick Attard | Secretary |



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

Dr Franco Galea, on behalf of EMDP, the appellant, made the following submissions:

- i. by letter dated 19th September 2012 his client was informed that his offer was found administratively non-compliant since the tender form was not filled in completely (*your financial offer was not written down in words or in numbers within the space provided in the tender form*);
- ii. his client had indeed furnished the price in his tender submission both in figures and in words, that is in Volume 4 'Financial Bid', so much so that the contracting authority was able to publish it in the Schedule of Prices –
- iii. this was a single envelope tender and clause 3.1 provided that: *This tender is not divided into lots* whereas in Volume 4 it was also indicated that the amount must not be broken down further; and
- iv. this tender had already been recommended for cancellation but that decision had been overturned.

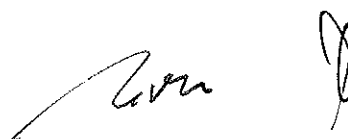
Dr Martha Farrugia, on behalf of MTA, the Contracting Authority, explained that:-

- a. the tender form submitted by the appellant was not properly and entirely filled in so much so that section 3 which requested the bidder to state the total price of his offer inclusive of VAT etc had been crossed out and no price indicated; and
- b. the Financial Bid in Volume 4 was a distinct and separate document from the Tender Form and both documents were mandatory requirements as per clause 16.1 (f) and if the Tender Form was not properly submitted then it had to lead to disqualification on administrative grounds.

Dr Franco Galea on behalf of EMDP contended that:-

- i. his client was correct not to fill in section 3 of the Tender Form because that was meant for tenders broken down in lots whereas the tender under review was not divided into lots;
- ii. had his client filled in section 3 of the Tender Form which referred to lots he would have been disqualified in terms of clause 3.1; and
- iii. the fact remained that his client had indicated his total price in Volume 4 'Financial Bid' both in figures and in words and so his client had fulfilled his tender obligations in full and therefore his offer was complaint.

Mr Francis Albani, chairman of the evaluation board, remarked that the tender form was the standard form they obtained from the website of the Contracts Department and in every tender adjudication process that he participated in it was always considered mandatory for the bidder to submit the Tender Form properly filled in. He



added that the tender document allowed for no rectifications and therefore the contracting authority had no other option but to disqualify the appellant's offer.

Dr Peter Fenech, on behalf of recommended tenderer, explained that the Public Contracts Review Board had invariably decided that leaving out the financial figures in the tender form rendered the tender submission null and that financial data was not subject to any rectification. In this regard he made reference the case MC Restauri vs Director of Contracts and MRRA.

This Board having noted that:


1. Messrs EMDP had on the 27th September 2012 objected to the decision taken by the Contracting Authority to award the tender to Messrs Doric Studio;
2. EMDP objected to their bid being found administratively non-compliant since the financial bid was not included in Section 3 of the tender document;
3. EMDP stated that they could not have included their bid in the mentioned section since this made reference to Lots and this tender was not divided into lots; however, the value was included in Vol 4 of the Financial Bid to the extent that the Contracting Authority was aware of the value of their bid;
4. The Contracting Authority noted that the inclusion of the financial bid in Section 3 of the tender document was imperative and that its non-inclusion rendered the bid inadmissible; moreover, Vol 4 Financial Bid was a separate document, which was intended to support the declaration at Section 3; and
5. Dr Peter Fenech on behalf of the recommended tenderer Doric Studio submitted that it was normal practice to consider that the non-inclusion of the financial offer in the tender form rendered it null;


came to the following conclusions:

1. The tender form made reference to lots and hence might have given the wrong impression that certain sections, including Section 3, were not applicable;
2. Had the tenderer been in any doubt he could have asked for a clarification from the Contracting Authority and not take it upon himself to leave out this pivotal information from the tender form;
3. The tender form without the financial offer written as requested rendered the offer invalid and thus inadmissible.

The Board finds against the appellant and recommends that the deposit paid for the objection to be heard will not be reimbursed.


Joseph Croker
A/Chairman


Carmel Esposito
Member


Paul Mifsud
Member

30th October 2012