

PUBLIC CONTRACTS REVIEW BOARD

Case No. 475

HM/22.02.2012

Tender for 3D Documentation of Fort St Angelo, Birgu

This call for tenders was published in the Government Gazette on the 3rd April 2012. The closing date for this call with an estimated budget of € 120,000 (excl. VAT) was the 14th May 2012.

Four (4) tenderers submitted their offers.

Heritage Scanning JV filed an objection on the 20th August 2012 against the decision of Heritage Malta to consider its offer over its estimate.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr Joseph Croker and Mr Carmel Esposito as members convened a public hearing on Friday, 19th October 2012 to discuss this objection.

Heritage Scanning JV – Interested party

Dr Anna Mallia	Legal Representative
Architect Victoria Farrugia Galea	Representative
Mr Steve Demicoli	Representative

St Angelo JV – Interested party

Dr Franco Galea	Legal Representative
Architect Mariello Spiteri	Representative
Architect Vanessa Pisani	Representative

ABC General Engineering SRL – recommended tenderer


Mr Johann Bondin	Representative
------------------	----------------

Heritage Malta

Dr Ruth Baldacchino	Legal Representative
---------------------	----------------------

Evaluation Board

Architect Ruben Abela	Chairman
Ms Joanne Mallia	Member
Ms Veronica Bonello	Member
Ms Anastasia Anastasi Vella	Secretary

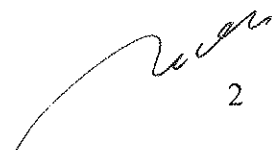


After the Chairman's brief introduction, the appellant joint venture's representative was invited to explain the motives of the joint venture's objection.

Dr Anna Mallia, legal advisor of Heritage Scanning JV, the appellant joint venture, submitted that:-

- a. by letter dated 10th August 2012 her client was informed that its offer was not successful because it was not the cheapest administratively and technically compliant bid;
 - b. page 31 of the tender document stipulated that this was a global price contract which meant '*A contract under which the services are performed for an all-inclusive fixed price*';
 - c. her client contended that it was highly questionable to provide all the services requested at the all inclusive prices quoted by the other three bidders which ranged from €63,075 to €113,740;
 - d. Volume 4 'Financial Bid' (page 69 of the tender document) was split in two parts, the first referred to the total all-inclusive price and the second part featured 'Provisional Items Rate Only' for 2D scanning;
 - e. her client quoted the all-inclusive price of €529,820 which included all the provisional items and that explained why her client quoted the unit rate of €8.26 whereas the other bidders quoted prices ranging from €96.80 to €1,000 and up to €7,260 for these provisional items;
 - f. her client contended that there must have been some misunderstanding in the sense that her client submitted a one, all-inclusive price as requested whereas the other bidders submitted two prices, for the standard items and one for the provisional items, which was not according to tender conditions;
 - g. it was noted that the recommended bidder offered €74,457.35 for 3D documentation but then offered the unit price of €36.30 and €60.50 for the provisional items against her client's unit price of €8.26;
- and
- h. when complaining that her client received the letter of rejection almost too late to lodge an appeal the contracting authority declared that such communications were, invariably, also sent via email.

The Chairman Public Contracts Review Board remarked that it appeared that in this tender there were mandatory items which had to be included in the total global price and provisional, or better still optional, items in respect of which bidders were asked to quote a unit rate in case the contracting authority would require more of those items. He added that if any bidder, including the appellant joint venture, required a clarification it was entitled to it by regulations prior to the deadline for tender submissions.



2

Architect Victoria Farrugia Galea, also representing the appellant joint venture, remarked that:-

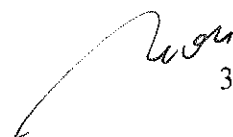
- a. clause 2.2 under 'Specific Objectives' stated, among other things, that the tasks "*Constitute a holistic 3D model of the surfaces of the areas/volumes*" and so in the total price she included everything, even the provisional items;
 - b. she was hard pressed for time to submit the tender and, as a result, she did not have time to ask for a clarification on what exactly represented the 'global price';
 - c. the tender document referred to all underground structures, including, but not limited to, reservoirs, shelters and so forth and, therefore, she had to cater for other things that might crop up but were not covered in the list provided;
- and
- d. the term 'provisional items' was not very clear so much so that the prices offered by the other tenderers varied considerably.

The Chairman Public Contracts Review Board observed that it could be the case that the appellant joint venture catered for every eventuality which might not necessarily be required and that could explain the difference in the price quoted.

Architect Ruben Abela, chairman of the evaluation board, explained that:-

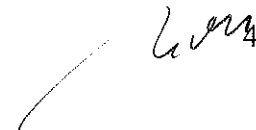
- a. The 3D model represented a digital model scanned by laser of Fort St Angelo, which model one could keep on a computer to extract data from it or from which one could need to extract a set of plans or cross-cuts a number of which were already included with the mandatory requirements;
 - b. the provisional items referred to future requirements which might or might not materialise in terms of additional cross-cuts or printouts of plan details over and above what had already been mandatorily requested in the terms of reference;
 - c. under the heading 'Deliverables' of the terms of reference at pages 60 to 63 there is the list of things which had to be delivered by the contractor and that list should have been reflected in the global price;
 - d. although the tender called for 3D documentation, still the 2D plans mentioned under provisional items were extractable from the 3D survey;
- and
- e. the provisional items were identified in the Financial Bid itself and no clarifications were requested in that regard.

At this point the hearing came to a close.



This Board,

- having noted that the appellants, in terms of their 'reasoned letter of objection' dated the 17th August 2012 and also through their verbal submissions presented during the hearing held on the 19th October 2012, had objected to the decision taken by the pertinent authorities;
- having noted all of the appellant joint venture's representative's claims and observations, particularly, the references made to the fact that (a) (b) by letter dated 10th August 2012 the appellant joint venture was informed that its offer was not successful because it was not the cheapest administratively and technically compliant bid, (c) page 31 of the tender document stipulated that this was a global price contract which meant '*A contract under which the services are performed for an all-inclusive fixed price*', (d) the appellant contended that it was highly questionable to provide all the services requested at the all inclusive prices quoted by the other three bidders which ranged from €63,075 to €113,740, (e) Volume 4 'Financial Bid' (page 69 of the tender document) was split in two parts, the first referred to the total all-inclusive price and the second part featured 'Provisional Items Rate Only' for 2D scanning, (f) the appellant joint venture quoted the all-inclusive price of €529,820 which included all the provisional items and that explained why the said appellant quoted the unit rate of €8.26 whereas the other bidders quoted prices ranging from €96.80 to €1,000 and up to €7,260 for these provisional items, (g) the appellant joint venture contended that there must have been some misunderstanding in the sense that it submitted a one, all-inclusive price as requested whereas the other bidders submitted two prices, for the standard items and one for the provisional items, which was not according to tender conditions, (h) it was noted that the recommended bidder offered €74,457.35 for 3D documentation but then offered the unit price of €36.30 and €60.50 for the provisional items against the appellant joint venture's unit price of €8.26, (i) when complaining that it received the letter of rejection almost too late to lodge an appeal the contracting authority declared that such communications were, invariably, also sent via email, (j) clause 2.2 under 'Specific Objectives' stated, among other things, that the tasks "*Constitute a holistic 3D model of the surfaces of the areas/volumes*" and so, in the total price, the appellant joint venture's representative included everything, even the provisional items, (k) the appellant joint venture's representative stated that she was hard pressed for time to submit the tender and, as a result, she did not have time to ask for a clarification on what exactly represented the 'global price', (l) the tender document referred to all underground structures, including, but not limited to, reservoirs, shelters and so forth and, therefore, one had to cater for other things that might crop up but were not covered in the list provided and (m) the term 'provisional items' was not very clear so much so that the prices offered by the other tenderers varied considerably;
- having considered the contracting authority's representative's reference to the fact that (a) the 3D model represented a digital model scanned by laser of Fort St Angelo, which model one could keep on a computer to extract data from it or from which one could need to extract a set of plans or cross-cuts a number of which were already included with the mandatory requirements, (b) the provisional items referred to future requirements which might or might not materialise in terms of additional cross-cuts or printouts of plan details over and above what had already



been mandatorily requested in the terms of reference, (c) under the heading 'Deliverables' of the terms of reference at pages 60 to 63 there is the list of things which had to be delivered by the contractor and that list should have been reflected in the global price, (d) although the tender called for 3D documentation, still the 2D plans mentioned under provisional items were extractable from the 3D survey and (e) the provisional items were identified in the *Financial Bid* itself and no clarifications were requested in that regard,

reached the following conclusions, namely:

1. The Public Contracts Review Board argues that there is no excuse for a tendering entity not to seek any clarification/s relating to a particular tender and, as a consequence, finds the appellant joint venture's representative's statement that she was hard pressed for time to submit the tender and, as a result, she did not have time to ask for a clarification on what exactly represented the 'global price', as unjustified.
2. This Board maintains that under the heading 'Deliverables' of the terms of reference at pages 60 to 63 there is the list of things which had to be delivered by the contractor and that list should have been reflected in the global price. Also, the provisional items were identified in the *Financial Bid* itself and no clarifications were requested in that regard.
3. The Public Contracts Review Board opines that the appellant joint venture was wrong in contending that it was highly questionable for the other bidders to be able to provide all the services requested at the all inclusive prices ranging from €63,075 to €113,740 when its own quoted all-inclusive price was €529,820. This Board argues that, contrary to what the appellant joint venture had understood, the other bidders acted correctly and in line with tender conditions in submitting two prices, namely one for the standard items and one for the provisional items. This Board agrees with the contracting authority's interpretation of 'provisional' items which referred exclusively to future requirements which might or might not materialise in terms of additional cross-cuts or printouts of plan details over and above what had already been mandatorily requested in the terms of reference. The Public Contracts Review Board noted that, in its bid, the appellant joint venture catered for every eventuality which might not necessarily be required and that would explain the difference in the price quoted.

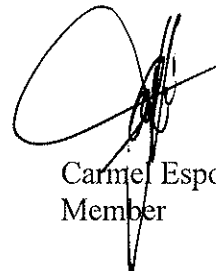
In view of the above, this Board finds against the appellant joint venture and recommends that the deposit paid by the same appellant for the appeal to be lodged should not be reimbursed.



Alfred R Triganza
Chairman



Joseph Croker
Member



Carmel Esposito
Member

26 October 2012