

PUBLIC CONTRACTS REVIEW BOARD

Case No. 524

GGH/91/2012

Tender for the Manufacture, Supply, Delivery and Installation of Timber Doors at the Gozo General Hospital

The call for tender was published in the Government Gazette of the 18th May 2012 with a closing date of the 11th June 2012. The estimated value of the tender was €61,000 excluding VAT. The price of the recommended tender was € 52,667.74 (incl. VAT).

Aretrop Ltd filed an objection on the 28th September 2012 against the decision of the Ministry for Gozo to disqualify its offer as administratively non-compliant and to recommend award to Mario Portelli Woodworks at a higher price.

The Public Contracts Review Board composed of Mr Alfred Triganza (Chairman) and Mr Carmelo Esposito and Mr Paul Mifsud as members convened a meeting on Tuesday 26th March 2013 to discuss the appeal.

Present:

Aretrop Ltd

Ms Ritianne Schembri	Representative
Mr Santo Portera	Managing Director

Mario Portelli Woodworks

Dr John Paul Grech	Legal Representative
Mr Mario Portelli	Representative

Central Procurement and Supplies Unit – Ministry for Health, the Elderly and Community Care

Evaluation Board

Ing. Saviour Debrincat	Chairman
Ms Loraine Apap	Member
Mr Lorry Apap	Member
Mr Anthony Cassar	Member
Ms Joanne Parnis	Secretary

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

Ms Ritianne Schembri, representing Aretrop Ltd, the appellant company, made the following submissions:

- i. by letter dated 18th September 2012 Aretrop Ltd was informed that its offer was rejected for failure to submit certificates of a chain of custody for timber certified as FSC, PEFC or any other equivalent means of proof of compliance that the timber was procured from legal sources as per requirements of the Green procurement clause in the technical specifications of the tender dossier;
- ii. the appellant company's supplier did possess FSC Certification with its code reading FSC-C023180 issued on the 8th December 2008 and expiring on the 7th December 2013;
- iii. the tender document requested proof of the bidder's experience where it was demonstrated that the supplier had extensive experience in the supply of doors to various hospitals, schools and cinemas in Europe;
- iv. the list of literature to be submitted included in the tender document did not mention that the tenderers had to submit the certificate of chain-of -custody for timber or equivalent;
- v. the appellant company's representative had signed the Tenderer's Declaration confirming that the bidding company would comply with all tender specifications listed in Volume 3 'Technical Specifications', which included, among other things, the 'certificate' for timber in question;
- vi. one had to note that the supply of these particular doors, in respect of which this certificate was being requested, made up only about 8% of the tender value;

and
- vii. the tender document also provided that the contracting authority could request clarifications from tenderers but no such request had ever been made to clear this relatively minor issue.

Ing. Saviour Debrincat, chairman of the evaluation board, explained that:-

- a. Section B of Volume 3 'Technical Specifications' (page 47) clearly indicated that the "Timber used for the Internal Door Frame Sets shall come from legal sources" and then it went on to specify that proof of compliance with the chain of custody tracing system had to be provided through ISO 9000 and/or ISO 14000 or EMAS management system or FSC, PEFC or any other equivalent means;

and

- b. the reason for rejection stemmed from the fact that the evaluation board found no such certification in the appellant company's tender submission.

Ms Schembri stated that the supplier's FSC Certification has been submitted with the letter of objection dated 26th September 2012.

Mr Santo Portero, representing the appellant company, went through the tender submission made by Aretrop Ltd and acknowledged that no certificates had been submitted by way of proof of compliance with 'the chain of custody tracing system'.

The Public Contracts Review Board observed that:-

- a. the submission of this certificate was a mandatory requirement requested in Volume 3 'Technical Specifications';
 - b. as per clause 16.1 'Content of Tender' (page 9) and clause 11 of the 'Tenderer's Declaration' (page 20) para. (e) 'Evaluation Criteria/Technical Specifications' indicated that in respect of (i) Tenderer's Technical Offer in response to specifications (Volume 3)' and (ii) 'Literature and samples' Note 3 was applicable which laid down that '*No clarification shall be allowed. Only clarifications on the submitted information may be requested*';
 - c. once it has been ascertained that this certificate had not been submitted then the contracting authority was precluded from asking for a clarification on information which had not been submitted in the first place;
- and
- d. the signing of the Tenderer's Declaration did not exonerate the bidding company's obligation to submit the mandatory information requested in the tender document.

At this point the hearing came to a close.

This Board,

- having noted that the appellant company, in terms of its 'reasoned letter of objection' dated the 26th September 2012 and also through its representatives verbal submissions presented during the hearing held on the 26th March 2013, 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 letter dated 18th September 2012 Aretrop Ltd was informed that its offer was rejected for failure to submit certificates of a chain of custody for timber certified as FSC, PEFC or any other equivalent means of proof of compliance that the timber was procured from legal sources as per requirements of the Green procurement clause in the technical specifications of the tender dossier, (b) the appellant company's supplier did possess FSC Certification with its code reading FSC-C023180 issued on the 8th December 2008 and expiring on the 7th December 2013, (c) the tender document requested proof of the bidder's experience where it was demonstrated that the

supplier had extensive experience in the supply of doors to various hospitals, schools and cinemas in Europe, (d) the list of literature to be submitted included in the tender document did not mention that the tenderers had to submit the certificate of chain-of-custody for timber or equivalent, (e) the appellant company's representative had signed the Tenderer's Declaration confirming that the bidding company would comply with all tender specifications listed in Volume 3 'Technical Specifications', which included, among other things, the 'certificate' for timber in question, (f) one had to note that the supply of these particular doors, in respect of which this certificate was being requested, made up only about 8% of the tender value, (g) the tender document also provided that the contracting authority could request clarifications from tenderers but no such request had ever been made to clear this relatively minor issue and (h) the supplier's FSC Certification has been submitted with the letter of objection dated 26th September 2012;

- c. having considered the contracting authority's representative's reference to the fact that (a) Section B of Volume 3 'Technical Specifications' (page 47) clearly indicated that the "Timber used for the Internal Door Frame Sets shall come from legal sources" and then it went on to specify that proof of compliance with the chain of custody tracing system had to be provided through ISO 9000 and/or ISO 14000 or EMAS management system or FSC, PEFC or any other equivalent means and (b) the reason for rejection stemmed from the fact that the evaluation board found no such certification in the appellant company's tender submission

reached the following conclusions, namely:

1. The Public Contracts Review Board has taken cognizance of the fact that during the hearing Mr Santo Portero, representing the appellant company, went through the tender submission made by Aretrop Ltd and acknowledged that no certificates had been submitted by way of proof of compliance with 'the chain of custody tracing system'. This Board notes that the submission of this certificate was a mandatory requirement requested in Volume 3 'Technical Specifications'.
2. The Public Contracts Review Board notes that, as per clause 16.1 'Content of Tender' (page 9) and clause 11 of the 'Tenderer's Declaration' (page 20), para. (e) 'Evaluation Criteria/Technical Specifications' indicated that in respect of (i) Tenderer's Technical Offer in response to specifications (Volume 3)' and (ii) 'Literature and samples' Note 3 was applicable which laid down that '*No clarification shall be allowed. Only clarifications on the submitted information may be requested*',
3. The Public Contracts Review Board opines that once it has been ascertained that this certificate had not been submitted then the contracting authority was precluded from asking for a clarification on information which had not been submitted in the first place.
4. This Board establishes that the signing of the Tenderer's Declaration did not exonerate the bidding company's obligation to submit the mandatory information requested in the tender document.

In view of the above this Board finds against the appellant company and recommends that the appellant company should not be reimbursed with the deposit paid to lodge the appeal.

Alfred R Triganza
Chairman

Carmelo Esposito
Member

Paul Mifsud
Member

15 April 2013