

PUBLIC CONTRACTS REVIEW BOARD

Case No. 564

CT 3113/2012

Service Tender for the Provision of Specialised Training and Certification for Data Protection Officers with the Malta Public Service.

The tender was published on the 20th November 2012 with a closing date of the 15th January 2013. The estimated value of the Tender was €300,692.32 (Exclusive of VAT).

Three (3) bidders submitted their offers.

PricewaterhouseCoopers on the 4th June 2013 filed an objection, followed by a reasoned letter of objection filed on the 11th June 2013 against a decision of the Director General (Contracts) to discard its offer and to recommend the cancellation of the tender.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Richard A. Matrenza as members convened a hearing on Tuesday 16th July 2013 to discuss the appeal.

Present:

PricewaterhouseCoopers - Appellants

| | |
|-------------------|----------------------|
| Dr Steve Decesare | Legal Representative |
| Mr George Sammut | Representative |

Evaluation Board

| | |
|-----------------------|----------|
| Mr Bernard Bartolo | Chairman |
| Ms Moira Pisani | Member |
| Mr Ian Deguara | Member |
| Ms Marica Saliba | Member |
| Mr Jonathan Sciberras | Member |

The Chairman made a brief introduction and the appellant company's representative was invited to explain the motives of the firm's objection.

Dr Steve Decesare, legal representative on behalf of the appellants stated that his clients' bid was declared to be administratively non compliant because they omitted to include the bid price in the Tender Declaration at page 19 of their bid. This was through an oversight caused by the different format of the Tender Declaration form used for this Tender. Point 3 of the Declaration omitted the usual blank spaces wherein one could fill in the price quoted, and the person who filled the tender document did not realise that after the colon, he should have written down the financial bid as well. However this does not mean that no price was quoted for the Tender because their bid was properly entered in the Financial Bid Volume 4 page 59 of the Tender document.

This was not a case where the financial bid was missing but in fact the price was not written in its proper place. There were several cases decided by the PCRB and the European Court of Justice wherein it was decided that evaluation boards should not disqualify bidders on trivial matters.

Mr Bernard Bartolo, Chairman of the Evaluation Board explained that the Scheduling of bids is done by the Contracts Department. Summary of Tenders Received show that only one bidder had properly written down the price, appellant's bid is not shown. It was therefore for this reason that their bid was disqualified. It is true that the European Court of Justice stated that bidders should not be disqualified for trivial reasons, but the same Court also stated that it was the bidder's responsibility to submit a proper bid.

He also stated that the evaluation report showed another reason for disqualification. This reason was not however included in the Department of Contract's letter to appellants. Appellants could have breached clause 7, which dealt with multiple bids, of the instructions to Tenders because during the evaluation process they took over CC Training Ltd which was another bidder who had submitted tender number 1. At the time of the closing date, appellants had not yet taken over the other bidder. They took them over in April 2013 that is three months after the closing date.

Answering questions by the Chairman PCRB, Mr Bartolo continued that in fact appellants' bid was not the cheapest. The Department of Contracts had insisted with the evaluation board that the appellants' Tender Declaration had incomplete information. Finally he declared that evaluation board had not evaluated the technical compliancy of the appellants' offer since they had been found administratively non-compliant.

The hearing was at this time brought to an end.

This Board,

Having noted the Appellant's objection in terms of 'Reasoned Letter of Objection' dated 10th June 2013, in that:

- a) The Appellant's bid was 'Administrative' non compliant due to the fact that Appellant failed to include the Bid Price in the tender declaration's form at page 19.**
- b) The tender price was properly entered in Volume 4 page 59 of the Tender Document.**
- c) This was not a case of failing to quote a price, but rather putting same in the wrong place.**
- d) This was a trivial matter and the Evaluation Board should not disqualify the bidder on such grounds.**
- e) In fact the bidder's price was quoted.**

Having considered the Contracting Authority' Evaluation Board's submissions as follows:

- a) That the Tenders received indicated that only one bidder had properly stated the price.**
- b) That the Appellant's bid was not shown in the Tender document.**
- c) The European Court of Justice ruled that bidders should not be disqualified for trivial reasons.**
- d) The European Court of Justice also ruled that it was the Bidder's responsibility to submit a proper tender.**
- e) That the Appellant had breached clause 7, which deals with multiple bids.**
- f) That during the Evaluation process, the Appellant took over another bidder to the same tender.**
- g) That the appellant's Bid was not the cheapest.**

Reached the following conclusions,

- 1. The fact that the Appellant failed to include the price in Part ‘C’ of the Tender form did not constitute omission on the part of the Appellant’s bid.**
- 2. The Price was in fact quoted by the Appellant on Volume 4 of the Tender under (Global Price Contracts) – Financial Bids.**
- 3. The Appellant cannot be excluded on an ‘Administrative non Compliant’ issue as although not all the sections of the Tender included the price, the price was quoted.**
- 4. There was no case of ‘Multiple Bids’ as at the time of closing date of the Tender Appellants has not as yet taken over the other Bidder.**
- 5. Due to these considerations, the Evaluation Board of the Contracting Authority did not evaluate the Appellant’s tender on the Technical Compliancy aspect.**

In view of the above, this Board finds in favour of the Appellant and apart from being integrated in the evaluation process, recommends that the deposit paid by the same Appellant for the appeal to be lodged should be reimbursed.

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Richard A. Matrenza
Member

8th August 2013