

PUBLIC CONTRACTS REVIEW BOARD

Case No. 567

MRRA/W/544/2012

Tender for Commissioning of Study to Establish Cost-Optimal Energy Performance Levels in New and Existing Residential Buildings

The tender was published on the 8th February 2013. The closing date was the 22nd February 2013. The estimated value of the Tender was €29,661 (Exclusive of VAT).

Five (5) bidders submitted their offers.

On the 14th May 2013 Mediterranean Technical Services Ltd filed an objection against its exclusion from the tender, giving no reasons for the objection. On the 4th July 2013, Mediterranean Technical Services filed a reasoned letter of objection whereby it listed the grievances against its disqualification.

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 23rd July 2013 to discuss the appeal.

Present:

Mediterranean Technical Services Ltd. - Appellants

Mr Joseph Demanuele	Representative
Mr Jonathan Sammut	Technical Director
Mr Anthony Bartolo	
Mr Bernard Brincat	
Mr Mario Schembri	
Ms Liana Vella	

Casainginiera – Recommended Bidder

Dr Andre Portelli	Legal Representative
Mr Pierre Cassari	Representative
Mr Daniel Azzopardi	Representative

EU Affairs Directorate (Building Regulations Office) – Contracting Authority

Dr Maria Scicluna	Legal Representative
Mr Samuel Attard	Chairman Evaluation Board
Mr Matthew Degiorgio	Member Evaluation Board
Mr Samuel Farrugia	Member Evaluation Board
Mr Stephen Pulis	Member Evaluation Board
Ms Nathalie Pace	Secretary Evaluation Board

After a brief introduction, the Chairman invited the appellants to explain the reasons for the objection.

Liana Vella on behalf of the appellants stated that:

1. the first point of appellants' disqualification was that "*not enough resources are being allocated to this offer. Two team members have relevant specialisations. However there is an insufficient diversity in professions allocated to the project. The application of building energy performance expertise and skills in using related software packages were not demonstrated.*" In MTS's bid we presented two persons having the necessary EPRDM qualifications as requested in the tender documents. Our firm works constantly in the building services and has all the necessary experience as requested. In our letter of objection we stated that the tender document does not stipulate clearly the number of resources required for the job. MTS employs 10 warranted engineers and has the necessary resources to complete the job successfully.
2. Methodology: Tender document requested the submission of an Organisation and Methodology document. It did not request any detailed methodology was requested. Appellants firm contained one page giving the rationale to be used, another listed the strategy and a third the experience. Contends that their bid did not have any deficiencies.
3. Innovation: The tender document stipulated the procedure to be used, and our bid stated that we would follow it and comply. Thus we contend that there was no room for any innovation. The remarks about lack of innovations were unjustified.
4. Time plan: Ms Vella contended that the tender document did not specifically request a time-plan to be submitted. It just stipulated a duration period and time frames for the completion of works with deadlines. Had MTS been awarded the tender it would obviously have submitted a time-plan.
5. EPRDM: In evaluating appellants' bid, the evaluation board stated that MTS was using only EPRDM software. The tender document did not request other specific software and as EPRDM is specifically designed for the purpose of the works requested in the tender, MTS decided to use it. This fact should not have been used against MTS.
6. Deliverables: The tender did not request a quality system, yet MTS submitted that it had a quality system in place and the company is certified to ISO9001:2008 requirements. Thus MTS claims that it is unjust to comment that "*no deliverables and measures for ensuring quality were mentioned* in their bid.

Samuel Attard, Chairman, Evaluation Board stated that Mr Stephen Pulis would reply to the objections raised by Ms Liana Vella.

Mr Stephen Pulis, a member on the evaluation board stated that during the evaluation of appellants' bid he became aware that an in depth understanding of the process was lacking. The tender is very technically specialised and is the first time that such tender has been

issued. The scope of the tender would affect and influence the building industry in Malta in the future as policy would be based on the results.

Mr Pulis acknowledged that MTS has in house capabilities and resources related to the construction industry. However the tender required expertise and special studies of buildings that are crucial. One of the important things deals with reference buildings. These do not necessarily have to be existing buildings because you have to create a median of buildings. It was apparent from the methodology used by MTS that there was no in-depth explanation of the different phases. Also the lack of time frames. It is true that MTS submitted some sort of skeleton time frame but it was felt that much more details were needed. The EPRDM certification is acknowledged this means that architects and engineers may certify buildings, however, once again much more was needed. Regarding EPRDM, if one sees the requisites of the European Union it is evident that this tool is not enough. It was felt that MTS's bid did not supply this.

On being asked whether the evaluation board felt the need for clarifications during the process, this being the first time such an important tender was being considered; Mr Pulis said that he felt no need for such clarifications. The tender being Directive given, required a time frame, set by the Maltese authorities. However a time frame as such was not requested in the tender document.

Dr Maria Scicluna for the contracting authority explained that the tender document gave all the necessary guidelines for the proper bidding to be made.

The Chairman suggested that any future such first time highly technical tenders should be preceded by a public meeting where all the intricacies would be explained to any interested bidders.

Mr Mathew Degiorgio for the contracting authority said that at European level there have been several studies made and published and all are easily accessed through internet. In preparing the tender documents we based document on these guidelines as regards methodology to be used. This reference point was included in the tender document.

At this point the hearing was brought to an end.

This Board,

Having noted the letter of objection dated 14th May 2013, giving no reasons for the objection and the Appellant's claim during the hearing heard on 23 July 2013, as follows:

- a) That the Contracting Authority disqualified the Appellant's bid due to lack of Resources.**
- b) That the Appellant's bid did not have any deficiencies in the 'Methodology' required in the tender document.**

- c) **That the remarks made by the Contracting Authority about the Appellant's bid as lacking of innovations, were unjustified.**
- d) **That no time plan was requested in the tender document.**
- e) **That in evaluating the Applicant's bid, the Evaluation Board stated that Appellant was only using EPRDM software and that this was to the detriment of the Appellant's bid.**
- f) **That no deliverables and measures for ensuring quality were mentioned in the Appellant's bid.**
- g) **The Appellant Company is certified ISO 9001:2008.**

Having considered the Contracting Authority's submissions as follows:

- a) **That the Appellant's bid was lacking an in depth understanding of the process.**
- b) **That since this is the first time that such a tender was issued, it was highly important to emphasise on the specialised technical aspect**
- c) **That the award of the tender to the appropriate bidder would influence the future policy of the building industry in Malta.**
- d) **That, although the Appellant had in house capabilities relating to the construction industry, the Appellant was required to prove that he had the expertise and special studies of buildings that are considered as 'Crucial' including 'Reference Buildings'.**
- e) **That the 'Methodology' adopted by the Appellant did not include an in depth explanation of the different phases.**
- f) **That although, the Appellant submitted a skeleton 'Time Frame', it was considered by the Evaluation Board that it was too sketchy.**
- g) **That the software mentioned by the Appellant to be utilised, namely EPRDM is not sufficient in accordance with EU regulations.**

Reaching the following conclusions:

1. **That the tender value does not exceed Euros 120,000, and that this objection should have been filed under Regulation 21 (i) of the Public Procurement Regulations;**

2. That this Regulation clearly states that ‘Whoever is aggrieved by the award may within five working days from date of notification, file a letter of objection with reasons for objecting;
3. No reason was filed with the objection within the stipulated time.

In view of the above, this Board finds against the Appellant and recommends that the deposit paid by the same Applicant should not be reimbursed.

Dr. Anthony Cassar
Chairman

Mr. Richard A. Matrenza
Member

Dr. Charles Cassar
Member

8th August 2013