

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 575**

**T/08/12**

### **Service Tender for the Provision of Short courses For MCAST Staff.**

The tender was published on the 10<sup>th</sup> June 2012. The closing date was the 27<sup>th</sup> June 2012.

The estimated value of the Tender was: Lot 1 €5, 000; Lot 2 € 22,000 (Exclusive of VAT).

Two (2) bidders submitted their offers.

On the 13<sup>th</sup> February 2013 Allied Consultants Limited filed an objection against its exclusion from Lot 1 of the tender and the non-award 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 Thursday 1<sup>st</sup> August 2013 to discuss the appeal.

### **Present:**

#### **Allied Consultants Limited - Appellants**

Mr Lorenzo Mule` Stagno	Representative
Dr Victor Axiak	Legal Representative

#### **Malta College of Arts Science and Technology – Contracting Authority**

Dr Peter Fenech	Legal Representative
Dr Helena Sammut	Representative
Mr Oscar Borg	Member Evaluation Board
Ms Veronica Sultana	Member Evaluation Board
Ing Pierre Dalmas	Member Evaluation Board

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

Dr Peter Fenech at this point asked to be allowed to explain a letter of reply filed by his clients earlier on today. He explained that this was a two lot tender and a bidder could be non compliant for one lot but still be compliant for the other lot. The letter by which appellant was informed of the outcome of the tender is admittedly not worded properly and not clear enough, and could be misunderstood. Appellant's bid for one lot was compliant while that for the other lot was not. In fact his bid for the compliant Lot continued in the evaluation process and was found to be compliant both administratively and technically, and passed to the financial evaluation stage. Dr Peter Fenech continued that the funds for this project came from abroad through ES Funds and exhibited a document by the Public Priorities Coordination Department (a Tenderer's Originator Form) that had allotted funds for this project. This form is an internal document and is not published.

Dr Victor Axiak on behalf of the appellants started by asking to hear the testimony of a contracting authority's representative.

Mr Steve Caruana, Purchasing Manager, who was not on the evaluation board, confirmed, on being asked that the bid bond was €350. About the amount set for the bid bond he stated that there is no criterion as such to arrive at the figure, but it is based on the estimated value of the tender. He could not confirm that the amount of €350 was arrived at using the value of €35,000 at 1 percent. On being asked to confirm that to-date, Malta College of Arts, Science and Technology has not yet published the fact that Lot1 of the tender had been cancelled, he stated that the fact that tender was not awarded had been shown in the notice board and on the web site. He produced and filed a notice dated 8 February 2013 which is being marked as Doc 1. On being shown a screen shot of the Authority's web page he said that this shows that the tender is still being adjudicated. He reiterated that the tender was "not awarded", and explained that the web site had not been updated.

Dr Victor Axiak asked to hear the testimony of Mr Pierre Dalmas, a member on the evaluation board. Mr Dalmas stated that since then, a new web site was inaugurated and old data had to be transferred from the old web site to the new one. The service provider has also been changed. The transition period was long and Malta College of Arts, Science and Technology was without web site for two weeks. Replying to a question by Dr Victor Axiak, witness stated that his responsibility as an adjudicator ended when the evaluation board submitted its report. He could not state whether the tender had been cancelled or not but that it was not awarded. He agreed that the choice of wording could have been a lot better, but he personally understood that being over the budget, a bid was financially non-compliant. He understood that appellants were administratively and technical compliant but that their financial offer exceeded the estimated budget. He confirmed that no communication had been made with any of the bidders.

It was agreed that the estimated budget was not published.

Dr Peter Fenech on behalf of Malta College of Arts, Science and Technology replied to a question from the Public Contracts Review Board and confirmed that as page 4 of the evaluation report shows, only appellant's bid for Lot 1 was deemed compliant and continued through to the financial evaluation. It was then however found that this bid was above the allotted budget.

Dr Victor Axiak insisted that his client on the 6<sup>th</sup> February 2013 was informed that its bid was not fully compliant. The contracting authority had every right to cancel the tender but such decision had to be notified to all the bidders. He contended that if a bid is over the estimate, it does not mean that it was non-compliant.

Chairman Public Contracts Review Board stated that certainly, the wording in the communication with bidders was not the most proper, but the end result was that there were no funds for the project.

Dr Victor Axiak asked that in view of what was said during the hearing; he would no longer insist in his clients being awarded Lot 1 but in the circumstances, asked that the deposit made for the objection will be reimbursed, and that the tender be declared formally cancelled.

The hearing was concluded at this stage.

**This Board,**

**Having noted the Appellant's objection in terms of 'Reasoned Letter of Objection' dated 13<sup>th</sup> February 2013 and also through the Appellant's verbal submissions during the hearing held on 1<sup>st</sup> August 2013, in that:**

- a) The Appellant insisted that the Contracting Authority failed to make a distinction between Lot 1 and Lot 2 of the tender.**
- b) Although the Appellant confirms that the Evaluation Board of the Contracting Authority's decision was that the Appellant was technically non compliant for Lot 2, the same decision does not apply for Lot 1 of the tender.**
- c) The Applicant's bid for Lot 1 of the tender was technically compliant.**

**Having considered the Contracting Authority's submissions by way of a 'Letter of Reply' dated 29<sup>th</sup> July 2013 and through the verbal submissions presented by same during the hearing held on 1<sup>st</sup> August.**

- a) Appellant was actually informed that his offer for Lot 2 of the tender was not technically compliant.**
- b) The Contracting Authority admitted the omission 'on its part' that it failed to inform the Appellant of the reasons for disqualification for Lot 1.**
- c) The tender issued by the Contracting Authority had to be cancelled due to lack of funds for the execution of the tender works.**

**Reached the following conclusions:**

- 1. The Contracting Authority should have clearly stated the reasons to all bidders for non compliance with regards to Lot 1 and Lot 2 of the tender.**
- 2. Since, as explained by the Contracting Authority's legal representative, this tender had a stipulated budget and all tenders 'bids were beyond the available**

**funds, this tender had to be cancelled. However, the Contracting Authority is in duty bound to inform all the bidders to the tender of the cancellation of tender and reasons thereof.**

**In view of the above, this Board recommends that the deposit paid by the Appellant be fully reimbursed.**

Dr. Anthony Cassar  
Chairman

Dr. Charles Cassar  
Member

Mr. Richard A. Matrenza  
Member

*3 September 2013*