

PUBLIC CONTRACTS REVIEW BOARD

Case No. 605

DOI 99/07

Service Contract for a Cameraperson to Cover Government Initiatives in Gozo.

The tender was published on the 21st May 2013. The closing date was the 14th June 2013.

The estimated value of the Tender was €16,500 Inclusive of VAT (or €100 per assignment).

Two (2) bids were submitted for this tender.

On the 31st July 2013, Citadel Video Communications Limited filed an objection against the rejection of its bid as being administratively non compliant and the award of the tender to Motion Blur.

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 3rd October 2013 to discuss the appeal.

Present for the hearing:

Citadel Video Communications Limited - Appellant

Mr George Scicluna	Representative
Dr John Gauci	Legal Representative

Motion Blur - Preferred Bidder

Ms Shirley Spiteri	Representative
Mr Stanely Agius	Representative

Department of Information - Contracting Authority

Mr Saviour Grech	Chairman Evaluation Board
Ms Charmaine Bonnici	Member Evaluation Board
Mr Matthew Carbone	Member Evaluation Board
Mr Paul Azzopardi	Representative

The Chairman made a brief introduction and asked the appellant's representative to make his submissions on the objection.

Dr John Gauci on behalf of the appellant stated that his client's bid was disqualified because a form at Volume 3 Section 2 was not filled in. This form required that the tenderer declares his capacity of performing bidder's obligations, and a list showing the equipment the bidder would be using. Instead of filling in this form, appellant submitted a detailed four page document; called "Organization and Methodology" wherein appellant included all that was requested in the said form. The document also included a declaration that at no time will appellant firm be short of the necessary equipment to fulfil its obligations. This document included also a list of all the equipment that would be used to provide the service. Apart from this, the document explained appellant's technical capacity in great detail. It is absurd that the appellant gave more details than the form required and yet was excluded because the said form was not filled. The document he submitted was signed and formed part of appellant's offer. Dr Gauci continued that this point of 'substance over form' had been decided by this Board several times before. In this case, substance meant that the required information had been given. A bid cannot be disqualified for giving the required information in another form, yet the reason for appellant's disqualification was that "the information was not in the required format". Appellant had reproduced the form in his bid, but added more details.

The Chairman asked the contracting authority if it was the case that appellant's bid had been discarded because he failed to fill in the form in the required format. He asked if in fact the detailed report submitted by appellant was examined by the evaluation board or not.

Mr Matthew Carbone, a member of the evaluation board replied that what was required was a signed declaration where the bidder assumes responsibility for, and declares to have the necessary technical capacities to provide the service. Appellant, while listing the capacities of the company, failed to sign the document. This form did not allow for any rectifications.

The Chairman asked that if a bidder did not have enough space in the form would it have been acceptable to add another sheet.

Mr Matthew Carbone replied that if this had been duly signed, it would have been acceptable, but insisted that appellant did not sign the declaration. No exceptions were allowed, declarations had to be signed.

DR John Gauci insisted that all the required information including the declaration was included in appellant's submission marked Organization and Methodology, and this submission was signed by the appellant.

At this stage, the hearing was brought to a close.

This Board,

Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 31st July 2013 and also through the Appellant's verbal submissions during the hearing dated 3rd October 2013, had objected to the decision taken by the pertinent Authority , in that:

- a) The Appellant's Bid was discarded by the Evaluation Board due to the failure, on the Appellant's part to fill in the declaration form as was required under Volume 3 , Section 2 of the tender document.**
- b) The Appellant contends that the required information under Volume 3, section 2 of the tender document was in fact submitted through an annexed document with the tender.**
- c) The required declaration was also included in the said annexed document.**
- d) The Annexed document was also signed by the Appellant.**

Having considered the Contracting Authority's verbal submissions during the hearing held on 3rd October 2013, in that:

- a) The Evaluation Board insisted that unless the declaration as specified in the appropriate form in the tender document was signed, the same Board could not accept the Appellant's bid as being compliant.**
- b) The declaration which was required under Volume 3 , section 2 of the tender , was that the Appellant would have the necessary resources and equipment for same to carry out the duties as specified in the tender without interruptions.**

Reached the following conclusions:

- 1. From submissions and documentation presented during the hearing of this appeal , this Board opines that the annexed document submitted by the Appellant with the tender did in fact give all the required information as specified in Volume 3 , section 2 of the tender document.**
- 2. The fact that all annexed documentation was signed by the Appellant , same is therefore declaring and abiding by the conditions as stated in Volume 3 , section 2 of the tender document.**

In view of the above, this Board finds in favour of the Appellant Company and recommends that:

- i) The Deposit paid by the Appellant should be reimbursed.**
- ii) The Appellant's bid should be reintegrated in the evaluation process.**

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Richard A. Matrenza
Member

26 November 2013