

PUBLIC CONTRACTS REVIEW BOARD

Case No. 644

ECCD/109/2012

Tender for the Supply of Care Workers to CommCare Outreach Team within the Department for the Elderly and Community Care.

The tender was published on the 8th March 2013. The closing date was the 4th April 2013.

The estimated value of the Tender was €120,000 (Exclusive of VAT)

Two (2) bidders had submitted an offer for this tender.

On the 5th December 2013 Support Services Limited filed an objection against the proposed award of the tender to St James Hospital Limited.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a hearing on Tuesday the 7th January 2014 to discuss the objection.

Present for the hearing were:

Support Services Limited - Appellant

Mr Philip Bonnici	Representative
Dr Ian Spiteri Bailey	Legal Representative

St James Hospital Limited - Preferred Bidder

Ms Maria Bugeja	Representative
Ms Blanche Plumpton	Representative
Dr Sandro Lia	Legal Representative

Department for the Elderly, Ministry For Family and Social Solidarity - Contracting Authority

Mr Albert Briffa	Chairman Evaluation Board
Mr John Privitelli	Secretary Evaluation Board
Mr Ray Mamo	Asst Director
Mr Emmanuel Bezzina	Member Evaluation Board
Ms Isabelle Avallone	Member Evaluation Board
Ms Marisa Vella	Member Evaluation Board

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

Dr Ian Spiteri Bailey on behalf of the appellant said that the main reason for this objection was the man/hour rate submitted by the preferred bidder which he contends is not viable. Dr Spiteri Bailey asked that he be shown the preferred bidder's Bill of Quantity, however this was refused by the preferred bidder.

When Dr Spiteri Bailey insisted in being allowed to see this document the Chairman explained that this is not possible under the current regulations; the contracting authority is legally bound to publish the hourly rate.

Dr Spiteri Bailey continued that the appellant had made a formal request to be provided with the rates as submitted by the preferred bidder in the Bill of Quantity but the request was refused by the contracting authority. He stated that if the amount included all that was requested, then the figure would not be correct; he contended that the service cannot be provided under that rate. He insisted and wanted to verbalize the fact that to make his client's case he wanted to see the preferred bidder's Bill of Quantity.

Mr Albert Briffa the chairman of the evaluation board said that according to the regulation amendments made during 2013, bidders had to submit a breakdown of the hourly rates submitted and these were sent to the Department of Industrial Relations for vetting. When the preferred bidder's bid was being evaluated, the itemized Bill of Quantity was referred to the Department of Industrial Relations. In the latter's opinion, the rates were more than reasonable. It was then that the tender was adjudicated. When compared to the wage regulation order, the rates submitted by the preferred bidder were reasonable. Replying to questions by Dr Spiteri Bailey, Mr Briffa said that the itemized Bill of Quantity was submitted to the DIR on the 15th October 2013. The Bill of Quantity was received on the 14th October 2013.

Dr Spiteri Bailey said that according to clause 17.2 of the tender, bidders had to provide a breakdown of the overall price in euros. Did the preferred bidder in fact comply with this requirement at the time when submitting the tender?

Mr Albert Briffa on behalf of the contracting authority said that if he remembered correctly, the preferred bidder's tender did not contain the breakdown of costs. When the evaluation board asked the Department of Contracts about this, it was informed that the breakdown was no longer needed. This was reflected in clause 16 of the tender where it is stated that "tenderers are not required nor are expected to submit with their offer any component except those mentioned in clause 16."

Dr Spiteri Bailey referred also to clause 16.1 f, financial offer/ bill of quantity which falls under note 3 where no rectification is allowed, only clarification and claims that therefore in the present case, the evaluation board tried to rectify when no rectification was allowed. The BOQ was received six months after the closing date of the tender.

Mr Albert Briffa said that the evaluation board had consulted with the Department of Contracts who said that the preferred bidder's tender had sufficient information to enable adjudication. Following the publication of the tender, new regulations had been issued covering service contracts. These new regulations required the submission of statement of

conditions of employment and breakdown of the hourly rate. That was the reason why the preferred bidder was asked to submit them since in reality these were not needed to enable evaluation to be made. This information was when received passed on to the DIR for vetting as required by the new regulations. Thus it was not a question of rectification.

Mr Ray Mamo, assistant director for the contracting authority, speaking about clause 16, financial bid/bill of quantity said that it were the terms of reference that spell out the services needed and thus the contracting authority could not ask for specific cost of items, the bidders had to state these.

Dr Alessandro Lia on behalf of the preferred bidder said that this objection was based on an allegation that was not sustained by evidence. That was why appellant's representative wanted to see the bill of quantity of the preferred bidder. He continued that volume 4 of the tender document, page 49 asked for the indication of the fees per hour for the provision of 8 care workers etc; the hourly rate per weekdays. The preferred bidder complied in a way that it can be seen that our workers receive more than the minimum wage. He submitted a document showing the minimum wage for care workers from the minimum to the maximum for that category. The department had made it clear that there was no need for the submission of breakdowns.

Dr Spiteri Bailey said that his client submits to the Director of Industry's opinion. However from this hearing it resulted that of the two bidders, one his client submitted the breakdown on the 4th April 2013 with the tender; whereas the preferred bidder submitted this information six months later. Clause 17.2 had required the submission of the breakdown using "must provide." The preferred bidder submitted these 6 months later and this does not make sense. He reiterated that clause 16.1(f) does not allow for any rectification.

Mr Albert Briffa for the contracting authority referred also to the same clause where bidders were required to submit a financial bid as provided in volume 4. This was submitted by both bidders. He insisted that the evaluation board had all the necessary information to adjudicate the bids. They only asked for the breakdown because of the new regulations that had come into force. There was no question of any rectification.

Dr Spiteri Bailey insisted that these breakdowns had to be submitted as requested with the original tender. The tender submitted by the preferred bidder was deficient.

Mr Albert Briffa said that the evaluation board had not rectified the preferred bidder's tender. He referred once again to the last paragraph of clause 16 which states that "tenderers are not required, nor expected to submit with their offer any components except those mentioned in clause 16." Thus the preferred bidder was not in default.

The Chairman explained that although clause 16 states so, it seems that clause 17.2 states otherwise.

At this point the hearing was brought to a close.

This Board,

Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 5th December 2013 and also through Appellant's verbal submissions during the hearing held on 7th January 2014, had objected to the decision taken by the pertinent Authority, in that:

- a) The Appellant contends that the hourly rate quoted by the Preferred Bidder was somewhat precarious.**
- b) The Appellant requested a breakdown of the Preferred Bidder's quoted rate, however this request was turned down.**

Having considered the Contracting Authority's verbal submissions during the hearing held on 7th January 2014, in that:

- a) The Evaluation Board confirmed that although the Preferred Bidder's offer did not contain a 'breakdown' of the hourly rate, the latter was not a requisite and it was also stated so in the tender document.**
- b) The Evaluation Board did carry out the necessary verifications to ensure the hourly rate quoted by the Preferred Bidder was not precarious.**

Reached the following conclusions:

- 1. This Board opines that the necessary audit measures were in fact taken by the Evaluation Board to verify that the quoted rate by the Preferred Bidder was not precarious.**
- 2. The fact that the competent Authority, ie Department of Industrial Relations , confirmed that the Preferred Bidder's quoted rate was reasonable , is proof enough for the Evaluation Board to ensure justification in the award of the tender.**

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

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Lawrence Ancillieri
Member

12 February 2014