

PUBLIC CONTRACTS REVIEW BOARD

Case No. 677

T 075/2013

Tender for the Provision of Financial Audit Services to MITA.

The tender was published on the 8th October 2013. The closing date was the 13th November 2013.

The estimated value of the tender was €70,000 Excluding VAT.

Nine (9) bidders had submitted their offer.

On the 29th January 2014 PKF Malta filed an objection against its ranking in the adjudication and the award of the tender to Nexia BT.

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 4th March 2014 to discuss these concerns.

Present for the hearing were:

PKF Malta - Appellant

Ms Tiziana Gauge	Representative
Dr Marilyn Mifsud	Legal representative

Nexia BT - Preferred Bidder

Mr Manuel Castagna	Representative
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Malta Information Technology Agency - Contracting Authority

Mr Ivan Alessandro	Member Evaluation Board
Mr Carmelo Formosa	Member Evaluation Board
Mr Pierre Vella	Member Evaluation Board
Mr Victor Camilleri	Representative
Dr Pauline Debono	Representative
Dr Marouska Cilia Barbara	Legal Representative

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

Dr Marilyn Mifsud on behalf of the appellant said that this objection was the result of the evaluation board assigning just 10 points to her client out of a possible 40 points, when appellant's financial ranking was 60 points out of 60.

Dr Marouska Cilia Barbara on behalf of the contracting authority explained that this was a MEAT tender where there minimum requirements for the bidders to satisfy, the eligibility criteria, and then there were the award criteria on which the bidders would be ranked. These award criteria allotted 40 marks maximum to the bidders' technical capacity and 60 marks maximum for the bidders' financial offer. Appellant's offer passed the eligibility criteria. In the award criteria, appellant obtained 60 marks for the financial offer and 10 marks for the technical capacity.

Mr Ivan Alessandro, a member on the evaluation board, speaking for the contracting authority, under oath stated that 40 marks were allowed for the technical criteria where bidders' explanations of the intended audit methodologies were assessed. Replying to questions by Dr Marilyn Mifsud, Mr Alessandro said:

1. Technical criteria. PKF, the appellant had submitted the methodology, mentioning general points and a brief outline of the audit programme. However no detailed comprehensive general programme was submitted. This should have comprised, as explained in the tender scope, two audits and the agreed upon procedures. Should have indicated how the audit was going to be tackled, giving risk details. Appellant did not give this. Appellant submitted the methodology brief points but failed to give the details how the audit would be tackled.
2. Risk analysis. At no point did the tender ask for a risk analysis. Bidders had to state how they would be assessing and tackling risks, indicating the tests that would be used.
3. Financial audit. Appellant had submitted a brief outline but did not give any detail or explanation how the personnel fitted in the programme. Appellant just submitted a list of 14 persons without however giving any indication how they would fit into the programme.
4. Internal control. The contracting authority, as per section 3.3 of the tender, wanted a review of the accounting systems. Wanted testing of the IT systems. Appellant did not give an explanation of how it intended to review the contracting authority's IT, its bid just stated "to review and testing general IT."

The evaluation board could not assess appellant's programme. Appellant's management letter was not enough; there was not any indication of possible discussion on the recommendations. The report was very brief and not effective. Appellant just stated in his covering letter that he would be "*pleased to meet you so that I can give you further information.*" Evaluation can only take into consideration what is submitted and not on future discussions.

Ms Tiziana Gauci on behalf of the appellant asked for guidance re the word "comprehensive" in the Instructions to Economic Operators.

Mr Ivan Alessandro explained that the tender referred to "Audit Methodology and Approach. Explain the audit methodology in use with the tenderer firms and provide a comprehensive

general programme.” Tenderers had to give an explanation specifying which models would be used. Appellant’s submission was very brief.

Ms Tiziana Gauci insisted that in the phrase ‘comprehensive general’ the word general takes precedence and thus bidders could not be expected to give details.

Mr Ivan Alessandro on behalf of the contracting authority said the evaluation report stated “to discuss”, that is, an opportunity for discussion.

The Chairman remarked that generally when a tender is issued, a tender outline is submitted and detailed discussions are held later. Apparently this was not done in the present case.

Dr Marouska Cilia Barbara on behalf of the contracting authority said that the Regulations are clear and it is not possible to give information to one bidder in a competitive tender. If any bidder wanted further information he could have asked for a clarification. In the present case in fact the appellant had asked for clarification and five clarifications were issued. It was the bidder’s duty to give a complete and the best bid. After the tender closing date all communications with bidders has to cease.

Ms Tiziana Barbara for the appellant said that the contracting authority alleged that appellant did not submit the selected team. Appellant’s bid was clear and specified which persons were involved in auditing, giving their names and positions. Two partners were the audit partners, Reuben Zammit was indicated as the audit manager, Tiziana Gauci audit supervisor, Christian Pace audit supervisor and Charlene and Jurgen Gerada assistants.

Dr Marouska Cilia Barbara said that page 3 of the appellant’s bid clearly shows that the team led by George Mangion includes a mix of senior and semi senior staff. These were not specified. The list submitted at page 5 shows names and does not specify which would be used to work the tender. The required information was then given in the letter of objection only and not included in the bid.

Mr Ivan Alessandro for the contracting authority said that appellant submitted a list of 14 employees but did not explain how these would fit in with the programme. This was just a general list and did not indicate how and how many would be used.

Dr Marilyn Mifsud said the whole point of the objection was how the evaluation board justified assigning just 10 points for the technical criteria to a bidder whose price was 100%.

The hearing was brought to a close at this point.

This Board,

Having noted the Appellant’s objection, in terms of the ‘Reasoned Letter of Objection’ dated 29th January 2014 and also through Appellant’s submissions during the hearing held on 4th March 2014, had objected to the decision taken by the pertinent Authority, in that:

The Appellant contends that the allocation of 10 out of 40 points with regards to technical capability was not based on fair reasoning, by the Evaluation Board.

Having considered the Contracting Authority's verbal submissions during the hearing held on 4th March 2014, in that:

- a) The Appellant failed to submit in detail, as requested in the tender document, the intended 'Audit Methodology'.**
- b) The Appellant's description of the 'Audit Methodology' was brief and ineffective.**
- c) Appellant's bid failed to submit the allocation of personnel as to how they fit in the 'Audit Programme'.**

Reached the following conclusions:

- 1. From the submissions made by both the Appellant and the Contracting Authority, it was made vividly clear that Appellant's submission had to include a detailed methodology of the audit programme to be applied. In this regard the Appellant's submission was somewhat sketchy and to the effect that the Evaluation Board could not adjudicate the Appellant's Bid on the information submitted by same. It is to be emphasised that the Evaluation Board has to adjudicate a tender bid on the information contained in the tender document. The allocated points given to the Appellant with regards to 'technical capability' were thus based on the information submitted by the Appellant.**
- 2. The Appellant could have asked for clarifications prior to submission of the tender document.**

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

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Richard A. Matrenza
Member

3 April 2014