

PUBLIC CONTRACTS REVIEW BOARD

Case No. 682

DCS/61/2013

Tender for Consultancy Services for the Restructuring of the Organisational Setup, Functions and Operations of the Ministry for the Family and Social Solidarity.

The tender was published on the 5th November 2013. The closing date was the 26th November 2013.

The estimated value of the Tender was €90,000 (Exclusive of VAT).

Three (3) bids had been received for this tender.

On the 25th March 2014 Nexia BT Consulting Limited filed an objection against the rejection of its bid as being non-compliant with the tender requisites and against the cancellation of the tender.

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 1st April 2014 to discuss the objection.

Present for the hearing were:

Nexia BT Consulting Limited - Appellant

Ms Svetlana Doublet	Representative
Dr Mariella Baldacchino	Legal Representative

Ministry for the Family and Social Solidarity - Contracting Authority

Mr John Degiorgio	Director Corporate Services
Dr Marisa Scerri	Chairperson Evaluation Board
Mr Ray Chetcuti	Member Evaluation Board
Mr Vince Ellul	Member Evaluation Board
Ms Elizabeth Vella	Member Evaluation Board
Mr Godwin Borg	Representative

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

Dr Mariella Baldacchino on behalf of her client Nexia BT Consulting Ltd, the appellant said that appellant had participated in this tender but was informed its offer had been rejected because it had not shown the necessary experience required by the tender specifications and that the tender was being cancelled. Appellant had replied through the letter of objection that a mistake had been made when submitting the original tender offer, and that appellant did qualify because it had the required work experience in accordance with Article 6.1.2 of the instructions to tenderers. She explained that this explanation had been given in the letter of

objection.

Dr Marisa Scerri, the Chairperson of the Evaluation Board, on behalf of the contracting authority said that when the board was examining the offers submitted for this tender it was discovered that appellant's tender did not satisfy the experience clause as required by the tender specifications. Bidders had to show works to the value of €130,000 during the years 2010, 2011 and 2012. Appellant's tender submitted works amounting to less than €130,000 and therefore it was not according to the specifications.

Mr John Degiorgio, the Director Corporate Services at the Ministry, on behalf of the contracting authority said that the evaluation board found that in appellant's offer did not reach the amount of €130,000 neither in Clause 6.1 nor in clause 16.1 and not even in the form that the bidders were required to list their experience. For the requested years, 2010, 2011 and 2012 appellant did not reach the required experience. Appellant however had submitted information for the year 2013 which was not required. The evaluation board considered this information in an effort to salvage the tender process. This was the technical compliance and no rectification could be allowed.

Dr Marisa Scerri said that the evaluation board had noticed that appellant had submitted information for the year 2013 that was not requested but tried to salvage the tender by considering it. The Department of Contracts portal was accessed to try to obtain more information about the experience appellant claimed for 2013 but found that the Transport Authority, indicated by the appellant as having been supplied by it, did not have any such tender listed. The board even wrote to the Transport Authority to try to verify the claim made by appellant but the Transport Authority replied that it was never involved in a similar tender. The evaluation board did this because there could have been a tender that bridged the years 2012 and 2013 and decided to give appellant the benefit of the doubt. The contracting authority did everything possible to try to save the tender from being cancelled.

Dr Mariella Baldacchino, answering a query by the Chairman about the tender appellant had with the Transport Authority explained that the mistake had been made there because while appellant listed Transport Authority, it should have put down the Tourism Authority.

Mr John Degiorgio remarked that the Experience as Contractor Form submitted by appellant with the letter of objection is different from that submitted with the one submitted with the tender. The last three references listed are different. The original form had also different tender numbers shown from that submitted at the appeal stage.

Dr Mariella Baldacchino explained that it was a genuine mistake and an oversight and enquired if a clarification could have been resorted to before the rejection of the bid.

Mr John Degiorgio presented a copy of a Court of Appeal Judgement from a decision taken by this Board that was confirmed, about the inadmissibility for rectifications.

At this point the hearing was brought to an end.

This Board,

Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 25th March 2014 and also through Appellant's verbal submissions during the hearing held on 1st April 2014, had objected to the decision taken by the pertinent Authority, in that:

- a) Inadvertently and due to an oversight, Appellant submitted the incorrect information with regards to experience.**
- b) Appellant contends that the explanation as given in the letter of objection dated 25th March 2014 did in fact illustrate that Appellant's experience was in compliance with Article 6.1.2. of the 'Instructions to Tenderers'.**

Having noted the Contracting Authority's verbal submissions during the hearing held on 1st April 2014, in that:

- a) Appellant's bid fell short of the required experience as dictated in the tender document.**
- b) Appellant submitted incorrect data regarding works carried out in the years 2010, 2011 and 2012.**

Reached the following conclusions:

- 1. It must be emphasised that the Evaluation Board can only adjudicate the compliance of a particular tender on the actual information submitted by the Tenderer through his tender document. In this regard, the Appellant Company failed to provide proof of the 'work experience' as was required in the tender document.**
- 2. The fact that the Appellant Company explained in more detail the 'work experience' scenario in his letter of objection, does not in any way, compensate for the failure to submit the same information as dictated in the tender document.**
- 3. From submissions made by both the Appellant Company and the Contracting Authority, it is evidently clear that:**
 - i) Appellant's bid failed to meet the 'work experience' requirement as stipulated in the tender document.**
 - ii) Appellant also failed to submit the exact information with regards to works carried out for the years 2010, 2011 and 2012.**

- 4. This Board opines that the Evaluation Board acted in a diligent manner in cancelling 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 Ancilleri
Member

6 May 2014