

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 714**

**HM 22/10/2013**

**Service Tender for a Financial Audit for Heritage Malta and Heritage Malta Services Ltd.**

The tender was published on the 26<sup>th</sup> November 2013. The closing date was the 10<sup>th</sup> January 2014. The estimated value of the Tender was €50,000.

Five (5) bidders had submitted bids for this tender.

On the 30<sup>th</sup> May 2014 PKF Malta filed an objection against the disqualification of their 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 Tuesday the 24<sup>th</sup> June 2014 to discuss the objection.

Present for the hearing were:

### **PKF Malta - Appellant**

Ms Tiziana Gauci	Representative
Dr Alessandro Lia	Legal Representative

### **Grant Thornton Ltd - Preferred Bidder**

Dr Wayne Pisani	Legal Representative
Mr Mark Bugeja	Representative

### **Heritage Malta - Contracting Authority**

Mr Noel Zammit	Chairman Evaluation Board
Mr James Aquilina	Member Evaluation Board
Ms Sue Ellen Farrugia Gregory	Member Evaluation Board
Dr Alex Sciberras	Legal Representative

The Chairman made a brief introduction and asked appellants' representative to make his submissions.

Dr Alessandro Lia on behalf of the appellant firm PKF Malta submitted that his clients were deemed by the contracting authority to be administratively and technically non-compliant because of two reasons; one was that the sample list was missing and the other was because "offer underestimated the required hours to fulfil the objectives of the contract. There is no contestation that appellants' offer was the cheapest. He contended that his clients tender bid, immediately following Part IV, List of Samples, on page 25 of the tender document, there are listed three samples as requested by Clause 16 of the tender. Clause 16 required the submission of samples and it can be seen that appellant had submitted three such samples. Dr Lia remarked that the samples had to be submitted within a number of days from when requested but his client had not been requested to submit any samples. Regarding the other point he stated that the number of hours needed is not listed anywhere in the tender document, it was not a tender requisite. He contended that the contracting authority could not at this stage declare that there was an underestimation of the hours since this would only arise at the contract stage when the service was being provided. He contended that appellants' price was more competitive than that of the preferred bidder. Appellants contend that the necessary, required number of hours had been given in their offer. The contracting authority failed to explain why the number of hours submitted by appellants was not sufficient.

Dr Alex Sciberras on behalf of the contracting authority asked that the testimony of a witness from the evaluation board should be heard at this stage.

Ms Sue Ellen Farrugia Gregory, a member of the evaluation board, on behalf of the contracting authority under oath testified that she worked with the contracting authority and her work involves dealing with the auditors. She has been working thus since 2004 and normally auditors when performing the audit accede to the contracting authority's offices from three to four weeks. Appellants offer indicated much less number of hours to be used performing the audit, around one week and one and half weeks. She said that she was an executive officer in the finance department of the contracting authority, grade A according to the collective agreement.

The Chairman remarked that nowadays, some audit work consists more of paper-work than auditing.

Ms Sue Ellen Farrugia Gregory replying to questions by the Chairman said that previously auditors always took around three weeks to perform the audit. Replying to Dr Lia's cross-examination, she said that she could not indicate where in the tender document the required number of hours was demanded. PKF the appellants had indicated that the audit would take one and half weeks to conclude. When asked by Dr Lia if she was aware that appellants had submitted one hundred and fourteen hours plus another 25 hours totalling nearly four weeks, she replied that those hours were however spread between all the employees and not on one person. The contracting authority's concern for the audit was the volume of transactions, wanted substantive testing; that was the reason for wanting the necessary number of hours.

The Chairman pointed out that this kind of testing can nowadays be performed within two days.

Ms Sue Ellen Farrugia Gregory continued that all the other bidders had submitted the number

of hours. The tender asked for the submission of a timetable of activities and no mention of hours was made. No other bidders were disqualified.

Dr Alex Sciberras on behalf of the contracting authority referred to Clause 16 at page 9 of the tender document - (e) Evaluation Criteria/Technical Specifications wherein sample financial statement report of similar nature projects and a Timetable of Activities were requested. The appellants had submitted samples containing just the opening section, a summary, of each audit and failed to submit full audit reports. Appellant had declared that a full report could not be submitted because of commercial reasons, and promised to submit the full reports if awarded the tender. All the other bidders had submitted full audit reports. Only two failed to do so, appellants and PMG. The contracting authority wanted to evaluate how bidders worked their audits. Since the contracting authority did not have detailed reports of audit performed by appellant, it had not enough material to enable evaluation. This was the reason appellants were disqualified. In fact the contracting authority itself had given a sample of the required report through a clarification to all bidders.

Mr Noel Zammit on behalf of the contracting authority explained that one bidder had asked for clarification about what reports to submit and the contracting authority had given a sample of a financial statement that bidders should submit.

The Chairman remarked that a full financial statement is not a financial report and wished to be shown the clarification.

Dr Alex Sciberras continued said that the criterion of the award was the price. This did not mean however that the lowest bid would always get the award since if it results that there are concerns about the said offer, that there is a danger that the service required was not fully appreciated, then, the contracting authority had the discretion to discard that bid. The contracting authority had vast experience and knew that the volume of work required to perform the tender was massive. When the number of hours offered by the appellant was considered, it was evident that what was being proposed would not be sufficient for appellant to provide the expected work. The contracting authority had to avoid a situation where it would have to try to enforce the unenforceable. The price offered by appellants was itself indicative that appellants had not understood fully the extent of work required to perform the audit. The appellants offer was half the nearest bidder, and thus the risk existed that the appellant would not be able to perform the tender.

The Chairman was shown the samples enclosed with the clarification and remarked that the bid was for five years and not just for one year.

Dr Alessandro Lia for the appellants submitted that appellant firm has twenty five years experience and works of the contracting authority. However appellants wanted to submit a competitive bid. However this was now rebounding on them. The firm has thirty five employees on its books. Sample audit reports had been submitted by appellants. The tender had just asked for a timetable of activities and this was submitted. The number of hours to be worked was sufficient to provide the service and at any rate the number of hours was not a tender requisite. It is not just for the contracting authority to claim that appellant firm was not capable to perform the contract.

Dr Alex Sciberras for the contracting authority stated that appellant did not understand the volume of work required. The onus was on the tenderer to be diligent. The timetable was an

evaluation criterion and it was clear that as such it would be used to evaluate bids. It was up to the bidders to satisfy the conditions. The difference between offers was such that it was difficult to compare bids and the contracting authority had to ensure that the tender was awarded to bidders who were able to provide the service. He reiterated that it was clear that the tender requested samples of full financial statements, and all other bidders had complied.

Dr Wayne Pisani on behalf of the preferred bidder said that financial statement is comprised of the audit report and the financials. The reason for demanding these was for the contracting authority to evaluate what was offered. The tender clearly asked for a financial audit report and not just an audit report. This can be seen from page 25 of the tender document. And the appellant did not submit this.

Dr Alex Sciberras for the contracting authority reiterated that page 9 of the tender clearly asked for the submission of sample “financial statement reports” and timetable of activities.

Mr Mark Bugeja on behalf of the preferred bidder said that the reason for demanding the submission of such samples was that the contracting authority would have something of bidders’ work to assess their suitability. The tender asked for past experience in similar projects and financial audit report of similar projects. Bidders could not satisfy this requisite by submitting a one pager.

Mr Richard A Matrenza, board member remarked that in many of the cases heard by the Board it was common occurrence to have partially filled documents and unsigned documents contained in the tender offers examined. This should not be acceptable and care should be taken when dealing with official documents.

At this point the hearing was closed.

**This Board,**

**Having noted the Appellant’s objection, in terms of the ‘Reasoned Letter of Objection’ dated 30<sup>th</sup> May 2014 and also through Appellant’s verbal submissions during the hearing held on 24<sup>th</sup> June 2014, had objected to the decision taken by the pertinent Authority, in that:**

- a) Appellant Form contends that his offer for ‘Auditing Services’ was discarded by the Contracting Authority due to:**
  - i) Non submission of sample of a typical ‘Full Financial Statement’. In this regard, Appellant claims that he had submitted three samples of such documentation in accordance with clause 16 of the tender document.**
  - ii) The Contracting Authority contended that the number of hours allotted by the Appellant on which his bid price was based, does not reflect a realistic number of hours to carry out the assignment effectively. Appellant claims that the number of hours being dedicated to this assignment would in fact achieve the desired results. Apart from the fact that the Contracting Authority did not give the**

reasons why it is considering Appellant's allotted hours to this assignment, Appellant claims that his offer satisfied the requirements as dictated in the tender document.

Having considered the Contracting Authority's verbal submissions during the hearing held on 24<sup>th</sup> June 2014, in that:

- a) Appellant submitted only a sample of a section of the 'Full Financial Statements Report'. Appellant failed to submit this important full sample of the data as stated in the tender document.
- b) Appellant was also aware that apart from the mandatory requirement for submission of samples, Appellant had to submit also a 'Timetable' of activities to be carried out in order to provide the professional services being tendered for. Appellant did abide by this requirement, however from Appellant's submission of this report it resulted that the number of hours being allotted by Appellant would not suffice to provide the desired professional services.

Reached the following conclusions:

1. This Board opines that, when a Tender for Professional Services is issued, it should not be the price that carry the most weight in assessing a tender, but rather the service which is being proposed by the tenderer and whether such proposed service would meet the desired standard. In this regard, the Contracting Authority had to ensure that the selected Bidder would render his professional services in an efficient and reliable manner.
2. The tender document dictated a mandatory requirement for submission of a 'Typical Full Financial Statements Report'. This full sample of the report was of great importance for the Evaluation Board to assess the mode of presentation and contents therein. In this regard, Appellant failed to submit such a comprehensive sample of the report as stated in the tender document. Only a section of the required data was submitted by Appellant.
3. This Board notes that, in order to be able to quote for such professional services, Appellant first, had to assess and estimate the number and grade of staff to be deployed on this assignment. Appellant has also to assess the duration of the assignments, hence the approximate number of hours are established. Then the chargeable rate is reflected in the quoted price. From the past ten years experience, the Contracting Authority was in a position to establish the number of hours that needs to be dedicated by the successful bidder in order to complete his assignment to a professional standard. The hours quoted by Appellant fell far too short of what was anticipated by the Contracting Authority. This Board confirms that the decision taken by the Evaluation Board with regards to Appellant's quoted number of hours as being not realistic, is correct.

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

Dr. Anthony Cassar  
Chairman

Dr. Charles Cassar  
Member

Mr. Richard A. Matrenza  
Member

*5 August 2014*