

PUBLIC CONTRACTS REVIEW BOARD

Case No. 767– DT-NCPE 05/2014: Tender for the Provision of Training Services and Seminar.

The tender was published on the 24th January 2014. The closing date was the 17th February 2014. The estimated value of the Tender was €25,000 (Exclusive of VAT).

Six (6) tenderers had submitted an offer for this tender.

On the 28th November 2014 Allied Consultants Limited filed a letter of objection against the decision of the contracting authority to reject their offer Option 1 and against the award of the tender to Outlook Coop.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a hearing on Friday the 12th December 2014 to discuss the objection.

Present for the hearing were:

Allied Consultants Limited - Appellant

Mr Anselmo Bugeja	Project Manager
Dr Victor G Axiak	Legal Representative

Outlook Coop - Preferred Bidder

There was no one present for the preferred bidder

National Commission for the Promotion of Equality - Contracting Authority

Ms Maria Borg Filletti	Member Evaluation Board
Ms Annalise Frantz	Member Evaluation Board
Dr Peter Fenech	Legal Representative

Dr Peter Fenech on behalf of the contracting authority, answering queries by the Chairman, explained that the tender had been awarded and one bidder had objected because of the matter of key experts being also university lecturers. The Public Contracts Review Board had found for the then appellant and re-integrated his tender. He had, as legal advisor, recommended that the members of the evaluation board be changed and that the new board re-evaluate all the tenders using the same criteria that are 80% for the technical submissions and 20% for the financial offer. It was found that all bidders were technically compliant and then the bids were evaluated on the MEAT principle. The results were put down in the evaluation grid. The marks were sub-divided and assigned by evaluators individually. There was found to be a marked difference in substance between the preferred bidder's tender and that submitted by the appellant. He said that all the six tenders were examined prior to assigning weights. This helped and was used to set benchmarks before assigning marks to the different bidders. Everything was done in order to try to obtain the best offer.

The Chairman then invited the appellant's representative to make his submissions.

Dr Victor G Axiak on behalf of Allied Consultants Limited, the appellant said that the tender was for the provision of training and not for mentoring services, although mentoring would be included in the project. Appellant's first grievance regarded the supposedly objective criteria used in assessing tenders; about how the marks for the technical capacity were awarded. The appellant was awarded 24 out of 30 marks for the rationale presented. The letter of rejection states that "*a. 'Furthermore, a clear distinction between the needs of Mentee Group 1 and Group 2 was not made'*". Appellant does not agree with this statement since at tendering stage, the mentees are not known to bidders, were not identified, and thus the diverse needs could not be assessed by appellant. The second grievance is that for the Timetable of Activities, appellant was awarded 15 out of 20 marks. It is not understood why these 5 marks were deducted since the evaluation board deemed appellant's tender in this regard as "*a clear work plan has been provided according to the tender requirements. The timeframes set out for option 1 and option 2 were considered to be feasible.....*" Dr Axiak continued by asking whether any sub-criteria, or construction of the weightings, had been fixed and the method how the weighing was arrived at. He insisted that these criteria should have been approved first by the Department of Contracts in order to ensure transparency. Finally he explained that appellant had not raised any objection to the members of the first evaluation board.

Dr Peter Fenech for the contracting authority stated that the weightings assigned do not fall within the remit of the Public Contracts Review Board. If any one of the bidders disagreed with these, there were other remedies to be had. The Department of Contracts does not need to approve assessment of technical matters and also, since the present tender was a departmental tender, the weightings were the sole responsibility of the contracting authority. He reiterated that he had given legal advice to the contracting authority to change the members of the evaluation board after the first objection had been decided by the Public Contracts Review Board, and this was for transparency's sake.

Ms Annalise Frantz for the contracting authority explained that the training, subject of this tender was intended for mentees in Group 1, 18 years to 25 years, and Group 2, 25 years and over, who fell under MQF level 3 and MQF level 5 respectively and this was clearly specified in the tender document. This was not her first weighting construction procedure. Replying to questions by Dr Victor Axiak she said that the criteria had not been submitted to the Department of Contracts for approval since this was a departmental tender issued by the contracting authority. Approval to issue a MEAT based tender had been given to the contracting authority by the Department of Contracts.

Mr Anselmo Bugeja on behalf of the appellant said that although ages had been specified in the tender, this was not an indicator that helped assess the training needs. Age was not a factor affecting methodology. In fact appellant had provided solutions that were based on research and not on age. He interpreted training needs as including topics, skills and outcomes.

Ms Annalise Frantz replying to the Chairman said that subjects were grouped by age, educational attainment, MQF 3 and 5 and also by the subjects being taught, subjects like assertiveness and decision making. There were enough bases to enable the bidders to offer their services.

Dr Victor Axiak insisted that there were no explanation given as to why 5 marks were deducted and that these 5 marks made the difference whether the tender was awarded to appellant or not.

Ms Annalise Frantz for the contracting authority said the evaluation grid showed the details. Feasible meant that bidder offered what was requested. But bidders could offer more than the basic requirements. The preferred bidder had submitted a shorter time period and was clear in the difference between groups 1 and 2. Replying to a question by Dr Axiak she said that the evaluation report contained another grid showing how marks were awarded for example when 0 marks were awarded, when 5 marks were awarded and so on. There were clear criteria on how these points were assigned comparing like with like.

Mr Anselmo Bugeja for the appellant said that the fact that different groups were indicated did not necessarily mean different training but the level of difficulty each group was capable of absorbing. The tender document did not specify the specific training needs required. The contracting authority should have specified the level each group was expected to achieve. Finally he remarked that only 2 marks separated appellant's tender from the preferred bidder's and this did not show such a marked difference.

The Chairman explained that weighting was a principle.

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 28th November 2014 and also through appellant's verbal submissions during the hearing held on 12th December 2014, had objected to the decision taken by the pertinent Authority, in that:

- a) Appellant Company contends that the allocation of marks allotted to the appellant's offer by the Evaluation Committee was not fairly carried out;**
- b) Appellant also maintains that with regards to the "Timetable of Activities", same was not given the fair allocation of marks. This was allegedly due to lack of "Clear distinction between the needs of Mentee Groups 1 and 2". Appellant does not agree and maintains that a clear work plan in accordance with the requirements of the Tender Document was in fact submitted and this should have sufficed;**
- c) Appellant also contests that the system of weighting adopted by the Evaluation Committee should have first been approved by the Department of Contracts.**

Having considered the Contracting Authority's verbal submissions during the hearing

held on the 12th December 2014 in that:

- a) The Contracting Authority maintains that the system of allocation of marks was performed on a “Weighing System”, long established and proven to be the fairest method of assessing similar tenders;
- b) The Contracting Authority contended that there was enough information in the Tender Document which should have enabled appellant to submit a “Clear, distinction between the needs of “Mentee Groups 1 and 2”. Appellant failed in this regard.

Reached the following conclusions:

1. With regards to the Appellant’s first contention, this Board opines that from credible submissions made by the Contracting Authority, it was clearly evident that the system of “Weighing” is the most just, efficient and transparent method of allotting the marks for each section of the Tender Requirements duly submitted by the Tenderer. The system has been deployed for a number of years and it was justifiably proven that the same system allows for a “Level Playing Field” for all the Tenderers. This Board opines that, the Evaluation Committee acted in a fair and transparent manner in allotting the marks under the Weighting System. In this regard, this Board does not uphold appellant’s first contention;
2. Referring to appellant’s second contention, this Board, after having heard credible submissions, opines that the Tender Document contained the necessary ingredients and information for any Tenderer to be in a position to submit “A clear distinction between the requirements of Mentee Groups 1 and 2”. It was justifiable proved that the appellant failed to indicate this distinction, in his submissions. In this respect, this Board does not uphold appellant’s second contention.
3. With regards to the Appellant’s contention that “The Evaluation Board should have first sought permission from the Department of Contracts prior to adopting the Weighting System”, this Board points out that this was a departmental tender and the method for the assessment of technical matters was the sole responsibility of the Contracting Authority. In this context, this Board does not uphold the Appellant’s third contention.

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

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancillieri
Member

12 January 2015