

PUBLIC CONTRACTS REVIEW BOARD

Case No. 794 - CT 3257/2014: Tender for the Provision of Security Services at the Agency for the Welfare of Asylum Seekers (AWAS)

The tender was published on the 13th February 2015. The closing date for the call was on the 26th March 2015.

The estimated value of tender is €2,038,194.60.

On the 25th March 2015 Kerber Securities filed a pre-contractual concern in terms of Regulation 85 of LN 296 of 2010.

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 April 2015 to discuss the objection.

Present for the hearing were:

Kerber Securities - Appellant

Mr Ronald Axisa	Director
Mr Stefan Axisa	Representative
Dr Matthew Brincat	Legal Representative

AWAS - Contracting Authority

Mr Alexander Tortell	Operations Director
Mr Robert Grixti	Director Corporate Services
Mr Charles Lia	Procurement Manager

Department of Contracts

Dr Franco Agius
Dr Christopher Mizzi

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

Dr Christopher Mizzi on behalf of the Director of Contracts made a declaration wherein he explained that the department was on the point of cancelling the tender in question in order to re-issue without certain constraints. However on the same date that the notice of cancellation was being issued, the appellant had filed the pre-contractual concern being heard today. This led to the department halting the cancellation procedures and extending the closing date of the tender in order for the hearing of the pre-contractual concern to be heard. The tender would be cancelled in any case.

Dr Matthew Brincat on behalf of the appellant stated that in that case his client would not object to the cancellation of the tender provided the clause asking for 100 employees would not be included in the re-issued tender.

Dr Franco Agius for the Department of Contracts stated that the tender would be re-drafted and the clause in question most probably removed. He said that the tender was going to be cancelled when the Public Contracts Review Board notified the contracting authority that a pre-contractual concern had been submitted. In order to abide with the Board's directive, the notice containing the cancellation was withheld until the Board's decision was handed down.

Dr Matthew Brincat declared that in view of this declaration his client did not insist on the pre-contractual concern.

The Chairman explained that the new tender would make it easier for small bidders to compete since the clause in question would not be retained. This was according to new European Union Directives.

At this point the hearing was closed.

This Board,

Having noted the appellant's 'pre contractual concern' dated 24th March 2015, and also through appellant's verbal submissions during the hearing held on 7th April 2015, had raised a 'pre contractual' concern, in that:

- a) **Appellant contends that the condition dictated in the tender document, whereby it is stipulated that the prospective tenderer must have 100 employees to be able carry out the tendering works, does in fact limit the scope of competition among prospective bidders.**

Having noted the contracting authority's letter of reply dated 2nd April 2015, in that:

- a) **The contracting authority confirmed that the intention for the cancellation of the tender in question was mainly due to the fact that a fresh tender will be issued to ease certain restraints and to allow small bidders to participate.**

Reached the following conclusions:

1. **This Board notes with satisfaction the credible reasons for the cancellation of the tender. It also notes that the applicant company agrees with a fresh issue of the tender with lesser restraints to enable small enterprises to participate in the bidding of the tender.**

In view of the above, this Board opines that the cancellation of the present tender is appropriate and a fresh tender be issued with lesser constraints with regards to the dictated minimum number of employees.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

9 April 2015