

PUBLIC CONTRACTS REVIEW BOARD

Case No. 795

MCH/324/2014

Tender for the Provision of Accountancy Services for the Mental Health Services.

The tender was published on the 25th November 2014. The closing date for the call was the 23rd December 2014. The estimated value of tender is €120,000 (Exclusive of VAT).

On the 19th February 2015 Grant Thornton filed an objection against the decision of the contracting authority not to award the tender to appellant.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a hearing on Thursday the 9th April 2015 to discuss the objection.

Present for the hearing were:

Grant Thornton - Appellant

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| Mr Mark Bugeja | Representative |
| Dr Elizabeth Gaerty | Legal Representative |
| Dr Wayne Pisani | Legal Representative |

MVB Financial Consultancy - Preferred Bidder

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| Mr Marc Vella Bonanno | Director |
| Dr Carlos Bugeja | Legal Representative |

Mount Carmel Hospital - Contracting Authority

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| Mr Gilbert Bonnici | Chairperson Evaluation Board |
| Dr Yana Micallef Stafrace | Legal Representative |

The Chairman, following a brief introduction, invited the appellant's representative to make his submissions on the objection.

Dr Wayne Pisani on behalf of the appellant claimed that his client had not been declared to be non-compliant. The letter of rejection had listed several reasons why the appellant's bid was not chosen for award. These reasons were based on an erroneous assumption that the salaries of the appellant's employees were less than the €14,500 indicated in the clarification note. He referred to Clause 7 (iv) of the tender which stated that bidders had to give the minimum hourly workers' costs involving the provision of employees' services. He claimed that the tender document is referring to "minimum hourly workers' costs" while the clarification note refers to €14,500 gross per annum plus any statutory bonuses. He claimed that there is a difference between salaries and costs. The appellant had abided with the clarification and quoted the salaries, not the costs. At this point Dr Pisani filed a copy of a worksheet showing the total cost per annum for appellant's employee. It could be seen, he said, that the costs for appellant are more than the salary. He claimed that the contracting authority had not asked for a clarification as to why the salaries were submitted instead of the costs. He contended that the tender was not clear and there was a mix-up between the tender and the clarification note – one asked for salary and hourly costs while the other asked for minimum labour costs; and since the Clause was qualified by note 2, a request for clarification was admissible. He insisted that his client was not disqualified, according to the letter of rejection.

Mr Gilbert Bonnici on behalf of the contracting authority said that the evaluation board could only adjudicate on the documents submitted by the bidders themselves. In the present case, the appellant's tender submission was clear enough that the monthly salaries to be paid amounted to a total of €1151. This multiplied by twelve amounts to €12,732 which is less than the €14,500 requested in the clarification. This rate was the sole technical specification demanded in the tender. The information presented today was not available to the Evaluation Board and if the appellant had any doubt he was obliged to ask for clarification before the closing date. The contracting authority could not ask for clarification on the point, during adjudication, because appellant's original submission was clear.

Dr Yana Micallef Stafrace for the contracting authority explained that once the submissions were clear the contracting authority could not ask for clarification since this could have created a dangerous precedent.

Dr Wayne Pisani for the appellant reiterated and insisted that:

- i) the tender referred to hourly costs while the clarification referred to an annual salary;
- ii) the clarification was misleading mixing salary with costs;
- iii) appellant had submitted the annual salary and not the costs; and
- iv) that appellant's offer had not been disqualified;
- v) the contracting authority should have asked appellant for clarification.

Mr Gilbert Bonnici for the contracting authority explained that the salary is less than the total cost.

Dr Carlos Bugeja on behalf of the preferred bidder said that the tender document and the Bill of Quantity indicate the number of hours required. The tender also was clear in the award criteria that the sole award criterion would be the price, the cheapest compliant tender. Since one of the administrative criteria was not satisfied by the appellant he was disqualified. Once a bidder accepted to bid for a tender, he accepted all the conditions of the tender. He contended that the clarification was very clear that the amount bid should cover the salary paid to employees during the year, overheads and any profit.

Dr Wayne Pisani explained that the appellant's bid was for €11 while the costs amounted to €7.72. This means that the salary that would be paid amounts to around €23,000. Once appellant's offer was not disqualified then it means that it satisfied the administrative and technical criteria and the tender should be awarded on the price basis.

Dr Carlos Bugeja said that the salary condition was important because it enabled the contracting authority to control what salaries are paid to employees.

At this point the hearing was closed.

This Board,

Having noted the Appellant's Objection, in terms of the "Reasoned Letter of Objection" dated 8th April 2015 and also through the Appellant's verbal submissions during the Public Hearing held on 9th April 2015 had objected to the decision taken by the Pertinent Authority, in that:

- a) The Appellant contends that the reasons given by the Contracting Authority for refusal of the Appellant's offer were unfounded and misleading. The Appellant claims that the Tender Document dictated that the bidders had to quote the "minimum hourly working costs". The Appellant claims that there is a difference between the salaries paid to employees and the cost to the employer;**
- b) The Appellant insists that the Contracting Authority should have asked for a clarification prior to embarking on its decision for the award of this Tender.**

Having considered the Contracting Authority's verbal submissions during the Public Hearing held on 9th April 2015, in that:

- a) The Contracting Authority maintains that the Adjudication Process by the Evaluation Committee should be transparently conducted on the documents submitted by the prospective bidder. In this particular case, the same Contracting Authority refers to the dictated requirement in the Tender Document that clearly states that "The Annual Salary to be paid to the Employees was not to be less than € 14,500 per Annum. The Appellant failed to provide this verification."**
- b) The Contracting Authority maintains that during the "Evaluation Stage", it could not ask for clarification as this would have created a "rectification" which is not allowed.**

Reached the Following Conclusions:

- 1. This Board opines that once a bidder submits his Tender Document, he is abiding by the same conditions as dictated in the latter. In this particular case, the prospective tenderer has to submit a proof that the salary paid to its employees had to reach a minimum amount of € 14,500. The Appellant failed to satisfy these criteria which in this Board's justifiable opinion, is an important issue. In this regard, this Board opines that if the Tender Document dictates a financial condition, the prospective bidder should not dictate a difference between "a salary paid to an employee and the cost of the same employee to the bidder." This Board, after having taken into account the credible submissions made by the Contracting Authority does not uphold the Appellant's first contention**
- 2. With regards to the Appellant's second contention, this Board justifiably contends that there was no instance for the Evaluation Board to ask for any clarification. The Tender Document dictated what was required and in this Board's opinion, this was not submitted by the Appellants.**

In view of the above, this Board finds against the Appellants and recommends that the deposit paid should not be reimbursed

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Lawrence Ancillieri
Member

15 April 2015