

PUBLIC CONTRACTS REVIEW BOARD

Case No. 821

VAT/VRNR/C/1/15

Public Service Concession, Value Added Tax Refund to Non-Residents.

The call was published on the 4th April 2015. The closing date was the 20th May 2015.

One (1) offer has been received for this call.

On the 24th June 2015 FINTRAX Group Holdings filed a letter objecting to the decision of the contracting authority to reject appellant's offer.

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 30th June 2015 to discuss the objection.

Present for the hearing were:

FINTRAX Group Holdings:

Mr Charles Farrugia

Representative

VAT Department:

Mr Robert Borg

Member Evaluation Board

The Chairman made a brief introduction following which the Appellant's representative was then invited to make his submissions.

Mr Charles Farrugia on behalf of the Appellant explained that appellant's offer was rejected because no bid bond had accompanied the tender submission. He contended that a transfer of €5000 had been made in lieu of the bid-bond, and the tender had explained this. This was better than a bid bond because a cash advance had been made in favour of the contracting authority. In case of problems the contracting authority did not need to contact any bank to redeem the bid bond but could at any time withdraw the cash deposited as a safeguard. He claimed that the Appellant's offer should not thus have been discarded.

Mr Robert Borg on behalf of the Contracting Authority explained that he was a member of the Evaluation Board. He contended that the latter had to disqualify Appellant's tender because the tender document had clearly explained what constituted a bid-bond. This was a bank guarantee which is in the form shown at appendix 3 and which complies with the requirements of section 5.5 and section 5.6 of the RfP. He reiterated that clause 5.2 said that the *"Bid Bond must be an original and valid guarantee presented in the form specified in Appendix 3. The guarantee must be issued by a reputable bank acceptable to the Commissioner for Revenue, who assumes responsibility for claims and payments to the amount as stated above."*

The Chairman explained that the Bid Bond is a guarantee to enable the contracting authority to redeem the amount should the bidder withdraw before the tender period. He asked Mr Borg if he agreed with this. He explained that the document submitted by the appellant clearly stated that the amount was deposited in favour of the government and the payment details mentioned that this was the FINTRAX Bid Bond for the FrP.

Mr Robert Borg insisted that the tender document clearly explained what the bid bond should have been. He explained that the Evaluation Board had sought legal advice and direction from the Department of Contracts before deciding to reject appellant's offer. The Evaluation Board was obliged to follow the requirements of the tender document to the letter.

The Chairman explained that in the Board's opinion, the deposit made by appellant with the Central Bank qualifies as a bid bond.

At this point the hearing was closed.

This Board,

Having noted the Appellant's objection, in terms of the "Reasoned of Objection" dated 24th June 2015, and also through the latter's verbal submissions during the Public Hearing held on the 30th June 2015, had objected to the decision taken by the Pertinent Authority, in that:

- a) **The Appellant Company contends that they had made a Bid Bond in the form of cash, which was deposited with the Central Bank of Malta in favour of the Contracting Authority. In this regard, the Appellant claims that his offer should not have been discarded just because the Bid Bond as registered was not in the appropriate format, as dictated in the Tender Document;**
- b) **The Appellant also claims that he gave a clear explanation of this issue with the submission of his Tender Document;**

Having considered the Contracting Authority's verbal submissions during the Public Hearing held on 30th June 2015, in that:

- a) The Contracting Authority contends that it had to discard the Appellant's offer due to the fact that the Guarantee presented by the latter was not in the proper format and did not comply with clause 5.2 of the Tender Document, specifically relating to the Bid Bond. In this regard, the Evaluation committee had no other option but to disqualify the Appellant's Bid.

Reached the following conclusions:

1. This Board opines that a "Bid Bond" is imposed in a Tender to safeguard the Contracting Authority in that should a bidder withdraw before the Tender period, the Appellant forfeits the amount of the established bid bond. After examining the payment made by the Appellant by way of a cash deposit, transferred from the Royal Bank of Scotland, this Board justifiably notes that:
 - i) The payment advice had clearly indicated under item "Payment Information", that this deposit consisted of "FINTRAX Bid Bond RFP" so, that in this regard, this Board credibly confirms that a "Bid Bond" was in fact made by the Appellant.
 - ii) Although the Bid Bond produced by the Appellant was not in the requested format, as dictated in the Tender Document, this Board noted the explanation given by the Appellant in Appendix 3 – Bid Bond, wherein the latter is confirming that "This Bid Bond becomes non reversable by Fintrax Ltd should the same withdraw its bid within 6 months from 20.05.2015". In this regard, this Board opines, that adequate clear explanation was given by the Appellants confirming all the conditions as stated in the Tender Document. This Board upholds the Appellant's grievances
2. This Board would justifiably like to point out that although the Bid Bond was not on the prescribed format as dictated in "Appendix 3 – Bid Bond", the Appellant did produce the Bid Bond, under a separate format accompanied by a clear and vivid explanation relating to the "Cash Deposit" made with the Central Bank of Malta in favour of the "Commissioner for Revenue", having the same requisites as those dictated in the Tender Document.

In view of the above, this Board finds in favour of the Appellant company and recommends that:

- 1) The Appellant's offer be re-integrated in the Evaluation Process;
- 2) The deposit paid by the Appellant is to be re-imbursed

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

2 July 2015