

PUBLIC CONTRACTS REVIEW BOARD

Case No. 864

GGH 069/2015

Call for Quotations with an Extended Threshold for the Provision of Clerical Services at the Gozo General Hospital.

The Tender was published on the 25th August 2015. The closing date was the 2nd September 2015. The estimated value of Tender is € 116,000.00 (Exclusive of VAT).

Three (3) offers had been received for this Tender.

On the 28th September 2015 Support Services Limited filed an objection against the decision of the Contracting Authority to award the Tender to J.F. Services Limited.

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 29th October 2015 to discuss the objection.

Present for the hearing were:

Support Services Limited:

Mr Emanuel Bezzina
Dr Ronald Aquilina

Representative
Legal Representative

J. F. Services Limited:

No representatives present

Gozo General Hospital:

Ms Maria Aquilina Caruana
Mr Carmel Camilleri
Mr Joseph Fenech
Mr Philip Muscat
Dr Stefan Zrinzo Azzopardi

Chairperson Evaluation Board
Member Evaluation Board
Member Evaluation Board
Representative
Legal Representative

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

Dr Ronald Aquilina on behalf of the Appellant stated that according to the Tender Document, bidders had to submit two different rates for the Tender, one rate for 2015 which had to be not less than €7.55 per hour; and another rate for 2016 which had to be not less than €7.73 per hour. This was mandatory and was clear from the wording of the dossier itself since two minimum rates were cited. Bidders were free to offer more and the offered rates were an integral part of the Tender offer.

The Tender Document, under "Further Instructions" had two conditions that were mandatory:

- a) all the items in the Financial Bid form must be quoted;
- b) Tenderers must quote all components of the price.

Thus the Appellant contends that any bidders who failed to offer the rates for 2016 should have been disqualified. Bidders had to calculate the number of hours at the 2015 rate and the number of hours at the 2016 rate and then totalled the result to the financial bid form. He contended that it was clear that the Recommended Bidder had failed to give the rates for each of the two years. The Contracting Authority in its letter of reply is citing clause 22 as the reason why one rate was accepted, saying that the clause allowed for the rates to be updated accordingly in 2016. This contention by the Contracting Authority was false since the Tender Document had clearly asked for two rates; in fact the rate for 2016 could only be calculated after the budget had been published.

Dr Stefan Zrinzo Azzopardi on behalf of the Contracting Authority said that the Appellant was basing the objection by claiming that only Appellant's offer was technically compliant and not on the amount of the financial offers. The financial bid form, under item 1 had listed two rates in the first column but the required number of hours was listed once only for the same item. The minimum rates had been pre-established. Had the Appellant's interpretation been correct, another item would have been included.

Dr Zrinzo Azzopardi did not agree with the interpretation of clause 22 as given by the Appellant. The circulars had pre-established the rates for both years 2015 and 2016. The rate for 2016 was already known and therefore there was no need for bidders to put down two separate rates. The Contracting Authority could not reject the offer from the cheapest Tender just because only one rate was given. It was for this Board to decide whether the Appellant's contention in this regard or the reasoning of the Evaluation Board that was valid. There would have been an automatic revision of the rates for 2016 and the Contracting Authority contends that all three offers had been valid.

The Chairman remarked that the way the bid form was worded, with the minimum rate for each year in brackets, could mean that these were intended to be used as a guideline.

Dr Ronald Aquilina for the Appellant pointed out that a clarification in another similar Tender had explained to bidders to give one rate only; but when one rate was given, the Contracting Authority had still asked for the figures for the next year. He reiterated that this Tender had asked for two rates and that any bidder who offered only one rate does not satisfy the Tender conditions. The rate submitted by the Recommended Bidder did not cover the Tender

conditions since it was less than the minimum amount for 2016.

The hearing was closed at this point.

This Board,

Having noted the Appellant’s objection, in terms of the “Reasoned Letter of Objection” dated 28th September 2015 and also through the Appellant’s Verbal submissions during the Public Hearing held on 29 October 2015, had objected to the decision taken by the pertinent Authority, in that:

- a) The Appellant Company contends that in accordance with the conditions of the Tender Document, bidders had to quote for two different quotes which were an hourly rate for 2015 and another one for 2016. In this regard, the Appellant maintains that the bidders had to submit two rates per hour as stated above. Those bidders who failed to do such mandatory submissions should have been disqualified. In this respect, the Appellant insists that he was the only bidder to abide by such a condition;**

- b) The Appellant Company maintains that, the Tender Document had asked for two rates and the other bidders had quoted one rate, therefore the other bids which were submitted for this Tender were to**

be disqualified;

Having considered the Contracting Authority’s “Letter of Reply” dated 14 October 2015 and also the verbal submissions during the Public Hearing held on 29 October 2015, in that:

- a) The Contracting Authority maintains that the Financial Bid Form, under item 1 listed two rates in the first column but the required number of hours was listed once only. In this regard, the Contracting Authority insists that if two separate rates were asked for the Financial Bid Form; these should have been included in another item relating to another rate;**

- b) The Contracting Authority also contends that the Circulars quoted in Clause 22 give an indication of the minimum rates applicable for 2015 and at the same time, the rate for 2016 will be updated where necessary.**

Reached the following conclusions:

- 1. With regards to the Appellant’s First Grievance, this Board, after having examined the contents of the Financial Bid Form of the**

Tender Document, justifiably opines that note 1 of the Form indicates (in brackets), “*The Minimum Hourly Rates for 2015 and 2016*”, purely as a guideline to the Bidder. In fact, this Board credibly notes that bidders had to quote two rates i.e. one rate for Hourly Worker’s costs and another rate for Overheads.

If the Contracting Authority requested two separate hourly rates for 2015 and 2016, the layout of the Financial Bid Form would have been dictated in a much different layout. This Board is credibly convinced that the format in the Financial Bid Form dictated one hourly labour rate and one “*overhead rate*” only.

With respect to the Appellant’s reference to the Circulars as specified in Clause 22 of the “*Special Terms and Conditions*” of the Tender Document, this Board would justifiably contend that Circulars 27/14 and 4/15 refer to the minimum hourly labour rate which must at least be paid to such workers. The same clause states that “*Tenderers shall quote one rate per hour for all weekdays, (Mondays to Sundays), per worker, etc.*” Clause 22 clearly states that the Tenderer had to submit “*one hourly rate to cover 2015 and 2016.*”

Moreover, this Board points out that “*Rates offered shall be in line*

with the Contracts' Circular Nos 27/14 and 04/15 and will be updated accordingly in 2016, if applicable. This clearly denotes that “one rate” had to be submitted and in 2016, this same rate will be updated where necessary.

In this regard, this Board does not uphold the Appellant's First Grievance.

2. With regards to the Appellant's Second Contention, this Board credibly opines that there is enough evidence available to show that the Contracting Authority requested “*one hourly rate*” to cover both 2015 and 2016. This means that the other bidders who submitted one rate were compliant with the conditions as laid out in the Financial Bid Form.

This Board also notes that one of the bidders, who submitted “*one rate*”, was the Recommended Bidder and therefore the same Board does not uphold the Appellant's Second Grievance.

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

Dr Anthony Cassar
Chairperson

Dr Charles Cassar
Member

Mr Lawrence Ancillieri
Member

5 November 2015