

PUBLIC CONTRACTS REVIEW BOARD

Case No. 875

KLM/T/4/2015:

Tender for the Collection of Mixed Household Waste in an Environmentally Manner.

The tender was published on the 2nd October 2015. The closing date was on the 2nd November 2015. The estimated value of tender is €175,000.00 (Exclusive of Vat).

On the 30th October 2015 Galea Cleaning Solutions JV filed a Pre-Contractual concern in terms of Regulation 85 of the Public Contracts Procurement Regulations claiming that the contracting authority has to publish beforehand the award criteria of the tender.

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 19th November 2015 to discuss the objection.

Present for the hearing were:

Galea Cleaning Solutions JV:

Mr Joseph Galea
Dr Adrian Mallia

Representative
Legal Representative

Mosta Local Council:

Mr Michael Mifsud
Dr Mario Mifsud

Acting Executive Secretary
Legal Representative

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

Dr Adrian Mallia on behalf of appellant explained that page 67 of the tender document states that the contracting authority would award the tender *"on the basis of the most favourable tender, provided that the tender had been submitted in accordance with the requirements of the tender documents."* His client the appellant had made a request for clarification on what "most favourable" meant – whether it would be the cheapest compliant or the most economically advantageous offers. The reply by the Mosta Local Council had been however that favourable meant either the cheapest compliant or the most common advantageous offer. This clarified nothing since the Public Procurement Regulations require the contracting authority to clearly declare what the award criteria would be, and this declaration had to be included in the tender document. The reply given shows that the contracting authority itself does not know what award criteria would be used to adjudicate the tender. If it was intended to use the MEAT criterion then the marks allocation parameters would have to be specified in the tender document itself. In order to follow Green Procurement Policies such tenders should preferably be assessed on the MEAT criteria and not the cheapest offer. Appellant was therefore asking that the contracting authority to clearly indicate the award basis of the present tender and that this basis should preferably be MEAT.

Dr Mario Mifsud on behalf of the contracting authority explained that the most economical advantageous offer means that the contracting authority would have to evaluate which offer was most advantageous; the financial situation of the Council was very bad and therefore most of the considerations had to be the prices offered. Mosta was a very big locality and there were many factors to be considered. However the adjudicators would take into consideration both the price as well as other factors. Page 16 of the tender document clearly shows the environmental considerations of the contracting authority. The tender had asked for Euro IV vehicles but obviously if a bidder offered something better he would be rewarded. He contended that "economically" included also the price consideration.

Dr Adrian Mallia for the appellant stressed that the contracting authority has by law to specify the award criteria and these should not be hidden or arbitrary.

Dr Mario Mifsud declared that the contracting authority would use the Most Economical Advantageous Tender method to assess the tenders.

Mr Michael Mifsud for the contracting authority explained that if all bidders proved to be up to specifications, then the financial bid would be used to assess the best offer.

Dr Mario Mifsud for the Mosta Local Council reiterated that to assess the tender the MEAT criteria will be used, but the financial offers would be the deciding factor of the award.

At this point the hearing was closed.

This Board,

Having noted the ‘Pre contractual Concern’ dated 29th October 2015, filed by Appellant and also Appellant’s verbal submissions during the hearing held on 19th November 2015, in that:

- a) Appellant Company contends that through various communication addressed to the Contracting Authority, requesting clarification regarding the ‘Award Criteria’ to be adopted, the latter did not specify clearly which criteria is to be applied. In this regard Appellant maintains that the Contracting Authority did not comply with Regulation 28 paragraph 3 of the Public Procurement Regulations, which states that: *‘Contracting Authorities shall determine the criteria of award whether by MEAT or the cheapest compliant offer’.***

Having considered the Contracting Authority’s ‘Letter of Reply’ dated 2nd November 2015 and also verbal submissions during the hearing held on 19th November 2015, in that:

- a) Through the Contracting Authority’s ‘Letter of Reply’, Authority confirms that the intention is to apply the ‘MEAT’ system as the award criteria. This statement was also affirmed during the verbal submissions of same Contracting Authority.**

Reached the following conclusions:

1. This Board, after having examined the ‘Pre-contractual Concern’ submitted by the Appellant and the ‘Letter of reply’ submitted by the Contracting Authority, together with verbal affirmations, that the Contracting Authority will be adopting, as the ‘Award Criteria’, the ‘MEAT’ principle, justifiably opines that:

a) It has been evidently proved that the Contracting Authority will avail itself of the ‘MEAT’ procedure in the award criteria.

b) This Board, having credibly established the ‘Award Criteria’ to be the ‘MEAT’, would justifiably refer to clauses 28 paragraph 3, 28 paragraph 4, 28 paragraph 5 of the Public Procurement Regulations wherein, it is clearly stated that:

a) Where the ‘Award Criteria’, falls under the ‘Most Economically and Advantageous Tender’, various criteria related to be subject matter of the Tender Document, including but not limited to, price, delivery date, period of completion, running costs, quality aesthetic characteristics, technical merits, after-sales service and technical assistance Shall be taken into consideration.

b) Where the ‘Contract’s Award Criteria’ is ‘MEAT’, the Contracting Authority shall, in the Tender Document, indicate the relative weighting which can be expertise by providing for a range with an appropriate maximum spread.

In this regard, this Board upholds Appellant’s ‘Pre-Contractual Concern’, as the Contracting Authority did not specify which ‘Award Criteria’ was to be implemented in the evaluation process of this Tender. As the same instance, this Board recommends that the award criteria be clearly dictated in the Tender Document so that the chosen ‘Criteria of Award’ will comply with the Public Procurement Regulations.

In view of the above, this Board opines that the Tender should be reissued taking into account clauses 28 paragraph 3, 28 paragraph 4 and 28 paragraph 5 of the Public Procurement Regulations.

Dr Anthony Cassar
Chairperson

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

24 November 2015