

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 927**

**CT 2048/2014**

### **Tender for the Cleaning Services for the Mental Health Services in a Environmentally Friendly Manner.**

The Tender was published on the 2<sup>nd</sup> November 2015. The closing date was on the 12<sup>th</sup> November 2015. The estimated value of the Tender is €4,700,000.50.

On the 9<sup>th</sup> November 2015 Specialist Group Cleaners Limited filed an objection raising pre-contractual concerns about certain aspects of the Tender Document.

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 14<sup>th</sup> April 2016 to discuss the objection.

Present for the hearing were:

#### **Specialist Group Cleaners Limited:**

Mr Wilson Mifsud	Representative
Mr Joachim Calleja	Representative
Dr John Bonello	Legal Representative

#### **Mental Health Services:**

Dr Clifton Grima	C E O
Mr Gilbert Bonnici	Finance Director
Ms Rita Zammit	Procurement Manager
Dr Alexia Farrugia Zrinzo	Legal Representative

#### **Department of Contracts:**

Ms Susan Camilleri	Procurement Manager
Dr Christopher Mizzi	Legal Representative

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

Dr John Bonello on behalf of the Appellant said that his client was raising two concerns regarding this Tender; the financial statements being demanded, and the requested technical capacity. The Tender asks for a minimum turnover of half a million euro during the years between 2012 and 2014. The Evaluation Board reserves the right to demand audited accounts for these three years if these are not shown in the MFSA website. Another concern was the demand that bidders prove works of a similar nature. The Appellant's main concern regarding the first grievance was that the MFSA website is not up to date and shows the position two years ago. Since the Appellant set up his company in 2012, this would not yet have appeared on the MFSA website.

Dr Christopher Mizzi for the Department of Contracts said that he agreed. The reason for choosing the MFSA website was not to increase the expenses of the economic operators to produce audited accounts in addition to those provide to the MFSA. He explained that the Department of Contracts is of the opinion that the range of years required should be opened to include 2015 but with the onus of the bidders to prove with audited accounts for years not shown on the MFSA website. He insisted that selection criteria should not be changed after publication.

Dr John Bonello for the Appellant said that they interpreted 'services of a similar nature' to mean cleaning services of a hospital. However it is evident that the Contracting Authority refers generally to cleaning services and not necessarily of a hospital.

Dr Christopher Mizzi for the Department of Contracts explained that the Contracting Authority intended '*of a similar nature*' to cover cleaning services and not necessarily of hospitals. It was up to the bidders to prove to the Evaluation Board all their experience. The Evaluation Board would then see if these fell within the parameters.

Dr John Bonello for the Appellant said that Appellant had understood that only the present cleaners of the three hospitals were eligible and that was the reason why the concern was raised. The matter has now been satisfactorily explained.

At this point the hearing was closed.

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**This Board,**

**Having noted the Appellant's "*Pre-Contractual Concerns*" in terms of the "*Reasoned Letter of Objection*" dated 9 November 2015 and also through their verbal submissions during the Public Hearing held on 14 April 2016 had objected to the decision taken by the Pertinent Authority, in that:**

- a) The Appellant Company contends that, since they were set up in 2012, the accounts and other documents submitted to MFSA would not have yet appeared on the latter's website. In this regard, the**

**Appellant maintains that the submission of the audited accounts as so requested by the Contracting Authority, can be submitted and accepted;**

- b) The Appellants also interpreted the wording “*Services of a similar nature*”, as in this case, pertaining to “*Cleaning of Hospitals*”. In this regard, the Appellant is requesting the Contracting Authority’s interpretation of this wording.**

**Having considered the Contracting Authority’s “*Letter of Reply*” dated 4 April 2016 and also through their verbal submissions during the Public Hearing held on 14 April 2016, in that:**

- a) The Contracting Authority contends that the selection criteria should not be changed after publication, but with regards to the Appellant’s First Grievance, the same Authority is willing to accept submissions of audited accounts not shown on MFSA Website as long as they are “*audited*”;**
- b) The Contracting Authority confirms that “*Services of a similar nature*” are not to incorporate “*Exclusive Hospital Cleaning*”.**

**Reached the following conclusions:**

- 1. On a general note, this Board would re-affirm that the “*Selection Criteria*” adopted by the Contracting Authority is in accordance with the Public Procurement Regulations and in this respect, this Board justifiably insists that it should not be changed;**
- 2. With regards to the Appellant’s First Grievance, this Board credibly notes, that during the verbal submissions made by the Contracting Authority, there is an agreement between the parties concerned that the Contracting Authority will accept submissions of “*Audited Accounts*” even when the same are not indicated on the MFSA Website, as not yet submitted.**

**This Board also notes that the purpose of requesting audited accounts from the MFSA Website was to reduce costs to economic operators. This Board upholds this decision.**

- 3. With regards to the Appellant’s Second Contention, this Board justifiably notes that a clear and vivid interpretation was given by the Contracting Authority, in that; the wording “*Services of a similar***

*nature*”, refers to “*General Cleaning Services*” and not limited to “*Hospital Cleaning*”. This Board upholds this interpretation.

In view of the above, this Board recommends that:

- i) A Clarification is to be sent to all bidders informing them of the acceptance of “*Audited Accounts*” which are not as yet registered on the MFSA Website;
- ii) A clarification note is to be sent to all bidders confirming the interpretation of the wording “*Services of a similar nature*”;
- iii) A clarification note is to be sent to all bidders informing them of the widening of range of years to be 2012-2015.

Dr Anthony Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Lawrence Ancilleri  
Member

*19 April 2016*