

PUBLIC CONTRACTS REVIEW BOARD

Case No. 981 – CT 2149/2015: Tender for the Provision of External Auditing Services for the University of Malta its Group of Companies and its Related Entities.

The Tender was published on the 11th March 2016. The closing date was on the 21st April 2016. The estimated value of the Tender was €283,200 (Inclusive of VAT)

Six (6) offers had been submitted for this Tender.

On the 2nd September 2016 Messrs PKF Malta filed an Objection against the decision taken by the Contracting Authority to reject their Tender as being non-compliant.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Mr Lawrence Ancilleri and Mr Carmel Esposito as members convened a hearing on Tuesday the 20th September 2016 to discuss the Objection.

Present for the hearing were:

PKF Malta - Appellant:

No representatives were present when the case was called.

Grant Thornton – Recommended Bidder:

Mr Austin Demajo	Representative
Dr Wayne Pisani	Legal Representative

University of Malta:

Mr Tonio Mallia	Chairman Evaluation Board
Mr Elton Baldacchino	Secretary Evaluation Board
Mr Peter J Baldacchino	Member Evaluation Board
Mr Joe Bugeja	Member Evaluation Board
Mr Mark Debono	Member Evaluation Board
Dr Steffi Vella Laurenti	Legal Representative

Department of Contracts:

Dr Christopher Mizzi	Legal Representative
Ms Christine Friggieri	Representative

When the case was called three times, no representatives from KPF Malta were present in the hall to make submissions.

The Chairman said that he was informed that the Appellants and their Legal Representative could not attend. He declared that the Board would continue the hearing and take into consideration the points raised by the Appellants in the Letter of Objection when giving its decision. The Contracting Authority's representative was then asked to make his submissions.

Dr Christopher Mizzi for the Department of Contracts said in the circumstances he would not be making any fresh submissions and the Contracting Authority would like to remit itself to the Board's decision.

Dr Wayne Pisani on behalf of the Recommended Bidder likewise declared that he agreed that the decision would be based on the documents already submitted in the case.

At this point the hearing was closed.

Due to the fact that PKF Malta's Legal Advisor could not attend the Public Hearing which was scheduled for Tuesday 20 September 2016, due to other urgent commitments, it was agreed by all parties concerned, that this case will be treated on the written submissions.

In this regard, this Board took into consideration the Appellant's "*Letter of Objection*" dated 1 September 2016 which stated that:

- a) PKF Malta contends that his offer was rejected as the University of Malta allegedly considered the Key Expert as mentioned in the Appellant's Bid to be non-qualified for the assignment as stipulated in the Tender Document. In this regard, PKF Malta considers the decision to be unfair.**

This Board took also into consideration the Contracting Authority’s “*Letter of Reply*” dated 15 September 2016 which stated that:

- a) **The University of Malta maintains that the Key Expert, apart from being an individual, had to be “*an audit officer in the actuarial Technical Area who is a qualified accountant and warranted auditor holding an MFQ Level 6 qualification and was in possession of a Maltese warrant*”. In this regard, the Appellant failed to submit a key expert that satisfied these mandatory conditions.**

Reached the following conclusions:

1. **This Board, after having examined the Appellant’s “*Letter of Objection*” and the Contracting Authority’s “*Letter of Reply*”, opines that the conditions laid down in a Tender Document must always be strictly adhered to, so that the main issue of this case is the Appellant’s Adherence to these conditions, through his offer.**

The reason given by the Authority for rejecting PKF Malta’s bid was solely that the Key Expert, (requested in Section 4 Clause 4.1.1.), had to be an Audit Officer who was not qualified in the “*Acturial*”

Technical Area.

The suggested particular expert was a certain Mrs Danielle Hermansen who was qualified in the Insurance Sector and although she worked closely with accountants, she did not meet the criteria as specified in Clarification 2 dated 7 April 2016.

In other words, the Key Expert under Article 4.1.1 of the Terms of Reference under “*Key Experts 3*”, the Audit Officer had to be qualified in the “*Acturial*” Technical area, a qualified Accountant, a warranted auditor holding an MFQ Level 6 Qualification and was also in possession of a Maltese Warrant.

Mrs Danielle Hermansen does not in any way qualify to suit Article 4.1.1. At the same instance, this Board justifiably notes that the Tender requested an auditor as an individual, so much so that it requested a CV of all the experts.

With regards to the dependence of the expertise of PKF Cooper Parry and PKF Little John, this Board considers this option to represent “*Sub Contracting*” which is not tolerated in the Tender.

This Board also credibly notes that in the reply to Clarification 2, PKF Malta confirmed that Mrs Danielle Hermansen is a chartered insurer only and does not possess any accountancy or auditing qualification and does not hold a warrant to practise in Malta.

In this regard, this Board does confirm that the Key Expert nominated by the Appellant did not satisfy article 4.1.1 Key Experts 3 which clearly states that:

“Audit Officers shall be qualified Accountants and warranted auditors, holding an MQF Level 6. The Audit Firm must provide qualified audit officers in each of the following Technical Areas, consolidation, actuarial, education audits and intellectual property valuation.”

This Board also notes that in Clarification 8, it is clearly specified by the University of Malta that subcontracting is not allowed. In this particular case, PKF Malta declared that they will be utilising services of an employee of a foreign firm.

Apart from the fact that PKF Malta was subcontracting some of the duties motioned in the Tender Document, it has been amply proved that the person assigned with “Actuarial” knowledge did not possess

the qualifications as dictated in Article 4.1.1 under the Terms of Reference of Key Experts 3. In this regard, this Board does not uphold the Appellant's Objection.

In view of the above, this Board finds against PKF Malta and recommends that the deposit paid by the latter should not be refunded.

Dr Anthony Cassar
Chairman

Mr Lawrence Ancilleri
Member

Mr Carmel Esposito
Member

29 September 2016