

PUBLIC CONTRACTS REVIEW BOARD

Case 1052 – NBTC 016/2017 – Provision of Consultancy Services to the National Blood Transfusion Service for the Compilation of European Union Funding Application

The Publication Date of the Call for Tenders was 24 March 2017 whilst the Closing Date for Call of Tenders was 7 April 2017. The Estimated Value of the Tender, (Exclusive of VAT) was € 6,000.

Three (3) Bidders have submitted offers for this Tender.

On 4 May 2017, RSM Malta filed an Objection against the decision of the Central Procurement and Supplies Unit to award the Tender to Ms Gabriella Mallia for the price of € 8,470 (Exclusive of VAT) against a deposit of € 400.

On 12 June 2017, the Public Contracts Review Board composed by Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Carmel Esposito as members convened a Public Hearing to discuss the Objection.

The Attendance for this Public Hearing was as follows:

Appellant – RSM Malta

Mr Robert Debono	Representative
Mr William Spiteri Bailey	Representative

Recommended Bidder – Ms Gabriella Mallia

Ms Gabriella Mallia	Representative
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Contracting Authority – Central Procurement and Supplies Unit

Dr Alex Aquilina	Representative
Ms Maria Camilleri	Representative

Following an introduction by The Public Contracts' Review Board Chairman, Dr Anthony Cassar, the Appellants were invited to make their submissions.

Mr William Spiteri Bailey on behalf of RSM Malta opened by stating that they were appealing because their bid was rejected for reasons regarding credit terms. The Tender Declaration which they have submitted said that they were accepting all Tender conditions as imposed by the Tender itself. Due to the fact that there was a conflict of statements, the Appellants were expecting a Clarification from the Contracting Authority.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board, remarked that Clarifications are usually made on documents which are submitted. Clarifications cannot be asked for erroneous documents or documents which had a misprint.

Mr Williams Spiteri Bailey for the Appellants countered that they have signed the declaration which stated that they have agreed with all the Tender conditions.

Mr Robert Debono, also for RSM Malta added that the fact that they were agreeing with all the conditions imposed does not change the nature of their answer. In the circumstance, there was a conflict between declarations which they have submitted as part of their offer and there should have been some common sense from the Contracting Authority in this sense since their offer should have not been discarded because of the Credit Terms.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board noted that one had to follow the Public Procurement Regulations.

Dr Alex Aquilina on behalf of the Central Procurement and Supplies Unit, whilst agreeing with the latter statement said by the Chairman of the Public Contracts Review Board added that these were clear. There was a 30 day credit terms and that they did not have an idea of what the Bidder had in mind.

Dr Aquilina added that the Contracting Authority had no other option but to reject the offer submitted by RSM Malta on administrative non-compliance.

At this stage, the Public Hearing was adjourned to Thursday 15 June 2017 at 09:00 wherein the Public Contracts Review Board will transmit the decision taken for this Objection verbally and then distribute a hard copy of the same to all parties concerned.

This Board,

Having noted this Objection filed by RSM Malta (herein after referred to as the Appellant) on 4 May 2017, refers to the Contentions made by the latter with regards to the award of Tender of Reference NBTC 016/2017

listed as Case No 1052 in the records of the Public Contracts Review Board, awarded by the Central Procurement and Supplies Unit (herein after referred to as the Contracting Authority).

Appearing for the Appellant: Mr William Spiteri Bailey

Appearing for the Contracting Authority: Dr Alex Aquilina

Whereby, the Appellant contends that:

- a) Although he had inadvertently submitted an inclusion of 30 day credit instead of a 60 day credit, he had also signed the declaration where it was declared that he will abide by all the conditions as laid out in the Tender Document.**

At the same instance, RSM Malta is maintaining that since his offer was by far the cheapest, the Contracting Authority could have asked for a clarification.

This Board also noted the Contracting Authority's "*Letter of Reply*" dated 5 May 2017 and its verbal submissions during the Public Hearing held on 12 June 2017, in that:

a) The Central Procurement and Supplies Unit maintains that, the Evaluation Board could only assess on the documentation received and in this regard, they had no other option but to reject the Appellant's offer.

At the same time, the Contracting Authority contends that it could not request a clarification as this would have amounted to a rectification, the latter of which is not allowed.

This Board, after having treated the merits of this case, arrived at the following conclusions:

- 1. This Board, after having examined the relative documentation and heard submissions made by both parties, opines that the issue at stake in this Appeal is the interpretation of the words, "*Clarification*" and "*Rectification*".**

As has been decreed on numerous occasions, it is of the utmost importance for the prospective Bidder to ensure that prior to the submission of his offer, all the conditions as laid out in the Tender Document have been met and tended to.

In this particular case, one must, first and foremost, appreciate the stages of the Evaluation process in that the first conformity should be Administrative compliance that is at this particular stage, the offer is vetted by the Evaluation Board to ensure that the prospective Bidder had submitted all the information requested in the Tender Document and such documentation conform with what was dictated.

Once this process is successfully completed, the Bidder's offer is passed on to the Technical Stage and then proceeds to the final stage which represents the Financial Evaluation of the offer. It is most important to note that each offer has to pass through these stages, if successful from one stage to the other.

In this particular case, the Tender dictated that payments will be made by the Central Procurement and supplies Unit on a 60 days credit, whilst the Bidder conditioned his offer on the basis of a 30 day credit basis.

At Evaluation stage, the Evaluation Board cannot go beyond their remit but must process the offer on the documentation submitted. In

this regard, this Board noted that there was a clear admission on the part of RSM Malta that he had submitted the incorrect credit terms.

One must also appreciate the fact that at this particular stage of the Evaluation process, the Evaluation Board is not concerned about the price but rather on the documentation submitted by the Appellants to allow their offer to advance to the other stage, which is the Technical Matter, so that, once the Evaluation Board took notice of the fact that RSM Malta's offer dictated different credit terms, the latter's offer could not be considered any further at Evaluation stage.

This Board opines that it has been evidently proven that at the Administrative Compliance stage, RSM Malta's offer failed to advance. At the same instance, the Evaluation Board could not ask for either a clarification or for a confirmation of the credit terms imposed by the Appellant's Bid.

Clarifications can only be made to clarify details for a particular offer on which the information submitted is not clear enough to allow the Evaluation Board to continue. In this particular case, there was nothing to clarify as the information submitted by the Appellant dictated different credit terms.

On the other hand, had the Evaluation Board rectified what RSM Malta had submitted, such an action would have been against the spirit of the Tender and would have infringed the Public Procurement Regulations. In this regard, this Board confirms the decision taken by the Central Procurement and Supplies Unit and does not uphold the Appellant's Grievance.

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

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Carmel Esposito
Member

15 June 2017