

PUBLIC CONTRACTS REVIEW BOARD

Case 1059 – T 022/2017 – Provision of Application Services on VERA Systems

The Publication Date of the Call for Tenders was 13 March 2017 whilst the Closing Date for Call of Tenders was 21 April 2017. The Estimated Value of the Tender, (Exclusive of VAT) was € 320,000.

Two (2) Bidders have submitted offers for this Tender.

On 17 May 2017, Intersistemi Italia SpA filed an Objection against the decision of the Malta Information Technology Agency to cancel the Tender against a deposit of € 2,400.

On 4 July 2017, the Public Contracts Review Board composed by Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Richard A Matrenza as members convened a Public Hearing to discuss the Objection.

The Attendance for this Public Hearing was as follows:

Appellant – Intersistemi Italia SpA

No Representative was present for the Public Hearing

Contracting Authority – Malta Information Technology Agency

Ms Katrina di Maggio	Chairperson, Evaluation Board
Mr Keith Aquilina	Member, Evaluation Board
Ms Katia Bonello	Member, Evaluation Board
Ms Marica Xuereb	Member, Evaluation Board
Mr Robert Grixti	Representative
Ms Danielle Mercieca	Representative
Dr Marouska Cilia Barbara	Legal Representative

Others

Mr Roland Scerri	Loqus Public Sector Limited Representative
------------------	--

The Public Contracts' Review Board Chairman, Dr Anthony Cassar, opened by saying that Intersistemi Italia SpA, the Appellants, have sent a notification citing that they could not send any representative for the Public Hearing and requested that their case was to be heard without them. Dr Cassar then invited the Contracting Authority to state their case.

Dr Marouska Cilia Barbara, the Legal Representative for the Malta Information Technology Agency opened by saying that this Tender was issued with a budget of € 320,000 and that on 30 March 2017 they have issued a Clarification which explained how the Budget was to be divided. The latter stated that whoever exceeded the total estimated Budget was to be disqualified.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board asked the Contracting Authority to confirm that the Budget was to be over five years.

Dr Marouska Cilia Barbara, the Legal Representative for the Contracting Authority confirmed the latter statement and added that Intersistemi Italia SpA's bid was a quarterly fee of € 7,100 which when multiplied by the 20 quarters which covered the five years of the Tender, it resulted that their bid was over the Budget.

The Evaluation Board has decided to apply Clause 17.1 (b) of the General Rules Governing Tenders v2.0 issued by the Department of Contracts on 3 November 2016 which states that:

“Where there is a discrepancy between a unit price and the total amount derived from the multiplication of the unit price and the quantity, the unit price as quoted will prevail”.

Dr Cilia Barbara added that the mistake was in the multiplication and despite the fact that yesterday's note from Intersistemi Italia SpA requested clemency from the Public Contracts Review Board, the Malta Information Technology Agency was insisting that the rules must be applied in every circumstance.

At this stage, the Public Hearing was adjourned to Tuesday 11 July 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 Intersistemi Italia SpA (herein after referred to as the Appellant) on 17 May 2017, refers to the Contentions made by the latter with regards to the award of Tender of Reference T 022/2017 listed as Case No 1059 in the records of the Public Contracts

Review Board, issued by the Malta Information Technology Agency (herein after referred to as the Contracting Authority).

Appearing for the Appellant: Nobody was present for the Public Hearing.

Appearing for the Contracting Authority: Dr Marouska Cilia Barbara

Whereby, the Appellant contends that:

- a) His main contention was that his offer was discarded due to a mathematical error, referring to the quoted quarterly maintenance fee of € 7,100. In this regard, Intersistemi Italia SpA maintains that due to an oversight, he based this fee on a period of three years instead of five years duration. However, the total outlay for the maintenance was quoted at € 85,200, the latter representing the correct total amount for the five year period.

This Board also noted the Contracting Authority's "*Letter of Reply*" dated 19 May 2017 and its verbal submissions during the Public Hearing held on 4 July 2017, in that:

- a) The Malta Information Technology Agency maintains that the Appellant multiplied the quarterly maintenance fee of € 7,100 by 12

quarters, representing a duration period of three years, whilst the duration of the Contract was for five years, hence the quarterly fee of € 7,100 had to be multiplied by 20 quarters, resulting in a global fee of € 142,000 which was way above the dictated Budget.

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

- 1. This Board would like to first and foremost acknowledge that the latter was informed, through a communication dated 3 July 2017, that Intersistemi Italia SpA could not attend the Public Hearing, however, through the same communication, they made their final submissions, hence the Public Hearing for this Appeal could be held as scheduled.**

This Board, after having examined the relative documentation including the Appellant's written submissions, would like to respectfully opine that he was in duty bound to follow the rules and procedures as stipulated in the Tender Document itself and the "*General Rules Governing Tenders*" and in this regard, it appears that Intersistemi Italia SpA did not abide by such regulations.

This Board noted the Appellant’s Contention wherein it is stated that although the quarterly fee for the duration of the Contract was not within the dictated Budget, the quoted Global Fee for the Maintenance was within the same stipulated Budget.

In this regard, this Board justifiably refers to the fact that there was a discrepancy between the unit price, as quoted by the Appellant, and the total Amount delved, in that the Appellant has clearly indicated that the quoted quarterly rate, if multiplied by the duration of the Contract, i.e. 20 quarters, would by far exceed the dictated figure of € 85,000.

In this respect, reference is merited to Clause 17.1 (b) of the “*General Rules Governing Tenders*” v 2.0 issued by the Department of Contracts on 3 November 2016 wherein it is clearly denoted that:

“Where there is a discrepancy between a Unit Price and the Total Amount derives from the multiplication of the Unit Price and the Quantity, the Unit Price as quoted will prevail.”

In this regard, this Board justifiably opines that the Evaluation Board was correct in their decision, as the quarterly rate of € 7,100

multiplied by 20 quarters resulted in a total, way beyond the dictated Budget.

At the same instance, this Board credibly notes that the Tender Document clearly dictated the duration period of the Contract, so that, in this respect, Intersistemi Italia SpA was quite aware of the duration of the Tender and the number of quarters involved.

This Board, as had on numerous occasions, would like to emphasize that it is the duty of the Bidder prior to the submission of an offer to ensure that he has read all the conditions laid out in the Tender Document and checked that he has submitted all that was requested. Any submissions or rectifications, after the closing date of the Tender, would be futile and are not allowed. In this regard, this Board does not uphold the Appellant's Contention.

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

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Richard A Matrenza
Member

11 July 2017