

PUBLIC CONTRACTS REVIEW BOARD

Case 1106 – MJCL/MPU/9/2017 – Tender for the Provision of Brand Strategy and Brand Identity, Website Design and Development for the Malta International Contemporary Art Space (MICAS)

The Publication Date of the Call for Tenders was 18 August 2017 whilst the Closing Date for Call of Tenders was 12 September 2017. The Estimated Value of the Tender, (Exclusive of VAT) was € 110,000.

Eight (8) Bidders have submitted offers for this Tender.

On 3 November 2017, CasaSoft Limited and Sancho Limited Joint Venture filed an Objection against the decision of the Ministry for Justice, Culture and Local Government to award the Tender to MAS and Redorange for the price of € 45,000 (Exclusive of VAT) against a deposit of € 550.

On 28 November 2017, the Public Contracts Review Board composed by Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a Public Hearing to discuss the Objection.

The Attendance for this Public Hearing was as follows:

Appellant – Casasoftware Limited and Sancho Limited Joint Venture

Mr Mario Cachia	Representative
Mr Mark Cassar	Representative
Mr David Demicoli	Representative

Recommended Bidder – MAS and Redorange

Mr Daniel Abela	Representative
Ms Cynthia Attard	Representative

Contracting Authority – Ministry for Justice, Culture and Local Government

Mr Etienne Bonello	Chairperson, Evaluation Board
Ms Mary Rose Mifsud	Member, Evaluation Board
Mr Christopher Tanti	Member, Evaluation Board
Dr Christopher Mizzi	Legal Representative

Mr Mario Cachia for Casasoft Limited and Sancho Limited Joint Venture, opened by saying that they were appealing because the points awarded to them for this Tender was not the correct one and that they had a number of generic and specific points which they wanted to raise.

With regards the Creative Competency, the Appellants contended that they were being judged on the words and explanations given in their submission. They did not understand why visual examples and samples were not requested in a Tender of such a nature.

Mr Cachia continued by saying that six of the eight Bidders who submitted offers for this Tender were deemed to be non compliant by the Contracting Authority. This occurred either because the six unsuccessful Bidders were really incompetent or else because the Ministry for Justice, Culture and Environment did not present the Tender Requirements in a clear way.

With regards the MEAT Procedure, Mr Mario Cachia argued that they offered a Bid which was € 26,930 cheaper than the Recommended Bid which was around 60% cheaper. It was true that there was a quality clause to be reached but the Appellants felt that one had to consider the best use of public funds when evaluating such Tenders.

The Appellants contended that there were also other deficiencies in the Tender Preparation Tool which included upload limits which are a hindrance in today's digital era.

Dr Christopher Mizzi, the Legal Representative for the Ministry for Justice, Culture and Local Government said that the Contracting Authority has brought a Witness who can explain everything.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board, whilst agreeing with Dr Mizzi's suggestion added that the Contracting Authority had to make its Evaluations on the submitted documents. He also requested both parties not to raise arguments which can go beyond this principle.

At this point, Mr Etienne Bonello, the Chairperson of the Evaluation Board for this Tender, holding ID Card Number 402780 M, was summoned by the Ministry for Justice, Culture and Local Government to testify under oath before the Public Contracts Review Board.

At the end of Mr Bonello's testimony, the Public Hearing was adjourned to Tuesday 5 December 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 CasaSoft Limited and Sancho Limited (herein after referred to as the Appellant) on 3 November 2017, refers to

the Contentions made by the latter with regards to the award of Tender of Reference MJCL/MPU/9/2017 listed as Case No 1106 in the records of the Public Contracts Review Board, awarded by the Ministry for Justice, Culture and Local Government (herein after referred to as the Contracting Authority).

Appearing for the Appellant: Mr Mario Cachia

Appearing for the Contracting Authority: Dr Christopher Mizzi

Whereby, the Appellant contends that:

- a) Most of the scores awarded to his offer do not reflect the substance of the information submitted in his offer. In this regard, the Appellant insists that the points given by the Evaluation Board were not fair and real.**

This Board also noted the Contracting Authority's "*Letter of Reply*" dated 15 November 2017 and its verbal submissions during the Public Hearing held on 27 November 2017, in that:

a) **The Contracting Authority maintains that the points awarded to the Appellant's offer reflected the comparison between what was submitted by the Appellant and what was requested in the Tender Dossier. At the same instance, the Ministry for Justice, Culture and the Local Government contends that the requisites for this Tender were clearly denoted in the Tender Document.**

This same Board also noted the Testimonies of Mr Etienne Bonello duly summoned by the Ministry of Justice, Culture and Local Government.

This Board, after having examined the relative documentation and heard submissions made by the parties concerned, including the testimony of the witness duly summoned by the Contracting Authority, opines that the sole and main issue of this Appeal is the allocation of points. In this regard, consideration is being given to two main issues, namely, “*Conditions in the Tender Document*” and “*Evaluation Procedure Adopted (Allocation of Points)*” as follows.

1. Conditions in the Tender Document

One has to appreciate that conditions are dictated in a Tender Dossier to ensure that these will achieve the desired results to the

satisfaction of the issuing Authority. These conditions must be viable, reasonable, achievable and do not deter free and fair competition.

In this particular case, Casasoft Limited and Sancho Limited Joint Venture are contending that the requisites, as indicated in the Tender Document, were not clear enough to justify the rejection of their offer. In this regard, this Board, would like to first and foremost, state that the Evaluation Board is not responsible for the drafting of the Tender Document, yet at the same time, the latter is obliged and duty bound, to ensure that all the conditions, as laid out in the Tender Document, are strictly abided by.

With regards to the Appellant's claim that, since 6 (six) of the eight Bidders were non compliant, it is indicative that the Tender Document was not drafted in a clear way, this Board does not find this argument to justify or provide enough evidence to prove that the conditions were not clear enough. On the other hand, this Board notes that other Bidders were compliant enough to understand what was required in their offer.

With regards to the Appellant's confirmation that their offer was much cheaper, this Board takes into consideration the fact that this was a "MEAT" Tender, and therefore, the fact that his offer was the cheapest does not necessarily imply that he will obtain a maximum overall mark, as the Formula which derives the end result takes into account via a large percentage of points, the administrative and technical compliance.

This Board also noted the Appellant's remarks in respect of deficiencies in the Electronic Tender Preparation Tool. However from the credible testimony of the Witness duly summoned, it was confirmed that the system did not deter a Bidder from making his submission in any particular way.

With regards to Casasoft Limited and Sancho Limited Joint Venture's Contention that their offer was adjudicated on the words and explanation given in the submission, this Board confirms that the Evaluation Board can only assess an offer on the submissions made by the Bidder and in this case, such a correct and proper procedure was adopted.

With regards to the Appellant's claim that the Ministry for Justice, Culture and Local Government should have requested visual examples and samples, this Board's remit is not to dispute or amend the requirements as dictated in the Tender Document but rather to ensure that the Evaluation Procedure was carried out in a fair, just and transparent manner.

2. Evaluation Procedure Adopted

First of all it is being established that the Award Criteria under the "*Best Price Quality Ration*", previously known as "*Meat*", where points are allocated individually, by members of the Evaluation Board after which a weighted average is arrived at, to be applied to the Formula, is the most fair and transparent mode of evaluating an offer as it suppresses substantially the element of "*Subjectivity*". This formulation is clearly denoted in Clause 9 of the "*Instructions to Tenderers*".

With regards to the Allocation of points on his offer, the Appellant indicated items, on which, in his opinion, unfair allocation was carried out, namely

a) **Gaant Chart**

This Board notes that although the Appellant did refer to the Gaant Chart, no such attachment was submitted by the same. The Appellant's claim that the EP System did not allow such an attachment to be transmitted was credibly rebutted by the credible Technical Witnesses Testimony wherein the Appellant could have carried out the process through a zip file.

b) **Proposed Brand Identity**

Although the Appellant's arguments were presented to justify why their offer, in this particular section, should have gained more marks, the credible explanation given by the Witness surpasses the justification of the points awarded in that, Casasoft Limited and Sancho Limited Joint Venture's offer described how a museum should be run whilst the Tender Document requested how the Branding of the Museum will be carried.

c) **Signage**

In this regard, the Appellant maintained that the information submitted with respect to “*Signage*” merited more marks than those allocated. However, from credible submissions, it was justifiably explained that what the Tender requested was, as to how such signage will be made and how the product, in the light of creativity, will be created.

3. This Board opines that, on a general note, it is credibly noted that the Award Criteria under the “*Best Price Quality Ratio*” is an efficient and objective system of the Evaluation Process of a Tender. The fact that more than two persons allocate their marks on the various particular items of a Tender makes this procedure more objective, fair and transparent.

In this particular case, this Board, after having considered the issues under Objection, opines that the Evaluation Board had adhered to the conditions requested in the Tender Document and each individual mark allocated to the Appellant’s offer, was carried out in a fair, just and objective manner.

In view of the above, this Board finds against Casasoftware Limited and Sancho Limited Joint Venture and:

- i) Justifiably confirms that the Evaluation Board carried out the Evaluation Process in a diligent and transparent manner;**

- ii) Recommends that the deposit paid by the Appellant is not to be refunded.**

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

5 December 2017