

PUBLIC CONTRACTS REVIEW BOARD

Case 1184 – MJCL/MPU/30/2018 – Service Tender for the Disinfestation of the Notarial Archives and its Housed Manuscripts

The publication date of the call for tenders was the 9th March 2018 whilst the closing date of the call for tenders was the 13th April 2018. The estimated value of the tender (exclusive of VAT) was € 100,000.

Salvarti Company Ltd filed an appeal on 7th May 2018 against the Notary to the Government and the Ministry for Justice, Culture and Local Government which had disqualified Appellant on the grounds of being technically non-compliant. A deposit of € 500 was paid.

On 3rd July 2018 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Carmel Esposito as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – Salvarti Co Ltd

Dr Kevin Plumpton	Legal Representative
Mr Oliver Borg	Representative
Mr Pierre Bugeja	Representative

Recommended Bidder – Comtec Services Ltd

Ms Joanie Mifsud	General Manager
Mr Tony Zahra	Representative

Contracting Authority – Notary to the Government and Ministry for Justice, Culture and Local Government

Dr Chris Mizzi	Legal Representative
Dr Keith Francis German	Chairperson Evaluation Committee
Mr Joseph Cassar	Secretary Evaluation Board
Dr Paul Callus	Member Evaluation Board
Dr Hubert Theuma	Member Evaluation Board

The Chairman of the Public Contracts Review Board, Dr Anthony Cassar, invited Appellants to make their submission.

Dr Kevin Plumpton, Legal Representative of Salvarti Co Ltd, said his clients had been disqualified by the Contracting Authority for failure to submit the technical offer which rendered their bid technically non-complaint. Since the document had been submitted the Authority should have asked them for clarification. If documents are missing the Authority should ask for them. Instead the Authority was claiming that they were not only unable to rectify but also that the document was not only missing but that a different document (working plan) had been submitted in lieu.

Dr Chris Mizzi, Legal Representative of the Contracting Authority, stated that the working plan prepared by Appellants was submitted but not the technical questionnaire. The ePPS did indeed show that a document had been uploaded but it was the wrong document. The technical questionnaire had not been uploaded.

Dr Plumpton said his clients were certain that they had submitted the questionnaire and it was necessary to check the Authority's file to verify this.

The Chairman said that the Appellants had a right to find out what documents they had submitted. On their behalf the Board will check the file and make its decision on the facts.

Notary Keith Francis German (163974M) testified on oath that he was the Chairperson of the Evaluation Committee and confirmed that the questionnaire was missing. He consulted and checked thoroughly with his colleagues on the Evaluation Committee and following the directive of the wording of the disclaimer on the Technical Questionnaire Form (Note 3) they had concluded that the non submission of the form made the bid non-compliant.

Dr Plumpton said that he wanted to draw the Board's attention to the fact that the tender document was misleading. It requested that with the questionnaire form, bidder had to submit a detailed working plan suggesting how disinfestation is to be carried out. The Board should look at this aspect of the tender and particularly whether it was worded clearly enough.

The Chairman assured Appellants that the Board would look at all aspects of the tender documents, thanked the parties for their submission and declared the hearing closed.

This Board,

Having noted this Objection filed by Salvarti Company Limited, (hereinafter referred to as the Appellants) on 7 May 2018, refers to the contentions made by the same Appellants with regard to the award of Tender of Reference MJCL/MPU/30/2018, listed as Case 1184 in the records of the Public Contracts Review Board, awarded by the Notary to the Government and Ministry for Justice, Culture and Local Government, (hereinafter referred to as the Contracting Authority).

Appearing for the Appellants: Dr Kevin Plumpton.

Appearing for the Contracting Authority: Dr Christopher Mizzi.

Whereby the Appellants contend that:

- a) The main issue is that the Contracting Authority discarded their offer due to the alleged fact that they did not submit the requested technical questionnaire. In this respect, Appellants maintain that they did in fact submit this document. At the same instance, the Appellants contend that the Contracting Authority should have asked for a clarification.**

This Board has also considered the Contracting Authority’s “*Letter of Reply*” dated 18 May 2018 and its verbal submissions during the Public Hearing held on 3 July 2018, in that:

- a) The Ministry insists that the document which the Appellants submitted was not the requested technical questionnaire. The Contracting Authority also maintains that the missing information fell under Note 3, where no clarification or rectification is allowed. In this regard, the Evaluation Board had no other option but to deem the Appellants’ offer, as technically non-compliant;**

This same Board has also noted the testimony of the witness namely, Notary Keith Francis German, the Chairman of the Evaluation Committee, duly summoned by the Notary to the Government and Ministry for Justice, Culture and Local Government.

This Board, after having examined the relevant documentation to this Appeal and heard submissions made by the parties concerned, including the testimony of the witness, opines that the issue worth of consideration is the contents of the submissions made by Appellants.

This Board would respectfully point out that the requested technical questionnaire formed an important part of the technical offer. At the same instance, this Board would point out that the lack of documentation cannot be clarified as otherwise it would be a rectification, that is effectively a submission of a missing mandatory document after the closing date for offers. One has to appreciate that such a regulation abides by the principles of equal treatment and self-limitation and in this Board’s opinion, it is the only mode of procedure available to safeguard the application of these two important principles in public procurement.

One has to appreciate that the Evaluation Committee must assess offers on the documentation duly submitted by the Tenderer and in this particular case, the Appellants’ offer was missing the technical questionnaire. At the same instance, this Board would refer to the preamble stated in the same document, which clearly states that:

“Failure to complete, duly sign and upload the requested information would be deemed as non-compliant”.

This Board would also point out the importance of the “*Technical Questionnaire*”. Since the introduction of the “*European Single Procurement Document*” (ESPD) was mainly designed to facilitate the compilation and

submission of offers in that, the Bidder, through the relevant documentation, must declare information about his capabilities, experience and qualifications which the Tender Dossier requested, without having to submit supporting documentation such as certificates, CVs and others, at tendering stage. At the same instance, the European Single Procurement Document, contains mandatory requirements which must be submitted with the offer to prove to the Contracting Authority that the Bidder is capable of carrying out the tendered works and in this respect, the Technical Questionnaire is one of the mandatory documents.

Yet, at the same instance, the Bidder must fully comply with the submission of all the information duly dictated in the Tender Dossier. The technical questionnaire was one of those documents, which apart from the fact that it formed part of the technical offer, was mandatorily requested by the Contracting Authority for the Bidder to declare that he is offering to perform all that is being requested in the Tender Dossier.

With regards to the Appellants' concern as to whether the wording, (in this context), was misleading, this Board examined the wording used for the requested submission of a "*Working Plan*", and found same to be clearly denoted. However, the submission of the "*Working Plan* does not justify or replace the non-submission of the "*Technical Questionnaire*". In this regard,

this Board examined all the documentation submitted by the Appellants and confirms that the “*Technical Questionnaire*” in the Appellants’ offer was missing. At the same instance, this Board can also confirm that the Contracting Authority was not in receipt, through the Electronic Public Procurement System, of the same technical questionnaire. In this regard, this Board does not uphold the Appellants’ contentions.

In view of the above, this Board,

- a) Upholds the decision taken by the Notary to the Government and Ministry for Justice, Culture and Local Government in the award of the Tender;**
- b) Does not uphold Salvarti Company Limited’s grievances;**
- c) Recommends that the deposit paid by the Appellants should not be refunded.**

Dr Anthony J Cassar
Chairman

Dr Charles Cassar
Member

Mr Carmel Esposito
Member

12th July 2018