

PUBLIC CONTRACTS REVIEW BOARD

Case 1229 – IMA 2018/008 –Tender for the Supply and Installation of Metal Shelving for Identity Malta Agency

The publication date of the call for tenders was the 25th June 2018 whilst the closing date of the call for tenders was 10th July 2018. The estimated value of the tender (exclusive of VAT) was € 12,000.

On the 18th October 2018, Petrolea filed an appeal against Identity Malta Agency as Contracting Authority objecting to being disqualified on the grounds that their offer was not compliant. A deposit of € 400 was paid.

There were six (6) bidders.

On 1st November 2018 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Mr Carmel Esposito and Mr. Lawrence Ancilleri as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – Petrolea

Dr Matthew Paris	Legal Representative
Dr Michele Cardinale	Legal Representative
Ms Noelle Attard	Representative
Mr Michael Zarb	Representative

Recommended Bidder – Alfen Trading Co Ltd

Mr Etienne Fenech	Representative
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Contracting Authority – Identity Malta Agency

Dr Neil Harrison	Legal Representative
Mr Martin Bowerman	Chairman Evaluation Committee
Ms Chantelle Tanti	Secretary Evaluation Committee
Mr Edwin Ebeyer	Member Evaluation Committee
Ms Leonie Zahra	Member Evaluation Committee
Mr Pablo Cachia Belli	Member Evaluation Committee

Dr Anthony Cassar, Chairman of the Public Contracts Review Board, welcomed the parties and invited submissions.

Dr Matthew Paris, Legal Representative for Petrolea, stated that his client's was appealing against the decision of the Contracting Authority to exclude their bid on the basis of their having offered shelving that was not exclusively made of steel. Appellant contends that this was not in line with the tender documents and Dr Paris referred specifically to Section 4.1 of the Tender documents (acknowledges the possibility of more than one material); Section 4.2 (Green Public Procurement Criteria – wood is compliant, but steel is not); Section 4.4 (meets European standards) and Section 4.5.1 which refers to wood and wood based materials. He also made reference to the literature list.

The Chairman intervened to note that he could not trace the letter of rejection sent by the Contracting Authority, which should have been sent to the Appellant as a first step.

Mr Pablo Cachia Belli (544383M) testified on oath that he was one of the Evaluators and confirmed that a letter of rejection had not been sent to any of the bidders. Instead, a full copy of the Evaluation Report had been sent.

The Chairman said that this was in breach of the Public Procurement Regulations and he was adjourning the hearing to consult with the Board.

On resumption of the hearing Dr Paris pointed out that he had just been advised that an email had been sent to the bidder at the time of the rejection advising them that they were not successful.

The Chairman pointed out that this was irregular and it was essential that Evaluation Committees acquainted themselves with PPR. He then said that the Board had considered the facts in this matter and since all details of all the submissions were now known, he instructed the Contracting Authority to send a letter of rejection according to the PPR.

The Chairman thanked the parties for their submissions and declared the hearing closed.

This Board,

having noted this Objection filed by Petrolea, (hereinafter also referred to as the Appellants), on 18 October 2018, refer to the contentions made by the same Appellants with regards to the award of Tender of Reference IMA 2018/008 listed as Case No 1229 in the records of the Public Contracts

Review Board and awarded by Identity Malta Agency, (hereinafter also referred to as the Contracting Authority).

Appearing for the Appellants: Dr Matthew Paris

Appearing for the Contracting Authority: Dr Neil Harrison

Whereby, the Appellants contend that:

- a) their offer was unjustly rejected for the simple reason that their offered shelving was not exclusively made of steel. In this regard, the Appellants maintain that they are fully compliant with the technical specifications as dictated in the Tender Document.**

This Board has also noted the Contracting Authority’s “*Reasoned Letter of Reply*”, dated 26 October 2018 and also its verbal submissions during the Public Hearing held on 1 November 2018, in that:

- a) The Contracting Authority insists that the shelving system offered by the Appellants did not comply with the requirements as stipulated in the Tender Document. Identity Malta Agency requested good quality shelving that will last for a considerable long duration and such consideration was taken into account in choosing the successful offer.**

This same Board has also noted the testimonies of the witnesses duly summoned by the Public Contracts Review Board namely:

- 1. Mr Martin Bowerman**
- 2. Mr Pablo Cachia Belli**

This Board, after having examined the relevant documentation to this Appeal and heard submissions made by the witnesses duly summoned by this Board noted that, Identity Malta Agency failed to submit a formal “*Letter of Rejection*” specifying the reasons for such a rejection together with the notice of the Appeal period and the deposit to be made by the Appellants.

At the same instance, this Board was also made aware that Identity Malta Agency sent a copy of the full evaluation report to the Appellants. In this regard, this Board would point out that only extracts from such a report denoting Petrolea’s offer details should have been submitted to the Appellants.

After a short recess, this Board opined that:

- i) such actions taken by the Contracting Authority breach the Public Procurement Regulations;**

ii) instructs Identity Malta Agency to submit a proper “*Letter of Rejection*” specifying the exact reasons for the rejection of Petrolea’s offer, within a period of five days from this decision;

iii) The deposit paid by the Appellants should be fully refunded.

Dr Anthony Cassar
Chairman

Mr Carmel Esposito
Member

Mr Lawrence Ancilleri
Member

5th November 2018