

PUBLIC CONTRACTS REVIEW BOARD

Case 1231 – 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 9th November 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 15th November 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 – 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
Mr Edwin Ebeyer	Member Evaluation Committee
Ms Leonie Zahra	Member Evaluation Committee
Mr Pablo Cachia Belli	Member Evaluation Committee
Ms Faith Bonanno	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 the Contracting Authority in this Case had evaluated on the basis of the title of the tender rather than on the actual wording of the tender documents, and this was the reason for this appeal. The only method to evaluate correctly is to follow the specifications. If one analysed the tender wording, one would realise that the Contracting Authority are incorrect in maintaining that the offer had to be for a complete steel system. Petrolea had been disqualified on the basis of not meeting the specifications of Article 4.1 in the tender – yet that section refers to ‘several’ or ‘all’ materials not merely to steel. Point 4.5 refers to ‘wood’ and ‘wood based materials’ and so does the literature list which satisfies all the requirements listed. The Appellants’ bid also satisfies Points 4.5.2 and 4.5.3 which refer to other materials including plastics. There is no ambiguity in the wording of the tender-if it was meant to exclude wood it should have stated so. Since other materials are acceptable the benefit should go to the bidder who offered a steel frame and wooden shelving.

Dr Neil Harrison, Legal Representative of Identity Malta Agency, stated that the tender clearly requested a modular steel galvanised shelving system. This is meant to be a complete system structure not separate units as is made clear in the specifications from point 4.1 to point 4.3. Furthermore point 4.4 refers to Euro standards for whole systems. The reference to wood is merely referring to parts that are not integral to the structure. The tender criteria had not been followed by the bidder and it would be unfair to consider this offer as all other bidders were compliant.

Dr Paris said that the Contracting Authority was trying to defend the indefensible by claiming what was not stated in the tender. Why had the Contracting Authority asked for samples of the wooden shelves if it was not intended to consider such offers?

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 9 November 2018, refers to the contentions made by the latter with regards to the award of Tender of Reference IMA 2018/008 listed as Case No 1231 in the records of the Public Contracts Review Board,

awarded by Identity Malta Agency, (hereinafter 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 compliant with the Tender's Technical Specifications.

However, the Contracting Authority rejected their offer due to the simple fact that there was an inclusion of wooden material and their offer was considered to be not technically compliant. In this regard, the Appellants insist that their offer consisted of modular galvanized steel structure, including the heavy duty fabricated laminated material, so that their offer was in compliance with sections 4.1 and 4.2 of the technical specifications.

This Board has also noted the Contracting Authority's "*Reasoned Letter of Reply*" dated 26 October 2018 and its verbal submissions during the Public Hearing held on 15 November 2018, in that:

a) Identity Malta Agency contends that the Tender Document clearly requested complete modular steel galvanised shelving system, so that the inclusion of wood in the Appellants' offer was not in conformity with what was requested in Articles 4.1 and 4.3. In this respect, the Evaluation Committee had no other option but to deem Petrolea's offer as technically non compliant.

This Board, after having examined the relevant documentation to this Appeal and heard submissions made by the parties concerned, opines that the issue which must be considered is the interpretation of Articles 4.1 and 4.2.

1. Article 4.1

This particular article in Section 4 – Technical Specifications, of the Tender Document describes what is actually being requested by the Identity Malta Agency and specifically states that:

“4.1 Scope of Works

The contractor shall supply and install modular galvanized steel structure shelving. The shelving shall include all the fixing materials and reinforcements required for stability.”

This Board opines that from the above mentioned article, the Contracting Authority requested a shelving system made from modular galvanized steel structure, that is, all the shelving system's material must be composed of galvanized steel (modular). At the same instance, this Board credibly establishes the fact that, the requested shelving system includes all the components which comprise the system itself, so that wood is not to be considered as a feature in the shelving system. However, at this stage of consideration, this Board would respectfully point out that the word "*structure*" might have been slightly misleading in that, what is normally understood by the word structure, is the skeleton of a particular system.

In this respect, this Board would remind Identity Malta Agency that the technical specifications of the Tender Document should be precise in the way they describe the requirements, be easily understood by the prospective Bidders and provide sufficient yet detailed information to allow prospective Bidders to submit reasonable offers.

On the other hand, if the Appellants were in doubt, they had all the remedies available to seek clarification or request a call for remedy to establish the composite material being requested in the Tender Document for the complete shelving system, and in this respect, this Board notes that Petrolea did not avail themselves of such remedies.

In this regard, this Board opines that, although article 4.1 could have been better phrased to emphasize the full description of the material for the complete structure of shelving, the same article refers to a complete shelving system which includes the frame and shelving which had to be in modular galvanized steel.

2. Article 4.2

This Board would refer to the last paragraph of Article 4.2 of the Technical Specifications which states that:

“The material used for the shelving should be

- *Anti corrosive;***

- *With minimal maintenance requirement in terms of painting and cleaning;*
- *Free from any health hazards*
- *Compliant to Green Public Procurement criteria”*

Petrolea’s contention in this regard is that, their product meets all the conditions mentioned above and this Board confirms that the material included in the Appellants’ offer, that is heavy duty fabricated laminated material, does, in fact, meet the requirements of Article 4.2, however, Identity Malta requested that even the shelving should be of modular galvanised steel, so that the Appellant’s offer does not cater for the Tender Requirements in their entirety.

This Board would again emphasize the importance of dictating clear description of the requirements in the Tender Document and at this stage of consideration, would refer to articles 4.5.1 and 4.5.3, wherein great prominence was given to wood material and its surface coating, which, in the end tends to give the impression that wooden material forms an important integral part of the shelving system and in this regard, this Board would opine that such dictated articles in the

technical specifications do create some confusion with regards to the type of materials to be included in the shelving system. However, having considered this deficiency in the technical specifications, this Board still maintains that the shelving system including the supporting structure and the shelving together with its components had to be of galvanized modular steel. This Board also takes into consideration the fact that there were six offers and all except the Appellants' did comply with such a requirement.

On a concluding note, this Board would remark that such an Appeal could have been avoided if the Appellants availed themselves of the remedies available prior to the Closing Date of submission of offers. At the same instance, this Board would point out, as it had on numerous occasions, that it is the responsibility of the prospective Bidder to ensure that prior to the submission of his offer, he must ensure that he is offering what is being requested in the Tender Dossier; if in doubt he has the necessary remedies to seek clarifications.

In view of the above, this Board:

- i) upholds Identity Malta's decision in the award of the Tender;**
- ii) does not uphold Petrolea's contentions;**

iii) opines that the technical specifications with regards to the materials, could have been more amplified in the Tender Dossier, and in view of this fact recommends that the deposit paid by the Appellants should be refunded.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Carmel Esposito
Member

22nd November 2018