

PUBLIC CONTRACTS REVIEW BOARD

Case 1250 – CT2114/2018 –Framework Agreement for the Provision of a Number of Professional Services across the Public Sector LOT 7 Project Management

The publication date of the call for tenders was the 2nd May 2018 whilst the closing date of the call for tenders was 5th June 2018. The estimated value of the tender (exclusive of VAT) was € 250,000.

On the 5th November 2018 The Doric Studio filed an appeal against the Department of Contracts as the Contracting Authority objecting to being disqualified on the grounds that their offer was technically not compliant. A deposit of € 1,250 was paid.

There were nine (9) bidders.

On 10th January 2019 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Richard A Matrenza as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants: The Doric Studio

Dr Tonio Cachia	Legal Representative
Arch Frank Muscat	Representative

Recommended Bidder: Architect Edgar Caruana Montalto

Arch Edgar Caruana Montalto	Representative
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Contracting Authority – Department of Contracts

Dr Franco Agius	Legal Representative
Dr Sirole Bezzina Gatt	Legal Representative
Mr Nicholas Aquilina	Chairman Evaluation Committee
Ms Ninette Gatt	Member Evaluation Committee

Dr Anthony Cassar Chairman of the Public Contracts Review Board welcomed the parties and invited Appellants to make their submissions.

Architect Frank Muscat, Representative of the Doric Studio said that through this Framework Agreement which the tender was seeking to establish there would be a pool of service providers who will manage projects for various entities. His appeal was not intended to exclude or eliminate any other party but to make his firm eligible to participate. It was only in the letter of objection that he was given the reasons for his firm's disqualification.

At this stage the Chairman pointed out that the only reason given for disqualification was that 'key experts do not have an MQF Level 6 or equivalent in Project Management or Risk Management' and the Board would only consider arguments on this point.

Architect Muscat said that he was aware of this – all his employers were qualified as Architects and therefore have reached Level 6 (degree level) or in some cases even Level 7 (Masters qualification).

Mr Nicholas Aquilina (109067M) called as a witness by the Department of Contracts testified on oath that he was an Assistant Director at the Department of Contracts and was the Chairperson of the evaluation Committee. Level 6 for key experts was a requisite in the tender and the Doric Studio was not compliant as it did not offer any key experts with MQF Level 6. Qualification as an architect (nine were listed in the offer) did not equate to the tender requirements – this was borne out in the Curriculum Vitae presented. The tender requirement was for a Level 6 MQF specifically in Project Management and not as a component part of another degree. He felt that there was no need for any clarifications as it was obvious that the required qualification was not available. Qualification as an architect does not equate to Level 6 in Project Management.

Dr Tonio Cachia Legal Representative for the Doric Studio said that did not see any distinction between a degree in Architecture and one in Project Management, and because the qualification was not specific it did not mean that an architect did not qualify. Appellant should have been included in the list of providers.

Dr Franco Agius Legal Representative of the Department of Contracts stated that the call for offers was specific and clear – a specific stipulation for a qualification in Project Management and not part of another degree or equivalent.

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

This Board,

having noted this Objection filed by The Doric Studio, (hereinafter also referred to as the Appellants), on 5 November 2018, refer to the contentions

made by the same Appellants with regards to the award of Lot 7 in the Tender of Reference CT 2114/2018 listed as Case No 1250 in the records of the Public Contracts Review Board and awarded by the Department of Contracts, (hereinafter also referred to as the Contracting Authority).

Appearing for the Appellants: Dr Tonio Cachia

Appearing for the Contracting Authority: Dr Franco Agius

Dr Sirole Bezzina Gatt

Whereby, the Appellants contend that:

- a) their main contention is that their offer was discarded due to the alleged reason that they do not possess the necessary experience and qualifications in project management. In this regard the Appellants contend that Architect Frank Muscat possesses the required qualifications in the subject, apart from the fact that he has the necessary proven experience to execute the tendered services.**

This Board has also noted the Contracting Authority's "*Reasoned Letter of Reply*" dated 13 November 2018 and also its verbal submission during the Public Hearing held on 10 January 2019, in that:

a) the Department of Contracts contend that the key experts had to possess a minimum qualification of an MQF Level 6 and Appellants did not satisfy this particular yet important requirement as dictated in the Tender Document. In this respect, the Contracting Authority had no other option but to deem the Appellants' offer as technically non-compliant

This same Board also noted the testimony of the witness, namely, Mr Nicholas Aquilina, Chairman of the Evaluation Committee, who was duly summoned by the Department of Contracts.

This same Board, after having examined the relevant documentation to this Appeal and heard submissions made by the parties concerned, including the testimony of the witness who was duly summoned by the Contracting Authority, opines that the only issue that deserves consideration is the fact whether The Doric Studio employees possessed the dictated academic qualification level or not.

First and foremost, this Board would respectfully point out that the technical conditions and specifications are not capriciously dictated in a Tender Document, but are stipulated in a way that the best interests of the Contracting Authority, namely the requested services, are executed in the

most professional manner so as to achieve their objective in the most effective manner. At the same instance, both the Bidder and the Evaluation Committee must adhere to the principle of self-limitation in their deliberations and assessment of the submitted offers, so that the latter must abide, in all respects, to the conditions as laid out in the Tender Dossier.

This Board would refer to Clause 6 (b) (vii), wherein for Lot 7, the Tender Document dictated that:

“(vii) Lot 7 – Project Management Services

The key expert/s must as a minimum be in possession of an MQF Level 6 (or equivalent) in project management or risk management.”

The above mentioned clause strictly dictates that for this particular lot, the key expert must possess such an academic qualification. In this regard, this Board acknowledges and appreciates the fact that an architect’s academic course includes the knowledge of project management services, however, the call for Tenders for this particular lot was clearly identified, in the Tender Document, to include the following services:

- i. Planning and Defining Scope;
- ii. Design and manage quality, risk and management plans;

- iii. Provide the overall guidance and direction to the project, ensuring that it remains within the specified budget and project plan;**
- iv. Resource Planning;**
- v. Developing Schedules;**
- vi. Time Estimating;**
- vii. Cost Estimating;**
- viii. Monitoring and Reporting Progress**
- ix. Team Leadership.**

What the Contracting Authority requested were specialised professional services in the field of project management and in this respect, a specific degree level or equivalent was dictated in the Tender Document. This Board was also made aware that such courses in the specific subject are available and therefore, the requested condition was possible to be attained. In this regard, this Board justifiably established that The Doric Studio employees were not in possession of the requested academic level in this specific speciality and therefore, this Board does not uphold the Appellants' contention.

This Board, as it has on numerous occasions, would also point out that, if in doubt, the Appellants had the remedies to clarify the exact requirements of the Contracting Authority, prior to the closing date of the submissions,

however, it is being noted that The Doric Studio did not avail themselves of such remedies.

In view of the above, this Board,

i) does not uphold the contentions made by The Doric Studio;

ii) upholds the decision taken by the Department of Contracts in the award of the Tender for Lot No 7;

iii) recommends that the deposit paid by the Appellants should not be refunded.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Richard A Matrenza
Member

15th January 2019