

PUBLIC CONTRACTS REVIEW BOARD

Case 1368 – MESDC/PAY 30/2019 – Tender for the Engagement of Consultancy Services for the Development of Simplified Cost Options to be used within the Framework of the Rural Development Programme for Malta 2014-2020

The publication date of the tender was the 4th June 2019 whilst the closing date was the 19th June 2019. The estimated value of the tender (exclusive of VAT) was € 65,000.

On the 26th August 2019 EF Info Ltd filed an appeal against the Agricultural and Rural Payments Agency as the Contracting Authority on the grounds that their bid was rejected as it was technically non-compliant. A deposit of € 400 was paid.

There were three (3) bidders.

On 16th October 2019 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Mr Lawrence Ancilleri and Mr Carmel Esposito as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – EF Info Ltd

Mr Ray Bartolo	Representative
Mr Trevor Fenech	Representative

Contracting Authority – Agriculture and Rural Payments Agency (ARPA)

Dr Edric Micallef Figallo	Legal Representative
Ms Cynthia Misokova	Chairperson Evaluation Board
Mr Kriss Debono	Secretary Evaluation Board
Mr Matthew Bugeja	Member Evaluation Board
Mr Daniel Attard	Member Evaluation Board

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

Mr Trevor Fenech Representative of EF Info Ltd said that this appeal was in line with reasons for disqualifications given in their letter, namely that contrary to what the Contracting Authority was claiming the key expert possesses the necessary qualification. Although the qualification in question does not bear the title Economics it includes economics subjects and is a question of substance over form.

Ms Cynthia Misokova (52972M) called as a witness by the Contracting Authority testified on oath that she worked for the Agriculture and Rural Payments Agency and was the Chairperson of the evaluation committee. She stated that the tender specified that the key expert had to be in possession of an MQF Level 7 qualification in Economics. It was not up to the Authority to vary the terms of the tender and the problem with the Appellants arose because of the actual requirement for an economist.

In reply to a question witness stated that the preferred bidder was the holder of a Ph.D. and a Masters in Economics.

Mr Matthew Bugeja (100089M) called as a witness by the Authority testified on oath that he was a member of the evaluation committee. He stated that the Rural Payments Agency required a Simplified Cost Options (SPO) study in economic methodology to be set up to establish market average rates for the eventual approval of the European Union. He confirmed that a number of clarifications had been submitted by prospective bidders but none querying the point regarding the specification for a qualification in Economics.

Mr Fenech pointed out that the Degree of Master of Science in Finance includes units of economics.

Dr Edric Micallef Figallo Legal Representative of the Agriculture and Rural Payments Agency said that from research made it was apparent that the University of London had separate departments for Economics and Financial Management studies – so there was a clear distinction in the courses they ran. The technical criteria in the tender were clear in what was required and the evaluation committee had doubts about the academic content of economics in the qualification offered by Appellants.

Mr Fenech referred to the second letter submitted by Appellants dated 14th October 2109 which pointed out that because of the tight definition of the qualification required the number of bidders had possibly been restricted. There had been no request if equivalent disciplines were acceptable.

The Chairman said that the evaluation committee had correctly used self limitation in their decision. The tender document had to be respected and he referred to the eligibility criteria which clearly indicated that the qualification requested was in Economics.

He then thanked the parties for their submissions and declared the hearing closed.

End of Minutes

Decision

This Board,

having noted this objection filed by EF Info Ltd (herein after referred to as the Appellants) on 26 August 2019, refers to the claims made by the same Appellants with regard to the tender of reference MESDC/PAY 30/2019 listed as case No. 1368 in the records of the Public Contracts Review Board, awarded by Agriculture and Rural Payments Agency (ARPA) (herein after referred to as the Contracting Authority).

Appearing for the Appellants: Mr Trevor Fenech

Appearing for the Contracting Authority: Dr Edric Micallef Figallo

Whereby, the Appellants contend that:

- a) The expert's qualification which consists of a Master of Science, does contain the necessary substance to qualify as knowledgeable enough in economics.**

This Board also noted the Contracting Authority's 'Letter of Reply' dated 30 August 2019 and its verbal submissions during the hearing held on 16 October 2019, in that:

- a) The Authority maintains that the tender document stipulated that key expert must possess an MQF Level 7 qualifications in Economics. In this regard, Appellants' offer presented an expert holding a Masters Degree**

in Finance (Economic Policy), so that his Degree did not contain the speciality in Economics.

This same Board also noted the testimony of the witnesses namely:

Ms Cynthia Misokova duly summoned by Agriculture and Rural Payments Agency

Mr Matthew Bugeja duly summoned by Agriculture and Rural Payments Agency

This Board, after having examined the relevant documentation to this appeal and heard submissions made by the parties concerned, including the testimony of the witnesses duly summoned opines that, the issue that merits consideration is whether the MQF Level 7 qualification of a Masters Degree in Finance (Economic Policy), is appropriate to conform with what was requested.

- 1. This Board would respectfully refer to clause 7 (C) (ii) of the tender document which states that:**

“The key expert shall be in a possession of an MQF Level 7 (or equivalent) in economics”.

This clause clearly dictates that the qualification must be directly specialised in economics.

- 2. From documentation presented, the key expert namely Mr Trevor Fenech, holds a Masters Degree from the University of London, in Finance (Economic Policy), so that although elements of economics were included in the programme, the speciality of the degree itself was Finance and not Economics.**
- 3. At this particular stage of consideration, this Board would point out that the tender conditions and specifications must be respected and adhered to, at all times and at the same instance, the Evaluation Committee is bound by the principle of self-limitation. In this particular case, Appellants' offer did not satisfy completely clause 7 (C) (ii), so that the Evaluation Committee has no other option but to correctly deem Appellants' offer as technically non-compliant.**
- 4. On the other hand, this Board notes that the successful bidder is technically compliant in all respects, so that the deliberations carried out by the Evaluation Committee, were fair and transparent.**

In conclusion, this Board opines that:

- a) Although the key expert attained the necessary MQF Level, the degree was not specialised enough to be considered as a Masters Degree in Economics, as duly stipulated in the tender dossier.**

- b) The necessary investigative exercise was carried out by the Evaluation Committee in determining that Mr Fenech's Masters Degree cannot be considered as a Masters in Economics.**
- c) The successful offer was indeed fully compliant with what was stipulated in the tender document.**

In view of the above, this Board,

- i) does not uphold Appellants' contention,**
- ii) upholds the Contracting Authority's decision in the award of the tender,**
- iii) directs that the deposit paid by Appellants should not be reimbursed.**

Dr Anthony Cassar
Chairman

Mr Lawrence Ancilleri
Member

Mr Carmel Esposito
Member

25 October 2019