

PUBLIC CONTRACTS REVIEW BOARD

Case 1398 – CFT 004-0449/19 – Tender for the Preventive Maintenance for HVAC System at CPSU San Gwann Stores

The publication date of the tender was the 14th May 2019 whilst the closing date was the 10th June 2019. The estimated value of the tender (exclusive of VAT) was € 63,000.

On the 28th October 2019 M.A. & A. Services Ltd filed an appeal against the Central Procurement and Supplies Unit as the Contracting Authority on the grounds that their bid was disqualified as it was not the cheapest technically compliant offer. A deposit of € 400 was paid.

There were four (4) bidders.

On 10th December 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 – M.A. & A. Services Ltd

Dr David Farrugia Sacco	Legal Representative
Eng Herbert Muscat	Representative

Recommended Bidder – FM Core

Dr Roberto Cassar	Legal Representative
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Contracting Authority – Central Procurement and Supplies Unit

Dr Marco Woods	Legal Representative
Eng Frankie Caruana	Chairman Evaluation Committee
Mr Josef Borg	Member Evaluation Committee

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

Dr David Farrugia Sacco Legal Representative for M.A. & A. Services Ltd said that the merit of his clients' appeal was that the tender as issued had shortcomings in that it required the totalisation of hourly rates, which while simple mathematically, was difficult as it required the incorporation of different rates into one total. One was unable to identify how the winning bids rate was

calculated as it indicated the price as €268 and also € 63,000 in the same instance. Appellants feel that their offer was lower and should have been awarded the tender.

Dr Marco Woods Legal Representative of Central Procurement and Supplies Unit stated that the figure of € 63,000 should be ignored as it was an error and was not the value of the bid. The rate quoted by Appellants (€ 15779.87) is the global price for a year when the Contracting Authority was expecting a price per hour. When a clarification was sought Appellants replied that their hourly rate was € 43.55 per hour which made it significantly higher than the preferred bidders' rate of € 18 per hour. Since the tender criterion was the cheapest price Appellants' offer was turned down.

Eng Frankie Caruana (576063M) called as a witness by the Public Contracts Review Board testified on oath that he was the Chairperson of the Evaluation Committee. He stated that the Bill of Quantities requested a rate per hour. All bids complied with this requirement except the Appellants. To be in a position to have a like for like comparison the Committee asked for clarification, which resulted in Appellants quoting a rate well above that of the preferred bidder. If one ignored the hourly rate and considered the global rate of € 268 on which the tender was awarded the preferred bidders' rate was still cheaper.

Dr Farrugia Sacco pointed out that that Appellants' rate is lower than the quoted figure of € 268, and if one took into consideration the number of hours mentioned in the tender (326 hours) then Appellants offer is less than that of the preferred bidder.

Dr Woods said that the mandatory hours only have to be taken into consideration as these were a definite amount which has to be paid. On these mandatory hours the preferred bidder's rate was € 18 – the rest of the hours are optional according to the needs of the Contracting Authority.

Dr Roberto Cassar Legal Representative of FM Core said that Appellants' figures were higher than those of the preferred bidder, not only overall but also under each individual rate requested.

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

End of Minutes

Decision

This Board,

having noted this objection filed by M.A. & A. Services Ltd (herein after referred to as the Appellants) on 28 October 2019, refers to the claims made by the same Appellants with regard to the tender of reference CFT 004-0449/19

listed as case No. 1398 in the records of the Public Contracts Review Board, awarded by Central Procurement and Supplies Unit (herein after referred to as the Contracting Authority).

Appearing for the Appellants: Dr David Farrugia Sacco

Appearing for the Contracting Authority: Dr Marco Woods

Whereby, the Appellants contend that:

- a) The tender document was ambiguous in, the sense that, it did not specify as to how the successful offers rate was to be calculated. In this respect, they feel that their offer was the cheapest and should not have been discarded.**

This Board also noted the Contracting Authority's 'Letter of Reply' dated 19 November 2019 and its verbal submissions during the hearing held on 10 December 2019, in that:

- a) The Authority maintains that the tender document clearly stated that an hourly had to be quoted. In this regard, Appellants' quoted rates which**

were higher than that of the preferred bidder, so that Appellants' claim is unfounded.

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

Engineer Frankie Caruana, Chairperson of the Evaluation Committee duly summoned by the Public Contracts Review Board.

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 duly summoned opines that, the issue that merits consideration is the submission made by Appellants.

1. With regard to Appellants' claim that the tender document was ambiguous in relation to the calculation of rates, this Board would respectfully remind the Appellants that, if they felt that the stipulated method of the calculation of rates was somewhat confusing, they had the available remedy to seek, prior to the closing date of the submissions and in this regard, this Board will not consider such claim, at this stage of tendering.

**2. With regard to Appellants’ submission, this Board would refer to the
Bill of Quantities submitted by Appellants, as follows:**

<i>“Item No.</i>	<i>Item description</i>	<i>Service to be carried out or requested between / on</i>	<i>Rate per Hour (Excluding Vat) Euros</i>
1	<i>Annual Preventive Maintenance Scheme during normal working hours (See Appendix 1)</i>	<i>Monday to Friday between 00700-1500 hrs</i>	<i>15779.87 per annum</i>
		<i>Saturdays between 0700-1500hrs</i>	<i>65.33</i>
2	<i>Call out Rate during Normal hours (see Appendix 1)</i>	<i>Sundays Public Holidays between 0700-1500 hrs</i>	<i>87.10</i>
		<i>Monday to Friday between 1500-2300hrs</i>	<i>65.33</i>
3	<i>Call rate during Overtime hours (see Appendix 1)</i>	<i>Saturdays between 1600-2300hrs</i>	<i>65.33</i>
		<i>Sundays and Public Holidays Between 1500-2300hrs</i>	<i>87.10</i>

	<i>Monday to Friday Between 2300- 0700hrs</i>	<i>87.10</i>
<i>4 Call out rate for Silent hours (see Appendix 1)</i>	<i>Saturdays between 2300- 0700hrs</i>	<i>87.10</i>
	<i>Sundays and Public Holidays between 2300- 0700hrs</i>	<i>87.10</i>
	<i>Total</i>	<i>15779.87 per annum ”</i>

The Bill of Quantities (BOQ) stipulated, in a very clear manner, that the rate to be quoted was per hour and in this respect, this Board notes that Appellants quoted a rate per annum under item 1 of the BOQ.

- 3. This Board, as it has on numerous occasions would emphasize the importance of the principle of self-limitation, the latter principle of which guarantees the application of equal treatment and level playing field, in the evaluation process. Whilst, it is the duty and obligation of the Contracting Authority to abide by such a maxim, it is also the duty of Appellants to conform with what has been requested in the tender dossier.**

4. With regard to Appellants’ claim that their offer was the cheapest, this Board, after having examined the evaluation report and the comments noted therein, would respectfully point out the following:

- **A clarification request was sent to Appellants who confirmed that the rate per hour was €675.04, per hour.**

- **The hourly rates quoted by the preferred bidder were by far, the cheapest offer received in relation to all the items stipulated in the BOQ, as follows:**

<i>“Item No.</i>	<i>Item description</i>	<i>Service to be carried out or requested between / on</i>	<i>Rate per Hour (Excluding VAT) Euros</i>
<i>1</i>	<i>Annual preventive Maintenance Scheme during normal working hours (see Appendix 1)</i>	<i>Monday to Friday between 0700-1500 hrs</i>	<i>18</i>
<i>2</i>	<i>Call out Rate during Normal hours (see Appendix 1)</i>	<i>Saturdays between 0700-1500hrs</i>	<i>25</i>
		<i>Sundays and Public Holidays between 0700-1500hrs</i>	<i>35</i>

		<i>Monday to Friday between 1500- 2300hrs</i>	25
3	<i>Call our rate during Overtime hours (see Appendix 1)</i>	<i>Saturdays between 1600- 2300hrs</i>	25
		<i>Sundays and Public Holidays between 1500- 2300hrs</i>	35
		<i>Monday to Friday between 2300- 0700hrs</i>	35
4	<i>Call out rate for Silent hours (see Appendix 1)</i>	<i>Saturdays between 2300- 0700hrs</i>	35
		<i>Sundays and Public Holidays between 1500- 0700hrs</i>	35
	Total		268 "

In conclusion, this Board opines that:

- a) If the Appellants' had doubts as to the interpretation of any of the stipulated clauses in the tender dossier, they had the remedies to clarify**

prior to the submission of their offer and in this regard, this Board notes that such remedies were not availed of by Appellants.

b) It confirms that the stipulated requests in the Bill of Quantities were clear enough to enable Appellants to submit the appropriate hourly rate as duly requested in the BOQ.

c) It confirms that Appellants' offer was not the cheapest and was not technically compliant.

d) Affirms that the evaluation process was carried out in a just and transparent manner.

In view of the above, this Board,

i. does not uphold Appellants' contentions,

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

18 December 2019