

PUBLIC CONTRACTS REVIEW BOARD

Case 1377 – WSM 217/2019 – Negotiated Procedure for the Provision of Labour Hire Services in respect of Services of Personnel for Sites and/or Offices managed and operated by Wasteserv Malta Ltd

Remedy before Closing Date of a Call for Competition

The publication date of the negotiated procedure was the 4th September 2019 whilst the closing date was the 25th October 2019. The estimated value of the tender (exclusive of VAT) was € 1,000,000.

On the 24th September 2019 G4S Security Services (Malta) Ltd sought a Remedy against Wasteserv Malta Ltd as the Contracting Authority requesting clarification of various points in the procedure documents.

On 31st October 2019 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr A Richard Matrenza as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – G4S Security Services (Malta) Ltd

Mr Julian Dimech	Representative
Mr Eder Catania	Representative
Mr Paul Azzopardi	Representative

Contracting Authority – Wasteserv Malta Ltd

Mr Martin Casha	Representative
Ms Branica Xuereb	Representative

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

Mr Eder Catania Representative of G4S Security Services (Malta) Ltd (G4S) said that this negotiated procedure was a call for the provision of services for the hire of labour. There was lack of clarification on several points in the published document and there was a need for these points to be clarified.

Mr Martin Casha Representative of Wasteserv Malta Ltd said that the clarifications sought were mainly dealing with the recruitment of staff. He made it clear that there was no recruitment of staff involved but merely the transfer of the existing personnel to a new contractor on the existing terms set by Wasteserv and the eventual reimbursement of wages paid plus commission due to successful bidder. This was a negotiated procedure and only three contractors had been invited to participate according to instructions given by the Director of Contracts. This was an interim measure until a new tender was issued.

Mr Catania said that in his view there was a requirement for personnel recruitment similar to an open tender.

Mr Casha said he failed to see where the problem was, as it had been explained in a clarification meeting that this was a replacement of a failed contract. Whilst no immediate recruitment was foreseen the need to change some personnel might arise in the course of a year. This, however, was irrelevant as whatever costs, staff roles, wages etc arose were dictated by Wasteserv and reimbursed to the contractor. All that Wasteserv required at this stage was the rate of commission bidder was expecting.

Mr Catania mentioned several points which he felt needed clarification such as details of employees for insurance purposes, the need of key experts on contractor's sites and clarification on the dates that the Employers' licence had to run.

Mr Casha said that insurance quotations were based on global wages paid and not on individuals or their roles. Key experts could not be forecast as the need was dictated by 'as and when' it arose. The conditions were based on the experience of previous similar work undertaken.

The Chairman said that this was not an open tender and the Contracting Authority was entitled to set its own conditions. The contractor would be paid on commission basis and the reimbursement of wages of personnel which was under the control of Wasteserv.

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

End of Minutes

Decision

This Board,

having noted this 'Call for Remedy Prior to Closing Date of Call for Competition' filed by G4S Security Services (Malta) Ltd (herein after referred

to as the Appellants) on 24 September 2019, refers to the claims made by the same Appellants with regard to the tender of reference WSM 217/2019 listed as case No. 1377 in the records of the Public Contracts Review Board.

Appearing for the Appellants: Mr Julian Dimech

Mr Eder Catania

Appearing for the contracting Authority: Mr Martin Casha

Whereby, the Appellants contend that:

- a) The published document for this negotiated procedure lacks clarity, in that, there are several issues which need to be clarified. In this regard, Appellants maintain that in order to be able to participate, they require details with grades of employees to be employed by the Authority.

This Board also noted the Contracting Authority's 'Letter of Reply' dated 3 October 2019 and its verbal submissions during the hearing held on 31 October 2019, in that:

- a) The Authority contends that the requirement did not involve the recruitment of personnel but merely the transfer of the existing staff to a

new contractor. This negotiated procedure is an interim measure until a new tender is issued.

This Board, after having examined the relevant documentation to this ‘Call for Remedy’ and heard submissions made by the parties concerned opines that, the issue that merits consideration is the scope of the negotiated procedure being issued by the Authority.

- 1. This Board was made aware that, the purpose of the negotiated procedure, being issued by the Authority, is simply an interim measure, until a new tender is issued. At the same instance, the scope of such a negotiated procedure is to transfer the existing labour force, being utilised by Wasteserv Malta Ltd to another contractor.**
- 2. This Board was also informed that the need for such a negotiated procedure arose due to an unsuccessful contract with the present contractor. This Board also noted the procedure to be adopted by the Authority in that, the cost of the labour force will be borne by the Authority and the successful contractor will be paid a commission. In fact, what the Authority is requesting, through the negotiated procedure, is the rate of commission the bidder is expecting on the basic wage bill.**

- 3. With regard to Appellants' request for details, this Board opines that, since the successful contractor will be responsible for the provision of an 'Employers Liability Insurance', same should have in his possession, an estimate of the amount of the payroll and the different grades which the total labour force is composed of.**
- 4. At the same instance, since the successful contractor will be remunerated by way of a percentage commission on the gross wages, specific and personal details of employees involved should not be of any interest to the prospective bidder. However, this Board acknowledges that the information stated in paragraph 3, above should be made available to Appellants.**
- 5. With regard to Appellants' concern relating to the stipulated period of proof of registrations as recruitment agency, this Board would point out that the document states that, what is being requested is proof that during the years 2014 to 2018, the bidder was registered as recruitment agency, so that it should not be imposed on the prospective bidder that the registration had to be for five complete years.**

In conclusion, this Board opines that,

- a) This procurement request is a negotiated procedure and not an open tender. Furthermore, this Board noted that the necessary approvals were obtained, and such a procedure is truly justified in this particular instance.**

- b) The request is for a quotation of a commission based on the basic total of the payroll, so that information on the estimated total wage bill should be made available to the participants.**

- c) Since there might be instances during the term of the contract where the contractor might be responsible for the recruitment of additional or replacement personnel, the availability to the participants of information relating to the various grades of the labour force involved, is truly justified.**

- d) For the purposes of the insurances being requested, the total wage bill and the approximate number of employees involved should be sufficient for an insurance company to estimate the premium costs.**

In view of the above, this Board,

- i. directs the Authority to amend clause 7.1(B)(4)(1) (through a clarification note) to read as follows:**

“(1) Bidders must prove that during the years 2014 to 2018, they were registered as a recruitment agency. Such proof must be submitted online through the prescribed tender response format and by using the tender preparation tool provided (Note 2 B)”.

- ii. directs the Authority to provide all potential participants with an estimate of the total annual basic pay bill for the labour force involved and to indicate the various grade of employment involved. Such information can be affected through a clarification note.**
- iii. directs the Authority to proceed with the negotiated procedure after action on (i) and (ii) above is taken.**

Dr Anthony Cassar
Chairman
14 November 2019

Dr Charles Cassar
Member

Mr Richard A Matrenza
Member