

PUBLIC CONTRACTS REVIEW BOARD

Case 1503 – TM001/2020 – Tender for Advisory Services – Cybersecurity Risk Management

The tender was published on the 3rd March 2020 and the closing date of the tender was the 25th March 2020. The estimated value of the tender (exclusive of VAT) was € 120,000.

On the 19th September 2020 Tuning Fork Advisory filed an appeal against Transport Malta as the Contracting Authority objecting to their disqualification on the grounds that their bid was not technically compliant.

A deposit of € 708 was paid.

There were eight (8) bidders.

On 18th October 2020 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Carmel Esposito as members convened a public virtual hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – Tuning Fork Advisory

Mr James Sammut	Representative
Mr Matthew Demicoli	Representative

Contracting Authority – Transport Malta

Dr Chris Cilia	Legal Representative
Mr Nathaniel Falzon	Chairperson Evaluation Committee
Ms Cherie Ann Caruana Arena	Secretary Evaluation Committee
Mr Rennie D’Emanuele	Member Evaluation Committee
Mr Andrew Buttigieg	Member Evaluation Committee

Recommended Bidder – RSM Malta

Dr Steve Decesare	Legal Representative
Mr Gordon Micallef	Representative
Ms Lisa Abela	Representative

Dr Anthony Cassar Chairman of the Public Contracts Review Board welcomed the parties. He noted that since this was a virtual meeting all the parties agreed to treat it as a normal hearing of the Board. . He then invited submissions.

Mr James Sammut Representative of Tuning Fork Advisory stated that his Company was disqualified on the basis of missing documents which had not been mentioned in the rectification requested in the tender. All documents requested had been uploaded with the technical questionnaire being attached to the relevant document. It was a case of the EPPs not retrieving the document which had been uploaded as a composite file.

Dr Chris Cilia Legal Representative for Transport Malta said that the technical questionnaire formed part of the Technical Specifications which included a note that any missing documents would lead to a disqualification. The document in question was not found and the Contracting Authority had no alternative course to take except disqualification.

Dr Steve Decesare Legal Representative for RSM Malta said that if the document had not been submitted the disqualification was justified as the document in question came under Note 3 – PCRB Case 1490 was decided on similar basis.

Mr Rennie D’Emanuele (445778M) called as a witness by the Public Contracts Review Board testified on oath that he was one of the evaluators and confirmed that the technical questionnaire was missing from the submissions.

It transpired from further interventions that clarifications had been sought from several of the bidders requesting details of the bidders form but no rectification was possible on the technical questionnaire due to Note 3 restrictions.

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 Tuning Fork Advisory (hereinafter referred to as the Appellants) on 19th September 2020, refers to the claims made by the same Appellants with regard to the tender of reference TM 001/2020 listed as case No. 1503 in the records of the Public Contracts Review Board recommended for award by Transport Malta (hereinafter referred to as the Contracting Authority).

Appearing for the Appellants:

Mr James Sammut

Appearing for the Contracting Authority: Dr Chris Cilia

Appearing for the Preferred Bidder: Dr Steve Decesare

Whereby, the Appellants contend that:

- a) **Their main concern refers to the fact that, their offer was disqualified due to the alleged reason that, the Authority did not receive the technical questionnaire. In this respect Appellants maintain that, they had submitted such information and this alleged non-submission was not even mentioned in clarification request on another query sent by the Authority.**

This Board also noted the Contracting Authority's 'Letter of reply' dated 28th September 2020 and its verbal submissions during the virtual hearing held on 18th October 2020, in that:

- a) **The Authority maintains that, Appellants' technical questionnaire was not included in their submissions and since such documentation fell under note 3, no clarification and/or rectification was possible, the Authority had no other option but to deem Appellants' offer technically non-compliant.**

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

Mr Rennie D'Emanuele evaluator, duly summoned by the Public Contracts Review Board.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties, including the testimony of the witness duly summoned by this Board, opines that the issue that merits consideration is the non-receipt of Appellants' technical questionnaire by the Authority.

- 1. First and foremost, it must be stated that, the technical questionnaire forms an integral part of the technical specifications in a tender dossier. Such documentation is mandatory so that, failure to submit same will result in disqualification.**
- 2. The technical questionnaire had to be submitted through the EPPS with other documentation, as duly specified in the tender document. In this particular case, the Authority did not receive the technical questionnaire from Appellants and as stated above, such a document fell under note 3, where no clarification and/or rectification was allowed, thus Appellants' offer was deemed technically non-compliant.**
- 3. Appellants' claim, in this regard, refers to the possibility that their technical questionnaire could not be opened by the Evaluation Committee, as they did submit such a document with their offer. In this respect, the Authority maintains that, the document itself had not been uploaded at source, which is the reason why the document was not delivered at the Authority's end.**

- 4. This Board notes that, since Appellants' offer was the cheapest, it would have benefited the Authority, if they were recommended for award, however, this Board would respectfully point out that, the Evaluation Committee has the duty and obligation to abide by the principle of self-limitation to ensure compliance with due transparency and equal treatment.**
- 5. This Board, would point out that, whilst it is the duty of the Evaluation Committee to abide by the principles of Public Procurement, it is even so, the obligation of the prospective bidder to ensure that all the information stipulated in the tender dossier is submitted.**

In view of the above, this Board,

- i. does not uphold Appellants' contentions,**
- ii. upholds the Contracting Authority's decision in the recommendation of award,**
- iii. confirms that the evaluation process was carried out in a fair and transparent manner,**
- iv. directs that, an amount of €108 from the deposit paid by Appellants be refunded, being an overpayment on the deposit made on appeal.**

Dr Anthony Cassar
Chairman
21st October 2020

Dr Charles Cassar
Member

Mr Carmel Esposito
Member