

PUBLIC CONTRACTS REVIEW BOARD

Case No. 248

WSM/149/2010

Period Contract for a Rodent Control Programme and Pest Control Services

This call for tenders was published in the Government Gazette on 11 June 2010. The closing date for this call for offers was 25 June 2010.

The estimated value of this tender was up to €120,000 over two years.

Two (2) tenderers submitted their offers.

Ortis Ltd filed an objection on 23 July 2010 against the decision taken by the WasteServ Malta Ltd to (i) disqualify its offer as it was considered not compliant and (ii) award the tender to Comtec Services Ltd.

In terms of PART II – Rules governing public contracts whose value does not exceed €120,000 of LN 296 of 2010 the Public Contracts Review Board, composed of Mr Alfred Triganza as Chairman and Mr. Edwin Muscat and Mr. Carmel J Esposito as members, convened a public hearing on Monday, 10 december 2010 to discuss this objection.

Present for the hearing were:

Ortis Ltd

Mr Mario Callus	Representative
Mr Adrian Borg Marks	Representative

Comtec Services Ltd

Mr Ronnie C. Galea	Representative
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WasteServ Malta Ltd

Dr Victor Scerri	Legal Representative
Mr Aurelio Attard	Representative

Adjudicating Board

Mr Tonio Farrugia	Chairperson
Mr Marco Putzulu Caruana	Member

Contracts Department

Mr Francis Attard	Director General
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After the Chairman's brief introduction the appellant company was invited to explain the motive/s of the objection.

In providing the motives behind his objection Mr Mario Callus, representing Ortis Ltd, the appellant company, made reference to *Services Specified in the Tender*.

Mr Callus stated that although the tender document title included the term 'pest control services', the tender specifications made no mention whatsoever of the 'fly trap recharge' except at item 19 in the *schedule of prices and rates*, where the details had been crossed out while requesting the tenderers to quote the rate. He added that a bidder should not be expected to bid for a service without having been given the details of the service requested.

Mr Aurelio Attard, representing WasteServ Malta Ltd, the contracting authority, conceded that the tender document as such did not contain information about the 'fly trap recharge' except at item 19 of the *Schedule of Rates and Prices*. Mr Attard explained that, in the opinion of the contracting authority, the term 'fly trap recharge' was self-explanatory and required no further elaboration for those in this line of business. Mr Attard added that the tender document also provided for site visits by prospective bidders.

Mr Attard pointed out that bidders had the opportunity to request clarifications in instances where they felt that more information was warranted and the contracting authority would have circulated such information to all participating tenderers. Mr Attard concluded that the contracting authority had requested the rate for this service but the appellant company, Ortis Ltd, did not quote the rate against item 19 of the schedule 'recharging of fly traps'.

With regards to the rodent control service referred to in the award and the defective schedule of offers received, Mr Callus explained that the call for tenders was requesting the provision of two services, namely the setting up of the rodent bait stations, which involved a once-only service, and the periodical recharging of these bait stations during the contract period. Mr Callus noted that the recommended tenderer had quoted €1.31 per baiting point and it was not clear to him if that rate included the provision of the bait station and its recharge cost and, if that was the case, he questioned how come that the total price for servicing this contract would amount to a mere €753.25 – as per schedule of offers received and as per breakdown provided by the preferred bidder - over a period of two years.

Mr Attard intervened to reiterate that, in case of any grey areas in the tender specifications, the appellant company was at liberty to request clarifications prior to the closing date of the tender.

The Chairman PCRB, on consulting page 2 of the evaluation report 'Summary of tenders received', observed that, evidently, the *Schedule of Offers Received* was not compiled on a like-with-like basis in the sense that the prices of the appellant company, option 1 of €74,136.70 and Option 2 of €72187.20, covered the whole contract period whereas the €753.25 quoted by the recommended tenderer was the monthly rate. He added that, for comparison purposes, the price quoted by the preferred bidder on the *Schedule of Offers Received* should be €18,098 (€753.25 x 24

months) and pointed out the considerable variation in the prices quoted by the two tenders and even when compared to the estimated value of the tender of €120,000.

Regarding the wide variation between the two prices quoted, Mr Attard remarked that it was up to the bidders to ensure that the prices they quoted were realistic, however, he added that the rates quoted by the recommended tenderer were in line with the current rates for the same services. Mr Attard explained that although this was a single package tender, the adjudicating board still had to evaluate the tender in stages and in fact the appellant company was disqualified on administrative grounds for having failed to submit the mandatory information regarding its past experience and, therefore, the other aspects of the appellant company's offer, including the financial side of it, were not evaluated. He informed the PCRБ that two tenderers participated in this call for tenders, the appellant company and Comtec Services Ltd, the latter being the recommended tenderer and the current contractor.

Mr Attard also explained that, besides the existing sites such as *Maghtab*, *Zwejra* and *Qortin Landfills*, WasteServ Malta Ltd included in this tender new sites which brought the total number of sites to 18.

The question arose as to whether there was level playing field given that on the previous sites, the recommended tenderer, being the current contractor, already had baiting stations in place whereas the appellant company, not being the current contractor, would have to provide baiting stations to existing sites, unless the baiting stations presently in place were the property of WasteServ Ltd and thus could be used by whoever was awarded the tender.

Mr Marco Putzulu Caruana, member of the adjudicating board, under oath, declared that, previously, the baiting station was in the form of a tube whereas in this call for tenders the baiting station had to be in the form of a box which was lockable and hence more secure so that no other creatures would be able to enter the baiting station. He confirmed that, according to the new tender specifications, whoever was awarded this tender had to replace the existing baiting stations and, as a consequence, all the bidders were effectively competing on a level playing field.

When referring to the issue of *Past Performance Records*, Mr Callus stated that clause 1.2.14 provided that:

“Tenderers shall provide with their offer a document with the Full details and Past Performance Records of similar pest control services carried out by his/her company. Failure to comply with this clause shall render the Tender offer null.”

Mr Callus remarked that he rendered such services to various clients and that whilst he was prepared to provide information regarding his capabilities to provide the services requested in the tender, yet he was reluctant to divulge details about its clients without obtaining their permission beforehand.

Mr Attard conceded that in its tender submission Ortis Ltd did give an account of its experience in this sector but the information given was of a general nature and lacked the full details as requested in the tender document. Mr Attard remarked that the

appellant company considered such information as confidential and that it would provide it once it is shortlisted. Mr Attard explained that the adjudication of this tender did not involve short-listing adding that the contracting authority expected the bidders to name their past clients and the type of service that they rendered them. Mr Attard noted that this requirement was included in most of the calls for tenders issued by government and bidders were even requested to authorise the contracting authority to verify from source the information they gave for the purpose of evaluating the track record of the tenderers. The contracting authority's main representative stated that it was up to the bidders to obtain the consent of their clients prior to divulging the information to the contracting authority. Mr Attard observed that Ortis Ltd did mention the Water Services Corporation as one of its clients but, then again, it was not clear if the appellant company simply provided the products or if it rendered the full service.

Mr Mario Callus remarked that, at the time this tender was issued, he was rather busy and, as a result, he did not have the time to seek clarifications from the contracting authority. On the other hand, he contended that the tender document should have been issued in more detail and the schedules and information emanating from the adjudication process should have been presented in a more logical and articulated manner.

The Chairman PCRB remarked that albeit the bidders had the right and the opportunity to seek clarifications from the contracting authority, yet it was not up to the bidder to decide which mandatory information it would submit or not. He added that, ultimately, it was the responsibility of the bidder to ensure that its tender submission was presented in order.

Mr Ronnie Galea, technical director of Comtec Services Ltd, an interested party, made the following remarks:

- a. contrary to the previous tender issued in 2008, where it was left up to the contractor as to what type of bait station to provide, in this tender the contracting authority specified the kind of box that had to be provided as a bait station and, in that regard, his firm would have to replace all the bait stations presently in place since they were in tube form;
- b. whilst his company's quote of €753.25 per month was arrived at according to the data given by the contracting authority, yet, since there was the eventuality of more bait stations being added on the company also included the standard rate of €1.31 per month per baiting point, which included the provision of the baiting station (the box) requested in the tender – a once only expense - and one inspection treatment visit per month. His firm had estimated that it would recover the cost of the bait station over the two year contract period; and
- c. the price quoted by Comtec Services Ltd was commercially viable because it was, more or less, the same rate charged in the execution of the current contract.

By way of conclusion Mr Callus stated that had the tender specifications been clearer from the beginning and had the schedule of offers received been compiled properly on a like-with-like basis then the need for lodging this appeal would not have arisen.

At this point the hearing was brought to a close.

This Board,

- having noted that the appellants, in terms of their ‘reasoned letter of objection’ dated 23 July 2010 and also through their verbal submissions presented during the public hearing held on 10 December 2010 had objected to the decision taken by WasteServ Malta Ltd;
- having taken note of the appellant company’s representatives’ (a) claim that although the tender document title included the term ‘pest control services’, the tender specifications made no mention whatsoever of the ‘fly trap recharge’ except at item 19 in the *schedule of prices and rates*, where the details had been crossed out while requesting the tenderers to quote the rate, (b) reference to the fact that the call for tenders was requesting the provision of two services, namely the setting up of the rodent bait stations, which involved a once-only service, and the periodical recharging of these bait stations during the contract period, (c) reference to the fact that, with regards to submission of past performance records, the company whilst it has rendered such services to various clients, yet it reluctant to divulge details about its clients without obtaining their permission beforehand and (d) remark that, at the time this tender was issued, he was rather busy and, as a result, he did not have the time to seek clarifications from the contracting authority;
- having also taken note of the contracting authority’s representatives’ (a) reference to the fact that whilst the contracting authority would concede that the tender document as such did not contain information about the ‘fly trap recharge’ except at item 19 of the *Schedule of Rates and Prices*, yet , in the opinion of the contracting authority, the term ‘fly trap recharge’ was self-explanatory and required no further elaboration for those in this line of business, (b) claim that the tender document also provided for site visits by prospective bidders, (c) claim that bidders had the opportunity to request clarifications in instances where they felt that more information was warranted and the contracting authority would have circulated such information to all participating tenderers, (d) claim that clauses 8.4.4, 8.4.5 and 8.4.6 clearly described the type of bait stations required and the relative bait station markers with the rate mentioned including the setting up of the bait station, (e) remark that, whilst it was up to the bidders to ensure that the prices they quoted were realistic, yet, the rates quoted by the recommended tenderer were in line with the current rates for the same services, (f) claim that since this was a single package tender, the adjudicating board still had to evaluate the tender in stages and in fact the appellant company was disqualified on administrative grounds for having failed to submit the mandatory information regarding its past experience and, as a result, the other aspects of the appellant company’s offer, including the financial side of it, were not evaluated, (g) reference to the fact

that besides the existing sites such as *Maghtab, Zwejra and Qortin Landfills*, WasteServ Malta Ltd included in this tender new sites which brought the total number of sites to 18, (h) declaration that , previously, the baiting station was in the form of a tube whereas in this call for tenders the baiting station had to be in the form of a box which was lockable and hence more secure so that no other creatures would be able to enter the baiting station, (i) claim that , according to the new tender specifications, whoever was awarded this tender had to replace the existing baiting stations and, as a consequence, all the bidders were effectively competing on a level playing field and (j) claim that it was up to the bidders to obtain the consent of their clients prior to divulging the information to the contracting authority;

- having taken cognizance of the fact that in page 2 of the evaluation report ‘Summary of tenders received’ the *Schedule of Offers Received* was not compiled on a like-with-like basis in the sense that the prices of the appellant company, option 1 of €74,136.70 and Option 2 of €72187.20, covered the whole contract period whereas the €753.25 quoted by the recommended tenderer was the monthly rate. Furthermore, for comparison purposes, this Board also notes the price quoted by the preferred bidder on the *Schedule of Offers Received* should be €18,098 (€753.25 x 24 months) pointing at the considerable variation in the prices quoted by the two tenders especially when compared to the estimated value of the tender of €120,000;
- having thoroughly considered Mr Galea’s remarks, especially (1) the fact that if awarded the tender his firm would still have to replace all the bait stations presently in place since they were in tube form, (2) that in its rate as quoted in the tender submission the company had estimated that it would recover the cost of the bait station over the two year contract period and (3) the fact that the price quoted by Comtec Services Ltd was commercially viable because it was, more or less, the same rate charged in the execution of the current contract,

reached the following conclusions, namely:

1. The PCRB feels that due to the fact that, according to the new tender specifications, whoever was awarded this tender had to replace the existing baiting stations, all the bidders were effectively competing on a level playing field.
2. The PCRB opines that, albeit the bidders had the right and the opportunity to seek clarifications from the contracting authority, yet it was not up to the said bidders to decide which mandatory information they would submit or not.
3. Furthermore, this Board argues that, whilst it was up to the bidders to ensure that the prices they quoted were realistic, yet, the rates quoted by the recommended tenderer were in line with the current rates for the same services and that, all things being equal, the commercial risk has been fully absorbed by the participating tenderer.

As a consequence of (1) to (3) above this Board finds against appellant company.

In view of the above and in terms of the Public Contracts Regulations, LN 296 of 2010, this Board recommends that the deposit submitted by the said appellants should not be reimbursed.

Alfred R Triganza
Chairman

Edwin Muscat
Member

Carmel J Esposito
Member

16 December 2010