

PUBLIC CONTRACTS REVIEW BOARD

Case No. 309

Agric 153/2010 – Advert No 142/2010

Tender for the Demolition of the Reinforced Concrete Water Tower at the Civil Abattoir Marsa

This call for tenders was published in the Government Gazette on the 3rd September 2010. The closing date for this call with an estimated budget of €53,100 was the 24th September 2010.

Five (5) tenderers submitted their offers.

Sides Trenching Ltd filed an objection on 15th February 2011 against the decision taken by the Evaluation Committee to recommend the award of the tender in caption to Vella Bros & Sons.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr. Edwin Muscat and Mr Joseph Croker as members convened a public hearing on Friday, 6th July 2011 to discuss this objection.

Present for the hearing were:

Sides Trenching Ltd

Mr Jason Barbara

Representative

Vella Bros and Sons

Mr Antoine Vella

Representative

Ministry for Resources and Rural Affairs

Evaluation Board

Mr Manuel Schembri

Evaluator

Mr Marixei Callus

Secretary

After the Chairman's brief introduction, the appellant company's representative was invited to explain the motive of the company's objection.

Mr Jason Barbara, representing Sides Trenching Ltd, the appellant company said that tenderers had to quote for all the items in the Bill of Quantities. He claimed that in the tender document it was specified that tenders with incomplete Bill of Quantities would be disqualified. The appellant company's representative said that whilst the Bill of Quantities submitted by Vella Brothers and Sons – the recommended tenderer - and PSV Turnkey Contractors Ltd – the 2nd Cheapest - were incomplete in view of the fact that these did not quote prices against all items, that of the 3rd cheapest, namely Polidano Bros. Ltd, was exclusive of VAT.

Mr Manuel Schembri, Manager at the Civil Abattoir and member of the Evaluation Board, said that, contrary to what was being alleged by the appellant company's representative, it was not true that some rates were not quantified or left out in the Bill of Quantities because *Clause 2.8 Tender Rates / Prices* provided that:

“2.8.1 The Tender rates/prices shall cover the whole of the works/ supplies/ services as described in the Tender Document.

2.8.2 The tenderer shall provide a breakdown of the overall rates/ prices in Euro (€).”

Mr Schembri explained that this meant that by accepting the total price of the tender the tenderer would also be accepting to carry out all the works.

The Chairman, Public Contracts Review Board, intervened to remark that this was *prima facie* a commercial decision.

Mr Barbara insisted that bidders were requested to quote against each item and stated that, in another instance, his company was disqualified because it did not submit the Bank Guarantee with the tender. The Chairman, Public Contracts Review Board, drew Mr Barbara's attention to the fact that the two issues were completely different because the Bank Guarantee was mandatory while the issue under reference dealt with the format.

Mr Antoine Vella, representing Vella Bros and Sons, declared that, as far as his company's bid is concerned, the items against which no rates were quoted would be carried out at no extra expense. He said that all works to be carried out were included in the method statement which was submitted with the company's offer in accordance with Clause 7.3 of the Tender Document.

Mr Barbara intervened to reiterate that tenderers were requested to quote prices against each item on the Bill of Quantities otherwise their offer would be disqualified.

At this point the hearing was brought to a close. However, soon after the representatives of all interested parties had to be called back since the Public Contracts Review Board wanted to hear the views of the Evaluation Committee regarding the contents of clause 5.1.1 wherein bidders were requested to provide a breakdown of rates against each item in the Bill of

Quantities. The hearing proceeded in the absence of the recommended tenderer's representative because the latter had already left the premises.

The Chairman, Public Contracts Review Board referred the Evaluation Committee to *Clause 5.1 Criteria for Award* which specified that:

“5.1.1 The sole award criterion shall be the rates. The contract shall be awarded as a whole to the cheapest/ globally priced Tender satisfying the administrative and technical criteria.

Tenders with incomplete Bill of Quantities, i.e. lacking quoted prices against one or more items on the Bill of Quantities, shall therefore be disqualified.”

Mr Manuel Schembri acknowledged that this clause was mandatory and that it was in conflict with Clause 2.8.1 referred to earlier during these proceedings.

This Board,

- having noted that the appellants, in terms of their ‘reasoned letter of objection’ dated 15th February 2011 and also through their verbal submissions presented during the hearing held on 6th July 2011, had objected to the decision taken by the pertinent authorities;
- having noted all of the appellant company’s representatives’ claims and observations, particularly, the references made to the fact that (a) tenderers had to quote for all the items in the Bill of Quantities, (b) in the tender document it was specified that tenders with incomplete Bill of Quantities would be disqualified and (c) whilst the Bill of Quantities submitted by Vella Brothers and Sons – the recommended tenderer - and PSV Turnkey Contractors Ltd – the 2nd Cheapest - were incomplete in view of the fact that these did not quote prices against all items, that of the 3rd cheapest, namely Polidano Bros. Ltd, was exclusive of VAT;
- having considered the contracting authority’s representative’s reference to the fact that (a) contrary to what was being alleged by the appellant company’s representative, it was not true that some rates were not quantified or left out in the Bill of Quantities, (b) Clause 2.8.1 and 2.8.2 implied that by accepting the total price of the tender the tenderer would also be accepting to carry out all the works and (c) with regards to Clause 5.1.1, wherein bidders were requested to provide a breakdown of rates against each item in the Bill of Quantities, the contracting authority’s representative acknowledged that this clause was mandatory and that it was in conflict with Clause 2.8.1 referred to earlier during these proceedings;
- having considered the recommended tenderer’s representative’s reference to the fact that (a) as far as his company’s bid is concerned, the items against which no rates were quoted would be carried out at no extra expense and (b) all works to be carried out were included in the method statement which was submitted with the company’s offer in accordance with Clause 7.3 of the Tender Document,

reached the following conclusions, namely:

1. The Public Contracts Review Board opines that the wording of clauses 2.8.1 and 2.8.2 respectively, particularly 2.8.1 could have given rise to an ambiguous interpretation of the content.
2. The Public Contracts Review Board, however, feels that it is also true that the content of clause 5.1.1 was clear enough leaving no room for any other interpretation apart from the one it was originally intended to.

In view of the above contradictory scenarios this Board feels that the only plausible solution would be for this tender to be cancelled and re-issued including clear and congruent clause content across the tender dossier. The Public Contracts Review Board also recommends that the deposit paid by the appellant company should be reimbursed.

Alfred R Triganza
Chairman

Edwin Muscat
Member

Joe Croker
Member

15 July 2011