

PUBLIC CONTRACTS REVIEW BOARD

Case No. 322

WSC/T/56/2011

Tender for the Supply and Delivery of Manhole Covers 600mmx900mm

This call for tenders was published in the Government Gazette on the 31st December 2010. The closing date for this call with an estimated budget of € 56,000 was the 2nd February 2011.

Eight (8) tenderers submitted their offers.

Messrs Andrew Vassallo filed an objection on the 25th April 2011 against the decision of the Water Services Corporation to discard its offer.

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 Monday, 5th September 2011 to discuss this objection.

Present for the hearing were:

Messrs Andrew Vassallo

Ms Maria Vassallo	Representative
Ms Miriam Cassar	Representative

Mr Anton Zarb

Mr Anton Zarb	Representative
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Water Services Corporation (WSC)

Mr Mark Perez	Engineer
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Evaluation Board

Ing. Stephen Galea St. John	Chairman
Ing. Nigel Ellul	Member
Mr Andrew Scicluna	Member
Mr Anthony Camilleri	Secretary

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

Ms Miriam Cassar, representing Messrs Andrew Vassallo, the appellant, made the following submissions:

- i. by letter dated the 21st April 2011 the Water Services Corporation informed her firm that the tender was not successful since no ISO Certificate had been submitted as per clause 7 of the technical specifications;
- ii. the Water Services Corporation further informed the said tenderer that the tender had been awarded to Mr Anton Zarb for the price of €38,656.80;
- iii. whilst conceding that the ISO certificate was requested in the tender document and that it was not included with the original tender submission as it was not yet in hand at the closing date of the tender, yet, she attached them with the letter of objection dated the 25th April 2011 (stamped received by the Water Services Corporation on the 28th April 2011);
- iv. the same letter of the 21st April 2011 informed her firm of its right to lodge an appeal and an appeal was filed as it was felt that it was a pity to lose a contract merely for the non-submission of the ISO certificate, which was obtainable from the manufacturer in China, when her firm's offer at €26,432 was about €12,000 cheaper than that recommended; and
- v. the appellant complained that although the letter of objection was dated 25th April 2011, the Water Services Corporation had issued the relative receipt dated 1st May 2011, which besides having been a public holiday and a Sunday, was also after the deadline to file the objection which was indicated at noon of the 29th April 2011, which event upset her firm's officials as it was felt that that might have been an attempt to render the firm's objection inadmissible. Furthermore, this issue seems to have been exacerbated by the explanation given in regard by the Water Services Corporation wherein her firm was unceremoniously informed that that was an internal administrative matter or a personal matter or something of the sort.

Ing. Stephen Galea St John, chairman of the evaluation board, confirmed that the submission of the ISO certificate was a mandatory requirement.

Mr Mark Perez, representing the Water Services Corporation, remarked that the date of the receipt did not affect the tenderer's right to appeal so much so that the request for an appeal was considered valid and it was actually taking place.

Ms Maria Vassallo, also representing the appellant, asked whether it was correct for the Water Services Corporation to forward her firm's certificate/s to its competitors.

At this point the Chairman Public Contracts Review Board remarked that (i) once the ISO certificate was a mandatory requirement laid down in the tender document then the tenderer had to make it available in the tender submission, (ii) although the tenderer had the right to file an appeal it was, ultimately, up to the tenderer to decide if there were sufficient grounds for filing an appeal and (iii) the contracting authority

could have shown more discretion in furnishing the other tenderers with documents presented in the tender submission of another tenderer and (iv) the contracting authority was obliged to furnish the documents submitted in connection with an appeal as the interested parties had the right to know what the appeal was about so as to be in a position to present their own version of events.

At this point the hearing was brought to a close.

This Board,

- having noted that the appellant's company, in terms of the reasoned letter of objection of the 25th April 2011, and through the verbal submissions made during the hearing held on the 5th September 2011, had objected against the decision of the Water Services Corporation to discard its offer;
- having noted the appellant firm's representatives claims and observations regarding the fact that (a) by letter dated the 21st April 2011 the Water Services Corporation informed her firm that the tender was not successful since no ISO Certificate had been submitted as per clause 7 of the technical specifications, (b) whilst conceding that the ISO certificate was requested in the tender document and that it was not included with the original tender submission as it was not yet in hand at the closing date of the tender, yet, the appellant attached them with the letter of objection dated the 25th April 2011 (stamped received by the Water Services Corporation on the 28th April 2011) and (c) it was a pity to lose a contract merely for the non-submission of the ISO certificate which was obtainable from the manufacturer in China;
- having considered the contracting authority's representative's submissions, namely that (a) the submission of the ISO certificate was a mandatory requirement and (b) the date of the receipt did not affect the tenderer's right to appeal so much so that the request for an appeal was considered valid and it was actually taking place;

reached the following conclusions:

1. The Public Contracts Review Board opines that whilst the contracting authority could have shown more discretion in furnishing the other tenderers with documents presented in the tender submission of another tenderer, yet the same authority was, nevertheless, obliged to furnish the documents submitted in connection with an appeal as the interested parties had the right to know what the appeal was about so as to be in a position to present their own version of events.
2. This Board opines that once the ISO certificate was a mandatory requirement laid down in the tender document then the tenderer had to make it available in the tender submission.

In view of the above this Board finds against the appellant company and also recommends that the deposit paid by the latter should not be reimbursed.

Alfred R Triganza
Chairman

Edwin Muscat
Member

Joseph Croker
Member

30 September 2011