

PUBLIC CONTRACTS REVIEW BOARD

Case No. 364

WSCD/113/2011 Adv No WSC/T/17/2011

Tender for the Provision of Cesspit Emptying Services (Malta)

This call for tenders was published in the Government Gazette on 1st April 2011. The closing date for offers was 4th May 2011.

The estimated value of this tender was € 44,700 (Lot 1).

Five (5) tenderers submitted their offers.

E.J. Mangion filed an objection letter dated 2nd August 2011 against the decisions of the Water Services Corporation to disqualify its offer as non-compliant and to award the tender – Lot 1 - to W.B. Construction Ltd.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman and Mr Carmel Esposito and Mr Joseph Croker as members convened a meeting on Wednesday, 11th January 2012 to discuss this objection.

EJ Mangion

Mr Jason Mangion Representative

W B Construction Ltd


Dr Victor Scerri Legal Representative

Water Services Corporation

Ing. Marco Perez Representative

Evaluation Board

Ing. Stephen Galea St John	Chairman
Ing. Stefan Riolo	Member
Ing. Sigmund Galea	Member
Ing. Charles Camilleri	Member
Mr Anthony Camilleri	Secretary



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

Mr Jason Mangion, representing EJ Mangion, the appellant, made the following submissions:

- i. by letter dated 2nd August 2011 the Water Services Corporation had communicated to him its decisions whereby (a) his offer for Lot 1 had been disqualified because of the unacceptable condition in point No. 2 in the list of non-compliances of the 'Declaration of Conformity' regarding the possible fluctuation of quoted price and (b) Lot 1 was recommended for award to W B Construction Ltd for the total price of €25,912.80;
- ii. the price he offered for Lot 1 amounted to € 16,557.38, which was substantially cheaper than the recommended price of €25,912.80, and since the sole award criterion was the price – clause 19.1 (page 11) - Lot 1 ought to have been awarded to EJ Mangion; and
- iii. confirmed the reason quoted by the contracting authority for his exclusion, namely that he had included a condition in the 'List of Non Compliances' to the effect that the price he quoted was calculated on the then fuel price of €1.34 per litre and that should in the future the price of fuel increase to €1.36 per litre and over then that increase would be reflected in a *pro-rata* fuel surcharge on an average of 10 litres of fuel per trip.

Ing. Stephen Galea St John, chairman of the adjudicating board, explained that:-

- a. in the course of the evaluation, the adjudicating board noted the condition inserted by the appellant to the effect that the quoted price was subject to fluctuations in the price of fuel beyond the €1.36 per litre mark;
- b. that condition was unacceptable to the contracting authority and the adjudicating board asked the Departmental Contracts Committee for permission to request the appellant to modify his bid, which request was turned down by the Departmental Contracts Committee and, as a consequence, the bid had to be disqualified; and
- c. none of the other participating tenderers had inserted any such condition.

The Chairman Public Contracts Review Board remarked that, although price fluctuations were part of the commercial risks that a bidder had to consider when submitting an offer, yet, the price quoted had to be a fixed one and not subject to changes because the contracting authority had to know what the provision of the contracted service would cost.

At this point the hearing was brought to a close.

This Board,

- having noted that the appellant company, in terms of the reasoned letter of objection dated 2nd August 2011 and through the verbal submissions made during the hearing held on the 11th January 2012, had objected against the decisions of the Water Services Corporation to



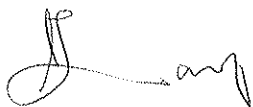
disqualify its offer as non-compliant and to award the tender – Lot 1 - to W.B. Construction Ltd;

- having noted the appellant firm's representatives' claims and observations regarding the fact that (a) his offer for Lot 1 had been disqualified because of the unacceptable condition in point No. 2 in the list of non-compliances of the 'Declaration of Conformity' regarding the possible fluctuation of quoted price, (b) Lot 1 was recommended for award to W B Construction Ltd for the total price of €25,912.80, (c) the price he offered for Lot 1 amounted to € 16,557.38, which was substantially cheaper than the recommended price of €25,912.80, (d) since the sole award criterion was the price – clause 19.1 (page 11) - Lot 1 ought to have been awarded to EJ Mangion and (e) he had included a condition in the 'List of Non Compliances' to the effect that the price he quoted was calculated on the then fuel price of €1.34 per litre and that should, in the future, the price of fuel increase to €1.36 per litre and over then that increase would be reflected in a *pro-rata* fuel surcharge on an average of 10 litres of fuel per trip;
- having considered the contracting authority's representative's submissions, namely that (a) in the course of the evaluation, the adjudicating board noted the condition inserted by the appellant to the effect that the quoted price was subject to fluctuations in the price of fuel beyond the €1.36 per litre mark, (b) that condition was unacceptable to the contracting authority and the adjudicating board asked the Departmental Contracts Committee for permission to request the appellant to modify his bid, which request was turned down by the Departmental Contracts Committee and, as a consequence, the bid had to be disqualified and (c) none of the other participating tenderers had inserted any such condition,

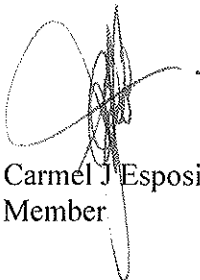
reached the following conclusions:

1. The Public Contracts Review Board opines that , although price fluctuations were part of the commercial risks that a bidder had to consider when submitting an offer, yet, the price quoted had to be a fixed one and not subject to changes because the contracting authority had to know what the provision of the contracted service would cost.
2. The Public Contracts Review Board contends that no tenderer is allowed to submit a bid with a conditional clause included in it.

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



Alfred R Triganza
Chairman



Carmel J Esposito
Member



Joseph Croker
Member

30 January 2012