

PUBLIC CONTRACTS REVIEW BOARD

Case No. 380

MRRA/A/221/2010

Tender for the Supply, Delivery, Installation and Commissioning of Glass Houses at the Department of Agriculture National Research and Development Centre, Ghammieri, Marsa.

This call for tenders was published in the Government Gazette on the 27th July 2010. The closing date for this call with an estimated budget of € 115,000 was the 24th August 2010 extended up to 7th September 2010.

Four (4) tenderers submitted five (5) offers / options.

Muscat Agri Imports and Farming filed an objection on 27th July 2011 against the decision of Ministry for Resources and Rural Affairs to recommend the award of the tender to Agri Products Ltd.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr. Carmel Esposito and Mr Joseph Croker as members convened a public hearing on Monday, 20th February 2012 to discuss this objection.

Present for the hearing were:

Muscat Agri Imports and Farming

Mr Joseph Muscat Representative

Agriproducts Ltd

Dr Edward Woods Legal Representative
Mr Jeffrey Debono Representative

Department of Agriculture National Research and Development Centre, Ghammieri – Ministry for Resources and Rural Affairs

Mr Louis Gatt Representative

Evaluation Board

Mr Noel Azzopardi Chairman
Mr Mario Falzon Membr
Mr Darren Borg Member



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

Mr Joseph Muscat, representing Muscat Agri Imports and Farming, the appellant, made the following submissions:-

- i. by letter dated 20th July 2011, the contracting authority had informed him that his company's bid was not successful because its *"offer is quoted higher than the recommended offer"*;
- ii. at the site meeting bidders were informed that the award was not necessarily going to be made to the cheapest bidder and so the appellant tenderer submitted an offer which it reckoned was a very advantageous one, including the construction of the perimeter wall;
- iii. the evaluation board, on the other hand, recommended the award to the cheapest bidder, which was about €7,000 cheaper than the company's offer;
- iv. the difference in the price was accounted for in the following manner:
 - a. the tender did not specify the type of foundations, namely whether they consisted of piles or a perimeter wall;
 - b. piles consisted of a hollow section placed in the ground 2.5 meters apart which would then be filled in with concrete with a pole embedded therein and, alternatively, one could construct a perimeter wall and fix the poles in the wall itself
- v. the appellant company's offer included the construction of the perimeter wall with the piles therein;
- vi. as per award notice it seemed that the recommended tenderer had not included the construction of the perimeter wall so much so that a note was included in the price of €108,000 referring to the construction of the perimeter wall at €150 per cane;
- vii. the appellant's offer amounted to €116,112, including the perimeter wall and VAT, and if one were to add the cost of the perimeter wall in the awarded price, the appellant's bid would probably be cheaper; and
- viii. one had also to verify whether the recommended bid was inclusive of VAT.

Mr Noel Azzopardi, chairman of the evaluation board, explained that:-

- a. albeit the tender itself did not specify the type of foundations of the glass houses, yet, at the site meeting, it was clarified that the foundations had to be made of piles;
- b. the recommended tenderer and the appellant were both compliant with the difference that the former proposed to construct the foundations by the use of

piles as per tender document and site meeting instructions whereas the appellant included the construction of the perimeter wall;

- c. strictly speaking, the construction of the glass houses did not necessitate the construction of a perimeter wall such that it was not included in the tender document but, in practice, a perimeter wall was useful and, as a result, the contracting authority engaged a quantity surveyor to work out the cost of the construction of the perimeter wall;
- d. the established price for the construction of the perimeter wall was accepted by the recommended tenderer, and then the adjudicating board added this expense to the original offer of the recommended tenderer which turned out to be cheaper than that of the appellant – this for a like-with-like comparison as both prices included the perimeter wall;
- e. the adjudicating board recommended the award to the cheapest priced tender satisfying the administrative and technical criteria as per clause 32.1 of the tender document.

Mr Azzopardi, under oath, gave the following evidence:-

- i. the original price of the recommended tenderer was €97,000 as per published schedule of prices and as broken down in document submitted and which excluded the perimeter wall;
- ii. once it was, later on, considered worthwhile to construct the glass houses with a perimeter wall and since another tenderer, namely the appellant, had included the perimeter wall in its offer, the contracting authority, through a quantity surveyor, worked out the cost of the perimeter wall at €11,000;

and
- iii. when it compared both offers like-with-like the appellant's offer amounted to €116,112 whereas the recommended offer amounted to €108,000, namely €97,000 plus €11,000, all inclusive of VAT.

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 26th July 2011 and also through their verbal submissions presented during the hearing held on 20th February 2012, had objected to the decision taken by the pertinent authorities;
- having noted all of the appellant's representatives' claims and observations, particularly, the references made to the fact that (a) by letter dated 20th July 2011, the contracting authority had informed the appellant that the company's bid was not successful because its "*offer is quoted higher than the recommended offer*", (b) at the site meeting bidders were informed that the award was not necessarily going to be made to the cheapest bidder and so the appellant tenderer submitted an offer



which it reckoned was a very advantageous one, including the construction of the perimeter wall, (c) the evaluation board, on the other hand, recommended the award to the cheapest bidder, which was about €7,000 cheaper than the appellant's offer, (d) the difference in the price was accounted for through (1) the tender not specifying the type of foundations, namely whether they consisted of piles or a perimeter wall and (2) piles consisting of a hollow section placed in the ground 2.5 meters apart which would then either be filled in with concrete with a pole embedded therein or, alternatively, one would construct a perimeter wall and fix the poles in the wall itself, (e) the appellant's offer included the construction of the perimeter wall with the piles therein, (f) as per award notice it seemed that the recommended tenderer had not included the construction of the perimeter wall so much so that a note was included in the price of €108,000 referring to the construction of the perimeter wall at €150 per cane, (g) the appellant's offer amounted to €116,112, including the perimeter wall and VAT, and if one were to add the cost of the perimeter wall in the awarded price, the appellant's bid would probably be cheaper and (h) one had also to verify whether the recommended bid was inclusive of VAT;

- having considered the contracting authority's representative's reference to the fact that (a) albeit the tender itself did not specify the type of foundations of the glass houses, yet, at the site meeting, it was clarified that the foundations had to be made of piles, (b) the recommended tenderer and the appellant were both compliant with the difference that the former proposed to construct the foundations by the use of piles as per tender document and site meeting instructions whereas the appellant included the construction of the perimeter wall, (c) strictly speaking, the construction of the glass houses did not necessitate the construction of a perimeter wall such that it was not included in the tender document but, in practice, a perimeter wall was useful and, as a result, the contracting authority engaged a quantity surveyor to work out the cost of the construction of the perimeter wall, (d) the established price for the construction of the perimeter wall was accepted by the recommended tenderer, and then the adjudicating board added this expense to the original offer of the recommended tenderer which turned out to be cheaper than that of the appellant – this for a like-with-like comparison as both prices included the perimeter wall, (e) the adjudicating board recommended the award to the cheapest priced tender satisfying the administrative and technical criteria as per clause 32.1 of the tender document, (f) the original price of the recommended tenderer was €97,000 as per published schedule of prices and as broken down in document submitted and which excluded the perimeter wall, (g) once it was, later on, considered worthwhile to construct the glass houses with a perimeter wall and since another tenderer, namely the appellant, had included the perimeter wall in its offer, the contracting authority, through a quantity surveyor, worked out the cost of the perimeter wall at €11,000 and (h) when it compared both offers like-with-like the appellant's offer amounted to €116,112 whereas the recommended offer amounted to €108,000, namely €97,000 plus €11,000, all inclusive of VAT,

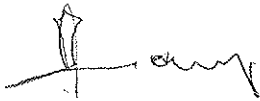
reached the following conclusions, namely:

1. The Public Contracts Review Board, whilst being fully cognizant of the fact that at the site meeting bidders were informed that the award was not necessarily going to be made to the cheapest bidder, yet, this Board also acknowledges that such a decision did not, in any way, preclude the adjudicating board from recommending that the said tender be awarded to the cheapest priced tender

satisfying the administrative and technical criteria as per clause 32.1 of the tender document.

2. The Public Contracts Review Board acknowledges that the contracting authority was fair when, being aware that the appellant had included the construction of the perimeter wall albeit the construction of the glass houses did not necessitate the construction of such wall, so much so that such a requisite was not included in the tender document, yet, having considered that such perimeter wall is useful, the contracting authority engaged a quantity surveyor to work out the cost of the construction of the perimeter wall.
3. Also, this Board, deliberating on the same subject matter in (2) above, is in total agreement with the stand taken by the contracting authority for considering it worthwhile for glass houses to be constructed with a perimeter wall. This Board also notes that since another tenderer, namely the appellant, had included the perimeter wall in its offer, the contracting authority, through a quantity surveyor, worked out the cost of the perimeter wall at €11,000. All in all, the Public Contracts Review Board acknowledges the stand taken by the adjudicating board when the latter compared both offers like-with-like with the appellant's offer amounting to €116,112 whereas the recommended offer ended up amounting to €108,000, namely €97,000 plus €11,000, all inclusive of VAT.

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 Esposito
Member



Joseph Croker
Member

5 March 2012