

PUBLIC CONTRACTS REVIEW BOARD

Case No. 396

WSM/231/2011; Adv No WSM/86/2011

Period Contract for the Sampling, Analysis and Reporting of Results for Seawater and Sediment as part of the Ghallies Non-Hazardous Waste Engineered Landfill Environmental Monitoring Programme

This call for tenders was published in the Government Gazette on the 6th September 2011. The closing date for this call with an estimated budget of Lot 1 € 400; Lot 2 € 400 both per sample and excl. VAT was the 4th October 2011.

Five (five) tenderers submitted their offers.

ISTS Ltd filed an objection on the 7th December 2011 against the decision of the WasteServ Malta Ltd the award of items 1 and 2 of the tender when the prices on the 'schedule of offers received' did not tally with those on the 'notice of award'.

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 Thursday, 12th April 2012 to discuss this objection.

Present for the hearing:

ISTS Ltd

Mr Mark Mifsud Director

Ecoserv Ltd and CADA Laboratories

Ms Sarah Debono Representative

PT Matic

Mr Derek Broadley Representative

WasteServ Malta Ltd

Dr Victor Scerri Legal Representative

Evaluation Board

Ms Daniela Grech Chairperson



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

Mr Mark Mifsud, representative of ISTS Ltd, the appellant company, explained that:-

- i. it was noted that certain prices on the 'schedule of offers received' did not match with the prices listed on the 'notice of award';
 - ii. since no remarks had been entered in the 'schedule of offers received' with regard to certain prices then those prices should have remained as originally indicated throughout the entire tendering process;
 - iii. on enquiring with the contracting authority as to why not all the prices on the 'notice of award' did not tally with the prices on the 'schedule of offers received', the appellant's representative was informed that, with regard to PT Matic, the recommended tenderer for item 2, the adjudicating board found an annex in the tender submission on the strength of which the contracting authority altered the rates per sample originally indicated in the 'schedule of offers received';
 - iv. the reason given by the contracting authority was unacceptable because any explanation in the tender submission regarding the price should have been reflected in the first place in the 'schedule of offers received' under the column 'remarks' as was the case with other offers, including the appellant company's own offer;
- and
- v. to remedy this situation the appellant company had to lodge an appeal.

Dr Victor Scerri, legal representative of the contracting authority, made the following submissions:-

- a. with regard to lot 1, there was only one compliant tender and the price quoted in its respect in the 'schedule of offers received' tallied with the price indicated in the 'notice of award', namely, €307.75 per sample and, as a result, there ought to be no issue on the award of item 1;
- and
- b. whilst, with regard to lot 2, tenderer no. 4, PT Matic inserted the amounts of €3,220 and €2,904 as rates per unit for lots 1 and 2 in the 'schedule of prices and rates' which were reflected in the 'schedule of offers received', yet, when those rates were evaluated it transpired that PT Matic's rates per sample for lots 1 and 2 were, in fact, €201.25 and €363 respectively.

Ms Daniela Grech, chairperson of the adjudicating board, submitted that:-

- i. the contracting authority had furnished the bidders, including the appellant company, with the 'notice of award' but it did not furnish them with the explanation contained in the bidder's tender submission that led the adjudicating board to establish the correct rate per sample;



- ii. notwithstanding that the schedule of prices submitted by PT Matic for lot 2 indicated € 2,904 per unit, once in the same tender submission there was an exhaustive explanation that, in fact, the rate per unit was €363, then the adjudicating board felt that it was reasonable and justified to recommend the award to PT Matic once it was both compliant and the cheapest;

and

- iii. the appellant company was correct that no explanation was given in the 'schedule of offers received' against the prices quoted by PT Matic and the reason was that that schedule was compiled at tender opening stage from the 'schedule of prices and rates' given by the bidders whereas the 'notice of award' was the result of an evaluation process where all relevant information was taken into account.

Mr Mifsud insisted that his reading of the situation was that the rate of €2,904 that featured on the 'notice of offers received' reflected the rate per unit (Qty 1) declared by bidder in the 'schedule of prices and rates' and, since no remark was entered in the 'schedule of offers received' to explain that rate then that rate should not have been altered during any subsequent stages of the evaluation process as that might give rise to abuse.

At this point the Public Contracts Review Board went through the tender submission of PT Matic and noted that the figure of €2,904 referred to a per quarterly sample which was made up of 8 samples, i.e. 4 monitoring stations in total as per clause 6.3.4 and then, as per clause 6.3.9, two replicate samples needed to be collected from each monitoring station. As a result, the figure of €2,904 had to be divided by 8 to produce the rate per unit of €363.

The Chairman Public Contracts Review Board observed that the appellant company could not have been aware of the workings undertaken by the adjudicating board during evaluation stage.

Mr Mifsud insisted that the rate per unit listed in the 'schedule of offers received' should have reflected the unit rate declared by the tenderer in the company's 'schedule of rates and prices', especially in the absence of any related explanatory note which the same 'schedule of rates and prices' provided for. He added that if the rate declared by the tenderer was subject to subsequent modification then one had to question the need for the bidder to sign a document stipulating the rate/s.

The Chairman Public Contracts Review Board made the following observations:-

- a. although the adjudicating board carried out a correct computation of the rate per sample taking into account all the information contained in the tender submission and that it was not unreasonable to recommend a tenderer who could deliver the required service at the cheapest price, still, since one was dealing with public procurement, the adjudicating board could not simply discard the written declaration by the tenderer stipulating the rate per unit that the company was offering;



and

- b. the adjudicating board was expected to accept the rate declared by the bidder and it should not have been forced to examine the entire tender document to work out the unit rate.

Dr Scerri submitted that although he would concede that the appellant company had lodged its appeal on reasonable grounds, once it did not have access to all the information, on the other hand, given the exhaustive and transparent explanation furnished by the contracting authority, he felt that, in taking into account all the information made available in the recommended tender submission, the contracting authority had acted correctly and with the aim of safeguarding public funds.

At this point the hearing was brought to a close.

This Board,

- having noted that the appellants, in terms of their 'letter of objection' dated 7th December 2011 and also through their verbal submissions presented during the hearing held on the 12th April 2012, had objected to the decision taken by the pertinent authorities;
- having noted all of the appellant company's representative's claims and observations, particularly, the references made to the fact that (a) certain prices on the 'schedule of offers received' did not match with the prices listed on the 'notice of award', (b) since no remarks had been entered in the 'schedule of offers received' with regard to certain prices then those prices should have remained as originally indicated throughout the entire tendering process, (c) on enquiring with the contracting authority as to why not all the prices on the 'notice of award' did not tally with the prices on the 'schedule of offers received', the appellant's representative was informed that, with regard to PT Matic, the recommended tenderer for item 2, the adjudicating board found an annex in the tender submission on the strength of which the contracting authority altered the rates per sample originally indicated in the 'schedule of offers received', (d) the reason given by the contracting authority was unacceptable because any explanation in the tender submission regarding the price should have been reflected in the first place in the 'schedule of offers received' under the column 'remarks' as was the case with other offers, including the appellant company's own offer, (e) to remedy this situation the appellant company had to lodge an appeal, (f) the appellant insisted that his reading of the situation was that the rate of €2,904 that featured on the 'notice of offers received' reflected the rate per unit (Qty 1) declared by bidder in the 'schedule of prices and rates' and, since no remark was entered in the 'schedule of offers received' to explain that rate then that rate should not have been altered during any subsequent stages of the evaluation process as that might give rise to abuse and (g) if the rate declared by the tenderer was subject to subsequent modification then one had to question the need for the bidder to sign a document stipulating the rate/s;
- having considered the contracting authority's representatives' reference to the fact that (a) with regard to lot 1, there was only one compliant tender and the price quoted in its respect in the 'schedule of offers received' tallied with the price indicated in the 'notice of award', namely, €307.75 per sample and, as a result, there



ought to be no issue on the award of item 1, (b) whilst, with regard to lot 2, tenderer no. 4, PT Matic inserted the amounts of €3,220 and €2,904 as rates per unit for lots 1 and 2 in the 'schedule of prices and rates' which were reflected in the 'schedule of offers received', yet, when those rates were evaluated it transpired that PT Matic's rates per sample for lots 1 and 2 were, in fact, €201.25 and €363 respectively, (c) the contracting authority had furnished the bidders, including the appellant company, with the 'notice of award' but it did not furnish them with the explanation contained in the bidder's tender submission that led the adjudicating board to establish the correct rate per sample, (d) notwithstanding that the schedule of prices submitted by PT Matic for lot 2 indicated € 2,904 per unit, once in the same tender submission there was an exhaustive explanation that, in fact, the rate per unit was €363, then the adjudicating board felt that it was reasonable and justified to recommend the award to PT Matic once it was both compliant and the cheapest, (e) the appellant company was correct that no explanation was given in the 'schedule of offers received' against the prices quoted by PT Matic and the reason was that that schedule was compiled at tender opening stage from the 'schedule of prices and rates' given by the bidders whereas the 'notice of award' was the result of an evaluation process where all relevant information was taken into account and (f) although the contracting authority would concede that the appellant company had lodged its appeal on reasonable grounds, once it did not have access to all the information, on the other hand, given the exhaustive and transparent explanation furnished by the contracting authority, it was generally felt that, in taking into account all the information made available in the recommended tender submission, the contracting authority had acted correctly and with the aim of safeguarding public funds,

reached the following conclusions, namely:

1. The Public Contracts Review Board opines that the appellant company could not have been aware of the workings undertaken by the adjudicating board during evaluation stage.
2. Also, this Board feels that although the adjudicating board carried out a correct computation of the rate per sample taking into account all the information contained in the tender submission and that it was not unreasonable to recommend a tenderer who could deliver the required service at the cheapest price, still, since one was dealing with public procurement, the adjudicating board could not simply discard the written declaration by the tenderer stipulating the rate per unit that the company was offering.
3. The Public Contracts Review Board acknowledges that the adjudicating board was expected to accept the rate declared by the bidder and it should not have been forced to examine the entire tender document to work out the unit rate.
4. The Public Contracts Review Board feels that the rate of €2,904 that featured on the 'notice of offers received' reflected the rate per unit (Qty 1) declared by the bidder in the 'schedule of prices and rates' and, since no remark was entered by the recommended tenderer in the 'schedule of offers received' to explain that rate, then that rate should not have been altered during any subsequent stages of the evaluation process.



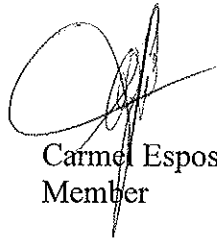
5. This Board notes the point raised by the contracting authority's representatives who stated that the contracting authority had not only acted correctly but that it did so whilst taking into account of all the information made available in the recommended tender submission with the aim of safeguarding public funds. Nevertheless, on the same subject matter this Board places emphasis on the fact that it cannot accept such initiatives being embarked upon due to the fact that, albeit in this instance it was not the case, yet, generally speaking, such arbitrary decisions could take the semblance of perceived vested interests.

In view of the above, this Board finds in favour of the appellant company and, apart from recommending that the latter's bid be re-evaluated with all clarifications being sought to enable the evaluation board to reach a more knowledgeable conclusion, this Board also recommends that the appellant company be reimbursed with the deposit paid for the appeal to be lodged.

Furthermore, this Board concludes that the recommended tenderer's bid was not administratively compliant and hence could not have been evaluated as it was the case.



Alfred R Triganza
Chairman



Carmel Esposito
Member



Joseph Croker
Member

2nd May 2012