

PUBLIC CONTRACTS REVIEW BOARD

Case No. 431

WSM/97/2012

Period Contract for the Hire of One Screener for the Rehabilitation and Restoration of Closed Landfill in M'scala

This call for tenders was published in the Government Gazette on the 9th March 2012. The closing date for this call with an estimated budget of € 47,000 (excl. VAT) was the 30th March 2012.

Two (2) tenderers submitted their offers.

Messrs Saliba Bros Ltd filed an objection on the 2nd May 2012 against the decisions of WasteServ Malta Ltd to disqualify its offer as administratively non-complaint and to award the tender to Schembri Barbros Ltd.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr Joseph Croker and Mr Paul Mifsud as members convened a public hearing on Thursday, 26th July 2012 to discuss this objection.

Present for the hearing were:

Saliba Bros Ltd

Dr Mark Mifsud Cutajar	Legal Representative
Mr Josmar Saliba	Representative
Mr Antoine Saliba	Representative

Schembri Barbros Ltd

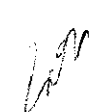
Dr John Gauci	Legal Representative
Mr Anton Schembri	Representative

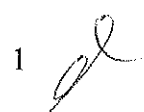
WasteServ Malta Ltd

Dr Victor Scerri	Legal Representative
Ing. Aurelio Attard	Contracting Executive

Evaluation Board

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

Non-Submission of Technical Literature

Dr Mark Mifsud Cutajar, legal representative of Saliba Bros Ltd, the appellant company, explained that:

- i. by notice of award of tender dated 25th April 2012 the contracting authority had informed his client that the company's offer had been discarded because it was administratively non-compliant since technical literature was not submitted as requested in clause 1.2.11 of the tender document (page 2);
 - ii. his client's representative maintained that in the company's tender submission he had provided the specifications of the equipment as per 'Specifications Form' at page 22 of the tender document;
 - iii. his client conceded that whilst it was a fact that in his company's original tender submission he did not submit the technical literature / catalogues / illustrations requested in clause 1.2.11, yet he did provide the brochure of the equipment offered but at a later stage, namely after the closing date of the tender, and notwithstanding the submission of the 'Specifications Form';
- and
- iv. the Public Contracts Review Board was being asked to be flexible and reasonable in the interpretation of the relevant clauses considering that the appellant company's (a) original tender submission already contained sufficient technical information for the adjudicating board to carry out its technical evaluation and (b) offer was the cheapest.


At this point the Chairman Public Contracts Review Board read out the contents of clause 1.2.11:-

*"Prospective bidders are requested to submit with their Tender offer a complete set of literature in the form of **Technical Literature and Catalogues/Illustrations** relevant to the equipment being offered. The Technical Documents shall corroborate in full the specifications requested in the Tender document. The Technical Documents shall moreover be fully adequate to enable the Contracting Authority to evaluate the technical compliance of the tenderer's offer to the tender technical specifications. **Failure to submit the Technical Literature shall render the tender offer null.**"*

The Chairman Public Contracts Review Board noted that:-

- a. the contracting authority requested the technical literature at clause 1.2.11 so as to corroborate in full the specifications provided by the bidder as per clause 1.2.10;



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- b. the technical literature requested at clause 1.2.11 was a mandatory requirement and as such the contracting authority could not have requested it or accepted it after the closing date of the tender otherwise that would have amounted to a rectification;
 - c. clause 1.2.11 was quite clear and left no room for any other interpretation and failure to comply with it would render the offer null;
 - d. prior to being considered financially, the offer had to be technically compliant;
- and
- e. if the tenderer felt the need to question the purpose of submitting the technical literature when his company was going to furnish the machine's specifications as per previous clause (1.2.10) then he could have done that prior to the closing date of the tender. Yet, having said that, the tenderer was not at liberty to omit mandatory tender requirements.

Ing. Aurelio Attard, contracting executive representing WasteServ Malta Ltd, remarked that whilst it was correct that the appellant company did submit the 'Specifications Form' as per clause 1.2.10 but it was equally correct that the same appellant company failed to submit the technical literature as per clause 1.2.11 which was a separate mandatory requirement and the contracting authority had to abide by the tender conditions and reject the appellant company's offer.

Non-Submission of Second Photo

Dr Mifsud Cutajar submitted that:-

- i. his client had also been informed in the letter of rejection that only one photo was submitted instead of the two requested in clause 1.2.12 of the tender document;
- and
- ii. his client contended to have submitted two and not one photo as was being indicated by the contracting authority and, as a result, one of the photos must have got mislaid somewhere along the process.

The Chairman Public Contracts Review Board referred to clause 1.2.12 which read as follows:-

"Prospective bidders are to include with their tender at least two (2) recent photographs of the plant/equipment being offered. Failure to submit the photographs with the tender shall render the tender offer null."



On checking the appellant's original submission only one photo was traced and since this was a departmental tender, bidders were not required to submit a sealed copy of the tender submission and therefore one could not make a double check in this regard.

Ing. Attard remarked that clause 3.1.8 requested tenderers to submit technical literature and such other documentation in bound form and WasteServ Malta Ltd assumed no responsibility for the loss of any documents that were not properly bound. He added that it could be verified from the original tender submission that some of the documentation, including the photo, was not presented in bound form.

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' filed on the 2nd May 2012 and also through their verbal submissions presented during the hearing held on the 26th 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) by notice of award of tender dated 25th April 2012 the contracting authority had informed the appellant company that its offer had been discarded because it was administratively non-compliant since the technical literature was not submitted as requested in clause 1.2.11 of the tender document (page 2), (b) the appellant company's representative maintained that in its tender submission the company had provided the specifications of the equipment as per 'Specifications Form' at page 22 of the tender document, (c) whilst the appellant company conceded that whilst it was a fact that in its original tender submission the company's representative did not submit the technical literature / catalogues / illustrations requested in clause 1.2.11, yet he did provide the brochure of the equipment offered, albeit at a later stage, namely after the closing date of the tender, and notwithstanding the submission of the 'Specifications Form', (d) the Public Contracts Review Board was being asked to be flexible and reasonable in the interpretation of the relevant clauses considering that the appellant company's (1) original tender submission already contained sufficient technical information for the adjudicating board to carry out its technical evaluation and (2) offer was the cheapest, (e) the appellant company had also been informed in the letter of rejection that only one photo was submitted instead of the two requested in clause 1.2.12 of the tender document and (f) the appellant company contended to have submitted two and not one photo as was being indicated by the contracting authority and, as a result, one of the photos must have got mislaid somewhere along the process;
- having considered the contracting authority's representatives' reference to the fact that (a) whilst it was correct that the appellant company did submit the 'Specifications Form' as per clause 1.2.10, yet it was equally correct that the same appellant company failed to submit the technical literature as per clause 1.2.11 which was a separate mandatory requirement and the contracting authority had to

abide by the tender conditions and reject the appellant company's offer and (b) clause 3.1.8 requested tenderers to submit technical literature and such other documentation in bound form and WasteServ Malta Ltd assumed no responsibility for the loss of any documents that were not properly bound adding that it could be verified from the original tender submission that some of the documentation, including the photo, was not presented in bound form;

reached the following conclusions, namely:

1. The Public Contracts Review Board feels that the contracting authority requested the technical literature at clause 1.2.11 so as to corroborate in full the specifications provided by the bidder as per clause 1.2.10 and that such literature was a mandatory requirement. Thus it followed that the contracting authority could not have requested it or accepted it after the closing date of the tender otherwise that would have amounted to a rectification. This Board opines that clause 1.2.11 was quite clear and left no room for any other interpretation and failure to comply with it would render the offer null.
2. This Board further contends that if a tenderer felt the need to question the purpose of submitting the technical literature as requested in a previous clause (1.2.10) then one could have done that prior to the closing date of the tender. Yet, having said that, tenderers are never at liberty to omit mandatory tender requirements.
3. This Board accepts the fact that all parties involved had to acknowledge the fact that, prior to being considered financially, an offer had to be technically compliant.
4. From the verbal submissions made during the hearing, the Public Contracts Review Board has no reason to question the fact that the appellant company did indeed fail to submit two (2) recent photographs of the plant/equipment being offered. Needless to say, such failure rendered the tender offer null.

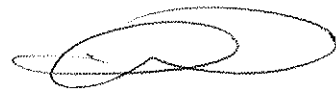
In view of the above this Board finds against the appellant company and recommends that the deposit paid by the appellant company for the appeal to be lodged should not be reimbursed.



Alfred R Triganza
Chairman



Joseph Croker
Member



Paul Mifsud
Member

31st July 2012