

PUBLIC CONTRACTS REVIEW BOARD

Case No. 507

WSC/43/2012

Tender for the Provision of Engineering Support for the Installation of Meters on Boreholes

This call for tenders was published in the Government Gazette on the 28th August 2012. The closing date for this call with an estimated budget of a fixed payment of €2,500 per month (€63,560) was the 10th September 2012.

Two (2) tenderers submitted their offers.

Ing. Annabelle Formosa filed an objection on the 1st November 2012 against the decision of the Water Services Corporation to recommend the award of tender to Mediterranean Technical Services Ltd.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr Carmel Esposito and Mr Paul Mifsud as members convened a public hearing on Friday, 14th December 2012 to discuss this objection.

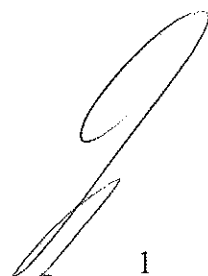
Ing. Annabelle Formosa

Ing. Annabelle Formosa Appellant
Mr Robert Formosa

Mediterranean Technical Services Ltd – no one attended the hearing

Evaluation Board (Water Services Corporation)

Ing. Stephen Galea St John Chairman
Ing. Ronald Pace Member
Mr Anthony Camilleri Secretary



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

Ing. Annabelle Formosa, the appellant, made the following submissions:

- i. by letter/email dated 25th October 2012 she was informed by the Water Services Corporation that her offer was unsuccessful because in the allocation of marks it placed second to that of Mediterranean Technical Services Ltd;
- ii. out of 200 marks, the recommended bidder obtained 158 whereas she got 156 and, as a consequence, she asked for more information on the allocation of marks since the difference was a mere 2 marks;

and

- iii. the tender laid down that the Water Services Corporation Ltd would pay a monthly fee of €2,500 for this services whereas she offered to render this service for €2,300 per month.

The Chairman Public Contracts Review Board questioned the purpose of fixing the payment for the requested service in the tender document instead of setting the standards/criteria required to perform this service and then leaving it up to the bidders to submit competitive offers and, if anything, the Water Services Corporation Ltd could have included the maximum monthly payment it was prepared to pay. The Chairman Public Contracts Review Board also questioned whether the evaluation board could recommend a tenderer who, although technically qualified, had offered to do the job for less than the amount stipulated in the tender and, therefore, not according to tender conditions.

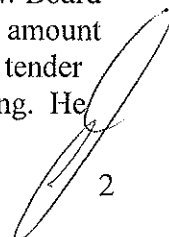
Ing. Stephen Galea St. John, chairman of the evaluation board, remarked that:-

- a. whilst he saw the point in the issue raised by the Chairman Public Contracts Review Board, yet the evaluation board did not set the tender conditions but it had to adhere to those published tender conditions;
- b. in his opinion, according to the published criteria, the evaluation board could not select a bidder who offered less than €2,500 per month for this service;
- c. only two bidders participated in this tendering procedure;

and

- d. there were other instances where the Water Services Corporation Ltd had issued such tenders for a pre-determined payment.

Without going into the merits of whether it made economical sense to fix the payment for this service in the tender document, the Chairman Public Contracts Review Board remarked that since the appellant offered to render the service at less than the amount laid down in the tender, then the appellant's offer was not compliant with the tender conditions and her offer should have been disqualified right from the beginning. He



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also noted that clause 3 of the Tenderer's Declaration read "*I accept the rate of €2,500 per month including VAT.*"

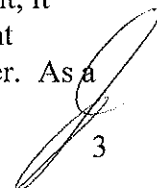
At this point the hearing came to a close.

This Board,

- having noted that the appellant, in terms of its 'reasoned letter of objection' dated 31st October 2012 and also through its representatives verbal submissions presented during the hearing held on the 14th December 2012, had objected to the decision taken by the pertinent authorities;
- having noted all of the appellant's representative's claims and observations, particularly, the references made to the fact that (a) by letter/email dated 25th October 2012 she was informed by the Water Services Corporation that her offer was unsuccessful because in the allocation of marks it placed second to that of Mediterranean Technical Services Ltd, (b) out of 200 marks, the recommended bidder obtained 158 whereas she got 156 and, as a consequence, she asked for more information on the allocation of marks since the difference was a mere 2 marks and (c) the tender laid down that the Water Services Corporation Ltd would pay a monthly fee of €2,500 for this services whereas she offered to render this service for €2,300 per month;
- having considered the contracting authority's representative's reference to the fact that (a) whilst the Water Services Corporation Ltd saw the point in the issue raised by the Chairman Public Contracts Review Board, yet the evaluation board did not set the tender conditions but it had to adhere to those published tender conditions, (b) according to the published criteria, the evaluation board could not select a bidder who offered less than €2,500 per month for this service, (c) only two bidders participated in this tendering procedure and (d) there were other instances where the Water Services Corporation Ltd had issued such tenders for a pre-determined payment,

reached the following conclusions, namely:

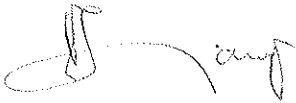
1. The Public Contracts Review Board questions the purpose of fixing the payment for the requested service in the tender document instead of setting the standards/criteria required to perform this service and then leaving it up to the bidders to submit competitive offers and, if anything, the Water Services Corporation Ltd could have included the maximum monthly payment it was prepared to pay.
2. This Board opines that the evaluation board could not recommend a tenderer who, although technically qualified, had offered to do the job for less than the amount stipulated in the tender and, therefore, not according to tender conditions.
3. This Board establishes that, without going into the merits of whether it made economical sense to fix the payment for this service in the tender document, it contends that it cannot but not take cognisance of the fact that the appellant offered to render the service at less than the amount laid down in the tender. As a



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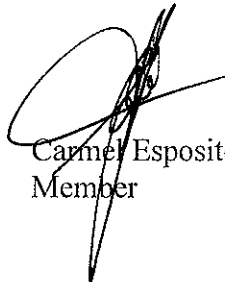
result this Board argues that the appellant's offer was not compliant with the tender conditions and her offer should have been disqualified right from the beginning.

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

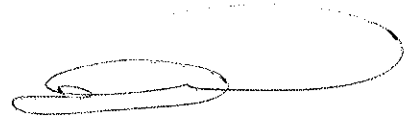


Alfred R Triganza
Chairman

18 December 2012



Carmel Esposito
Member



Paul Mifsud
Member