

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 513**

**WSM/346/2012**

### **Tender for the Procurement of a Second Hand Mobile Screener**

This call for tenders was published in the Government Gazette on the 12<sup>th</sup> October 2012. The closing date for this call with an estimated budget of € 120,000 was the 2<sup>nd</sup> November 2012.

Two (2) tenderers submitted their offers.

SR Environmental Solutions Ltd filed an objection on the 26<sup>th</sup> November 2012 against the decision of the WasteServ Malta Ltd to disqualify its offer as technically non-compliant and to recommend the cancellation of the tender.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr Joseph Croker and Mr Carmel Esposito as members convened a public hearing on Wednesday 16th January 2013 to discuss this objection.

Present for the hearing were:

#### **SR Environmental Solutions Ltd**

Ing. Ray Muscat	Director
Dr Ian Vella Galea	Legal Representative

#### **Vassallo Builders Ltd**

Mr Pio Vassallo	Chief Executive Officer
Mr Jonathan Buttigieg	Commercial Director
Mr Eusebio Muscat	Representative

#### **WasteServ Malta Ltd**

#### **Evaluation Board**

Mr Charles Zerafa	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.

Ing. Ray Muscat, representing SR Environmental Solutions Ltd, the appellant company, made the following submissions:

- i. by notice issued on the 19th November 2012 the appellant company was informed that the three options it presented were not technically compliant since (i) the specification form was not complete as per clause 1.2.12 and (ii) the flow of material of the equipment was out of range to that requested in the tender document;
- ii. this tender called for second hand equipment and such equipment could be made available up to a specific period beyond which availability would not be guaranteed;
- iii. this screener was a sort of large sifting or grading machine for different types of material;
- iv. the tender specifications requested a screener with a processing capacity ranging from 10 to 20 tons per hour;
- v. it was correct for one to state that the equipment offered by the appellant firm in option 1 could process 35 tons/hr whereas, in the case of options 2 and 3, the processing rate was 25 tons/hr;
- vi. apparently, once the contracting authority noted the processing rates of 35 tons/hr and 25 tons/hr it adjudicated the offer as technically non-compliant;
- vii. besides the fact that the throughput was dependent on the type of material to be processed along with a number of other variables, namely the belt feeding speed, in effect, the equipment offered by the appellant company had the maximum throughput of 25 tons/hr and 35 tons/hr, yet the operator of the equipment could adjust certain settings so that the throughput would be reduced to the desired rate but up to the maximum limits indicated;
- viii. whilst admitting that an error had been made by the said appellant company in the tender submission where the throughput was indicated as 35 tons/hr and 25 tons/hr without inserting the words 'up to', yet, in the technical specifications of the equipment which were presented with tender submission it was clearly indicated that the throughput rate was 'up to' 25 tons/hr and 'up to' 35 tons/hr and, as a consequence, the proposed equipment could be operated at the throughput rate of 20 tons/hours and lower according to tender specifications;
- ix. the tender requested equipment with the year of manufacture being 2007 onwards and with not more than 5000 operating hours;

and

- x. one of the options offered referred to a demo unit manufactured in 2011 with 300 operating hours whereas another option had the same year of manufacture but with 500 operating hours.

Mr Charles Zerafa, a member of the evaluation board and works manager, whilst acknowledging that the evaluation board had noted that the throughput of the proposed equipment was outside that requested, yet it did not check thoroughly the technical literature submitted by the appellant company and that explained the erroneous decision taken. He added that, in the light of the explanation given by the appellant company, it was clear that the equipment, the said company proposed, was, in fact, technically compliant.

Dr Ian Vella Galea, legal representative of the appellant company, submitted that with regard to the other reason given for disqualification, namely that the *specification form* was not complete as per clause 1.2.12, the appellant company maintained that the specifications form was duly filled in and was inviting the contracting authority to indicate which section was left incomplete.

Mr Charles Zerafa remarked that the appellant company had failed to answer in a ‘yes or no’ manner the first question in the Specifications Form which read: *The contractor confirms to undertake the following tasks?*

The Chairman Public Contracts Review Board stated that that question did not make sense and, frankly, it did not deserve an answer.

The Chairman Public Contracts Review Board deplored the lightness with which certain technical evaluations were being carried out with the consequence that bidders had to resort to appeals with the consequent waste of time, effort and money.

At this point the hearing came to a close.

This Board,

- having noted that the appellant company, in terms of its ‘reasoned letter of objection’ dated 26<sup>th</sup> November 2012 and also through its representatives verbal submissions presented during the hearing held on the 16<sup>th</sup> January 2013, 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) by notice issued on the 19th November 2012 the appellant company was informed that the three options it presented were not technically compliant since (1) the ‘specification form’ was not complete as per clause 1.2.12 and (2) the flow of material of the equipment was out of range to that requested in the tender document, (b) this tender called for second hand equipment and such equipment could be made available up to a specific period beyond which availability would not be guaranteed, (c) this screener was a sort of large sifting or grading machine for different types of material, (d) the tender specifications requested a screener with a processing capacity ranging from 10 to 20 tons per hour, (e) it was correct for one to state that the equipment offered by the appellant firm in option 1 could

process 35 tons/hr whereas, in the case of options 2 and 3, the processing rate was 25 tons/hr, (f) apparently, once the contracting authority noted the processing rates of 35 tons/hr and 25 tons/hr it adjudicated the offer as technically non-compliant, (g) besides the fact that the throughput was dependent on the type of material to be processed along with a number of other variables, namely the belt feeding speed, in effect, the equipment offered by the appellant company had the maximum throughput of 25 tons/hr and 35 tons/hr, yet the operator of the equipment could adjust certain settings so that the throughput would be reduced to the desired rate but up to the maximum limits indicated, (h) whilst admitting that an error had been made by the said appellant company in the tender submission where the throughput was indicated as 35 tons/hr and 25 tons/hr without inserting the words 'up to', yet, in the technical specifications of the equipment which were presented with tender submission it was clearly indicated that the throughput rate was 'up to' 25 tons/hr and 'up to' 35 tons/hr and, as a consequence, the proposed equipment could be operated at the throughput rate of 20 tons/hours and lower according to tender specifications, (i) the tender requested equipment with the year of manufacture being 2007 onwards and with not more than 5000 operating hours, (j) one of the options offered referred to a demo unit manufactured in 2011 with 300 operating hours whereas another option had the same year of manufacture but with 500 operating hours and (k) with regard to the other reason given for disqualification, namely that the *specification form* was not complete as per clause 1.2.12, the appellant company maintained that the specifications form was duly filled in and was inviting the contracting authority to indicate which section was left incomplete;

- having considered the contracting authority's reference to the fact that (a) whilst the evaluation board had noted that the throughput of the proposed equipment was outside that requested, yet it did not check thoroughly the technical literature submitted by the appellant company and that explained the erroneous decision taken, (b) in the light of the explanation given by the appellant company, it was clear that the equipment, the said company proposed, was, in fact, technically compliant and (c) the appellant company had failed to answer in a 'yes or no' manner the first question in the Specifications Form which read "*The contractor confirms to undertake the following tasks?*"

reached the following conclusions, namely:

1. The Public Contracts Review Board stated that it does not agree with the evaluation board's assessment wherein this decided that the 'specification form' as submitted by the appellant company was not complete in line with clause 1.2.12 in view of the fact that the initial question did not make sense and, in the first place, it did not deserve an answer and, more importantly, no bidder could have ever been disqualified for not replying to an unanswerable question. In this regard, this Board cannot but deplore the lightness with which certain technical specifications are being drafted and certain evaluations are being carried out with the consequence that bidders have to resort to appeals with the consequential waste of time, effort and money.
2. This Board took full cognisance of the fact that the tender specifications requested a screener with a processing capacity ranging from 10 to 20 tons per

hour. Nevertheless it is also a fact that the equipment offered by the appellant firm in option 1 could process 35 tons/hr whereas, in the case of options 2 and 3, the processing rate was 25 tons/hr. With this in view this Board agrees with the appellant company regarding the fact that one had to consider the fact that the throughput was dependent on the type of material to be processed along with a number of other variables, namely the belt feeding speed, and that albeit, in effect, the equipment offered by the appellant company had the maximum throughput of 25 tons/hr and 35 tons/hr, yet the operator of the equipment could adjust certain settings so that the throughput would be reduced to the desired rate but up to the maximum limits indicated.

3. Also, this Board took full consideration of the fact that in the technical specifications of the equipment which were presented with tender submission it was clearly indicated that the throughput rate was 'up to' 25 tons/hr and 'up to' 35 tons/hr and, as a consequence, the proposed equipment could be operated at the throughput rate of 20 tons/hrs and lower according to tender specifications. The Public Contracts Review Board cannot but demonstrate its disappointment at the way the evaluation board did not thoroughly check the technical literature submitted by the appellant company and which explained the erroneous decision taken by the said evaluation board.
4. In its deliberation this Board has considered the fact that, during the hearing, the evaluation board's representative exclaimed that, in the light of the explanation given by the appellant company, it was clear that the equipment the appellant company proposed was, in fact, technically compliant.

In view of the above this Board finds in favour of the appellant company and recommends that, apart from the appellant company's bid being reintegrated in the evaluation process, this Board recommends also that the deposit paid by the same company for the appeal to be lodged should be reimbursed.

Alfred R Triganza  
Chairman

Joseph Croker  
Member

Carmel Esposito  
Member

*24 January 2013*