

PUBLIC CONTRACTS REVIEW BOARD

Case No. 514

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 12th October 2012. The closing date for this call with an estimated budget of € 120,000 was the 2nd November 2012.

Two (2) tenderers submitted their offers.

Vassallo Builders Ltd filed an objection on the 26th 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:

Vassallo Builders Ltd

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

SR Environmental Solutions Ltd

Ing. Ray Muscat	Director
Dr Ian Vella Galea	Legal 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 the company's objection.

Mr Jonathan Buttigieg, representing Vassallo Builders Ltd, the appellant company, made the following submissions:

- i. by notice issued 19th November 2012 the appellant company was informed that the equipment offered was not technically compliant since the flow of material of the equipment was out of range to that requested in the tender document;
 - ii. despite the fact that, admittedly, the throughput of the proposed screener was 25 tons/hr, yet, in the tender submission, reference was made to the technical specifications of the equipment which formed part of the tender submission where it was indicated that the throughput was 'up to' 160 m³/hr or up to 25 tons/hrs;
 - iii. the *Specification Form* itself provided space where to 'Please indicate the corresponding page reference in the technical literature where applicable';
 - iv. the operator could adjust the settings of the proposed screener to process material at a lower rate than its maximum of 25 tons/hr, namely at 20 tons/hr or even lower which would satisfy the tender conditions;
 - v. the proposed equipment was a demo model manufactured in 2011 and only had 500 operating hours, whereas the contracting authority requested equipment with the year of manufacture being 2007 onward and with a maximum 5000 operating hours;
- and
- vi. it was clear that the proposed equipment was fully compliant with tender specifications.

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.

The Chairman Public Contracts Review Board deplored the lightness with which certain technical evaluations were being carried out with the consequence that appeals would eventually be filed resulting in 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 26th November 2012 and also through its representatives verbal submissions presented during the hearing held on the 16th 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 19th November 2012 the appellant company was informed that the equipment offered was not technically compliant since the flow of material of the equipment was out of range to that requested in the tender document. (b) despite the fact that, admittedly, the throughput of the proposed screener was 25 tons/hr, yet, in the tender submission, reference was made to the technical specifications of the equipment which formed part of the tender submission where it was indicated that the throughput was 'up to' 160 m³/hr or up to 25 tons/hrs, (c) the *Specification Form* itself provided space where to 'Please indicate the corresponding page reference in the technical literature where applicable', (d) the operator could adjust the settings of the proposed screener to process material at a lower rate than its maximum of 25 tons/hr, namely at 20 tons/hr or even lower which would satisfy the tender conditions and (e) the proposed equipment was a demo model manufactured in 2011 and only had 500 operating hours, whereas the contracting authority requested equipment with the year of manufacture being 2007 onward and with a maximum 5000 operating hours and it was clear that the proposed equipment was fully compliant with tender specifications;
- 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 and (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,

reached the following conclusions, namely:

1. 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 technical specifications of the equipment which formed part of the tender submission there was indicated that the throughput was 'up to' 160 m³/hr or up to 25 tons/hrs implying that the operator could adjust the settings of the proposed screener to process material at a lower rate than its maximum of 25 tons/hr, namely at 20 tons/hr or even lower which would satisfy the tender conditions.
2. 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.

3. 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. This Board deplores 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.

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