

PUBLIC CONTRACTS REVIEW BOARD

Case No. 517

WSM/80/2012

Period Contract for the Transportation of Material by using Hired Hook Loaders from Sant Antnin Waste Treatment Plant to Maghtab Environment Complex, returning back to Sant Antnin Waste Treatment Plant

This call for tenders was published in the Government Gazette on the 4th September 2012. The closing date for this call with an estimated budget of €120,000 was the 25th September 2012.

Six (6) tenderers submitted their offers.

Ballut Blocks Services Ltd filed an objection on the 20th November 2012 against the decision of WasteServ Malta Ltd to recommend the award of the tender to Polidano Brothers Ltd.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Joseph Croker and Mr Carmel Esposito as members convened a public hearing on Wednesday, 30th January 2013 to discuss this objection.

Present for the hearing were:

Ballut Blocks Services Ltd

Dr Massimo Vella	Legal Representative
Mr Paul Vella	Director

Polidano Brothers Ltd

Dr Franco Galea	Legal Representative
Mr Paul Polidano	Representative

WasteServ Malta Ltd

Mr Anton Borg	Representative
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Evaluation Board

Mr Marco Borg	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.

Dr Massimo Vella, legal representative of Ballut Blocks Services Ltd, the appellant company, made the following submissions:

- i. by award notice published on the 15th November, 2012, the appellant company was notified that its offer was not successful as it placed 3rd in the final ranking of bids;
- ii. the notice of award issued on the 15th November 2012 indicated that the appellant company had quoted the total amount of €234.55 which amounted to a misinterpretation of the rates as featured in the schedule of rates which clearly indicated the total price of €51.63 against the recommended price of €53.10;
- iii. one had to quote for two (2) items and, as a result, in the schedule of rates the appellant company quoted in the most clear terms as follows:-
 - (a) a rate for item 1 in respect of the transport of loaded container from Sant' Antnin Waste Treatment Plant to Maghtab and transport of empty container back to Sant' Antnin Waste Treatment Plant, where the appellant company offered the rate of €9.15 per tonne which then had to be multiplied by 5 tonnes to read €45.73, including VAT;
 - (b) a rate for item 2 in respect of the transport of loaded container from Maghtab to Sant' Antnin Waste Treatment Plant where the appellant company offered the rate of €5.90 per tonne (only) including VAT;
- iv. in the case of the appellant company, the notice of award should have featured the rate per tonne for item 1, namely €9.15 multiplied by 5 (tonnes) i.e. €45.73 *plus* the rate of €5.90 per tonne for item 2 totalling €51.63 and not as, in fact, indicated in the notice of award, namely the rate of €45.73 per tonne for item 1 multiplied by 5 (tonnes) i.e. €228.65 *plus* the rate of €5.90 per tonne for item 2 totalling €234.55;
- v. what, evidently, happened was that, in the notice of award, the contracting authority did not include the rate of €9.15 per tonne but included the rate of €45.73 per tonne in respect of item 1 when the latter was, in fact, the rate per 5 tonnes and, as a result Ballut Blocks Services Ltd's offer instead of reading €51.63, which rendered it the cheapest offer, it read €234.55;
- vi. clauses 4.5.1 (b) provided, among other things, that '*Where there is a discrepancy between a unit rate/price and the total amount derived from the multiplication of the unit rates/price and the quantity, the unit rates/price as quote shall prevail*' and clause 4.5.2 provided, among other things, that: '*The amount stated in the Tender shall be adjusted by the evaluation committee in the event of error, and the tenderer shall be bound by that adjusted amount*';

and

- vii. therefore, in the appellant company's case, the rates quoted in its schedule of rates should prevail over those indicated in the notice of award, which were evidently misinterpreted.

Mr Anton Borg, representing the contracting authority, offered the following explanations:-

- a. whilst, it was correct that, in the schedule of rates, the appellant company quoted the total price of €51.63 for items 1 and 2, yet in para. 3 of the the tender form the appellant company quoted the rate per tonne of €45.73 in respect of item 1 and the rate per tonne of €5.90 in respect of item 2;
- b. the evaluation board noted this discrepancy in the rates quoted by the appellant company in its schedule of rates and in its 'tender form' and sought guidance from the Departmental Contracts Committee (DCC) and the latter advised, in writing, that, in such a case, the rates quoted in the 'tender form' should prevail;

and

- c. that explained why the prices that, eventually, featured in the notice of award issued on 15th November 2012 were those indicated in the appellant company's 'tender form'.

Dr Vella insisted upon his argument that, in this case, the rates in the Schedule of Rates, which were crystal clear, should prevail as per clauses 4.5.1 and 4.5.2 and, if anything, it would have been in place had the contracting authority asked for a clarification.

Dr Franco Galea, legal representative of the recommended tenderer, submitted that:-

- i. in this case the discrepancy between the rates in the 'Schedule of Rates' and in the 'tender form' did not arise from any arithmetical error but the discrepancy resulted because, in its tender submission, the appellant company, effectively, quoted two different rates in respect of item 1, namely €9.15 per tonne in the 'schedule of rates' and €45.73 per tonne in the 'tender form';
- ii. therefore, the provisions of section 4.5 of the tender document did not apply in this case;
- iii. it had always been held that the 'tender form' prevailed over any other signed declarations/documents found in any other part of the tender submission so much so that the tenderer was bound by what was declared in the 'tender form';
- iv. tenderers could have offered more than one rate, namely different options, provided that a separate 'tender form' had to be filled in for each option;

- v. clause 1.2.7 provided that failure to submit the ‘tender form’, complete in all respects, would disqualify the bid;

and

- vi. no rectifications were allowed to the ‘tender form’.

Dr Vella maintained that, according to section 4.5 of the tender document, it was evident that the schedule of rates should prevail as far as the rates were concerned. He added that the appellant company was currently providing this service and it had won the contract with an identical tender submission.

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 20th November 2012 and also through its representatives verbal submissions presented during the hearing held on the 30th 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 award notice published on the 15th November, 2012, the appellant company was notified that its offer was not successful as it placed 3rd in the final ranking of bids, (b) the notice of award issued on the 15th November 2012 indicated that the appellant company had quoted the total amount of €234.55 which amounted to a misinterpretation of the rates as featured in the schedule of rates which clearly indicated the total price of €51.63 against the recommended price of €53.10, (c) one had to quote for two items and, as a result, in the schedule of rates the appellant company quoted in the most clear terms as follows (1) a rate for item 1 in respect of the transport of loaded container from Sant’ Antnin Waste Treatment Plant to Maghtab and transport of empty container back to Sant’ Antnin Waste Treatment Plant, where the appellant company offered the rate of €9.15 per tonne which then had to be multiplied by 5 tonnes to read €45.73, including VAT and (2) a rate for item 2 in respect of the transport of loaded container from Maghtab to Sant’ Antnin Waste Treatment Plant where the appellant company offered the rate of €5.90 per tonne (only) including VAT, (d) in the case of the appellant company, the notice of award should have featured the rate per tonne for item 1, namely €9.15 multiplied by 5 (tonnes) i.e. €45.73 *plus* the rate of €5.90 per tonne for item 2 totalling €51.63 and not as, in fact, was indicated in the notice of award, namely the rate of €45.73 per tonne for item 1 multiplied by 5 (tonnes) i.e. €228.65 *plus* the rate of €5.90 per tonne for item 2 totalling €234.55, (e) what, evidently, happened was that, in the notice of award, the contracting authority did not include the rate of €9.15 per tonne but included the rate of €45.73 per tonne in respect of item 1 when the latter was, in fact, the rate per 5 tonnes and, as a result Ballut Blocks Services Ltd’s offer instead of reading €51.63, which rendered it the cheapest offer, it read €234.55, (f) clauses 4.5.1 (b) provided, among other things, that ‘Where there is a discrepancy between a unit rate/price and the total amount

derived from the multiplication of the unit rates/price and the quantity, the unit rates/price as quote shall prevail and clause 4.5.2 provided, among other things, that: *The amount stated in the Tender shall be adjusted by the evaluation committee in the event of error, and the tenderer shall be bound by that adjusted amount*', (g) therefore, in the appellant company's case, the rates quoted in its schedule of rates should prevail over those indicated in the notice of award, which were evidently misinterpreted, (h) the rates in the Schedule of Rates, which were crystal clear, should prevail as per clauses 4.5.1 and 4.5.2 and, if anything, it would have been in place had the contracting authority asked for a clarification and (i) that the appellant company was currently providing this service and it had won the contract with an identical tender submission;

- having considered the contracting authority's representative's reference to the fact that (a) whilst, it was correct that, in the schedule of rates, the appellant company quoted the total price of €51.63 for items 1 and 2, yet in para. 3 of the the tender form the appellant company quoted the rate per tonne of €45.73 in respect of item 1 and the rate per tonne of €5.90 in respect of item 2, (b) the evaluation board noted this discrepancy in the rates quoted by the appellant company in its schedule of rates and in its 'tender form' and sought guidance from the Departmental Contracts Committee (DCC) and the latter advised, in writing, that, in such a case, the rates quoted in the 'tender form' should prevail and (c) that explained why the prices that, eventually, featured in the notice of award issued on 15th November 2012 were those indicated in the appellant company's 'tender form';
- having also considered the recommended tenderer's reference to the fact that, (a) in this case the discrepancy between the rates in the 'Schedule of Rates' and in the 'tender form' did not arise from any arithmetical error but the discrepancy resulted because, in its tender submission, the appellant company, effectively, quoted two different rates in respect of item 1, namely €9.15 per tonne in the 'schedule of rates' and €45.73 per tonne in the 'tender form', (b) therefore, the provisions of section 4.5 of the tender document did not apply in this case, (c) it had always been held that the 'tender form' prevailed over any other signed declarations / documents found in any other part of the tender submission so much so that the tenderer was bound by what was declared in the 'tender form', (d) tenderers could have offered more than one rate, namely different options, provided that a separate 'tender form' had to be filled in for each option, (e) clause 1.2.7 provided that failure to submit the 'tender form', complete in all respects, would disqualify the bid and (f) no rectifications were allowed to the 'tender form',

reached the following conclusions, namely:

1. The Public Contracts Review Board (a) observes that (1) clause 4.5.1 (b) provided, among other things, that *'Where there is a discrepancy between a unit rate/price and the total amount derived from the multiplication of the unit rates/price and the quantity, the unit rates/price as quote shall prevail* and (2) clause 4.5.2 provided, among other things, that *'The amount stated in the Tender shall be adjusted by the evaluation committee in the event of error, and the tenderer shall be bound by that adjusted amount'* (b) agrees with the recommended tenderer's argument wherein it was stated that, in this case, the discrepancy between the rates in the 'Schedule of Rates' and in the 'tender form'

did not arise from any arithmetical error but the discrepancy resulted because, in its tender submission, the appellant company, effectively, quoted two different rates in respect of item 1, namely €9.15 per tonne in the 'schedule of rates' and €45.73 per tonne in the 'tender form' and, as a consequence, in this particular instance, the provisions of section 4.5 of the tender document did not apply.

2. The Public Contracts Review Board also concurs with the recommended tenderer's viewpoint in respect of the fact that it had always been held that the 'tender form' prevailed over any other signed declarations / documents found in any other part of the tender submission so much so that the tenderer was bound by what was declared in the 'tender form'.
3. This Board has also taken full cognisance of the fact that clause 1.2.7 provided that failure to submit the 'tender form', complete in all respects, would disqualify the bid and that no rectifications were allowed to the 'tender form'.

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

Alfred R Triganza
Chairman

Joseph Croker
Member

Carmel Esposito
Member

6 February 2013