

PUBLIC CONTRACTS REVIEW BOARD

Case No. 570

QMS/U/6/10

Tender for the Supply of Winter Trousers to the Malta Police Department.

The tender was published on the 28th January 2011. The closing date was the 23rd March 2011. The estimated value of the Tender was €67,000 (Exclusive of VAT).

Six (6) bidders submitted their offers.

On the 7th February 2013 Astor Company Limited filed an objection against the award of the tender to Indesign (Malta) Limited.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Richard A. Matrenza as members convened a hearing on Thursday 25th July 2013 to discuss the appeal.

Present for the hearing:

Astor Co. Limited - Appellant

Mr Jeffrey Calleja Representative

Indesign (Malta) Limited – Recommended Bidder

Dr Isabel Bharwani Scicluna Legal representative
Ms Samantha J. Reed Representative

Malta Police Department – Contracting Authority

Supt. Dr Mario Spiteri Chairman Evaluation Board
Insp. A. Cassar Secretary Evaluation Board
P.S. 4 A. Bellia Member Evaluation Board
Mr Martin Debono Member Evaluation Board
Mr George Cutajar Representative

After a brief introduction, the Chairman invited the appellant to give the reasons behind his objection.

Mr Jeffrey Calleja on behalf of the appellants stated that the objection is based on seven points:

1. Validity period of the tender has been exceeded well by the 150 day period, and bidders had not been asked to extend their validity period. Thus he contended that the tender has been rendered null and void and should be cancelled.
2. That since the issue of the tender, government has issued legislation to ensure green procurement. The present tender having been issued before this legislation would, if awarded have the trousers not being compliant with the new regulations regarding Green Procurement.
3. Claims that while appellants' bid for item two was declared non-compliant when the material was tested in 2011, the preferred bidder's tests on the material to be used for item two was performed more than a year later, therefore using different chemical reagents.
4. Contends that the material used in preferred bidder's bid was not compliant since in his opinion the weave was not as per specifications. There was a refusal on the contracting authority's part to allow appellant to test the weave submitted by the preferred bidder, and no laboratory testing was done on the weave.
5. Claimed that preferred bidder has no experience to supply the required trousers, and it was one of the conditions of the tender to show this experience.

The Chairman at this point asked for Mr Jeffrey Calleja what was his relationship with Yorkie Clothing as it is evident that he has an interest in both companies and both companies have bid for the same tender. This is usually not allowed. Mr Calleja stated that he is a Director and shareholder with Astor Company Limited and he is a Director of Yorkie Clothing Limited. He claimed that the same firm could bid twice in the same tender.

Supt Dr Mario Spiteri stated that:

1. Regarding the first point raised by appellant, that the 150 day period is there for the safeguarding the interests of the bidders themselves. The tender is not rendered null if it is exceeded. In any case, when the tender was going to be awarded to the present appellant, before the first appeal, the same 150 day period had lapsed and appellant had not objected.
2. The samples from Indesign (Malta) Limited could not have been sent at the same time as those from appellants, because Indesign's could only be sent for analysis following its reinstatement through the PCRБ's first decision.
3. The contracting authority has to rely on the expert advice given, in this case the MCCA Laboratory. Tender specifications are passed on to the Laboratory and the adjudication board has to stand by the results obtained from the laboratory.
4. It is definitely not done to give third parties samples of material submitted by other bidders.

Mr George Cutajar from the National Laboratory, when asked by the PCRБ, explained that samples are tested according to recognised standards, that is, as per BS Standard, EN standard or ISO standard. Samples are registered and then the same procedures and chemicals are used to analyse all the samples. The same methods are used for all samples

and it is ensured that the chemicals used are not expired. Samples are assigned numbers and during the tests reference is only made to these numbers. Tests are made under controlled conditions and using controlled reagents. The Laboratory has a quality system in place and the same procedures are used for all samples. Appellant's claim that chemicals used to test his material had been contaminated was definitely refuted. He stated that no tests regarding type of weave were done on the samples.

Mr Martin Debono on behalf of the Police Department explained that when samples are submitted for sampling, the laboratory is not told the provenance of the samples, just the sample number.

Mr Jeffrey Calleja insists that weave tests were not done and that preferred bidder's material was not compliant. Alleges that ten years ago he had done tests and it resulted that there had been some contamination.

Dr Isabel Bharwani-Scicluna on behalf of the preferred bidder submitted a letter of reply to the letter of objection.

Supt Dr Mario Spiteri on behalf of the contracting authority continued that the adjudication board examined and found that Indesign's bid was compliant and that there are safeguards in place to ensure that it is not in default in the delivery of the trousers.

At this point the hearing was brought to a close.

This Board,

Having noted the Appellant's objection, in terms of 'Reasoned Letter of Objection' dated 7th February 2013 and also through the Appellant's verbal submissions during the hearing held on 25th July 2013, had objected to the decision taken by the pertinent Authority in that:

- a) Bidders were not asked to extend their bid beyond the '150 day period'.**
- b) The material being proposed in the preferred tender does not fall in line with the new regulations regarding 'Green Procurement'.**
- c) Laboratory tests were not carried out at the same period of time.**
- d) No clinical tests were performed on the actual material being used by bidders.**
- e) Preferred bidders had no previous experience.**

Having considered the Contracting Authority's submissions through the verbal submissions presented by same during the hearing held on 25th July 2013:

- i) That the '150 day period' issue does not render the tender 'Null and Void'.**
- ii) That samples for testing could not be sent at the same time due to the fact that the preferred bidder's offer could only be tested after the latter's reintegration in the tendering process.**
- iii) That the Contracting Authority (as is normal) had to rely on expert advice.**
- iv) That the Contracting Authority's adjudication board examined in detail the Preferred Bidder's offer and concluded the offer submitted by Indesign**

(Malta) Limited to be fully compliant and that enough safeguards were taken to ensure delivery of goods.

Having considered also the verbal submissions made by the National Laboratory during the hearing held on the 25th July 2013:

- I) That all tests carried out at the National Laboratory are in accordance with BS standards.**
- II) That same method of Testing is carried out on all samples.**
- III) That all tests are carried out under controlled conditions.**
- IV) That there were no cases of contamination.**

Reached the following conclusions:

- 1. Reliable tests were carried out by the National Laboratory on the material included in Tender.**
- 2. The Preferred Bidder's offer was fully compliant.**

In view of the above, this Board finds against the Appellant Company and recommends that the deposit paid by the Appellant should not be reimbursed.

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Richard A. Matrenza
Member

13th August 2013