

PUBLIC CONTRACTS REVIEW BOARD

Case No. 585

WSC/T/80/2012

Tender for the Provision of Cesspit Emptying Services.

The tender was published on the 18th September 2012. The closing date was the 17th October 2012.

The estimated value of the Tender was €80,853 (Exclusive of VAT).

Five (5) bidders had submitted their offers.

On the 4th March 2013, Messrs Jason Mangion filed an objection against a decision by the contracting authority, Water Services Corporation, to award the tender to Messrs William Bugeja.

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 Tuesday 3rd September 2013 to discuss the appeal.

Present for the hearing:

Messrs Jason Mangion – Appellant

Mr Jason Mangion	Representative
Dr Bernard Grech	Legal Representative

Messrs William Bugeja – Recommended Bidder

Dr Victor Scerri	Legal Representative
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Water Services Corporation – Contracting Authority

Mr Anthony Camilleri	Secretary Evaluation Board
Ing Charles Camilleri	Member Evaluation Board
Mr Jonathan Scerri	Representative

After making a brief introduction, the Chairman invited the appellant to make his submissions.

Dr Bernard Grech on behalf of the appellant stated that according to Clause 19.1 of the tender document, this tender had to be awarded to the cheapest bidder. Appellant's bid was discarded because *"Your offer was not the cheapest bid"*. There were no other reasons given for the rejection of his bid. The price for the consideration of this tender was to be that shown in the schedule.

When filling in his tender offer, appellant made a multiplication error when compiling the total of his bid, and this led to his bid showing a greater amount in the total. Appellant is aware that this fact was brought to the knowledge of the evaluation board chose differently. However the evaluation board was not in order when deciding to do this because Clause 17.2 of the tender document states clearly that in case of inconsistency between the unit price and the total, the unit price of the bid should prevail. The wording is clear in that it specifies "shall," therefore this was not an optional choice for the evaluation board but a mandatory one. He contended that appellant's unit rate bid was the cheapest, so therefore the tender should have been awarded to him.

The Chairman, at this point said that it was obvious that a mathematical error had been made. One just had to multiply the unit rate with the volume in cubic meters to obtain the amount, and asked the contracting authority if this fact was discussed by the evaluation board. The contracting authority was also asked if any reply was given to the appellant, following his email dated the 18th October 2012, wherein he explained the mathematical error.

Mr Anthony Camilleri, Secretary to the Evaluation board did not reply to the first question and to the second one he replied that just an acknowledgement had been sent. He also stated that appellant's offer was technically compliant.

At this stage, the hearing was brought to a close.

This Board,

Having noted the Appellant's objection in terms of 'Reasoned Letter of Objection' dated 4th March 2013, had objected to the decision taken by the pertinent Authority, in that:

- a) **The Appellant's bid was rejected by the Contracting Authority for not being the cheapest.**
- b) **The Appellant's bid had a very simple and clear mathematical error in multiplying the Unit price by the quantity. In fact the Unit price quoted by the Appellant was the cheapest.**
- c) **The Evaluation Board of the Contracting Authority was made aware of this mistake and informed accordingly by the Appellant.**

Having considered the Contracting Authority's verbal submissions presented by same during the hearing held on the 3rd September 2013, in that:

- a) **The Contracting Authority confirmed that the Evaluation Board was notified of this error by the Appellant.**
- b) **The Contracting Authority confirmed that no reply was sent to the Appellant except for an acknowledgement.**
- c) **The Contracting Authority could not confirm that, whether during the Evaluation stage the Board took notice of the error.**
- d) **The Contracting Authority confirmed that the Appellant's bid was technically compliant.**

Reached the following conclusions:

- 1. **It was obvious that a clear mathematical mistake was made by the Appellant. Although the Evaluation Board could have easily noticed that an error in multiplying the Unit Price with the quantity.**
- 2. **The Evaluation Board were notified of the error in the Appellant's bid and no action was taken by the Board.**
- 3. **The Unit price quoted by the Appellant was the cheapest.**
- 4. **The Appellant's bid was administratively and technically compliant.**

In view of the above, this Board finds in favour of the Appellant and recommends that the tender be awarded to the Appellant and also recommends that the deposit paid by the Appellant should be reimbursed.

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Richard A. Matrenza
Member

12 September 2013