

PUBLIC CONTRACTS REVIEW BOARD

Case No. 592

WSM 372/12

Period Contract for the Loading and Export of Asbestos Waste from Civic Amenity Sites found in Malta and Gozo.

The tender was published on the 23rd November 2012 with a closing date of the 1st February 2013.

The estimated value of the Tender was €119,560 (exclusive of VAT).

Three (3) bidders submitted their offers.

PT Matic Environmental Services Limited filed an objection on the 3rd July 2013 against a decision of WasteServ Malta Limited to recommend the award of the Tender to ISTS Limited For the price of €80,839.22, exclusive of VAT.

Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Richard A. Matrenza as members convened a meeting on Thursday 19th September 2013 to discuss the appeal.

Present:

PT Matic Environmental Services Limited – Appellants

Dr Katya Mercieca	Legal Representative
Mr Derek Broadley	Representative
Ing. Oliver Fenech	Representative

ISTS Limited - Recommended Tenderer

No representative

WasteServ Malta - Contracting Authority

Dr Victor Scerri	Legal Representative
Ms Daniela Grech	Chairperson Evaluation Board

The Chairman made a brief introduction and the appellant company's representative was invited to explain the motives of the firm's objection.

Dr Katya Mercieca on behalf of the appellant said that there were three main grounds on which this appeal was based:

1. It was a tender requirement that vehicles used in this tender had to be Euro IV compliant, vide addendum WSM 101/2012 dated 12th December 2012. The vehicle offered by the preferred bidder, GBF 396, was registered in March 1996 and therefore was not Euro IV compliant. Thus the preferred bidder's offer was not as per specifications and not compliant.
2. Mr Derek Broadley on behalf of appellant stated that it was also a requirement of the tender document that the specific vehicles to be used had to be covered by a waste-carriage permit, that was specific to the vehicle. The preferred bidder could not submit proof and are not in a position to provide proof that their vehicle carried a waste-carriage permit and their bid was thus non-compliant.
3. The tender document specified that the successful tenderer should provide the service within one week from the issue of the order to start work. Appellants have it from MEPA records that the preferred bidder does not have a current live notification for the export of ACM, as they did not pay the relevant fees. Appellants contend that from the date of application for such a MEPA notification to the issue of authorisation requires a process that takes about sixteen weeks. In this case the preferred bidder would not be able to provide the service within one week as demanded in the tender.

Daniela Grech, Chairperson of the evaluation board, on behalf of the contracting authority stated that bidders could declare, as the preferred bidder did, that he would obtain the export permit within three months. The one week term mentioned in the tender document would start to count from the date when the permit was obtained. Regarding the first point raised by appellant she stated that the preferred bidder was going to use a third party vehicle. He is going to sub-contract this process and the vehicle the evaluation board compared during evaluation was a different one from that mentioned by the appellant. This other vehicle was manufactured in 2006. A clarification from preferred bidder confirmed that the vehicle to be used was Euro IV compliant. The evaluation board did not check directly with the competent authority but relied on the confirmation supplied by the preferred bidder. The log book of this vehicle was submitted with the tender.

The Chairman said that ideally, the evaluation board should check with the authorities themselves and not to rely on clarifications submitted by bidders.

Dr Victor Scerri, for the contracting authority stated that the officer in charge would check, later on when the service was being provided, that the awarded contractor's vehicle was Euro IV compliant, and if it were not, take the necessary remedial action.

DR Katya Mercieca for appellants said that the other vehicle for which the log book has been provided, LHQ 068 is not covered by a permit to transport waste and contends that the tender

should have insisted on the submission of relevant certification regarding the Euro IV compliancy, and not rely on clarifications from bidders.

Dr Victor Scerri for the contracting authority stated that the contract has to be carried out using a Euro IV vehicle. Any such vehicle and not a specific one as long as the vehicle used is Euro IV. The contractor may obtain other vehicles during the term of the contract, provided that these were Euro IV compliant. Otherwise, a contractor whose vehicle became unusable during the contract term would lose the contract.

The Chairman, Public Contracts Review Board asked the contracting authority if any checking was made whether the vehicles were Euro IV compliant.

Ms Daniela Grech, chairperson of the evaluation board explained that the evaluation board just checked the date of manufacture of the submitted vehicle which as stated earlier was 2006.

Dr Katya Mercieca on behalf of the appellant said that Article 7.5.1 of the tender document stated that all vehicles used in the tender have to be Euro IV compliant, and proof of this was to be submitted with the tender offer.

Ms Daniela Grech for the contracting authority said that the evaluation board had received a log book for a vehicle and a waste-carriage permit, but this permit was issued for another different vehicle. Replying to a question by the Chairman, Ms Grech affirmed that appellant's bid was both administratively and technically compliant. The waste carrier permit could be checked with MEPA while Euro Grading could be checked with Transport Malta.

The hearing was brought to an end at this point.

This Board,

Having noted the Appellant's objection , in terms of the 'Reasoned Letter of Objection' dated 3rd July 2013 and also through the Appellant's verbal submissions during the hearing held on 19th September 2013, had objected to the decision taken by the Pertinent Authority, in that:

- a) The Tender document included a mandatory requirement in that the vehicles to be used by the tenderer had to be EUR O (iv) compliant.**
- b) There was also a mandatory requirement in the tender document, that the vehicles to be used by the tenderer in the execution of the tender itself had to have a 'Waste Carriage Permit'.**
- c) Another condition in the tender document was that the successful bidder was to provide the required services within one week from the issue of 'commencement of Works' by the Contracting Authority.**

Having considered the Contracting Authority's verbal submissions presented by same during the hearing held on 19th September 2013, in that:

- a) Bidders were allowed to declare that the export permit would be obtained within three months.
- b) The Preferred Bidder stated that he was going to use a third party vehicle.
- c) The Contracting Authority would later on check that the vehicle to be utilised for the services required in the tender document that these are classified as EURO (iv) compliant.
- d) The Evaluation Board of the Contracting Authority referred to a log book and a 'waste carriage permit) which referred to a different vehicle.

Reached the following conclusions:

1. This Board noted the sensitive type of waste. Asbestos has long been proved to create health hazards. In this regard, the chosen bidder must have all the necessary experience and precautions in handling this type of waste.
2. It was of the utmost importance that the Evaluation Board of the Contracting Authority carries out all all possible verifications with regards to the classification of vehicles to be used . This had to be done by confirmation from the Compitent Authority.
3. This Board also notes that the Evaluation Board did not carry out due diligence and necessary confirmations regarding:
 - i) The Classification of the vehicles – whether same conforms to EURO(v) requirement.
 - ii) Whether the vehicles to be utilised had the necessary permit to transfer such waste.
4. The Appellant's Bid was administratively and technically compliant.

In view of the above, this Board finds in favour of the Appellant Company and recommends the following:

- i) The Appellant should be reintegrated in the Evaluation process.
- ii) The deposit paid by the Appellant to be fully reimbursed.
- iii) On the other hand, the Contracting Authority's Evaluation Board should verify from direct sources that the Preferred Bidder would have all the necessary experience and permits as laid out in the tender document.

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Richard A. Matrenza
Member

8 October 2013