

PUBLIC CONTRACTS REVIEW BOARD

Case No. 603

WSD/4/2013/18

Cottonera Dock No. 1 Project: Tender for the Supply and Delivery of Various Types of Ready Mix Concrete.

The tender was published on the 17th May 2013. The closing date was the 31st May 2013.

The estimated value of the Tender was €56,796.61 (Excluding VAT)

Six (6) bids were submitted for this tender.

On the 4th July 2013, Rockcut Limited filed an objection against the rejection of its bid as being administratively non compliant and the award of the tender to Mangion Bros 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 3rd October 2013 to discuss the appeal.

Present for the hearing:

Rockcut Limited - Appellant

Mr Rhys Buttigieg

Representative

Works and Services Department - Contracting Authority

Mr Anton Camilleri

Chairman Evaluation Board

Mr Oliver Debono

Member Evaluation Board

The Chairman made a brief introduction and asked the appellant's representative to make his submissions on the objection.

Mr Rhys Buttigieg on behalf of the appellant stated that appellant's bid was the cheapest but was disqualified on two administrative criteria, Clause 8.3.2a not submitted and Clause 8.3.2c. Regards the first point he explained that the contracting authority had asked for certificate for the source of supply of the concrete. This was something new, no such certificates were demanded in previous tenders. In its bid the appellant filled in Document A which identified the appellant as the bidder; document B which declared that this was not a joint venture; and Document C, which asked if bidder was making any sub-contracting which was not applicable. All these three documents were signed and produced with the offer. Mr Buttigieg asked that if the intention behind the production of the certificate was the source, was this not explained in the tender bid itself? It was obvious that the bidder could not issue a certificate in its own name.

The Chairman explained that if a tender document asked for a certificate, then this had to be produced. Otherwise, if in doubt, the bidders could ask for clarification.

Mr Ryhs Buttigieg continued on the second criterion. The contracting authority had asked for two additives, and wanted certification that these two separate additives did not react adversely with each other. The contracting authority claimed that we offered a combined additive. However in the tender document only a small box indicated that the contracting authority wanted two separate additives

Architect Anton Camilleri, Chairman Evaluation Board said that the certificate in question was just to identify the source of the concrete to be provided by the bidder. If appellant was going to use concrete which it mixed itself, it just had to state this in the tender document. However the appellant's offer did not state this fact, no information as to the source of the concrete was given. This information is requested so that the contracting authority could verify and check. It is a known fact that Rockcut uses its own concrete mixes, but unless this was specifically stated, Rockcut could obtain supplies from other producers. In case of difficulties, then it would not be possible to act against the company if and when things go wrong. It is assumed that since appellant filed an objection that his bid was better than that of the preferred bidder but the evaluation board did not go into the appellant's financial offer because the bid had been disqualified as being administratively non compliant.

Architect Anton Camilleri continued to explain that certain additives are added to concrete for several reasons. These could be retardants, slowing down the curing process; accelerators to hasten the process and others. One of these additives is the plasticizer. This ensures that the mix is more liquid, and cannot be substituted by adding water instead. There is another product, the retardant that enables the concrete to take longer to cure. The contracting authority wanted these two additives to be separate allowing the use of one without the other and vice versa according to the specific needs of the job being tackled. However, when both are used in the same mix the contracting authority wanted to ensure that the mixing of the two additives together would not cause a reaction between them. This was the documentation that was required. The contracting authority must have the faculty of choosing whether to use one or the other additive or both together when necessary. Appellant offered a mix with both plasticizer and retardant. The tender was specific in that the additives had to be separate.

Mr Rhys Buttigieg stated that there was nowhere in the tender documents that asked for separate additives. Contended that the product he offered is better because the plasticizer makes the mix better.

Architect Anton Camilleri for the contracting authority reiterated that the contracting authority wanted quotes for both admixtures, but it wanted them separately. The mixture containing both additives was not necessarily better. That was why the tender asked for two products separately. Unfortunately the present system does not allow for the direct communication between the evaluators and the bidders.

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

This Board,

Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 4th July 2013 and also through the Appellant's verbal submissions during the hearing held on 3rd October 2013, had objected to the decision taken by the pertinent Authority, in that:

- a) The Appellant's Bid was the cheapest.**
- b) The Contracting Authority requested a certificate confirming the source of supply. In this regard the Appellant is claiming that this requisite was never asked before in previous tenders.**
- c) The Contracting Authority claimed that the Appellant's Bid offered a combined additive and not a separate component of concrete additive.**
- d) There was nowhere in the tender document that specified the requirement for separate additives.**

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

- a) The certificate required by the Evaluation Board had a very valid purpose and that was to identify the source from where the concrete was being obtained by the bidder.**
- b) There were valid technical reasons why the Evaluation Board asked for separate specifications details of the additives to be applied.**
- c) A mixture of both additives does not permit the Evaluation Board to assess the validity of the tender specifications.**

Reached the following conclusions:

From submissions made by the Technical Experts of the Evaluation Board, it is evidently clear that the technical information required by the Evaluation Board regarding the components of the additives contained in the concrete of the supply by

the bidder , was of the most technically aspect of the tender.

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

29 November 2013