

PUBLIC CONTRACTS REVIEW BOARD

Case No. 613

FTS/45/13

Tender for the Supply and Installation of Extra Low Voltage Systems at the Child Care Centre at Gzira.

The tender was published on the 23rd July 2013. The closing date was the 12th August 2013.

The estimated value of the Tender was €21,758.47 (Exclusive of VAT).

Two (2) bidders had submitted an offer.

On the 28th August 2013, Alberta Fire & Security Equipment Limited filed an objection against the rejection of their bid as being administratively non-compliant, and against the decision to cancel the tender.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancillieri as members convened a hearing on Tuesday 15th October 2013 to discuss the appeal.

Present for the hearing:

Alberta Fire & Security Equipment Limited - Appellant

Mr Silvan Ellul	Representative
Dr Damian Degiorgio	Legal Representative

Foundation for Tomorrow's Schools - Contracting Authority

Mr Christopher Pullicino	Chairman Evaluation Board
Mr Andrew Ellul	Member Evaluation Board
Engineer Vincent Rapa	Member Evaluation Board
Mr Ivan Zammit	Member Evaluation Board
Mr Albert Ellul	Representative

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

Dr Damian Degiorgio on behalf of the appellant said that his client's bid was discarded as being administratively non-compliant for two reasons. The first reason was that appellant's bid, in a covering letter, went against the requirement of the tender document Bill of Quantity that bids should be inclusive of VAT. He contended that since the column headers of the Bill of Quantity there is clearly indicated that "Inclusive of VAT" therefore there is no conflict with what was written in appellant's covering letter. This letter stated that unless specified, VAT is not applicable. The second reason for disqualification stated that the appellant's offer made some reservation about the rates quoted, reserving the right to change the rates. Dr Damian Degiorgio affirmed that the rates quoted are fixed, and will not be changed unless the quantities are altered. The tender itself allows for variations and definition of these variations is "any increase or decrease in the quantities of works". Therefore the bid will vary according to the quantity of works. The value of the works will alter, not the rates, if the quantities are altered.

Mr Ivan Zammit on behalf of the Contracting Authority said that in public procurement tenders it is not acceptable for bidders to make conditions regarding their offers. In appellant's bid, for example at page four (4) of the letter enclosed with the tender, it is stated that "price is subject to import duties fluctuations", this is clearly a conditioned bid.

Dr Degiorgio explained that in the present case, as all the items would be obtained from the European Union, there would be no import duty.

The Chairman remarked that evaluation boards have to adjudicate bids on what the tenderers themselves submit and could not see why this condition about import duties was included.

Mr Christopher Pullicino on behalf of the Contracting Authority stated that were several other conditions made in appellant's bid. Tender was issued as inclusive of all charges. But appellant's offer excluded several items that were excluded from the offer. He particularly referred to page 5 of the appellant's offer, which includes a list of items were excluded from the bid.

Mr Silvan Ellul stated that these items were not considered necessary for the work appellant tendered for.

The Chairman remarked that some items on the list were considered necessary for the project citing for example a generator for electrical back-up. Appellant seems to consider that if such a generator had to be used, then the contracting authority had to pay extra for it. Thus it appears that bid was asking for additional expenses not included in the offer. Appellant had sufficient expertise to know what equipment would be required to carry out the works.

The hearing was here brought to a close.

This Board,

Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 28th August 2013 and also through the Appellant's verbal submissions during the hearing held on 15th October 2013 had objected to the decision taken by the pertinent Authority, in that:

- a) The Appellant's offer was considered by the Evaluation Board as being 'administratively non compliant' due to the fact that the Bid price was not stated as inclusive of VAT. In this regard the Appellant also stated that" unless specified VAT is not applicable".**
- b) The Appellant's Bid allowed for variations in that the quoted rates were fixed h however the tender value depended on the quantity of units of works to be carried out.**

Having considered the Contracting Authority's verbal submissions during the hearing held on 15th October 2013, in that:

- a) The Appellant's offer was specifically conditional in that the Bid price was not all inclusive.**
- b) In Fact the Appellant listed down the charges that may be incurred and charged to the Contracting Authority apart from the tendered price.**

Reached the following conclusions:

- 1. From submissions heard, this Board established that:**
 - i) The price quoted by the Appellant was somewhat confusing in that, all tendered prices had to be VAT inclusive. The Covering letter sent by the Appellant clearly stated that "unless specified, VAT is not applicable". Obviously, this declaration in itself confuses the interpretation of the quoted bid price.**
 - ii) The Appellant's offer was not all inclusive. It did not cater for contingencies, such as hiring of other equipment or apparatus in case of emergency situations, so that the works as specified in the tender can proceed as programmed in the tender conditions.**
- 2. The Evaluation Board of any Contracting Authority adjudicates offers, bids and tenders on information submitted in the tender document. In this respect, the Evaluation Board were correct in assessing the Appellant's offer as being 'administratively non 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. Lawrence Ancillieri
Member

20 November 2013