

PUBLIC CONTRACTS REVIEW BOARD

Case No. 618

WSD 4/2013/33

Tender for the Cleaning, Reinstatement and Restoration Works to Historical Dock Head, Cottonera Dock No1 Project.

The tender was published on the 16th July 2013. The closing date was the 30th July 2013.

The estimated value of the Tender was €79,026.57 (Exclusive of VAT).

Four (4) bidders had submitted an offer.

On the 20th September 2013, MaCri Joint Venture, filed an objection against the cancellation of 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 22nd October 2013 to discuss the appeal.

Present for the hearing:

MaCri Joint Venture - Appellant

Mr Marzio Capece Minutolo del Sasso	Representative
Ms Josephine Casabene	Representative

Works and Services Department - Contracting Authority

Mr Anton Camilleri	Chairman Evaluation Board
Vincent Centorino	Member Evaluation Board

After making a brief introduction the appellant's representative was invited to make submissions about the objection.

Ms Josephine Casabene on behalf of the appellant Joint Venture stated that appellant was not in fact informed of the outcome of the tender procedure as the letter was not sent to appellant but to another firm, CM Costruzioni Srl., this was just a partner in the Joint Venture and not the bidder. Contended that appellant Joint Venture was not informed that the tender had been cancelled. However appellants were informed by CM Costruzioni Srl and filed the letter of objection.

Ms Casabene continued that appellant had participated in the tender with two options, one, Option A, was discarded as being technically non-compliant. Appellant agreed with this decision and was not contesting it. The other Option B on the other hand was compliant but was discarded because the offer exceeded the financial resources available, was beyond the budget. Appellant's Option B was fully compliant.

The Chairman explained that the appellant's offer for Option B was much higher than the budgeted amount. The budget for the project was half the amount stated in appellant's offer.

Ms Josephine Casabene stated that therefore there could be bases for negotiations since in its offer appellant included many items that were not in the Bill of Quantity. For example she cited that around €14,000 were for day works and could be excluded from the final price.

Mr Marzio Capece Minutolo del Sasso on behalf of the appellant asked if there was any way to reach a negotiated agreement on the price.

Architect Anton Camilleri on behalf of appellant said that negotiated procedures are only possible with Department of Contract tenders. He suggested that when the tender is re-issued, appellant can keep the present one in mind before submitting offers for the new tender.

The hearing was at this point brought to a close.

This Board,

Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 20th September 2013 and also through the verbal submissions presented by same during the hearing held on 22nd October 2013, in that:

- a) The Appellant was not made aware of the outcome of the tender as the Contracting Authority's relevant correspondence was sent to a third party.**
- b) The Appellant's bid under option B was fully compliant.**
- c) The Appellant through a third party was informed that his bid was well over the budgeted funds allocated for this particular tender.**
- d) The Appellant also enquired whether at this stage, the Appellant's Bid price can be negotiated.**

Having considered the Contracting Authority's verbal submissions presented by same during the hearing held on 22nd October 2013, in that:

- a) Although the Appellant's bid under option B was fully compliant, the bid price by far exceeded the budgeted allocated amount.**
- b) The Contracting Authority was in duty bound to abide by the budgeted value of the Tender's financial parameters.**
- c) The Appellant's bid was 80% higher than the allocated funds.**

Reached the following conclusions:

- 1. Since the variance in price between the Appellant's bid and the allocated funds was well beyond a reasonable proportion, the Contracting Authority, diligently, followed the correct procedure in advocating a re issue of the tender.**
- 2. This Board also recommends that some form of indicative budgeted figures be made available to prospective tenderers. So that the prospective tenderer is made aware of the magnitude of the tender prior to submission of same.**

In view of the above, This Board finds against the Appellant, however due to circumstances this same Board recommends that the deposit paid by the Appellant be reimbursed.

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Lawrence Ancillieri
Member

29 October 2013