

PUBLIC CONTRACTS REVIEW BOARD

Case No. 619

PARK 20/2013/1

Tender for the Design, Supply, Installation, Testing, Commissioning and Certification of a Grid-Connection Photovoltaic System at the Oenology & Viticulture Research Centre, Buskett.

The tender was published on the 3rd September 2013. The closing date was the 13th September 2013. The estimated value of the Tender was €45,305 (Exclusive of VAT).

Six (6) bidders had submitted an offer.

On the 7th October 2013, Clinton Electrical & Mechanical Installations filed an objection against the rejection of its bid and the award of the tender to ECO Group Limited.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a hearing on Thursday 24th October 2013 to discuss the appeal.

Present for the hearing:

Clinton Electrical & Mechanical Installations – Appellant

Mr Clinton Zammit
Dr Victor Refalo

Representative
Legal Representative

ECO Group Limited - Recommended Bidder

Mr Louis Borg

Representative

PARK Department - Contracting Authority

Mr Herman Galea
Ms Therese Zammit
Mr Emanuel Board
Ms Charmaine Debono Fenech
Mr Eman Portelli
Mr Redeemer Axisa
Dr Abigail Caruana

Chairman, Evaluation Board
Secretary
Member, Evaluation Board
Member, Evaluation Board
Member, Evaluation Board
Representative
Legal Representative

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

Dr Victor Refalo on behalf of the appellant referred to the letter of objection for the reasons of the objection and wanted to clear some points. Following the submission of the tender by his client, the contracting authority asked the appellant twice for clarifications. The first one on the 17th September was regularly sent, and gave appellant two days within which to reply. Appellant complied and submitted the requested documents. On the 20th September, his client received another notice which contained another request asking him to submit documents in terms of Clause 8.5.4.10.1 of the tender document. The tender document specified which documents were to be submitted and these latter requested documents were not included. He contended that if these documents were relevant they should have been requested under Clause 1.2.8 or in Clause 8.3. Clause 8.3 refers bidders to Clause 1.2.8 when asking which documents to enclose. Clause 4.4.1 stated that the evaluation board shall upon payment of a fine, request rectification within two working days from notification. However in the present case his client was only given a few hours to reply because the 21st September was a public holiday and the following day was a Sunday. The relevant email was received by client on Friday, the 20th September 2013 at 18.00, that is, the close of business of the week. Furthermore, Dr Refalo continued, the appellant's offer was, as explained in the letter of objection, fully compliant. The requested schematics were had already been submitted, while the declaration signed by a structural engineer, had already been explained by appellant in his bid. That all the equipment eventually supplied by appellant would be certified by the overseas manufacturer. Had appellant been given sufficient time, probably he would have complied and produced the requested certification.

Dr Abigail Caruana on behalf of the contracting authority said that the evaluation board asked appellant to rectify his bid in the first communication. Tender document required, Clause 1.2 certain documentation that was to be submitted with the tender. During evaluation, it was discovered that appellant had not submitted all the necessary documents. He did not provide 1. a signed and approved structural plan for the three separate arrays, and 2, the single line electrical diagram including safety equipment. Since Clause 2.1.5 allowed for rectification, appellant was asked to rectify his omission. Appellant complied and submitted the requested documents within the two days, and was thus compliant up to a point. However appellant was not totally compliant because according to Clause 1.2.8 the documents had to contain certain information. Submitted documents did not contain a signed and approved structural plan. According to tender general conditions Clause 8.5.4.10.1 stated that "*bidders shall submit signed drawings together with a declaration from a warranted structural engineer that the designs for the three separate structures together with their respective fixation and ballast shall withstand without any damage a wind of 200 km/hr (55m/s) or Force 12.*", contends therefore that the submission had to be certified by a structural engineer. The second document, that is, the electrical single line diagram, including safety equipment according to tender document, had to have "*surge protection shall be provided for both DC and AC circuits....data should be provided, as proof of such protection and clearly indicated in the electrical schematic.*" This schematic is the single line diagram. The documents submitted by the appellant following the rectification did not contain these requisites. A structural diagram was submitted but this, although it carried a signature, did not specify that this signature was of a warranted structural engineer.

The Chairman remarked that when one is compiling a tender one should be careful in

following to the letter what is asked. If any doubts arise, then the bidder is to ask for clarification. The tender document clearly specified that there had to be the signature of an engineer.

Dr Abigail Caruana stressed that appellant had signed the tenderer's declaration whereby he accepted without any reservations the contents of the tender document. Therefore he was aware that document should have been signed by a qualified structural engineer.

On being asked by the Chairman why his client did not submit these documents, Dr Victor Refalo replied that with the original bid, client submitted specification sheets from the manufacturer. Appellant thought that those had been sufficient for the case.

Dr Abigail Caruana explained that bidders had to submit a plan signed by an engineer, who, after the tender was awarded would be required to certify the completed structure. The appellant's bid also failed to produce the required guarantee.

Dr Victor Refalo stated that if this certification and signature was so important this should have been requested in the first clarification notice.

Dr Abigail Caruana stated that rectification could only be asked for under 1.2.8 only as was in fact done. It was up to bidder to see what the request made by the evaluation board meant. It was explained clearly to him and the information was requested in the tender document itself. The appellant was even asked to state whose signature appeared on his submitted plans.

The Chairman stated that tenderers have an obligation to fill tenders correctly and if problems are encountered, to ask for clarification.

Dr Victor Refalo finally contended that the wording of the tender document stated that the plans had to be signed and approved. The plans submitted by appellant were in fact approved by the manufacturer and signed by the appellant.

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

This Board,

Having noted the Appellant's objection by way of the 'Reasoned Letter of Objection' dated 7th October 2013 and also through the verbal submissions presented by same during the hearing held on 24th October 2013, had objected to the decision taken by the pertinent Authority, in that:

- a) The Appellant received a request for clarifications from the Contracting Authority on the 17th September 2013 and this was complied with by the Appellant. However on the 20th September 2013, the Appellant received another request for clarifications giving a deadline of two days for a reply. Due to the fact that the two day period included a public holiday, Appellant could not provide the necessary clarification.**

- b) The clarifications requested by the Evaluation Board in the second correspondence could have easily been included in the first request for clarifications.**
- c) The Appellant's offer was fully compliant.**
- d) The Appellant insisted that the equipment supplied by same would have been certificated by the manufacturers of the same equipment and this would have been sufficient.**

Having considered the Contracting Authority's verbal submissions presented by same during the hearing held on 24th October 2013, in that:

- a) Appellant did not submit the required information as specified in the tender document.**
- b) There had to be a certification by a structural engineer certifying the technical capabilities of the product being offered by the Bidder. And this was a mandatory condition.**
- c) The Appellant was aware that the mandatory documentation requested in the tender document was to be submitted.**
- d) The documentation not submitted by the Appellant in the tender document was highly pivotal during the evaluation stage of the tender.**

Reached the following conclusions:

- 1. The fact that for the second request by the Evaluation Board of the Contracting Authority had to abide by the time limit for which a reply to same had to be made does not rule out the responsibility on the Appellant to have given the requested clarified information when submitting the tender document in the first place.**
- 2. The appellant failed to submit the required complete information as specified in the tender document.**
- 3. If , on the other hand, the Appellant had any doubts regarding the submissions of additional schedules, clarifications and necessary certifications, he was in duty bound to ask for clarifications with the Contracting Authority , prior to submission of the tender document.**

In view of the above, This Board finds against the Appellant 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

29 October 2013