

PUBLIC CONTRACTS REVIEW BOARD

Case No. 624

P 4584/2011

Tender for the Supply and Installation of CCTV Surveillance Equipment at the Malta Police Department.

The tender was published on the 13th November 2012. The closing date was the 3rd January 2013.

The estimated value of the Tender was €90,000 (Inclusive of VAT).

Five (5) bidders had submitted an offer.

On the 6th September 2013, Firetech Limited filed an objection against the rejection of its offer as being non compliant.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a hearing on Tuesday 29th October 2013 to discuss the appeal.

Present for the Hearing:

Firetech Limited - Appellant

Mr Simon Camilleri	Representative
Mr Eder Catania	Representative
Dr Victor Axiak	Legal Representative

Alberta Limited - Preferred Bidder

Mr Duncan Barbaro Sant	Representative
Mr Karim Cassar	Representative

Malta Police Department - Contracting Authority

Inspector Pierre Minuti	Chairman Evaluation Board
Supt. Silvio Valletta	Secretary Evaluation Board
Mr Claudio Baldacchino	Member Evaluation Board
Mr Martin Debono	Member Evaluation Board
Mr Ismael Vassallo	Member Evaluation Board

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

Dr Victor Axiak on behalf of appellant Firetech Limited stated that appellant was mainly objecting to Clause 6.1.2 because this limited bidder's experience to three years, and to at least one per year. Appellant in fact made one delivery in 2010 and this was shown in the tender. In 2011 appellant made two deliveries. In 2009 appellant firm also made deliveries, but these were for some reason not submitted in the tender. However it must also be said that the appellant firm has vast experience in the field that it is unjust to base the evaluation of its offer on the three years 2009, 2010 and 2011. This decision moreover goes against the interests of the contracting authority itself. The contracting authority should examine if the bidders in fact have any experience in what the tender asks for and then should go for the cheapest offer.

Mr Martin Debono on behalf of the contracting authority said that the tender asked for a list of deliveries for the years 2009, 2010 and 2011. Appellant's bid submitted deliveries only for the years 2010 and 2011. Since the submission of three years' deliveries was mandatory appellant's bid was considered to be administratively non-compliant. The technical capacities of the appellant could thus not be assessed.

Mr Simon Camilleri Chief Executive at Firetech Limited the appellant said that his firm has been in this field since 1991 that is for twenty one years. He said that admittedly, the appellant's tender bid contained a mistake. The person compiling the tender misunderstood the specifications and thought that the deliveries had to be of specific installations. And for some reason considered that other types of installations the firm made in 2009 could not be submitted. Deliveries had been in fact made during 2009 but these were erroneously not submitted with the tender. It is not understood why adjudication was made solely on those three years when his firm has such vast experience.

Dr Victor Axiak for the appellant said that during the last three years, appellant had made three deliveries because it made one in 2010 and two during 2011. The contracting authority asked for at least three deliveries, but these had to have been made one a year.

The Chairman requested the Contracting authority to confirm that appellant's bid contained the information that three deliveries had been made during those three years.

Inspector Pierre Minute, the chairman of the evaluation board said that page 8 of the tender document stated in bold that "*the minimum value of deliveries of similar nature of not less than €30,000 per annum for the years 2009, 2010 and 2011*". In appellant's bid the value shown for the year 2010 was €31,000 and 2011 showed two deliveries that together amounted to over €30,000 and where thus considered acceptable. However there was no submission for the year 2009. The total amount submitted for the years 2010 and 2011 in totals €65,000. The requirement according to the tender was over €90,000.

Mr Martin Debono who was a member of the evaluation board for the contracting authority remarked that even if appellant wanted to rectify after submitting the tender and submit the figures for 2009, this could not be allowed, because this falls under note 3 which does not allow any rectification. The specifications did not ask for a total of deliveries to be in excess of €90,000 but that deliveries should be of €30,000 per year.

Mr Simon Camilleri said the specific items asked for in this tender were introduced at the end of 2009/beginning of 2010. This caused the problem in the person compiling the tender. The appellant made deliveries during 2009 but these were not of a similar nature. Appellant have a list of deliveries made during 2009.

Mr Martin Debono on behalf of the contracting authority, replying to a question by the Chairman, whether the other bidders were compliant in this requirement, replied that yes they were. Otherwise they would have been disqualified. The specifications required deliveries of a '*similar scope/nature*'.

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 6th September 2013 and also through Appellant's verbal submissions during the hearing held on 29th October 2013, had objected to the decision taken by the pertinent Authority, in that:

- a) The Appellant's bid was discarded as 'Administrative non Compliant' by the Evaluation Board due to lack of experience of similar works carried out in the years 2009, 2010 and 2011.**
- b) The Appellant felt unjustly regarded by the Contracting Authority due to the fact that, although he did not reach the minimum similar works required during the specified years in the tender document, the same Appellant had more than the specified experience since 1991.**
- c) In Actual fact, in compiling the requested information of the tender document, the Appellant made a genuine mistake in not listing deliveries effected by the Appellant in 2009.**

Having considered the Contracting Authority's verbal submissions during the hearing held on 29th October 2013, in that:

- a) The Appellant failed to submit the requested information regarding the deliveries effected by same in 2009.**
- b) All other bidders were compliant to this mandatory requirement.**

Reached the following conclusions:

- 1. This Board opines that the conditions regarding experience laid out by the Contracting Authority should not limit the parameter of same condition in terms of minimum per annum, but rather in total over the number of years as requested by the same Contracting Authority. At the same time, the same Board feels that the experience clause in any tender document should not create a closed shop to other bidders who could carry out the same contracting works which could in actual fact, save public funds from being exploited.**

- 2. As the ‘Public Procurement Regulations’ stand, the Appellant did not submit the required information as stipulated in the tender document and in this regard the Evaluation Board acted diligently in discarding the Appellant’s Bid as being ‘Non Administratively Compliant’.**

In view of the above, this Board finds against the Appellant Company, however due to ambiguous circumstances, it recommends that the deposit paid by the Appellant should be reimbursed.

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Lawrence Ancillieri
Member

16 December 2013