

PUBLIC CONTRACTS REVIEW BOARD

Case No. 654

WSM/104/2013

Period Contract for the Drilling, Supply and Installation of Gas Wells at the Maghtab Complex.

The tender was published on the 3rd May 2013. The closing date was the 31st May 2013.

The estimated value of the Tender was €120,000.00 (Exclusive of VAT)

Four (4) bidders had submitted offers for this tender.

On the 21st November 2013 Messrs. Polidano Brothers Limited filed an objection against rejection of their bid for being technically non-compliant and asked that the decision to reject their bid to be reversed.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancillieri as members convened a hearing on Thursday the 16th January 2014 to discuss the objection.

Present for the hearing were:

Polidano Bros. Limited - Appellants

Mr Noel Vella	Representative
Dr Franco Galea	Legal Representative

Ballut Blocks Services Limited - Preferred Bidder

Dr Massimo Vella	Legal Representative
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WasteServ Malta Limited - Contracting Authority

Mr Robert Micallef	Member Evaluation Board
Dr Victor Scerri	Legal Representative

The Chairman made an introduction and the appellants' representative was invited to make his submissions and explain the nature of the objection.

Dr Franco Galea on behalf of the appellants submitted that his clients' offer was the cheapest one but it was rejected because it was claimed that the equipment they intended to use was not according to the tender requirements. The tender required the use of a continuous flight auger system according to clause 7.4.1.ii. He contends that the equipment offered by his clients was a continuous flight auger system and fell within the required parameters. The appellants' offer was according to specifications.

Dr Victor Scerri of behalf of the contracting authority said that from the documents and technical specifications submitted by the appellants it could be seen that what the equipment they offered was not of the continuous auger type. To be considered as continuous the drill needed to have a screw type bit 19 meters long and in one piece. The one submitted by appellants has a twisted bit only about three meters long; the rest of the drill consists of a straight edged shaft. In use you had to raise it up and add more pieces. The specifications were specially formulated because the drilling was for gas and each time the bit was raised up, the substrata was exposed to air. This caused damage to the bacteria.

Mr Robert Micallef, a member of the evaluation board, on behalf of the contracting authority said that he was a Senior Technical Officer in charge of the gas plant at Maghtab. He stated that there were two issues here. The first being that gasses should not be allowed to escape and the second was that the bacteria producing the gas had to be in an oxygen free environment. The contracting authority did not want any gas to escape and neither did it wish to have the bacteria producing it to die through contact with oxygen.

Dr Franco Galea for appellants said that according to page 32 of the tender document, 'Specification of Wells' Type A, the gas wells shall be drilled to a depth of 12 meters. The equipment submitted by appellants could drill up to a depth of 60 meters.

Mr Robert Micallef contended that the drill (submitted by appellants) could not remove the material cut after the screw bit ended. The material removed by the drill is pushed up by the screw shape of the drill. A smooth drill does not push the material up.

Dr Victor Scerri said that the bit submitted by appellants consisted of a long cylindrical shaft with the bottom part being shaped like a screw, the auger. The auger permits the cut material to be raised up but the straight shaft does not.

Dr Franco Galea asked Mr Micallef if he had used the machinery submitted by the appellant before because there was no similar machinery in Malta and has never been used here before. He insisted that this machinery is new and qualifies as a continuous auger as requested by the tender.

Answering to questions by the Chairman, Mr Robert Micallef explained that what the continuous auger meant was that the drill bit had to be made up of twisted screw type for its whole length enabling cut material to be raised continually without raising the drill. The equipment offered by the preferred bidder was capable of doing this and was considered compliant. There were two methods of drilling. One is the continuous auger system that was requested in this tender and offered by the preferred bidder. The other is the Kelly Bar System which is being offered by the appellants. This is not a continuous flight auger system

because it requires the cut material to be raised by raising the drill. This is only used for rock drilling and not for drilling through material.

Dr Franco Galea explained that Mr Robert Micallef was giving his opinion that the machinery submitted by appellants is not continuous while appellants insists that it is. He suggested that since this is a technical opinion and the Board has the faculty to obtain the opinion of an expert regarding the matter.

Dr Massimo Vella on behalf of the preferred bidder said the tender document was clear. A continuous auger was what was required. The equipment offered by the appellants, albeit it is being claimed to be equivalent to continuous auger, is not continuous. The tender document itself specified that if the tender specifications were not met then the offer should be disqualified.

The hearing was brought to a close at this point.

This Board,

Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 21st November 2013 and also through the Appellant's verbal submissions during the hearing held on 16th January 2014, had objected to the decision taken by the pertinent Authority, in that:

- a) Appellant contends that although his bid was the cheapest, his offer was discarded due to the fact that it was considered to be 'technically non compliant'. Appellant also insists that his offer was within the technical parameters as specified in the tender document.**

Having considered the Contracting Authority's verbal submissions during the hearing held on 16th January 2014, in that:

- a) The Equipment offered by the Appellant was not in accordance with the technical specifications as laid out in the tender document.**
- b) Specifically, the Appellant's equipment was not of a 'continuous nature' as required by the Contracting Authority.**

Reached the following conclusions:

- 1. Since the decision to be taken by this Board rests totally on the technical evaluation aspect, this same Board felt the necessity to obtain a second technical opinion on the equipment being offered by the Appellant.**
- 2. This Board sought the services of an independent Mechanical Engineer who in turn drew up a report of his findings.**

- 3. The conclusion of the Independent Engineer's report was that the Appellant's equipment was not 'technically 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

21 January 2014