

PUBLIC CONTRACTS REVIEW BOARD

Case No. 680

WSM 249/2013

Period Contract for the Hire of one (1) Crawler Tractor (Bulldozer) for the Handling and Compaction of Permitted Waste.

The tender was published on the 18th October 2013. The closing date was the 8th November 2013.

The estimated value of the Tender was €120,000 (Exclusive of VAT).

Four (4) bids had been received for this tender.

On the 6th February 2014 W. B Construction filed an objection against the rejection of its bid as being technically 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 Thursday the 6th March 2014 to discuss the objection.

Present for the hearing were:

W.B. Construction - Appellant

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| Mr William Bugeja | Representative |
| Dr John Bonello | Legal Representative |

Bonnici Brothers Contractors Limited - Preferred Bidder

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| Mr Mario Bonnici | Representative |
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WasteServ Malta Limited - Contracting Authority

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| Ms Beverly Scerri | Representative |
| Mr Charles Zerafa | Member evaluation board |
| Mr Mario Agius | Member evaluation board |
| Mr Nicholas Aquilina | Member evaluation board |
| Dr Victor Scerri | Legal Representative |

Following a brief introduction by the Chairman, the appellant's representative was invited to make his submissions.

Dr John Bonello on behalf of his client the appellant said that the contracting authority gave two reasons for having disqualified his client's bid that had been the cheapest offer. His client's bid was rejected because it was alleged that he failed to submit the schedule of rates and prices as per clause 1.2.4 and failing to produce a certificate of insurance certified as a true copy by a notary.

Speaking about the first reason, Dr John Bonello continued that appellant had submitted the schedule of rates and prices so much so that the Schedule of Offers still shows appellant's offer at €103840. Therefore there was no missing schedule when the tenders were opened.

Dr Victor Scerri on behalf of the contracting authority stated that appellant's tender has the Schedule of Rates, page 32 of 46 of the tender missing.

Dr John Bonello for the appellant said that the missing page could have been removed or lost after the tender was submitted by his client because he insisted that appellant had submitted all the documents. He remarked that the pages are not enumerated. Regarding the second reason for rejection, the failure to submit an Insurance Certificate, he said that Bulldozers are not covered by insurance all the time, like automobiles, but only whenever they are being actually used. Appellant had submitted with his tender a letter by Middlesea Insurance where this confirmed that it would be insuring the appellant's vehicle when this is used. He contested the utility of submitting a certified copy of a certificate, would the submission of an original certificate have the bidder also disqualified?

Ms Beverly Scerri on behalf of the contracting authority said that she was one of the persons who had opened the tenders. She was present at the opening of appellant's offer and had seen that it had the Schedule of Rates missing. The appellant's tender form however had shown the appellant's financial offer and it was this amount that was taken to be his offer and listed in the schedule of offers. It was not up to the team opening the offers to take any action for any offers that were not according to specifications. The board appointed to open the tenders check the tenders to see if the values submitted in the Schedule and in the Declaration tally. It was at that point that it was discovered that appellant's tender had missing documents. The persons in charge of the opening the tenders sign every page containing any information from bidders. It is not the remit of the opening board to enumerate the pages of the offers; it was up to the bidders to do this.

Mr Charles Zerafa, a member of the evaluation board, on behalf of the contracting authority stated that the evaluation board did not find the certificate form in appellant's tender and therefore could not continue with the evaluation of his tender. The submission of a letter by Middlesea did not satisfy the criteria since other bidders were involved and these had submitted and conformed to the tender clauses. The other tenders were compliant with all the clauses, and appellant's bid, which had missing information, could not be assessed further.

Dr John Bonello for the appellant said that there was inconsistency in the tender. The contracting authority alleges that appellant failed to submit the insurance certificate as per clause 7.5.2. From the tender documents it can be seen that the clause dealing with insurance, clause 8.2.1 refers to contractor and not to bidder. Thus the obligation to provide insurance rests on the contractor. Thus his client should not have been disqualified under

clause 7.5.2.

Ms Beverly Scerri under oath, replying to questions by Dr John Bonello confirmed what she had said before. She reiterated that at the tender opening, all offers were examined and the members signed each page that contained information entered by the bidders. In appellant's case she confirmed personally that the Schedule of Rates was missing. The opening board's remit ended after the Schedule of Offers was compiled and signed. No further action was needed from those opening the tenders. The value of appellant's tender was taken from his tender form. Further action taken would be taken by the evaluation board and not at the opening stage. She never knew that any comments were added to the price in the Schedule of Offers.

Mr Mario Agius, on behalf of the contracting authority, under oath stated that he was an engineer employed by the contracting authority and was also a member of the evaluation board. The board could not check the rates submitted by appellant with the bid price to see if this was correct since the Schedule of Rates was not available. Only the tender form was available for the evaluation board. I was not present at the opening.

Mr William Bugeja, ID No 5295863M the appellant under oath said that he is the sole owner. He declared that all the documents were submitted in his tender. His daughter had prepared the tender for filing.

Mr Charles Zerafa for the contracting authority said that they had searched several times through all the submitted documents trying to find the missing document but found nothing. The evaluation board could only evaluate on the available documents.

Dr John Bonello said that a doubt existed on the submission of the Schedule of Rates with the appellant claiming that he submitted it and the contracting authority claiming that he had not. At any rate appellant's total bid was known for it had been noted in the Schedule of Tenders and affixed to the notice board.

Ms Beverly Scerri reiterated that the opening of tenders was held in public. The opening members then signed the relevant pages and issued the Schedule of Tenders.

Dr John Bonello insisted that his client's bid was the cheapest yet it was discarded for frivolous reasons.

Dr Victor Scerri on behalf of the contracting authority said that the persons responsible for the opening of the tenders had no interest in removing any documents. Having found a missing document they still had included appellant's bid in the Schedule of tenders. The evaluation board had to decide and adjudicate on the submitted documents. This was a matter of fact and not a legal matter.

At this point the hearing was closed.

This Board,

Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 6th February 2014 and also through Appellant's verbal submissions during the hearing held on 6th March 2014, had objected to the decision taken by the pertinent

Authority, in that:

- a) **Although Appellant's bid was the cheapest, it was discarded as the Contracting Authority contends that Appellant failed to submit the 'Schedule of Rates'. Appellant claims that all documentation requested was submitted by same.**
- b) **Appellant contends that the Letter issued by Middlesea Insurance, confirming that the 'Bulldozer' will be insured, should have been considered as sufficient , since such heavy vehicles are normally insured whilst in use only.**

Having considered the Contracting Authority's verbal submissions during the hearing held on 6th March 2014, in that:

- a) **The Contracting Authority maintains that the Appellant did not submit the Insurance Certificate of the vehicle as requested in the tender document.**
- b) **Page 32 of 46 of the tender document was missing. This requirement referred to the 'Schedule of Rates'.**
- c) **In view of a and b above, the Evaluation Board was not in a position to assess further Appellant's Bid.**

Reached the following conclusions:

1. **From the verbal submissions 'Under Oath', it emerged that in fact, the 'Schedule of Rates' was missing from the onset of the 'Opening of Tenders' procedure. So that, this Board opines that Page 32 of 46 of the tender document was indeed missing.**
2. **Although, it is customary for these type of vehicles to be insured only when in use, however Clause 1.2.14 of the tender document clearly states that" Copy of the Insurance Certificate certifying that the main crawler tractor (Bulldozer) and its standby are properly insured". This particular clause clearly demonstrated that the tender requirement dictated that the said vehicles had to be already insured and in no way the vehicles will be insured after the award of the tender.**

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

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Laurence Ancilleri
Member

1 April 2014

