

PUBLIC CONTRACTS REVIEW BOARD

Case No. 687

CT 3188/2013

Tender for Trenching and Pipe Laying Works – Ta’ Qali – Sliema, Using Environmentally Sound Construction Materials and Methods – Water Services Corporation.

The tender was published on the 10th January 2014. The closing date was the 20th February 2014.

The estimated value of the tender was €4,560,057 (Excluding VAT).

Six (6) bidders had submitted their offer.

On the 27th March 2014 DPRS Joint Venture filed an objection against the decision to disqualify their tender at the first package, bid-bond stage.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Richard A. Matrenza as members convened a hearing on Tuesday the 22nd April 2014 to discuss this objection.

Present for the hearing were:

DPRS Joint Venture - Appellant

Mr Arthur Gauci	Representative
Mr Carmelo Penza	Representative
Mr Nazzareno Scicluna	Representative
Dr Ronald Aquilina	Legal Representative

Polidano Brothers Limited - Interested Party

Dr Franco Galea	Legal Representative
Dr Chris Chircop	Legal Representative

RM construction Limited - Interested Party

Perit Malcolm Gingell	Representative
Dr Tonio Cachia	Legal Representative

Philip Agius & Sons Limited - Interested Party

Mr Mario Agius	Representative
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Water Services Corporation - Contracting Authority

Mr Mark Perez	Representative
Mr Anthony Camilleri	Representative
Perit Adin Bundic	Representative
Ms Fiona Borda	Representative
Mr Carmel Ellul	Representative
Mr Pierre Cassar	Representative

Department of Contracts

Mr Anthony Cachia	Director General
Ms Marisa Gauci	Procurement Manager.

Following a brief introduction by the Chairman, the representative of the appellant was invited to make his submissions on the letter of objection.

Dr Ronald Aquilina on behalf of DPRS Joint venture said that his clients had been disqualified because the bid bond submitted with the tender was not in the name of R Scicluna Limited. He explained that the tender was submitted by a consortium made up of R. Scicluna Limited and D P Road Construction Limited. Appellant had submitted all necessary documents with the tender. Enclosed with his clients bid bond had been a letter that explained that the bidder was a consortium and that the bid bond covered all the parties involved. This was uploaded with the tender that was an e tender.

His clients' representative had also tried to submit a hard copy of the letter at the Department of Contracts but was not allowed to do so. The reason for the disqualification of appellants' bid was not correct. The bid bond submitted with the tender was valid and the requisite requiring the submitting of a bid bond had been satisfied.

Mr Anthony Cachia, Director General at the Department of Contracts on behalf of the Contracting authority said that the tender had been submitted by R. Scicluna Limited in this e tender. The Instructions to Tenderers had given the necessary information how Joint Ventures had to register with the e tenders and how to submit such tenders. In the present case, the tenderer resulted not to be a Joint Venture but R. Scicluna Limited. The bid bond enclosed and uploaded however was issued in the name of DP Roads Construction Limited. Any joint venture should have been registered in the system before submitting a tender. The bid bond in this case does not agree with the bidder. The tender had therefore to be disqualified.

Dr Ronald Aquilina for the appellant said that the reason given for the rejection was different because the notice said that appellant had not submitted a valid bid bond. He claimed that the original document of copy enclosed with the letter of objection marked DPRS4 had been enclosed with the appellants' tender, and this explained everything.

Mr Anthony Cachia explained that no such document was found when the tender was opened electronically.

Dr Ronald Aquilina insisted that his client was not allowed to hand a copy of the document in question when he went personally to the Department but also that the document had been

included and uploaded with the e tender.

Mr Anthony Cachia insisted that no such document was enclosed.

Mr Mark Perez on behalf of the contracting authority explained that the tender was a three package tender where the 1st package was the bid bond, the 2nd package contained the bidders' tender information and the 3rd package contained the financial offers. In the present case the tenderer was R. Scicluna Limited. This bidder was disqualified because the bid bond submitted was not in his name. Package number 2 was therefore not opened. The authority was precluded from accepting hard copies of documents in an e tender.

Mr Richard Abela, the ICT Contracts and Services Officer at the Department of Contracts, speaking on behalf of the contracting authority said under oath that when the tender was opened only the scanned copy of the bid bond was found. The document earlier mentioned marked as DPRS4 was not found in the tender.

It was at this point agreed by all concerned to accede to the Department of Contracts to examine the e tender submitted by appellant on the Department's computer and the hearing was postponed for a quarter of an hour.

When the hearing reconvened, Mr Anthony Cachia, the Director General Department of Contracts informed the Public Contracts Review Board that the tender submitted by the appellant was opened again in the presence of the following witnesses and the document in question was found enclosed with the tender. He apologised for the occurrence and insisted however that in future Joint Ventures should be registered before submitting an e tender to safeguard against a similar occurrence.

The list of people who attended the Verification Session held on the 22nd April 2014 in the Main Hall of the Department of Contracts follows:

DPRS Joint Venture - Appellant

Dr. Ronald Aquilina	Legal Representative
Mr. Arthur Gauci	Representative
Mr. Carmel Penza	Representative
Mr. Nazzareno Scicluna	Representative

Polidano Brothers Limited - Interested Party

Dr. Tonio Cachia	Legal Representative
Perit Malcolm Gingell	Representative

Philip Agius & Sons Limited - Interested Party

Mr. Mario Agius	Representative
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Contracting Authority – Water Services Corporation

Ms. Fiona Borda	Representative
Perit Adin Bundic	Representative
Mr. Anthony Camilleri	Representative
Mr. Pierre Cassar	Representative
Mr. Carmel Ellul	Representative
Mr. Mark Perez	Representative

Department of Contracts

Mr. Richard Abela	ICT Contracts & Services Officer
Mr. Anthony Cachia	Director General
Ms. Marisa Gauci	Procurement Manager
Ms. Margaret Camilleri	General Contracts Committee Member
Mr. Brian Farrugia	General Contracts Committee Member
Mr. Anthony Galea	General Contracts Committee Member
Mr. Mark Grech	General Contracts Committee Member
Mr. Oliver Vassallo	General Contracts Committee Member
Mr. Sammy Vella	General Contracts Committee Member
Mr. Stephen Young	General Contracts Committee Member
Mr. Jurgen Zammit	General Contracts Committee Member

Public Contracts Review Board

Ms. Carmen Vella	Representative
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The Director General of the Department of Contracts pointed out that Mr. Sammy Vella had opened the 1st Envelope during the Tender Opening Session for this tender when this was originally held.

At this point the hearing was closed.

This Board,

Having noted the Appellant’s objection, in terms of the ‘Reasoned Letter of Objection’ dated 27th March 2014 and also through Appellant’s verbal submissions during the hearing held on 22nd April 2014, had objected to the decision taken by the pertinent Authority, in that:

- a) Appellant contends that although the Bid Bond was issued in the name of a Joint Venture in which the Appellant Company had an interest; Appellant submitted an explanation why such a Bid Bond was not issued in the name of the Tenderer.**

- b) Appellant argues that whilst the tender document was submitted in the name of R. Scicluna Limited, Appellant did inform the Department of Contracts of such an arrangement of a Consortium. In this regard, Appellant feels that he has submitted all the necessary information and valid documentation as requested in the tender document.**
- c) Although, the Appellant wanted to submit a hard copy of the above mentioned explanation, same was precluded from lodging the document with the Department of Contracts.**
- d) Although, the notice of refusal from the Department of Contracts stated that the reason for discarding Appellant's bid was due to an invalid Bid Bond, the same Contracting Authority failed to note the 'explanatory letter', which explained why the Bid Bond was issued by no other than the Consortium.**

Having considered the Department of Contracts' verbal submissions during the hearing held on 22nd April 2014, in that:

- a) The Department of Contracts contends that since the Appellant Company was a partner in a Consortium, this information was not communicated to same.**
- b) When a Tender is issued and a Bid Bond is one of the prime requirements, the Bid Bond should be issued by the tendering Company and not otherwise.**
- c) If a Joint Venture is formed to participate in the application of a tender, this joint venture is to be registered via the appropriate procedures as laid out in the Public Procurement Regulations.**

Reached the following conclusions:

- 1. This Board opines that when a tenderer is part of a Consortium or joint venture with other commercial venture, the Joint Venture should be formally registered and notified to the Department of Contracts through a letter or a document of clarification on submission of the tender document.**
- 2. This same Board commends the approach and cooperation which the Contracting Authority had shown towards the verification of the proof that Appellant's 'Explanatory Letter' of why Bid Bond was not issued in the name of Appellant Company but in the name of joint venture.**

In View of the above, this Board finds in favour of the Appellant and recommends that:

- i) The Appellant's Bid be reintegrated in the tendering process.**
- ii) The Deposit paid by the Appellant be reimbursed.**

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Richard A. Matrenza
Member

6 May 2014