

PUBLIC CONTRACTS REVIEW BOARD

Case No. 700

WSC 387/2013

Tender for the Supply of Repair Clamps.

The tender was published on the 30th August 2013. The closing date was the 27th September 2013.

The estimated value of the Tender was €40,000 (Excluding VAT)

Six (6) offers have been received for this tender.

On the 19th February 2014 Superior Pipeline Products Limited filed an objection against the disqualification of their offer.

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 the 20th May 2014 to discuss the objection.

Present for the hearing were:

Superior Pipeline Products Limited - Appellant

Mr Joseph Bugeja	Representative
Dr Robert Tufigno	Legal Representative

Idro Gas Engineering Europa S.A.S - Preferred Bidder

Mr Adrian Baldacchino	Representative
Dr Christine Calleja	Legal Representative

Water Services Corporation - Contracting Authority

Ing. Mark Perez	Chairman Evaluation Board
Mr Anthony Camilleri	Secretary Evaluation Board
Ing. Stephen Galea St. John	Member Evaluation Board
Mr Joseph Gregoraci	Member Evaluation Board
Ing. Ronald Pace	Member Evaluation Board

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

Dr Robert Tufigno on behalf of the appellant Superior Pipeline Products Limited said that his client was given two reasons for the disqualification of tender. The first one being that *"the sealing gasket is not specified to be waffle type as required by Clause 2 of the Technical Specifications;"* the second reason was that *"the scope of the ISO certificate is not for design as requested in Section 4, Clause 7 of the technical specifications."*

About the first reason, Dr Tufigno stated that the tender specifications clearly indicated that the gaskets had to be of the waffle type and the appellant had submitted a waffle type gasket. The documentation requested in clause 2 referred only to the material used to make the gaskets and not to type of gasket. It was presumed that bidders would offer waffle type gaskets. Any bidder who offered any other type of gasket except of the waffle type would be guilty of making false declarations. Appellant had produced all that was requested and tender offer was compliant. Regarding the issue of the ISO certificate, Dr Tufigno claimed that his client had submitted this certificate which clearly included "design" and filed another copy of the said certificate during the hearing to sustain his claim.

Engineer Mark Perez on behalf of the contracting authority, on being shown the document filed today, agreed that this was the required document. However this was not the document that had been uploaded by appellant with the e tender submission, which did not include "design".

At this point Mr Mark Perez showed Dr Tufigno the document that had in fact been uploaded with the tender.

Mr Joseph Bugeja on behalf of the appellant said that he could not state which of the two documents had in fact been uploaded since the tender in question had been uploaded by his overseas partner. He was going to contact his partner as soon as possible and inform the Board accordingly.

Mr Mark Perez on behalf of the contracting authority said that in the submitted literature there had been no indication that the gasket offered was of the waffle type but conceded that the evaluation board should maybe have asked appellant for clarification on this point. This was not done since the tender had also failed on the matter of the ISO certificate.

Mr Adrian Baldacchino on behalf of the preferred bidder insisted that this being an e tender, what matters is what was received by the contracting authority and not what was sent.

Dr Christine Calleja on behalf of the preferred bidder said that evaluation could only be made on the submitted documents.

At this point the hearing was suspended.

Later on Dr Robert Tufigno informed the Public Contracts Review Board that his client had contacted the overseas partner who confirmed that the wrong ISO certificate had been erroneously uploaded with the tender.

This Board,

Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 18th February 2014 and also through Appellant's verbal submissions during the hearing held on 20th May 2014, had objected to the decision taken by the pertinent Authority, in that:

- a) Appellant contends that the first reason why his offer was discarded was due to the fact that his 'casket component' had to be of a 'waffle type', in accordance with clause 2 of the technical specifications as dictated in the tender document. Appellant's bid, according to the Evaluation Board, did not meet these requirements.**
- b) During the hearing Appellant produced an ISO certificate, which was a mandatory requirement in the tender document. So That Appellant's offer was compliant.**

Having considered the Contracting Authority's verbal submissions during the hearing held on 20th May 2014, in that:

- a) The ISO document which the Appellant submitted was not the sort which was required by the Contracting Authority to conform with the technical specifications as laid out in the tender document.**
- b) Since the Appellant failed to provide the mandatory proper certificate, the Evaluation Board could not seek clarifications.**

Reached the following conclusions:

- 1. Through the prompt co-operation of the Appellant Company, it was confirmed by the latter that the incorrect certificate was submitted to the Contracting Authority.**
- 2. On the other hand, the Evaluation Board assessed the Appellant's offer on the documentation submitted by the latter. In this regard, the Evaluation Board acted in a diligent and transparent manner.**

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

**Dr. Anthony Cassar
Chairman**

**Dr. Charles Cassar
Member**

**Mr. Lawrence Ancilleri
Member**

4 June 2014