

PUBLIC CONTRACTS REVIEW BOARD

Case No. 713

S.L. 3/14

Tender for the Supply, Delivery, Installation, Testing and Commissioning of Light Fittings and Luminaries in Various Streets at Hal Balzan.

The tender was published on the 21st February 2014. The closing date was the 24th March 2014. The estimated value of the tender was €93,000.

Three (3) tender offers had been received.

On the 14th May 2014 Mr Richard Cauchi filed an objection against the rejection of his tender 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 17th June 2014 to discuss the objection.

Present for the hearing were:

Mr Richard Cauchi - Appellant

Mr Richard Cauchi	Representative
Dr Simone Grech	Legal Representative

Mica-Med Limited - Preferred Bidder

Mr James Agius	Representative
Mr Pierre Micallef	Representative
Ms Melissa Sammut	Representative
Dr Claudine Zarb	Legal Representative

Hal Balzan Local Council - Contracting Authority

Mr Mark Mallia	Secretary Evaluation Board
Mr Stephen Gatt	Member Evaluation Board
Mr Clayton D'Amato	Representative
Perit Anthony Bezzina	Representative
Dr Veronica Aquilina	Legal Representative

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

Dr Simone Grech on behalf of the appellant explained that as submitted in the letter of objection, there were two grievances that appellant wanted to deal with in this objection. Appellant's tender had been disqualified because the tender failed to submit a written procedure to be used in case of a faulty LED lamp. She contended that the tender document required the submission of after sales services proposal without specifically describing what this should include and consist of. Appellant did submit a signed After-Sales Services Proposal, and if this proposal was not deemed sufficient the evaluation board could have asked for clarification according to clause 16.1. Appellant could have been asked to rectify within two days. However appellant was not asked to do this. Appellant had submitted a declaration confirming the after sales technical service and availability of spare parts for a period in excess of 10 years. Dr Grech continued that even had there been a requisite for a written procedure about faulty LED lamps the appellant had given guarantees against vandal proof and against corrosion and these guarantees covered instances of faulty lamps. Moreover article 35 on page 47 of the tender clearly states that any parts, including the lamps would have to be replaced without extra cost. This definitely made the requisite for submitting a written procedure on the replacement of faulty lamps unnecessary and appellant's bid should not have been disqualified because of non submission of this procedure.

Dr Simone Grech continued that the second reason why appellant's bid was disqualified was the non submission of a photometric report for each street. Appellant had enclosed with his tender, a declaration that stated that upon request, the photometric report for each street would be submitted. Since documents were not available to appellant, the photometric report for each street could not be submitted with the tender. Appellant had asked the contracting authority to provide him with auto cad drawings in order to be able to submit the photometric report because these were essential for the drawing up of the reports. However he did not receive any documents from the contracting authority and neither did he receive a clarification request. Another grievance raised by appellant was that the preferred bidder had failed to submit the samples as required, but had been asked to submit the samples later. Thus the preferred bidder was given an opportunity to rectify his tender while the appellant was not given any such opportunity. It is felt that appellant was thus discriminated against.

Dr Veronica Aquilina on behalf of the contracting authority submitted that appellant's tender bid had been defective on two points. The first was that no complete photometric report had been submitted and second was that no procedure in case of defective LED lamp was submitted. The Instructions to tenderers had made it clear that if the tenders had any information missing then this would be discarded. Appellant is claiming that the preferred bidder was given an opportunity to rectify his tender. This was not so because the preferred bidder's tender was complete. Mica-Med, the preferred bidder, had noted in their tender that the lantern and bracket that had to be submitted with the tender would be submitted immediately when asked for by the contracting authority. When asked for the samples, the preferred bidder immediately complied. The preferred bidder's bid did not lack any requisites and was complete. Regarding the photometric report, Dr Veronica Aquilina stated the instructions to tenderers contained clear instructions that the photometric reports had to be submitted for each street.

Perit Anthony Bezzina for the contracting authority explained that the appellant had submitted a sample photometric report but failed to submit a photometric report for each

street as was required.

Dr Veronica Aquilina reiterated that appellant had just submitted a sample photometric report while the contracting authority required a photometric report for each street of the locality. The preferred bidder had submitted the requested photometric report for each street and it is not understood how the appellant could not do so. The tender had enough information to enable the photometric report to be compiled. She insisted that several clauses in the instructions to tenderers allowed only clarifications to be made and no rectifications. This applies both to appellant's photometric report and to the defective lamp procedure. Had the contracting authority acted as the appellant indicated, this would have been rectification and not clarification. At this point Dr Aquilina filed a letter of reply to the appellant's objection.

The Chairman enquired whether the appellant had felt the need to ask for clarifications before submitting the tender.

Mr Richard Cauchi the appellant replied that he had made no request for clarification. He said that he did not submit the photometric report but the same list that asked for this report also included a demand for samples of the brackets and the luminaires. He stated that he had enclosed a covering letter with the tender. The tender should have included acad maps to enable bidders to prepare the photometric report. Appellant had included a sample photometric report.

Dr Simone Grech for appellant said that with his tender the appellant had made it clear that he would be providing the photometric reports when he was given the information by the contracting authority about every street. At page 27 it was stated that samples had to be produced, but the preferred bidder had failed to submit the samples with the tender but stated that he would submit them when asked. The preferred bidder was in fact asked to do so while the appellant was not given the same opportunity.

Dr Veronica Aquilina for the contracting authority said that appellant is claiming discrimination in treatment because while the preferred bidder was granted an opportunity to rectify, he was not. There is a difference however; the preferred bidder had explained in a letter that he would be producing samples as soon as asked. Appellant did nothing of the sort but just submitted a general photometric report and failed to submit the procedure to deal with defective lamps.

Perit Anthony Bezzina said that the tender document contained a street map. Had the request for acad plans been requested during the period when clarifications were admissible he would have drawn them up but no request for clarification had been made. There was sufficient information in the tender to enable the preparation of photometric reports. The preferred bidder had submitted such report.

Dr Pauline Zarb on behalf of the preferred bidder submitted that appellant is claiming that since her client had been asked for the samples, then appellant should have been asked to submit the missing photometric report and procedure. The preferred bidder had declared that they would be submitting samples. The evaluation board had a complete picture of what the preferred bidder was offering. Appellant's photometric report on the other hand only gave a general report and not one per street. Appellant is also claiming that since he provided a guarantee, this sufficed instead of the written procedure to be followed when replacing lamps. She did not agree with this contention.

Perit Anthony Bezzina for the contracting authority insisted that appellant should have used the map included in the tender to make the photometric report.

Mr James Agius on behalf of the preferred bidder said he used the same map to compile the photometric report. Furthermore he had gone on site at each street and was able to produce and submit a photometric report for each street.

At this point the hearing was brought to a close.

This Board,

Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 12th May 2014 and also through Appellant's verbal submissions during the hearing held 17th June 2014, had objected to the decision taken by the pertinent Authority, in that:

- a) **Appellant's bid was discarded due to the fact that same failed to submit a 'Declaration about the procedure relating to Faulty LED lamps'. In this context, Appellant contends that he had submitted a guarantee which covered such an occurrence. Apart from the fact that Appellant also submitted a declaration confirming an 'After Sales Service' for a period of ten years will prevail.**
- b) **Appellant's bid was also discarded due to the non submission of a complete and full Photometric report for each street. Appellant claims that he could not comply with such request as he was not in possession of Auto Cad Drawings to enable same to comply with this requirement as specified in the tender document.**

Having considered the Contracting Authority's 'Letter of Reply' dated 12th June 2014 and also the verbal submissions made by same during the hearing held on 17th June 2014, in that:

- a) **Contracting Authority maintains that one of the mandatory requirements in the tender document was, that the Tenderer had to submit a declaration wherein the procedure to be adopted in cases of defective LED lamps, would be described. In this regard Appellant's offer failed to provide such a declaration.**
- b) **Another mandatory requirement in the tender document was that the Tenderer had to submit a 'Detailed photometric Report' for each street, where the tendered works are to be carried out. Again, in this respect, Appellant failed to submit such information and instead same submitted a sample of the report.**

Reached the following conclusions:

- 1. Tenderers are in duty bound to read carefully the mandatory requirements in a tender document. This particular tender dictated that ‘A declaration of the procedure to be adopted relating to faulty LED lamps’. This requirement was vividly made clear in the tender document. The fact that Appellant gave a guarantee and a declaration of ‘After Sales Service’ does not in any way satisfy the mandatory requirement that the declaration, as dictated in tender document would be respected. In this regard, Appellant failed to comply with this mandatory requirement.**

- 2. Another mandatory requirement of the tender conditions was the submission of a ‘detailed photometric report’ for each street of the tendered area. Appellant submitted a ‘Sample’ and not the complete document relating to a ‘detailed photometric report’ for each street, as dictated in the tender document. In this regard, Appellant’s argument that same could not submit the requested report, due to the non availability of CAD drawings, is not credible, as there was sufficient information in the tender document for the Appellant to compile a detailed photometric report as requested in the tender document. In this regard, Appellant again failed to submit this mandatory information.**

- 3. Appellant’s claim that the Contracting Authority could have asked for clarifications, is uncalled for, as the Contracting Authority, in its evaluation process, can only seek clarifications on information submitted and not on ‘missing information.’**

In view of the above, this Board finds against the Appellant and recommends that the deposit paid by the Appellant should not be reimbursed.

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Lawrence Ancilleri
Member

28 July 2014