

PUBLIC CONTRACTS REVIEW BOARD

Case No. 742

WSD 20/2014

Tender for the Hire of Hydraulic Excavator to the Manufacturing & Services Directorate.

The tender was published on the 2nd May 2014. The closing date was the 23rd May 2014.

The estimated value of the Tender was €52,120 (Inclusive of VAT).

On the 4th August 2014 Vella Group Limited filed a letter of objection objecting to the award of the tender to Messrs. Raydon Excavations Limited.

Three (3) bidders had participated in this tender.

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 9th September 2014 to discuss the objection.

Present for the hearing were:

Vella Group Limited- Appellant

Mr Jimmy Vella	Representative
Mr Mario Vella	Representative
Dr Jacomo Farrugia	Legal Representative
Dr Kenneth Grima	Legal Representative

Raydon Excavations Limited - Preferred Bidder

Mr Raymond Galea	Representative
Mr Donald Galea	Representative
Mr Ramon Galea	Representative
Mr Roderick Abela	Representative

Manufacturing and Services Directorate - Contracting Authority

Ing Martin Grech	Chairperson Evaluation Board
Ms Joanne Sciberras	Secretary Evaluation Board
Mr Paul Formosa	Member Evaluation Board
Mr Joseph McKeon	Member Evaluation Board
Mr Raymond Caruana	Member Evaluation Board
Mr Manuel Bezzina	Representative

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

Dr Kenneth Grima on behalf of the appellant made a declaration wherein he completely withdrew appellant's second grievance. He apologised and explained that that grievance arose through a misunderstanding of his brief on the telephone. The objection did not mean to allege that the preferred bidder had employees on precarious employment.

Dr Kenneth Grima however claimed that the objection meant that it was not possible to give employees the minimum wage at the rate quoted by the preferred bidder, since after removing the overhead expenses there would not be enough. His client knew this first hand from having provided the service for a number of years. Urgent extra work often crops up needing prompt action and requiring additional equipment and employees. He contended that appellant has enough equipment to deal with these urgent works. The preferred bidder does not have enough equipment and employees. The tender should be awarded not to the cheapest offer but to the cheapest compliant one. He contended that to be compliant, the equipment to be used should be the property of the bidder. His client is informed that the preferred bidder does not have the necessary machinery to cope with this tender and any extra work. Appellant's offer, although higher should have been chosen since it had the necessary equipment and has shown it was capable of delivering the service during the last four years.

Engineer Martin Grech, the Chairperson of the evaluation board, on behalf of the contracting authority stated that the tender asked for two (2) excavators. The preferred bidder owns two excavators and has supplied their specifications. He has shown that he has enough equipment to satisfy the tender needs. According to Clause 8.4.1 of the tender technical specifications, the ownership of the units being offered was preferable but not a pre-requisite. Emergency extra works are not included in the tender. Replying to a question by the Chairman about whether the evaluation board took into consideration the possibility of the hourly rates being the cause of precarious employment, he said that there was only a €2.50 difference between the bids and the evaluation board could not know each bidder's margin of profit.

Dr Kenneth Grima said that the difference amounts to 10% which is substantial. In this contract the most important factor is the man hours as the overheads to all bidders would be the same. He insisted that the evaluation board should have been aware of the problems arising in such tenders if not enough machinery was available to the contractor.

Mr Jimmy Vella on behalf of the appellant, replying to the Chairman said that the percentage of the labour content could not be given as this depended on the machinery being used.

Mario Vella for the appellant said that the employees' wages are known and these are paid overtime after 3.00 pm so these are calculated at between €11 and €5.75 as manpower. All the rest covers the overheads and contingencies. In calculating the offer, appellant took the labour rate at €7.15.

Dr Kenneth Grima continued that the previous tenders always exceeded the estimates. Experience has shown that more than 2 excavators were needed. What would be the result if more machinery was required? The preferred bidder does not have either the required machinery or the required personnel to work the tender. Appellant, having worked this tender several years can do this.

Engineer Martin Grech for the contracting authority said the adjudication was done on the tender conditions and these were that bidders had to have two excavators. The preferred bidder declared two excavators and the bid was according to specifications. Furthermore the preferred bidder assumed responsibility to provide the service.

Mr Roderick Abela on behalf of the preferred bidder explained that appellant's cost structure was different from that of the preferred bidder. The preferred bidder took into consideration all factors when making the offer. The preferred bidder saw that with the offer a sufficient profit margin remained. The tender asked for 2 excavators and 2 were submitted. The employees with the preferred bidder are paid €7.00 per hour. The preferred bidder also guarantees any extra work required.

Dr Kenneth Grima reiterated that the contracting authority cannot risk having the service remaining un-provided. This is not a question of the cheapest offer but of which package offers most ease of mind. Appellant always provided excellent service and contended that the evaluation board should have chosen appellant's offer although this was not the cheapest.

The Chairman remarked that the remit of the Public Contracts Review Board was to ensure that the evaluation board performed the adjudication process in a transparent and just way.

The hearing was closed.

This Board,

Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 4th August 2014 and also through Appellant's verbal submissions during the hearing held on 16th September 2014, had objected to the decision taken by the pertinent Authority, in that:

- a) Appellant Company contends that it has the necessary equipment to carry out the tendered works. Same also claims that it has carried out the same works for the last three years. In this respect, the Contracting Authority is well aware that Appellant has the necessary experience and equipment to carry out what is required from the tender specifications.**
- b) Appellant Company also contends that, through experience, same was aware that in such type of contracts, additional works usually arise and Appellant's offer had to include a contingency for such an event, hence a higher bid price than that of the Preferred Bidder.**

Having considered the Contracting Authority's verbal submissions during the hearing held on 9th September 2014, in that:

- a) The successful bidder does in fact own two excavators as stipulated in the tender. The Contracting Authority credibly confirmed that the Preferred Bidder was fully compliant and had tendered the cheapest offer.**

- b) **The Contracting Authority also credibly confirmed that any additional works outside the tender parameters would be discussed prior to execution of same. So that there was no need for contingencies for extra works, if so required.**

Reached the following conclusions:

- 1. This Board notes that the Preferred Bidder made a declaration that he has the necessary equipment to carry out the tendered works. Clause 8.4.1 of the technical specifications does in fact state that, preferably, the machinery, i.e. excavators, to be utilised in the tender, should be owned by the tenderer. In this regard, this Board does not consider, that ownership of the equipment was a mandatory condition, so that this same Board opines, that the Preferred Bidder was classified as being compliant by the Evaluation Board and in this respect, same Board upholds the Contracting Authority's decision in the process of the award of the tender.**
- 2. From credible submissions made by the Contracting Authority, this Board established the fact that any additional works was not included in the tender. So that, this Board does not uphold Appellant's contention that his offer provided for additional works, which are usually carried during the execution of the tendered works.**
- 3. From the Submission made during the hearing, this Board opines that the statement made by the appellant company in that "The rates quoted by the preferred bidder might lead to a precarious labour situation" Has not been proved.**

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

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

16 October 2014