

PUBLIC CONTRACTS REVIEW BOARD

Case No. 744

CT 3126/2013

Tender for the Supply, Delivery and Commissioning of Low Emissions Truck Mounted Gully Sucker icw The National Flood Relief Project.

The tender was published on the 8th November 2013. The closing date was the 19th December 2013.

The estimated value of the Tender was €170,000 (Exclusive of VAT).

Three (3) bidders had submitted an offer for this tender.

On the 28th August 2014 SR Environmental Solutions Limited filed an objection against the rejection of their offer and against the proposed award of the tender to United Equipment Co. (UNEC) Limited.

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 Thursday the 18th September 2014 to discuss the objection.

Present for the hearing were:

SR Environmental Solutions Limited - Appellant

Dr Aldo Carrieri	Representative
Mr David Muscat	Representative
Ing. Ray Muscat	Director
Ms Sarah Muscat	Director
Mr Vincent Muscat	Representative
Dr Ian Vella Galea	Legal Representative

United Equipment Co. (UNEC) Limited - Preferred Bidder

Mr Marcus Bonnici	Representative
Dr John Gauci	Legal Representative

Works and Services Department (Ministry for Transport and Infrastructure) - Contracting Authority

Arch. George Buhagiar	Chairperson Evaluation Board
Mr Paul Formosa	Member Evaluation Board
Ing. Martin Grech	Member Evaluation Board
Ing. Margaret Zammit	Member Evaluation Board

Department of Contracts

Mr Kevin D'Ugo

Procurement Manager

The Chairman made a brief introduction during which he pointed out that appellant had neglected to give the reasons for the letter of objection. The appellant's representative was then invited to make his submissions on the objection.

Dr Ian Vella Galea on behalf of the appellant insisted that his clients' tender was technically compliant and not as found by the evaluation board. This compliancy resulted from the tender offer itself. He explained that the truck in question contained two separate compartments. Bidders were asked to provide the gross vehicle weight.

Engineer Ray Muscat on behalf of the appellant contended that the tender contained vague and unhelpful specifications. The tender asked for a Gully Sucker which is a tanker containing two compartments, one for clean water and another for dirty water. In practice, when used, the clean water compartment is full and the water contained is used under high pressure to clear gullies. The gross vehicle weight was not given in this tender but was left up to bidders. Appellant contacted 4 suppliers with the specifications and chose two of these to make the tender offers. These suppliers used a method to calculate the cost effective offer, calculated the truck chassis weight, the necessary equipment and the rest of the weight would be the water and waste in the tanks. Thus they recommended tanks with a capacity of 2000 and 4000 litres of water and sludge respectively. Assuming a water density of 1 both suppliers worked out that a 12 ton truck would suffice. Thus appellant's offer was for a 12 ton truck.

Dr Ian Vella Galea for the appellant said in practice the truck would start in the morning with a full water tank weighing 2 tons. During use this would empty and the other tank would be filled up with 4 tons of sludge and there would never be occasion for both the tanks to be full. This was the usual practice and appellant had documents that showed that this was so. The evaluation board made wrong assumptions that two full tanks could be a possibility. This was not in the tender document. The evaluation board also disagreed that the loading of the tanks would be taken care of by the driver. They assumed that the truck should be safe whoever was driving it. Another wrong assumption by the evaluation board was that the truck would be filled with dirty rain water. The tender specifies that the truck would be used for the cleaning of dirt and not dirty rain water. Appellant's tender had been disqualified because of three assumptions made by the evaluation board. Appellant calculated the truck weight of 12 tons as 8 tons for the vehicle and a full sludge tank weighing 4 tons, a total of 12 tons. This was calculated as per the normal praxis in such work.

Dr Aldo Carrieri was called as a witness by appellant to explain the praxis in Italy and in Europe when cleaning storm water gullies. However since Dr Carrieri spoke only Italian and no interpreter had been provided the Board could not hear his evidence.

Dr Ian Vella Galea made a formal request to hear the witness in Italian. The Board since the matter of the case was technical decided that witness could only be heard in the official languages of Malta that is Maltese and English.

Perit George Buhagiar, the Chairperson Evaluation Board, on behalf of the contracting authority explained that the scope of the tender was for the cleaning of the structure of the flood relief project, to clean up rain water. The use does not necessitate always emptying the water tank before filling up the other tank with sludge. The problem with appellant's truck is that in certain conditions, when there was no need to use the clean water tank, it could exceed the rated gross vehicle weight. The truck would weigh 8 tons plus two full tanks weighing another 6 tons totalling 14 tons. The preferred bidder's truck, when the tanks are full did not exceed the gross vehicle weight.

Engineer Margaret Zammit, a member on the evaluation board said that the tender never said that in use the truck would start with 2 tons water and finish with 4 tons of sludge. This sludge was specified in the tender to consist of dirt and silt, that is, having a density of more than water. With both tanks full the load of the truck would be weighing more than 6 tons. No vehicle is allowed on the road having a total weight exceeding its stated gross vehicle weight of the chassis. Appellant submitted a vehicle designed as having 12 tons stated gross vehicle weight. These trucks were to be ordered custom made and the designer had to consider the worst case scenario. The designer has to work backwards in choosing an adequate chassis for the truck. The tender had specified the two tank sizes as being 2000 litres and 4000 litres respectively. Appellant's truck when taking into consideration the vehicle's weight and the equipment and the worst case scenario – with both tanks full- could exceed the 12 tons of its declared gross vehicle weight. This scenario would take effect when the sludge consisted of silt and oil traps where the water tank would not need to be used. The water would be used when thick material was to be cleared.

Dr Ian Vella Galea for the appellant insisted that the tender stated that dirt would be cleared. It assumed that the water compartment would be used.

Engineer Ray Muscat for the appellant said that a previous tender issued by the same department had asked for a specified payload. This helped bidders prepare their bids. In the present tender the contracting authority should have specified a clear payload of 6 tons and the problem would not have arisen.

Dr John Gauci on behalf of the preferred bidder said that while appellant referred to the praxis in working such contracts, it failed to consider the real practice in use here for working this contract. Appellant's bids were rejected because appellant made the wrong assumptions and not the other way round. The solutions offered by appellant are not useable because the contractor cannot break the law by overloading the truck being used to provide the service. Reference to other tenders is irrelevant.

Engineer Margaret Zammit for the contracting authority said that bidders should be aware of the law relating to the weight of trucks on the road.

At this point the hearing was closed.

This Board,

Having noted the Appellant Company's 'Letter of Objection) , without reason, dated 26th August 2014 and also through Appellant's verbal submissions during the hearing held on 18th September 2014, had objected to the decision taken by the pertinent

Authority, in that:

- a) Appellant contends that his offer was technically compliant and not as stated by the Contracting Authority in its letter of rejection, stating that Appellant's offer was technically non-compliant.**
- b) Appellant claims that the technical specifications as laid out in the tender document were vague and of no assistance to the prospective tenderer.**

Having considered the Contracting Authority's verbal submissions during the hearing held on 18th September 2014, in that:

- a) The Contracting Authority contends that, in formulating the submitted technical specifications of his product, he made the wrong assumptions and failed to provide for a 'worst case scenario' situation.**
- b) In submitting his offer, Appellant failed to foresee that under certain conditions, the truck being proposed by same to carry out the tendered works could exceed the rated gross vehicle weight which is legally permitted.**

Reached the following conclusions:

- 1. This Board notes that since, in its Letter of Objection, the Appellant Company did not state the reasons for objecting, the actual reasons were stated by Appellant in the verbal submissions made by same during the hearing of this Appeal. This Board does not approve of such an irregular procedure, especially when the same Board noticed that the Appellant was fully informed by the Contracting Authority as to why Appellant's offer was technically non-compliant, vide attachment to the 'Letter of Rejection' dated 19th August 2014.**
- 2. With regards to the Appellant's contention that his offer was technically compliant; this Board, after having heard of what was required from the works being tendered and the technical submissions made by the Engineers of the Contracting Authority, considers these submissions to be credible and justified. This Board upholds the Contracting Authority's contention that, in compiling the technical details of his offer, Appellant made the wrong assumptions and did not provide for a 'worst case scenario' situation. This Board also notes that Appellant should have known of the maximum vehicle load which is legally allowed. In this regard, this Board does not uphold Appellant's contention that his offer was technically compliant.**
- 3. With regards to Appellant's claim that the technical details as dictated in the tender document were vague, if not unhelpful; this Board had to rely heavily on the technical submissions made by the Engineers, however, this same Board opines that the purpose for which this tender was issued was clearly defined in**

the tender document. In this respect this Board does not uphold Appellant's claim that the technical specifications as laid out in the tender document were vague.

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

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Richard A. Matrenza
Member

21 October 2014