

PUBLIC CONTRACTS REVIEW BOARD

Case No. 761

Park/Life 68/2014

Tender for the Supply, Delivery and Commissioning of a Backhoe Loader for the EU Life Saving Buskett Project Executed by the PARK and Initiatives Directorate.

The tender was published on the 8th August 2014. The closing date was the 29th August 2014.

The estimated value of the Tender was €46,000 (Exclusive of VAT).

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

On the 3rd October 2014 Green Building Solutions filed a letter of objection against the decision of the contracting authority to reject its offer as being technically non-compliant.

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 18th November 2014 to discuss the objection.

Present for the hearing were:

Green Building Solutions - Appellant

Mr Rhys Lee Buttigieg Representative

SR Services - Preferred Bidder

Ing Ray Muscat Representative

Park + Initiative Directorate - Contracting Authority

Mr Emmanuel Portelli	Chairperson Evaluation Board
Mr Mark Anthony Zammit	Secretary Evaluation Board
Mr Mark Causon	Member Evaluation Board
Mr Joseph Gauci	Member Evaluation Board
Mr Joseph Borg	Member Evaluation Board
Mr Emanuel Borg	Representative
Dr Abigail Caruana	Legal Representative

The Chairman made a brief introduction and asked the contracting authority's representatives to explain the meaning of a form signed by Sampierana SPA with the preferred bidder's tender. He also asked for an explanation about a letter from the contracting authority that stated that the preferred bidder's tender was technically non-compliant.

Mr Emanuel Portelli the chairperson of the evaluation board said that the preferred bidder, SR Services had submitted two tenders, one of which was found to be non-compliant while the other was compliant.

Dr Abigail Caruana explained that the form referred to one of the two tenders submitted by the preferred bidder that was also disqualified, being technically non-compliant.

Mr Ray Muscat on behalf of the preferred bidder explained that the preferred bidder prefers to have the 'Technical specifications form' countersigned by the supplier providing the equipment, in this case Sampierana SPA, to give the tender more weight.

The appellant's representative was then invited to make his submissions on the objection.

Mr Rhys Lee Buttigieg on behalf of the appellant claimed that no reasons were given by the contracting authority for the disqualification of appellant's tender. Appellant found it difficult to make the objection since the reason for non-compliance was not divulged to the appellant.

The Chairman asked the contracting authority to explain why appellant's offer had been disqualified.

Dr Abigail Caruana on behalf of the contracting authority said that the appellant had quoted the wrong Regulation in the letter of objection, and this Board had to decide on the matters raised by the letter of objection only. The fact that no reason was given does not affect the award of the tender. She said that appellant's tender had been disqualified because it was technically non-compliant with Clause 8.3.16. This specified that the Hydraulic pump had to be rated at approximately 100 litres per minute while the pump offered by appellant was only rated at 56 litres per minute. This was not approximately 100 litres/minute and was unacceptable and appellant's tender had to be disqualified.

Mr Rhys Lee Buttigieg insisted that the tender document said "approximately 100 litres/minute" and it did not give a range within which the pumps should be.

At this point the hearing was brought to an end.

This Board,

Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 3rd October 2014 and also through Appellant's verbal submissions during the hearing held on 18th November 2014, had objected to the decision taken by the pertinent Authority, in that:

- a) The Contracting Authority did not state the reasons why Appellant's offer was rejected. This omission, on the part of the Contracting Authority, hindered Appellant's rights to object on specific issues during the hearing of the Appeal.**

- b) With regards to the rating of the Hydraulic Pump, Appellant contends that the tender document dictated a rating of same equipment, at ‘approximately 100 litres per minute’. The specification, in this regard, did not state a range within which the pump should fall.

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

- a) The Contracting Authority maintains that the fact that no reasons were given in its letter of rejection does not affect the award of the tender.
- b) Appellant’s bid was technically non compliant. The tender document dictated a rating of the hydraulic pump to be ‘approximately’ 100 litres per minute whilst Appellant’s rating of same equipment was 56 litres per minute. The Contracting Authority contends that this difference in rating does not constitute an approximation.

Reached the following conclusions:

1. This Board notes, with regret, that it has become an addictive practice by some Contracting Authorities not to submit the valid and specific reasons for the rejection of the offer of the unsuccessful bidder. This Board strongly opines that the unsuccessful bidder must be informed with specific reasons why his offer was unsuccessful; so as to allow the prospective Appellant to present his objection to the reasons given to him by the Contracting Authority. Since Appellant must state the reasons for his objection, same must be aware of the reasons for the rejection of his bid. In this regard, the Contracting Authority failed, in all respects, to inform Appellant. Inform the unsuccessful bidder of the reasons of rejection of his offer. This Board upholds Appellant’s first grievance.
2. With regards to Appellant’s second contention in that; ‘the technical specification of the hydraulic pump gave an approximation and not a range of rating of same equipment’, this Board is credibly convinced, from the submissions of the Contracting Authority that Appellant’s offer of rating 56 litres per minute does in fact fall short of the expected approximate 100 litres per minute, as dictated in the tender document. This Board opines that an ‘approximate 100 litres per minute’ refer to a rating near the 100 litres figure. In this regards, this Board opines that the Appellant’s equipment rating of 56 litres is nowhere near the expected approximate rating as dictated in the tender document. This Board does not uphold Appellant’s second contention.

In view of the above this Board finds against the Appellant, however, due to the fact that the Appellant was not informed of the reasons for the rejection of his offer, this same Board recommends that the deposit paid by Appellant should be reimbursed.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

25 November 2014