

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 771**

**CT 3094/2014**

### **Tender for the Supply, Delivery and Installation of Road and Street Lighting Using Smart Lighting.**

The tender was published on the 18<sup>th</sup> July 2014. The closing date was the 4<sup>th</sup> September 2014.

The estimated value of the Tender was €708,000 (Inclusive of VAT).

Ten (10) tenderers had submitted an offer for this tender.

On the 15<sup>th</sup> December 2014 KDM/BNE filed a letter of objection against the decision of the contracting authority to disqualify its 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 13<sup>th</sup> January 2015 to discuss the objection.

Present for the hearing were:

#### **KDM/BNE - Appellant**

Mr Samuel Bonanno	Representative
Mr Jes Camilleri	Representative
Dr Jesmond Manicaro	Legal Representative

#### **Street Lighting - Preferred Bidder**

Mr Arvin Camilleri	Representative
Mr Ludwig Camilleri	Representative
Mr Liam Ferriggi	Representative
Dr Veronique Dalli	Legal Representative
Ms. Joanne Aloisio	Representative

#### **Sustainable Energy and Water Conservation Unit - Contracting Authority**

Mr John Chircop	Representative
Dr Katrina Borg Cardona	Legal Representative
Mr Simon Scicluna	Representative
Mr Mark Perez	Representative

#### **Department of Contracts**

Mr Kevin D'Ugo  
Mr George Vella

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

Dr Jesmond Manicaro on behalf of the appellant consortium remarked that there was a great discrepancy between the amount of the preferred bidder shown in the opening schedule and the amount shown on the award to the preferred bidder. The amount shown on the notice board is €537,728 while that given in the notice of rejection received by appellant is shown to be €227,562. He said that unless this is explained he would not be able to continue making his case for the appellant.

Mr John Chircop on behalf of the contracting authority explained that the criterion for this tender was the cheapest bid. The offers had however to be increased by the amount that the use of the lighting for 10 years. That is the bidders had to give both the capital cost and the running costs. The preferred bidder had included these running costs in the bill of quantity and thus the amount of €537,728 included both the capital cost and the running costs. The other bidders shown in the schedule only put down the capital costs. This explains the discrepancy. The letter of rejection which was sent to appellant showed the amount of the capital costs as submitted by the preferred bidder.

The preferred bidder's running costs calculation also needed arithmetical correction after a clarification was issued. The preferred bidder had based the calculation on the wattage at 100% when this was to be 75% because of the dimming. Thus the running costs were reduced to €203,423.66 leading to a total of €480,985.66. The capital cost remained the same. Replying to questions by Dr Manicaro, Mr Chircop referred to page 27 where the procedure of adding the running costs to the capital costs for each bidder was explained.

Dr Jesmond Manicaro on behalf of the appellant said that his client was disqualified because the lighting offered by appellant was not up to specifications. It can be seen that the evaluation board, when going through appellant's data sheets, missed the point that in fact these were just an example since appellant was offering both luminaires at 4000K and 4200K.

The Chairman asked appellant what model of luminaire was offered by appellant.

Dr Manicaro stated that appellant in his bid had offered model number 1831115.

The Chairman remarked that from Appendix X it could be seen that this model number gives 4000K.

Dr Manicaro insisted that from the data sheet it could be seen that the model could give from 4000K and also 5000K.

Mr Carmel Bonanno on behalf of appellant said that the supplier could not produce a separate data sheet for 4200K luminaires, because the standard used in Europe is 4000K. The supplier builds the code according to the orders received. If and when the order was received (if awarded the tender) the supplier would purchase the necessary LEDs needed for 4200K.

Mr John Chircop for the contracting authority said that when doing the photometric report simulation, appellant had used lamps that gave a colour temperature of 4200K but for the simulation bidders could use different lamps from those offered. Thus the evaluators could not rely on the data of the simulations. In the tender document, appellant specified that the

colour temperature of the luminaire offered was 4000K. Also the model number listed in appellant's tender was 1831115. This model gave 4000K. While appellant had offered two different lamps, LSL 45 and LSL 60 appellant based the running costs on one lamp only. The evaluation board only had the tender data supplied by appellant to evaluate the offer.

Dr Veronique Dalli on behalf of the preferred bidder said that for some reason the tender requisite of colour temperature of 4200K was ignored by the appellant. Yet this requisite was clearly stated in the tender document. Appellant offered luminaires of different colour temperature. Also it can be clearly seen from the reply given by the contracting authority that there was a difference of €110,000. The consumption over 10 years has to be worked out on a colour temperature of 4200K thus the appellant's working of the consumption factor was wrong.

At this point the hearing was closed.

**This Board,**

**Having Noted the Appellant's objection in terms of the 'Reasoned letter of Objection' dated 15<sup>th</sup> December 2014, and also through Appellant's verbal submission during the hearing held on 13<sup>th</sup> January 2015, had objected to the decision taken by the pertinent Authority, in that:**

- a) **Appellant maintained that there was great discrepancy between the amount of the preferred Bidder as shown in the opening schedule and that shown in the award of the Tenderer.**
- b) **Appellant contends that although, allegedly, the Contracting Authority disqualified his offer on technical grounds, Appellant maintains his offer, as can be seen from the data sheet submitted, was technically compliant.**
- c) **Appellant stated that the standard luminaries adopted in Europe was for 4000K luminaries and that his supplier could not produce literature other than for 4000K, however, if awarded, his supplier would provide for 4200K luminaries.**

**Having considered the Contracting Authority's verbal submission during the hearing held on 13<sup>th</sup> January 2015, in that:**

- a) **The Contracting Authority explained to this Board why there was a discrepancy in the quote Bidder's price, from that shown in the opening schedule to that quote in the award of tender. Reference was made to the fact that apart from the capital cost, the Evaluation Committee had to take also into consideration the running costs of the system for ten years.**
- b) **The Contracting Authority referred to the model offered by Appellant on appendix B (submittal form) which was model number 1831115 and this stated 4000K luminaries. To this effect, the Evaluation Committee had to assess Appellant's offer on the 'laminar details submittal form' and not otherwise.**
- c) **The Contracting Authority re-affirmed that the Evaluation Committee carried out its evaluation process on documentation as submitted by Appellant.**

**Reached the following conclusions:**

- 1. With regards to Appellant's first contention, this Board is justifiably satisfied that, through credible explanation given by the Contracting Authority, in that, the discrepancy in the preferred Bidder's price, between that quoted in the opening schedule from that quoted in the award of tender; to represent the capital cost and the running cost for ten (10) years of the system. This Board opines that the Evaluation Committee adhering to page twenty seven (27) of the tender document wherein the procedure of adding the running costs to the capital outlay for each Bidder was clearly explained. In this regard, this Board opines that the Evaluation Committee acted in a fair and transparent manner and consequently, this Board does not uphold Appellant's first contention.**
- 2. With regards to Appellant's second contention, in that, he was technically compliant, this Board, heard the credible submissions made by the Contracting Authority and made due reference to the technical specifications submitted by Appellant on page twenty seven (27), where it is clearly stated that model No 183115 had a 4000K luminaries. In this regard, this Board upholds the Contracting Authority's contention that the Appellant's offer was not technically compliant.**
- 3. With regards to Appellant's third contention, this Board opines that it is not what the standard is in Europe which counts but rather the technical requirements as dictated in the tender document. This Board does not uphold Appellant's third condition.**

**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

*20 January 2015*