

PUBLIC CONTRACTS REVIEW BOARD

Case 772

WSC 533/2013

Tender for Electro-Submersible Water Pumps – Ta’ Bakkja Pumping Station – Water Services Corporation.

The tender was published on the 22nd August 2014 and the closing date was on the 2nd October 2014. The estimated value of the tender was €59,322.04 (Exclusive of VAT)

Sixteen (16) bidders had submitted an offer for this tender.

On the 28th November 2014 Jani Limited filed an objection against the decision to reject their tender for being administratively 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 Thursday the 15th January 2015 to discuss the objection.

Present for the hearing were:

Jani Limited - Appellant

Alfredo Martinez Burgos	Representative
Dr Mark Refalo	Legal representative

Attard Farm Supplies - Preferred Bidder

No representatives present

Water Services Corporation - Contracting Authority

Mr Stephen Galea St John	Chairperson Evaluation Board
Mr Anthony Camilleri	Secretary Evaluation Board
Mr Vincent Bezzina	Member Evaluation Board
Mr Anthony Muscat	Member Evaluation Board
Mr Mark Perez	Manager EU Funding

Department of Contracts

Mr Kevin D’Ugo	Procurement Manager
----------------	---------------------

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

Dr Mark Refalo on behalf of Jani Limited, the appellant started by making reference to a judgement given on the 12th January 2015 by the Court of Appeal in the names "Cassar Petroleum Services Limited v Gozo Channel Company Ltd et. He explained that the case was identical to the present objection and dealt with the principle of proportionality when the submission of documents was involved. In the present case appellant had in fact submitted the requested ISO 9001 certificate but this certificate had lapsed on the 18th September 2014. However appellant had explained that the same certificate's validity would be extended for 1 year if the annual audit result was successful. The closing date of the tender fell within the time-window for the extension of the certificate, and there was no time to submit the new certificate.

Mr Mark Perez on behalf of the contracting authority said that the tender required that bidders have an ISO certificate 9001 in place at the closing time of the tender. The certificate submitted by appellant had an expiry date of the 18th September 2015 while the closing date was the 2nd October 2014. He admitted that the certificate submitted had a written comment that it would be renewed subject to the audit test. The evaluation board reasoned that audits are carried out before the expiry date of the certificate in order that this may be renewed. Therefore from the 18th September to the 2nd October, there was ample time if the audit was successful for the new certificate to be issued. The board could not conclude that the audit had been successful or not since the new certificate was not produced. The evaluation board also considered that asking for the new certificate would be rectification and not clarification, and rectification was not permissible according to note 3.

The Chairman remarked that this was obviously a case for clarification because the document had been submitted. The evaluation board could have asked for clarification on the submitted document. This was clearly a case where clarification should have been resorted to.

At this point the hearing was closed.

This Board

Having noted the Appellant's Objection, in terms of the "Reasoned Letter of Objection" dated 27th November 2014 and also through the Appellant's Verbal Submissions during the Hearing held on 15th January 2015, had objected to the decision taken by the pertinent authority, in that:

- a) **Appellant contends that he had submitted the requested ISO Certificate and although same certificate's validity lapsed within the tendering period, extension of the certificate for a period of one year would automatically be renewed when subjected to annual audit;**

Having considered the Contracting Authority's verbal submissions during the hearing held on 15th January 2015, in that:

- a) **The Contracting Authority maintained that the Tender Document dictated that all bidders should have an ISO Certificate 9001 in order, as at the closing date of the Tender. The document submitted by the Appellant was not valid as at closing**

date of the Tender. In this regard, the Evaluation Committee was not in a position to proceed with the Evaluation Process of Appellant's Offer.

Reached the Following Conclusions:

- 1. This Board appreciates the fact that conditions, in so far as documentation, are dictated by the Tender Document and should be strictly adhered to. However, it is the opinion of this Board that in this Particular Case, although the Document expired by the time of the closing date of the tender, an ISO 9001 Certificate was in fact submitted. This Board opines that in such an instance, a clarification from the Evaluation Committee would have been proper. This Board does not uphold the Contracting Authority's contention that any requests from the Evaluation Committee's end would have involved a "Rectification". Even more so, if one had to take into consideration the footnote of the ISO Certificate submitted by appellant, which clearly stated that "If annual surveillance audit result is successful, certificate validity is extended for 1 year".**

In view of the above, this Board finds in favour of the appellant Company and recommends that:

- i) Appellant's offer be re-integrated in the Evaluation Process;**
- ii) The deposit paid by the Appellant be reimbursed**

**Dr Anthony Cassar
Chairman**

**Dr Charles Cassar
Member**

**Mr Lawrence Ancillieri
Member**

22 January 2015