

PUBLIC CONTRACTS REVIEW BOARD

Case No. 808

DH 436/2014

Tender for the Supply of Filters for the HVAC System at MDH.

The tender was published on the 27th June 2014. The closing date was the 24th July 2014. The estimated value of tender is €120,000 (Exclusive of VAT).

Six (6) offers had been received for this tender.

On the 27th February 2015 Aretrop Limited filed an objection against the decision of the contracting authority to disqualify its tender offer.

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 28th May 2015 to discuss the objection.

Present for the hearing were:

Aretrop Limited

Mr Santo Portera	Representative
Ms Ritianne Schembri	Representative
Dr Ivan Mifsud	Legal Representative

Reliability and Maintenance Services Limited:

Mr Saviour Sino Abela	Representative
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Central Procurement and Supplies Unit:

Mr Stephan Mercieca	Chairperson Evaluation Board
Ing. Ivan Cachia	Member Evaluation Board
Mr Marnol Sultana	Representative
Dr Stefan Zrinzo Azzopardi	Legal Representative

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

Dr Ivan Mifsud on behalf of the appellant explained that the tender was issued for 20 different kinds of filters and that their tender, although being the cheapest, was disqualified on just one kind of these filters. He contended that the evaluation board had thus failed to exercise its discretion. The product offered by the appellant was in fact superior to the specifications requested in the tender. The latter had offered a 30 mm thick filter which is compressible by up to 60%. This was within the +/-5% allowed. The appellant had supplied the same filters to the contracting authority before. Page 9 of the tender document had stated "or equivalent" when referring to the specifications and the product offered by appellant was fully compatible and equivalent. Also when referring to the thickness required, (page 19), bidders were requested to state variances, and this meant that bidders had some leeway in providing the thickness of the filters. However the letter of rejection just said that appellant's offer was not compliant since the "required thickness was 25mm"; this was the wrong interpretation. Appellant's product gave much more for less cost.

Dr Stefan Zrinzo Azzopardi on behalf of the contracting authority agreed that the tender was being adjudicated as 1 lot and not the individual items. This meant that all the items offered had to be compliant with the specifications. The tenders were evaluated on the documents submitted by the bidders with their tenders. The appellant's offer was rejected because of the submissions made with the tender originally; the filter submitted was inferior to the requisites and not superior as was being claimed. When asked for clarification by the evaluation board, the appellant had submitted additional, different literature on the item in question. Most of the other types of filter had an allowance of +/- 5% but the item on which the appellant was disqualified, did not have this allowance. Since the tender was not divided into lots, the evaluators had to reject appellant's tender.

Engineer Ivan Cachia on behalf of the contracting authority, under oath said that the original documents submitted by appellant, for the item under consideration, clearly stated that the thickness of the filter was 10mm. (Here witness filed a copy of the document). When subsequently the appellant was asked for clarifications regarding the other items, additional documents for the filter under examination were submitted, and in these the thickness was indicated to be 30mm. These additional documents stated that the thickness was 30mm +/- 5, which would have been correct had these been submitted with the original tender. Replying to Dr Ivan Mifsud, he reiterated that the original submission had clearly stated that for G2 grade product, the thickness was 10mm. This was inferior to requirements.

Mr Santo Portera for the appellant insisted that the original tender offered the 30mm +/- 5m thick filters.

Dr Stefan Zrinzo Azzopardi for the contracting authority said that the specifications did not allow any rectification of the original offers. In this case the original offer did not conform to the specifications and could not be rectified.

At this point the hearing was closed.

This Board,

Having noted the appellant's objection, in terms of the "Reasoned Letter of Objection"

dated 25th February 2015 and also through the appellant's verbal submissions during the public hearing held on the 28th May 2015, had objected to the decision taken by the pertinent authority, in that:

- a) The appellant contends that the Evaluation Board failed to exercise its discretion, in that his offer, although the cheapest, was discarded simply due to the fact that one of the items quoted by the appellant, namely filters, failed to meet the required specifications as laid out in the Tender Document;
- b) The appellant company maintains that not only does his offer meets the required specification but is also superior in quality from that requested in the Tender Document.

Having noted the Contracting Authority's "Letter of Reply" and verbal submissions during the hearing held on 28th May 2015, in that:

- a) The Contracting Authority contends that the tender was adjudicated as one whole tender and not by specific items. All the components listed in the Technical Specifications of the Tender Document had to be compliant. In the appellant's case, not all items were compliant, namely "filters";
- b) The appellant, in his original offer, stated that the thickness of the "filter" was 10mm. Upon requesting clarifications, the Contracting Authority received a totally different version of the technical specifications of the filter.

Reached the following conclusions:

1. With regards to the appellant's first grievance, this Board, after having heard credible submissions from the Contracting Authority, that although the tender was composed of various items, justifiably opines that the tender had to be assessed as one and not segmented in accordance with the items listed in the Tender Document. This Board contends that every tender is broken down into the technical specifications of the components of the product being requested by the Contracting Authority. However, all the components of the product have to be technically compliant. In this regard, this Board opines that the Evaluation Committee had to ensure that all the stipulated technical components of the product were compliant. In the appellant's case, not all the items were technically compliant. To this effect, this Board does not uphold the appellant's first contention;
2. With regards to the appellant's second contention, this Board noted that it was credibly established and confirmed by the latter that when the Contracting Authority requested clarifications, the appellants submitted different technical specifications of the filter, from those submitted with the original Tender Document. In the original submission, the thickness of the filter was 10mm whilst on replying to the clarification, the appellant quoted a thickness for the same filter of 30mm +/- 5. This Board justifiably opines that the evaluation committee could not accept the technical submission of the second version. In fact, if the Evaluation Committee had accepted such a technical change in submission, it would have been a rectification of the Appellant's technical offer.

In this regard, this Board does not accept the appellant's second contention.

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

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Lawrence Ancillieri
Member

4 June 2015