

PUBLIC CONTRACTS REVIEW BOARD

Case No. 847

CT 3024/2015

Tender for the Supply and Commissioning of Heavy/Light Plant Equipment and Refrigerated Truck for the Waste Treatment and Transfer Facility at Tal-Kus, Gozo – WasteServ Malta.

The tender was published on the 23rd June 2015. The closing date for the call was on the 4th August 2015.

The estimated value of tender is €750,000.00 (Exclusive of Vat).

On the 4th August 2015 SR Environmental Solutions filed a pre-contractual concern in terms of Regulation 85 of LN 296 of 2010 requesting a change in the tender specifications.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a hearing on Friday the 28th August 2015 to discuss the objection.

Present for the hearing were:

SR Environmental Solutions:

Mr Ray Muscat	Representative
Mr Simon Zammit	Representative
Mr David Muscat	Representative

WasteServ Malta Limited:

Mr Martin Casha	Chairman Evaluation Board
Mr Roderick Spiteri	Representative
Mr Jean Luke Zarb	Representative

Department of Contracts:

Ms Michelle Lunetti	Representative
Dr Christopher Mizzi	Legal Representative

The Chairman after making a brief introduction invited the appellant's representative to make his submissions.

Mr Ray Muscat on behalf of the appellant explained that appellant was objecting in order to have a more open tender where there could be more competition because as it stood at present the bidders for Lot 1 would find it difficult to abide by the strict specifications. He said that if this change in specifications was not possible then the contracting authority should consider removing Lot 1 from the tender and have another tender issued specifically for Lot 1.

Dr Christopher Mizzi on behalf of the Department of Contracts stated that the specifications had been specially formulated to cater for the site in which the truck/loader would be used. However since the tender was issued, the parameters of the site in which the truck would operate had changed. This allowed the possibility to adjust the specifications accordingly. He continued that the contracting authority agreed with this change. Normally such changes to specifications at the clarification stage could not be made, but in order to open the tender to more bidders these would be changed, increasing the tolerance. He explained that the length of the truck would be changed allowing an increase of 20%; the external radius parameters allowed would be reduced by 20%.

At this point the hearing was closed.

This Board,

Having noted the Appellant company's 'Pre-Contractual Concern' in term of the Appellant's verbal submissions during the hearing held on 28th August 2015, had objected to the decision taken by the pertinent Authority, in that:

- a) Appellant contends that the specifications dictated in the tender documents were too rigid and very difficult to abide by.**

Having considered the Contracting Authority's verbal submissions during the hearing held on 28 August 2015, in that:

- a) The Contracting Authority maintains that the technical specifications dictated in the tender document reflected the proportionate requirements for the proper execution of the project being tendered for.**

The Contracting Authority informed this Board that since, the publication of the tender,

the parameters of the site have been altered, and in this regard, same Contracting Authority will allow a tolerance of 20% and this will permit more Bidders to participate.

Reached the following conclusions:

- 1. This Board justifiably contends that the specifications issued in the tender document were proportional to the site of the project itself. This Board also notes from credible submissions by the Contracting Authority, that since the publication of the tender, the parameters of the site of the project have been changed, so that, the length of the truck would be allowed an increase of 20% and the external radius parameters would be reduced by 20%.**

This Board contends that through the application of this 20% tolerance, the Contracting Authority is opening the opportunity for more prospective Bidders.

In view of the above, this Board commends the positive approach taken by the Contracting Authority and recommends, that the tendering process be continued, to include the said tolerances.

**Dr Anthony Cassar
Chairman**

**Dr Charles Cassar
Member**

**Mr Lawrence Ancilleri
Member**

31 August 2015