

PUBLIC CONTRACTS REVIEW BOARD

Case No. 849

WSM 68/2015

Works Tender for the Sewage System at the Tal-Kus Waste Transfer Station l/o Xewkija Gozo.

The Tender was published on the 30th April 2015. The closing date was the 21st May 2015. The estimated value of Tender is €105,215.52 (Exclusive of VAT).

Two (2) offers had been received for this Tender.

On the 29th July 2015 Road Construction Co. Limited filed an 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 22nd September 2015 to discuss the objection.

Present for the hearing were:

Road Construction Co Limited:

No Representatives

PJ Debono Construction Limited:

Mr Joseph Debono
Dr Mario Scerri

Director
Legal Representative

WasteServ Malta:

Mr Stephen Dimech
Mr Eric Formosa
Mr Martin Casha
Dr Victor Scerri

Chairperson Evaluation Board
Member Evaluation Board
Representative
Legal Representative

The Chairman stated that since no representatives from the Appellant's side had turned up for the Public Hearing, he instructed the PCRB Secretariat to contact by telephone the Appellant firm to see what had happened since the latter, through an email dated 18th September 2015, had confirmed that they will be attending for today's hearing. He said that when contacted by telephone, the Appellant had informed staff members that they would not be attending the hearing, giving no reasons for this action. The Chairman then said that the hearing would continue with those present and that the case would be decided taking consideration of Appellant's submissions in the letter of objection.

Dr Victor Scerri on behalf of the Contracting Authority explained that the Contracting Authority had asked for the pipes to be used in the Tender to be 40 meters long between joints. The reason for this being that this length was the optimum length. The Appellant had offered pipes 11.8 metres in length. After being disqualified, the Appellant had informed the Contracting Authority that different pipe lengths could be supplied.

Dr Mario Scerri on behalf of the Recommended Bidder made reference to his client's letter of reply and explained that the Appellant could have asked for clarification on the length of pipes but chose not to do so.

At this point the hearing was closed.

This Board,

Having noted the Appellant Company's objection, in terms of the "Reasoned Letter of Objection" dated 29th July 2015, had objected to the decision taken by the Pertinent Authority, in that:

- a) **The Appellant maintains that the procedure which will be adopted with pipes in coils is exactly the same as specified in the Tender Document with the exception that, instead of having joints at 40 metre intervals, the Appellant offered a product which will have an 11.8 mm interval joint;**
- b) **The Appellant contends that the Evaluation Board should have asked for a clarification since the Appellant maintains that the procedure and the overall result would be the same as that requested in the Tender Document.**

**Having considered the Contracting Authority’s “Letter of Reply” dated 3rd August 2015,
in that:**

- a) The Contracting Authority contends that the Technical Specifications in the Tender Document dictated that the pipes tendered for must be 40 metres long in between joints. The Appellant offered pipes with a length of 11.8 metres between the joints, hence, they were not technically non compliant.**

Reached the following conclusions:

- 1. On a General note, this Board would like to express its disapproval at the Appellant Company’s approach towards the scheduled hearing of this Appeal. Although, the Appellant’s representatives were informed of the Public Hearing well in advance and the latter confirmed their attendance to the same, nobody turned up from the Appellant’s side and it was only following persistent communication from this Board’s end, that the latter was informed by the Appellants that nobody could attend from their side and that the Public Hearing could proceed “*in absentia*”.**

It was for this reason that the Board decided to proceed with the Public Hearing however, when informing the other interested parties present, this same Board stated that its adjudication will be based on the Appellant’s “Letter of Objection” dated 29th July 2015 and the Contracting Authority’s “Letter of Reply” dated 3rd August 2015.

2. **With regards to the Appellant's First Contention, this Board opines that the Contracting Authority is bound to dictate the Technical Specifications in a Tender Document and to ensure that the correct requirements are obtained after acknowledging their exact requisites.**

In this case, the Contracting Authority established and dictated that pipes are to have joints at 40 metre interval lengths. This Board is justifiably convinced that this Technical Specification was imposed to ensure a more practical approach towards the maintenance and services which may be required in the long run.

The fact that the procedure of laying the pipes, as offered by the Appellant, may be the same as that specified in the Tender Document, does not exclude the cardinal fact that the Appellant offered pipes of a Technical Quality different from that dictated in the Tender Document. In this regard, this Board does not uphold the Appellant's First Contention.

3. **With regards to the Appellant Company's Second Contention, this Board is being presented with objections which their answer could have been achieved through clarifications to be made by any prospective bidders. This Board opines that its jurisdiction is to assess and adjudicate the process of Evaluation of Tenders and not to contest the Technical Specifications of a Tender.**

This same Board opines that the Appellant Company had remedies to clarify his offer with the Contracting Authority prior to the submission of his bid. In this

regard, this Board justifiably opines that the Appellant's offer was not in accordance with the Technical Specifications as dictated in the Tender Document.

Apart from credibly confirming the Evaluation Board's decision to discard the Appellant's bid, this same Board does not uphold the Appellant's Second Grievance.

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

29 September 2015