

PUBLIC CONTRACTS REVIEW BOARD

Case No. 850

DH 1664/14

Tender for the Supply, Installation and Commissioning of a High Pressure Compressor Unit.

The Tender was published on the 6th March 2015. The closing date was the 2nd April 2015. The estimated value of Tender is €25,000 (Exclusive of VAT).

Eight (8) offers had been received for this Tender.

On the 10th July 2015 The Dive Warehouse 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:

The Dive Warehouse:

Mr Claude Sciberras	Representative
Mr Paul Sciberras	Representative

Hundar Limited:

Mr Keith Attard	Representative
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Central Procurement and Supplies Unit:

Mr Wayne Caruana	Chairperson Evaluation Board
Mr Jesmond Farrugia	Member Evaluation Board
Mr Gordon Fenech	Member Evaluation Board
Mr Walter Farrugia	Member Evaluation Board
Mr Marnol Sultana	Representative
Ms Marisa Mifsud	Representative
Dr Stefan Zrinzo Azzopardi	Legal Representative

The Chairman explained that the Appellant had submitted three offers for this Tender bearing numbers 31385, 31386 and 31388. Each of these was a Tender bid in its own right and therefore a Letter of Objection should have been submitted for each individual bid and accompanied by a deposit each.

Mr Claude Sciberras declared that the Appellant was thus withdrawing the objections regarding offers numbers 31386 and 31385. Thus the present appeal was being limited to Appellant's Tender number 31388 which was for €21,082.59.

Following this, the Appellant's representative was invited by the Chairman to make his submissions.

Mr Claude Sciberras on behalf of the Appellant stated that their Tender had been rejected because *“not up to specifications since the compressor offered has a cylinder filling bank. Technical specifications requested a high pressure compressor to be connected to the existing pipeline as stated in technical specifications, paragraph 7b. Moreover, it is clear in the Functional Specifications of the Technical Specifications, that the compressor is required to supply air to the hyperbaric chambers and not to re-fill cylinders.”*

He contended that the Evaluation Board had noticed a filling panel on the equipment and assumed that since the equipment can be used to fill cylinders, it could not be used to be linked to existing piping. This assumption was totally in error since the compressor can be linked. Although he admitted that the brochure submitted with the Tender had included a picture showing a filling bank, this was extra. However, he could not see why the Evaluation Board made the assumption that it could not be used for the hyperbaric unit.

The Appellant insisted that his offer had provided features that were over and above the Tender requirements and did not detract from the functions; the compressor offered can be used to supply air to the hyperbaric unit according to specifications. After all, the Tender was for the installation as well as for the supply, and the successful bidder would have to install the compressor and link it to the existing piping himself.

He insisted that offered compressor has the necessary outlet to enable it to be used for the Tender requirements. He pointed out that the offer was around €5,000 cheaper than that of the Recommended Bidder.

Dr Stefan Zrinzo Azzopardi on behalf of the Contracting Authority explained that the Evaluation Board has to follow in detail the Tender specifications and have to decide according to the documentation supplied by the bidders themselves. The Evaluation Board cannot make any assumptions. It cannot be assumed, that any compressor would be suitable for the purpose needed as the Appellant was insisting. In the present case it can be seen from the submitted documents that the necessary explanations were missing and were only done during this Public Hearing. It was not correct to state that the Evaluation Board was mistaken. It was essential for the needs of the Contracting Authority that there could be a connection between the offered compressor to the existing piping and this was not clearly explained in the Appellant's Tender.

Mr Jesmond Farrugia, ID No 541664M, Operations Manager with the Contracting Authority, under oath gave his testimony. On being shown the brochure submitted with Appellant's Tender he said that this showed that the compressor offered was used to fill diving cylinders.

He said that there was no indication in Appellant's Tender that it could also be used to link to an existing pipeline – no explanation was given how the connection with the pipeline could be made. He contended that as offered, the equipment cannot be used for the required purpose and that the mechanism required to link it to the pipeline was different. The Evaluation Board could not conclude what exactly was being offered by Appellant. There were no details how the unit would connect with the existing pipeline. He said that the evaluation was not done only on the basis of the photograph submitted. There was also a site visit and it was still not clear how the connection with the existing pipeline would be made. Replying to questions by the Board he said that the offered compressor's pressure range was according to specifications and that the existing pipeline required a 15mm connection to be made in hard tubing not flexible, and using a special connection.

Mr Claude Sciberras for the Appellant said that the compressor which they were offering did not include the panel and thus it had to be understood that it had an outlet at the back that would be used to link with the piping.

Mr Jesmond Farrugia stated that the Evaluation Board could not be expected to assume that this outlet was there.

Dr Stefan Zrinzo Azzopardi contended that the Board had to examine whether the information submitted with the Appellant with the Tender was sufficient to allow adjudication or whether assumptions had to be made in order to agree with Appellant's contention.

At this point the hearing was closed.

This Board,

Having notes the Appellant's Objection, in terms of the "Reasoned Letter of Objection" dated 10th July 2015 and also through the Appellant's verbal submissions during the Public Hearing held on the 22nd September 2015, had objected to the decision taken by the pertinent Authority, in that:

- a) The Appellant contends that the Evaluation Committee misunderstood the literature which they have submitted regarding the Compressors. The Appellant maintains that the product which they offered contained features well above of what was requested in the Tender Document's specifications. In this regard, the Appellant maintains that his offer was unjustly discarded;**

- b) The Appellant also maintains that their product was the cheapest and fully technical compliant with the requisites as dictated in the Tender Document.**

Having considered the Contracting Authority's verbal submissions during the Public Hearing held on 22nd September 2015, in that:

- a) The Contracting Authority maintains that the Evaluation Board had to assess the Technical Specifications on the information submitted by the Appellant. In this regard, the Appellant did not submit additional information and/or details to enable the Evaluation Board to decide whether the compressor being offered by the Appellant is technically compliant. The Evaluation Board adjudicated the Appellant's offer on the information submitted by the latter.**
- b) The fact, which was highly essential, that the compressor had to be linked to an already existing pipeline, was not clearly demonstrated in the Appellant's bid.**

Reached the following conclusions:

- 1. On a general note, this Board is being presented with "Clear Cut" explanations, which should have been made by the prospective bidders, during the submission of their respective bids. The jurisdiction of this Board is to ensure and adjudicate whether the Evaluation process has been carried out in a just and transparent manner. This dictum, empowers this Board to establish whether the Evaluation Board performed their duties in accordance with the "Public**

Procurement Regulations”, and in this regard only, this same Board, can adjudicate this particular appeal.

- 2. With regards to the Appellant’s First Contention, this Board, after having heard credible submissions by the Technical Adjudicators of the Evaluation Committee and after having examined the submissions made by the Appellant, is justifiably convinced that the Appellant did indeed submit insufficient information. This enabled the Evaluation Committee to establish whether the compressor, as illustrated in the literature accompanied with the Tender Document, was technically compliant or not. This Board does not find any proven deficiency in the adjudicating process of the Evaluation Committee**

However, due to the fact that the Appellant’s bid was cheaper, this Board opines that the same Evaluation Committee could have asked for clarification to confirm whether the Appellant’s offer provided for the requisites as specified in the Tender.

At the same instance, this Board justifiably contends that the literature/photograph of the Appellant’s offer did not provide sufficient details to enable the Evaluation Committee to determine whether the compressor being offered meets the specifications as dictated in the Tender Document.

This Board opines that it was the Appellant’s onus to provide enough explanation and proof that the equipment being offered by the same does in fact meet the technical requirements and in this respect, this Board does not uphold

the Appellant's First Grievance;

- 3. With regards to the Appellant's Second contention, this Board justifiably opines that the fact that the Appellant's bid was cheapest, does not justify the lack of submitted Technical explanation/information. In this regard, this Board does not uphold the Appellant's Second Grievance.**

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

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Lawrence Ancillieri
Member

7 October 2015