

PUBLIC CONTRACTS REVIEW BOARD

Case No. 854

HO/T/4038/PC1/2014

Framework Agreement for the Recycling/Recovery/Disposal of Hazardous and Non-Hazardous Waste.

The Tender was published on the 23rd January 2015. The closing date was the 25th February 2015. The estimated value of the Tender is €82,000 (Exclusive of VAT).

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

On the 10th June 2015 AGV Non Ferrous Malta Limited filed an objection against the decision of the Contracting Authority to award the Tender to another bidder.

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 29th September 2015 to discuss the objection.

Present for the hearing were:

AGV Non Ferrous Malta Limited:

Mr Frank Cachia Director

Green Skip Services Limited:

Ms Mary Gaerty Director

Enemalta Corporation:

Mr Ivan Bonello	Chairperson Evaluation Board
Mr Silvan Mugliett	Member Evaluation Board
Ms Silvana Scicluna	Member Evaluation Board
Dr Julianne Portelli Demajo	Legal Representative
Dr Anselmo Mifsud Bonnici	Legal Representative

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

Mr Frank Cachia on behalf of the Appellant said that their Tender bid had offered a fixed rate for transport of the waste plus another rate for its disposal per kilogramme. When compiling the Tender, the Appellant interpreted the heading of the third column in the Financial Bid to be so. The Appellant understood the wording of the third column in this way and for three lots his offer had been the cheapest.

Dr Julianne Portelli Demajo on behalf of the Contracting Authority explained that the bidders had to submit just one rate, comprising transport and disposal of the waste per kilogramme. The Contracting Authority did not ask for separate rates for these since the Tendered amount would have to be multiplied by the quantity column to arrive at a total. The Tender was clear that the offered rate "r" (euro per kilo) would have to be multiplied by the quantity "q" and in this way the results of the bids could be compared to select the cheapest. The way that the Appellant filled in the form did not allow the comparison of the offer with other bidders' offers. The Contracting Authority was not interested in the number of loads that would be necessary to transport and dispose of the waste. The other bidders understood this and complied. The Appellant for example offered €50 per load for one item plus €0.21 per kilogramme, and this could not be compared.

Mr Frank Cachia for the Appellant insisted that they had interpreted the third column correctly. The global amount was not mentioned.

Dr Julianne Portelli Demajo for the Contracting Authority explained that the amount to be bid for transport and disposal was to be put in one column and not two columns and this meant that a single rate for both transport and disposal had to be offered. The way as reasoned by the Appellant would have needed another column to be added to the form. A clarification note had in fact been issued and circulated to all bidders that clearly explained this. The offers had to be a rate in Euro for each kilogramme and this rate had to be multiplied by the quantity to arrive at the offer.

Mr Ivan Bonello said that the clarification in question was issued through the e-Tender system and published and accessible to all bidders. The Appellant, when putting down the total amount in the fifth column, could only arrive at this amount by assuming a certain number of loads that were needed for each lot.

Mr Frank Cachia for the Appellant said that the queries which resulted in the subsequent clarification note were made by themselves and the Contracting Authority just answered that this was already in the Tender Document.

Dr Julianne Portelli Demajo for the Contracting Authority said that the Appellant, if he did not understand the clarification could have asked for further clarifications to be issued.

At this point the hearing was closed.

This Board,

Having noted the Appellant’s objection, in terms of the “Reasoned Letter of Objection” dated 10 June 2015 and also through the Appellant’s verbal submissions during the Public Hearing held on 29 September 2015, had objected to the decision taken by the pertinent Authority, in that:

- a. The Appellant contends that his offer was discarded due to the fact that he had submitted two rates, one for the transport of waste and another rate for the disposal of same/per kilograms. In this regard, the Appellant maintains that his offer was discarded due to the fact the he did not submit one rate to incorporate both stages of service;**

- b. The Appellant Company also maintains that it had interpreted the Third Column of the Financial Bid of the Tender Document correctly and through the Bills of Quantity submitted, the Contracting Authority should have understood the Appellant’s Technical Specifications in their bid.**

Having considered the Contracting Authority’s verbal submissions during the Public Hearing held on 29 September 2015, in that:

- a) The Contracting Authority maintains that in accordance with the Tender Requirements, the Appellant had to submit only the rate which will include the “Rate of Disposal”, and the “Rate for Transport” of hazardous waste. In this regard, the Appellant did not submit one rate incorporating the two conditional services;**

b) Due to the fact that the Appellant Company did not submit one rate only, the Evaluation Committee could not compare “like with like”, during the Evaluation Process.

Reached the following conclusions:

- 1. With regards to the Appellant’s First Grievance, this Board, after having examined all the documentation relating to this Appeal and after having heard the submissions by both the Appellant Company and the Contracting Authority, justifiably opines that, the Tender Document, with specific reference to the Financial Bid, Third Column, specifically states a “Rate for Transport Disposal per Kilogram.”**

This Board is credibly convinced that the Tender Document in the particular section of the “Financial Bid”, clearly dictated one single rate but incorporating the rate for Transport and disposal of the waste. This Board also notes that the Contracting Authority issued Clarification No. 2 during the Tendering Stage and this was ignored by the Appellant Company on its submission of offer.

Clarification No. 2 dated 16 February 2015 clearly confirms that the Tenderers had to quote the “Rate for Transport Disposal per Kilogram.” Nowhere in this clarification was mentioned that more than “one rate” was to be quoted. In this regard, this Board does not uphold the Appellant’s First Contention.

2. **With regards to the Appellant's Second Grievance, this Board after having examined the Appellant's submissions opines that the fact that the latter submitted two rates, did not permit the Evaluation Committee to include the Appellant's bid for comparison's purpose. It is the opinion of this Board that Evaluation of all quotes should be carried out on the same Level Playing Field for all in order to arrive at an equitable and transparent decision for the Award.**

After having examined the relative documentation and assessed submissions of both the Appellant and the Contracting Authority, this Board justifiably opines that it was not possible to include the Appellant's bid in the Evaluation process and in this regard, this Board does not uphold the Appellant's Second Grievance.

3. **On a general note, this Board would like to point out that although the Tender Document, with particular reference to the financial bid, did dictate a "Single Rate" incorporating the stages of services to be tendered for, perhaps a "clearer indication" of what the single rate is to include, could have been shown in the Tender Document itself to avoid any unnecessary misinterpretation.**

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

8 October 2015