

PUBLIC CONTRACTS REVIEW BOARD

Case No. 885

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 (Lot 1).

The Tender was published on the 23rd June 2015. The closing date was on the 1st October 2015. The estimated value of the Tender is €260,000.00 (Exclusive of Vat).

Ten (10) offers from three bidders had been submitted for this Lot.

On the 11th December 2015 United Equipment Co. (UNEC) Limited filed an objection against rejection of their offer because of technical non-compliance.

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 the 5th January 2016 to discuss the objection.

Present for the hearing were:

United Equipment Co. (UNEC) Limited:

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| Mr Gilbert Bonnici | Director |
| Mr Gilbert Debono | Sales Manager |
| Dr John L Gauci | Legal Representative |

SR Environmental Solutions Limited:

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| Mr Ray Muscat | Director |
| Mr Simon Zammit | Representative |
| Mr David Muscat | Representative |
| Dr Matthew Paris | Legal Representative |

WasteServ Malta Limited:

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| Mr Martin Casha | Chairperson Evaluation Board |
| Mr Ramon Vella | Member Evaluation Board |
| Dr Victor Scerri | Legal Representative |

Department of Contracts:

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| Mr Kevin D'Ugo | Procurement Manager |
| Dr Christopher Mizzi | Legal Representative |

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

Dr John L Gauci on behalf of the Appellant said that his client's Tender for Lot 1, a Front-End Wheel Loader, was rejected for two reasons:

- i) The Appellant's offered equipment had an overall length of 8093mm which exceeds the requested technical specifications that the length shall not exceed 7680mm as explained in Clarification note 5 issued on the 14th September 2015;
- ii) The Appellant's offered equipment had the external radius to the outside of tyres of 5402mm which is out of the requested range of 5440mm to 13,700mm as explained in Clarification note 5 issued on the 14th September 2015.

Dr Gauci explained that the standard length of the Appellant's loader was 7451mm which is less than the maximum allowed by the specifications. He said that the High lift requested by the Tender had to be at least 3900mm. The offered standard lift is 3907mm which is within the requested parameters. However the model offered could also reach 4400mm.

He contended that the equipment offered by the Appellant was within the requested parameters and compliant with the specifications. With regards the turning radius he explained that his client's offer had a turning radius of 5402mm. He contended that a shorter turning radius is in fact better and this is a known fact but also this turning radius could be adjusted so that if the Contracting Authority did not want a better turning radius, the Appellant's radius could be increased to 5442mm even if this did not make sense.

Dr Christopher Mizzi on behalf of the Department of Contracts said that the Tender had asked for a high lift wheel loader and thus the evaluation board had to follow the specifications for high lift. That is why the figures shown in Appellant's literature under high lift were chosen. The Appellant had submitted two lists of specifications – one for standard, and another for high lift – and since the Tender was for a high lift, the latter were chosen. Regarding the turning radius he contended that the Contracting Authority was bound by what was requested in the Tender Document and this had been a range. It was not advisable to accept offers outside of the requested range.

Dr Matthew Paris on behalf of the Recommended Bidder said that the specifications had stated that the loader "was not to exceed 7680mm". Dr Gauci had referred to Document A filed with the objection and to point 5 of the list. He admitted that 7451mm is less than 7680 but pointed out that the 7451mm is qualified by an asterisk and this refers to an explanation that this length of 7541 was "vary with bucket". The bucket indicated in this specifications sheet is of 1.9 cubic meters.

The Tender requested a bucket with a capacity of 2.5 cubic meters. Thus it is obvious that with a larger bucket the overall length would increase and so exceed the maximum 7680mm. About the turning circle he contended that the technical specifications were clear and gave the required measurements. Bidders were expected to abide by these.

At this point the hearing on Lot 1 was closed.

This Board,

Having noted the Appellant's Objection, in terms of the "Reasoned Letter of Objection" dated 11 December 2015 and also through their Verbal Submissions during the Public Hearing held on 5 January 2016, had objected to the decision taken by the Pertinent Authority, in that:

- a) The Appellant contends that although the equipment offered by the latter had an overall length of 8093mm as explained in Clarification Note 5 of the 14 September 2015, the Appellant submitted Literature of the same equipment which showed a "*Standard Overall Length*" of 7451mm, which is within the Maximum Length of 7680mm as specified in Clarification Note 5;**

- b) The Appellant also maintains that his offer was disqualified as the Equipment offered had a turning radius of 5402mm. In this regard, the Appellant insists that a shorter turning radius was better. However, the turning radius could be adjusted to reach 5442mm which would fall within the parameters of the Tender's Technical Specifications.**

Having considered the Contracting Authority's "*Letter of Reply*" dated 21 December 2015 and also through their verbal submissions during the

Public Hearing held on 5 January 2016, in that:

- a) **The Contracting Authority had asked for an offer for a “*High Lift*” and during the Evaluation Process only Technical Specifications under the heading “*High Lift*” had to be taken into consideration. In this regard, the Appellant’s offer under “*High Lift*” was not technically compliant;**

- b) **Again as in point a) above, the Contracting Authority contends that the “*Turning Radius*” of the Appellant’s proposed equipment did not meet the Technical Specifications in this regard.**

Reached the following conclusions:

1. **On a general note and consideration, this Board opines that since the Tender asked for a “*High Lift*”, the Evaluation process had to be assessed on the Technical Specifications of the latter and not “*Standard Specifications*”.**

This Board is emphasising this consideration so that the Evaluations and Assessments of this Tender had to be carried out on a “*Level Playing Field*”.

2. With regards to the Appellant’s First Contention, this Board, after having examined the Technical Requirements in the Tender Document, opines that the “overall length” of the High Lift was clearly explained in Clarification Note 5 dated 14 September 2015, wherein it was stated, as a reply, that “Item 2.2.3, the Overall Length (with bucket) with High Lift – may be greater than that stipulated in the Original Document by up to a maximum of 20%, (not exceeding 7680mm).”

The Literature submitted by the Appellant showed an overall length of 8093mm, which is in excess of the dictated maximum of 7680mm. This Board justifiably opines that the Evaluation of the Technical Specifications had to be carried out on the Technical Specifications submitted by the Appellant under the “High Lift” listings.

This Board also upholds the process procedure dictated by the Evaluation Committee and in this regard, this same Board does not uphold the Appellant’s First Grievance.

3. With regards to the Appellant’s Second Grievance, this Board, after having examined the Technical Requirements as stipulated in the Tender Document and also after having examined the relevant clarifications issued by the Contracting Authority, opines that the

“Turning Radius” of the Equipment tendered for, was clearly stated in item 2.2.6 of the Clarification Note 5 dated 14 September 2015, wherein, it was stated that, ***“the External Radius of the Outside of the Tyres may range between 5440mm and 13700mm.”***

The Literature submitted by the Appellant with regards to the Technical Specifications of the equipment being offered by the same with special reference to Item 2.2.6 stated a ***“Turning Radius”*** of ***5402mm***, which this Board credibly notes that it falls short of the range as dictated in the Clarifications made by the Contracting Authority.

This Board would justifiably emphasise, that as has been stated by this same Board on many occasions, the Technical Specifications are not capriciously dictated by a particular Contracting Authority but are stipulated by the latter to ensure that the product or service which is being tendered for, gives the expected results which in turn will safeguard the utilisation of public funds.

In this regard, this Board credibly opines, that the Evaluation Board acted in a just and transparent manner in its evaluation process. In this regard, this Board does not uphold 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 latter should not be reimbursed.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancillieri
Member

12 January 2016