

PUBLIC CONTRACTS REVIEW BOARD

Case No. 886

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 2).

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:

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

SR Environmental Solutions Limited:

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

WasteServ Malta Limited:

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

Department of Contracts:

Mr Kevin D'Ugo	Procurement Manager
Dr Chris 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 objection on Lot 2 – Wheeled Material Handlers was based on the Appellant's belief that the Recommended Bidder did not have the capacity to provide the necessary after-sales services and maintenance required for this lot.

He referred the Board to another Tender, CT 3171/2014 for the same kind of machinery for Magħtab. In that case the same Recommended Bidder was rejected because the Contracting Authority felt that the Recommended Bidder did not have the necessary capacities. This happened 6 months ago and no objection had been raised.

Dr Christopher Mizzi on behalf of the Department of Contracts said that this Board should only examine the present Tender because it was not known what the reasons for that tender's rejection had been.

Dr Matthew Paris on behalf of the Recommended Bidder complained that a competitor, the Appellant, had made untrue allegations about his client. These allegations were not true and his client was offended and reserved the right to take proper action.

At this point the hearing on Lot 2 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 the Appellant's Verbal Submissions during the Public Hearing held on 5 January 2015, had objected to the decision taken by the Pertinent Authority, in that:

- a) The Appellant Company maintains that since the Tender Document had requested for "*After Sales Services*", the Appellant alleges that the Recommended Bidder did not have the necessary capacity to**

provide such a service, to the satisfaction of the Contracting Authority.

The Appellant Company referred to a previous tender concerning the Recommended Bidder where the latter was rejected due to the lack of facilities in providing “*After Sales Services*”.

Having considered the Contracting Authority’s “*Letter of Reply*” dated 21 December 2015 and also the Contracting Authority’s verbal submissions during the Public Hearing held on 5 January 2016, in that:

- a) The Contracting Authority maintains that the presumption by the Appellant Company does not have the necessary capabilities to provide an “*After Sales Services*” are unfounded. In this regard, the Appellant should not refer to another Tender other than this one.**

Reached the following conclusions:

- 1. With regards to the Appellant’s Grievance, this Board is somewhat perturbed why allegations are made during the Hearings without proof or evidence to substantiate the same allegations.**

This Board credibly opines that where serious allegations are made by the Appellant against the Recommended Bidder, the former must not only substantiate these allegations, but must also submit evidence to prove his grievance.

In this particular case, the Appellant's sole basis of objection was that the Recommended Bidder does not have the necessary capabilities to provide "*After Sales Services*", as stipulated in the Tender Document.

In this regard, this Board justifiably notes that no proof or evidence was submitted to this Board to be able to justify the Appellant's claim.

At the same instance, this Board would credibly point out that there are other remedies for the Contracting Authority, should the Recommended Bidder does not deliver the "*After Sales Services*", as stipulated in the Tender Document.

This Board would also credibly state that it is not its jurisdiction to adjudicate a Public Hearing against a Recommended Bidder on past performances of a Tender by the same.

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