

PUBLIC CONTRACTS REVIEW BOARD

Case No. 894

REST 76/2015

Tender for the Manufacture and Fixing of Galvanized Metal Works in the Valletta Fortifications and Ditches using Environmentally Friendly Construction Materials and Products.

The Tender was published on the 6th October 2015. The closing date was on the 27th October 2015. The estimated value of the Tender was €112,935.64 (Exclusive of VAT)

Three (3) bidders had submitted an offer for this Tender.

On the 13th November 2015 Windmill Services Limited filed an objection against the decision taken by the Contracting Authority to reject their Tender as being technically non-compliant.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Richard A. Matrenza as members convened a hearing on Tuesday the 26th January 2016 to discuss the objection.

Present for the hearing were:

Windmill Services Limited:

Mr Carmel Abela	Representative
Mr Jen Abela	Representative
Mr Joseph Farrugia	Representative

General Maintenance Limited:

Mrs Denise Abela Camilleri	Representative
Mr Marco Camilleri	Representative

Restoration Directorate:

Mr Norbert Gatt	Chairperson Evaluation Board
Mr Keith Muscat	Secretary Evaluation Board
Mr Martin Azzopardi	Member Evaluation Board
Mr Mario Ellul	Member Evaluation Board
Mr Stephen Pulis	Member Evaluation Board
Mr Dennis Attard	Representative

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

Mr Carmel Abela on behalf of the Appellant explained that the Tender was based on the lowest price criterion. Their bid had been disqualified because of some forms in spite of it being the lowest priced Tender. He insisted that all the necessary forms had been sent with the Tender but if anything was missing this could have been rectified as per notes to clause 7.1 of the Tender. Mr Abela stated that the Contracting Authority should have asked the Appellant to rectify any mistakes in the submitted document.

He cited a previous case decided by this same Board, Case 843 where the latter had decided that "*It was the duty of the Evaluation Board to ensure that the most advantageous Tender is procured*" however in the present case it did not. This was the grievance of the Appellant against the Contracting Authority.

Architect Norbert Gatt, Chairperson of the Evaluation Board, on behalf of the Contracting Authority explained that the forms in question were qualified by "*note 3*" and therefore this meant that no rectification was admissible. The Tender had in fact been awarded to the cheapest compliant offer. The Appellant's bid was disqualified for three reasons:

- i) An empty unsigned plant and equipment form;
- ii) An unsigned quality assurance systems form;
- iii) Missing information in the work plan and programme of works form.

All these three items were qualified by note 3 which stated that no rectification was allowed.

Mr Carmel Abela for the Appellant insisted that the items are qualified by note 2 and not note 3. He also stated that the Contracting Authority should also have taken note of the cheaper price considerations since clause 4.2 specified that the Tender would have been awarded to the lowest priced offer.

Mr Norbert Gatt pointed out that the clause referred to the lowest priced but technically compliant offer. The Technical Specifications of the Tender were all qualified by note 3 and therefore there could be no rectifications.

At this point the hearing was closed.

This Board,

Having noted the Appellant Company's "*Letter of Objection*" dated 13 November 2015 and also through their verbal submissions during the

Public Hearing held on 26 January 2016, had objected to the decision taken by the Pertinent Authority, in that:

- a) The Appellant Company contends that its offer was disqualified due to the fact that some forms were not submitted as dictated in the Tender Document. In this regard, the Appellant maintains that in accordance with Clause 7.1 of the Tender Document, the Contracting Authority should have asked for a clarification, since they were also the cheapest contenders;**

- b) The Appellant Company also maintains that note 2 of Clause 7.1 should be taken into consideration since the Appellant's Bid was the cheapest.**

Having noted the Contracting Authority's verbal submissions during the Public Hearing held on 26 January 2016, in that:

- a) The Contracting Authority maintains that the Appellant Company did submit the requested forms but these were not signed. These forms were part of the Tender requirements. In this regard, it is not the discretion of the Evaluation Committee to amend such documents in the absence of authenticated confirmation; as this would amount**

to a rectification.

Reached the following conclusions:

- 1. With regards to the Appellant's First Grievance, this Board, after having examined the documentation submitted by the Appellant to the Contracting Authority and also their verbal submissions during the Public Hearing held on 26 January 2016, justifiably opines that the Appellant Company instituted a frivolous Appeal, since this Board was always consistent in its recommendations and that the Technical Specifications of a Tender are not capriciously compiled.**

These Technical Specifications are dictated by the Contracting Authority to ensure that Public Funds are made to good use and not otherwise.

In this particular case, forms which formed part of the Technical Requirements of the Tender Document were not submitted in a proper manner, to allow the Evaluation Committee to adjudicate the same Tender in a just and transparent manner. In this regard, this Board does not uphold the Appellant's First Grievance.

2. With regards to the Appellant’s Second Contention, this Board would credibly opine that after examining Clause 7.1 of the Tender, this same Board credibly asserts that the Appellant Company was well aware that the dictated Technical Specifications of the Tender Document were steered by “Note 3” of the same clause, that means that no rectifications were possible.

This Board confirms that, lack of technical compliance should not lead to the onus of the Contracting Authority to seek clarifications as this would definitely amount to a clarification, which is not allowed. 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 Richard A Matrenza
Member

1 February 2016