

PUBLIC CONTRACTS REVIEW BOARD

Case No. 972 – WSM 76/2015: Tender for Ongoing Rodent Control Programme and Pest Control Services at Various Sites Managed and Operated by WasteServ Malta Limited.

The Tender was published on the 4th August 2015. The closing date was on the 1st September 2015. The estimated value of the Tender is €54,434.00 (Exclusive of VAT).

Two (2) offers have been submitted for this Tender.

On the 3rd June 2016 Comtec Services Limited filed an Objection against the decision of the Contracting Authority to award the Tender to Salvarti Co. Limited for the price of €32,281.50 exclusive of VAT.

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 30th August 2016 to discuss the Objection.

Present for the hearing were:

Comtec Services Limited:

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| Mr Peter Mercieca | Director |
| Ms Joanie Mifsud | Manager |
| Mr Ronnie Galea | Representative |
| Dr Simon Galea Testaferrata | Legal Representative |

Salvarti Company Limited:

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| Mr Oliver Borg | Representative |
| Mr Pierre Bugeja | Representative |
| Mr Kevin Plumpton | Representative |

WasteServ Malta Limited:

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| Mr Martin Casha | Purchasing Manager |
| Mr Reno Mangion | Chairperson Evaluation Board |
| Dr Victor Scerri | Legal Representative |

The Chairman made a brief introduction wherein he pointed out that the merits of this case have already been decided by the Board when the present Recommended Bidder, Salvarti Company Limited had been the Appellant firm.

Dr Victor Scerri for WasteServ Malta stated that Salvarti Company Ltd had been excluded from this Tender and had objected. The Board found for him and had his Tender reintegrated. Following re-evaluation, the Contracting Authority had decided to award the Tender to Salvarti Company Ltd. Comtec Services Ltd, who were the Recommended Bidders in the first case are now objecting.

The Chairman remarked that this was so and the Objection today lists the decisions of the first decisions as grievances. This case is asking the Board to change its previous decision. However, he then invited Comtec Services Ltd's representative to make his submissions.

Dr Simon Galea Testaferrata on behalf of Comtec Services Ltd submitted that their first grievance dealt with the Technical Compliance of the Salvarti Company Ltd. He contended that the Recommended Bidder's offer was not Technically Compliant because it did not offer enough bait stations as per Tender requirement of having bait stations spaced a minimum of 30 meters between them.

The Recommended Bidder had taken the linear measurements of the sites and not the circumference. The Appellant on the other hand had offered an extra bait station for each site, around the perimeter. This fact means that Salvarti Company Ltd was not Technically Compliant since its offer did not provide a bait station every 30 meters.

Comtec Services Limited's Second Grievance dealt with the price. Based on the number of bait stations to be provided, the Appellant's offer would be cheapest and the Tender's sole criterion was the cheapest compliant offer.

Comtec Services Limited's Third Grievance was about the non-competence of the Recommended Bidder to provide the service. The latter claimed to be accredited with the MCCAA when in fact it is not so accredited. This raised doubts about the competence of the Recommended Bidder to provide the service. The Tender had asked the bidders to work out the number of bait stations required themselves. But this should be done according to best practices.

Dr Victor Scerri for WasteServ Malta declared that he would be limiting his submissions only on the grievances raised by the Appellant about the competence of the Recommended Bidder and the nullity of the latter's offer. He declared that the Contracting Authority had no information about the accreditation of the Recommended Bidder or not with the MCCAA or if the Salvarti Company Limited declared in the Tender to be so. He said that he would not comment on the Appellant's first two grievances on the bases of the Contracting Authority's stance taken in the first case that was decided by this Board.

Mr Ronnie Galea on behalf of the Appellant, and a consultant with the latter on pest control said that they had calculated the number of bait stations required on the bases of the current trade practices, and referred to a the number of bait stations required for the sites.

At this point the Chairman pointed out that the schedule covered the merits of the case already decided by the Board where the present Recommended Bidder had been declared to

be Technically Compliant. If anyone disagreed he could have had recourse to the Court of Appeal.

Dr Simon Galea Testaferrata for Comtec Services Limited exhibited a document issued by National Pest Technicians Association of the United Kingdom which gave the correct information regarding the best practice in the placement of bait stations. He reiterated that the Board should look at the competence of the Recommended Bidder to provide the service as well as the accreditation.

If it results that Salvarti Company Limited is not accredited his Tender should be nullified. Dr Galea Testaferrata also exhibited a screen shot purported to be of the Yellow Pages insertion regarding the Recommended Bidder. He said that even if the Recommended Bidder had not declared to be accredited with the MCCA, the fact remains that since it was not, it was not competent to provide the service.

Dr Victor Scerri on behalf of the Contracting Authority said that the Recommended Bidder did not in fact declare accreditation with the MCCA in the Tender.

At this point the hearing was closed.

This Board,

Having noted the Appellant's Objection, in terms of the "*Reasoned Letter of Objection*" dated 3 June 2016 and also through their verbal submissions during the Public Hearing held on 30 August 2016 had objected to the decision taken by the Pertinent Authority, in that:

- a) **Comtec Services Ltd contends that the Recommended Bidder was not Technically Compliant as it did not offer sufficient "*Bait Stations*";**

- b) **The price quoted by Salvarti Company Ltd was based on an**

insufficient number of “*Bait Stations*” thus enabling it to make a cheaper offer;

- c) Comtec Services Ltd also maintains that the Recommended Bidder was not accredited with the MCCA. In this regard, the Public Contracts Review Board should look into the matter as to whether Salvarti Company Ltd is competent or not.**

Having considered the Contracting Authority’s “*Letter of Reply*” dated 21 June 2016 and also their verbal submissions during the Public Hearing held on 30 August 2016, in that:

- a) WasteServ Malta chose not to comment on the Appellant’s First Two Grievances as the Public Contracts Review Board had already taken its stance in the First Appeal, which was already decided by the latter;**
- b) WasteServ Malta contends that Salvarti Company Limited based his price on the number of “*bait stations*”, the latter of which were Technically Compliant.**

Reached the following conclusions:

1. With regards to the Appellant's First Grievance, this Board, after having examined the relative documentation and heard submissions from all interested parties, justifiably opines that the merits of this Grievance have already been treated during the Public Hearing held on 1 March 2016 and adjudication thereof dated 9 March 2016, that is, the Recommended Bidder was technically compliant. In this regard, this Board does not uphold the Appellant's First Grievance.

2. With regards to the Appellant's Second Grievance, this Board acknowledges the fact that the quoted price was correlated to the number of "*Bait Stations*", so that, the issue is whether the price quoted by Salvarti Company Ltd was calculated on the correct number of "*Bait Stations*" being offered by the latter.

Again, this Board would like to refer to the Decision taken by the same on 9 March 2016 where it was proven and adjudicated that the Recommended Bidder was Technically compliant, in other words, the Bidder had quoted a price based on the correct number of "*Bait Stations*" to be installed. In this regard, this Board does not uphold the Appellant's Second Grievance.

3. With regards to the Appellant's Third Grievance, this Board credibly notes that nowhere, in the Tender Document, is requested that the bidder should be accredited, as was also confirmed during the Hearing, so that the question of accreditation does not fall within the parameters of the requirements of the Tender. In this regard, the Evaluation Board were not obliged to verify whether Salvarti Company Ltd was accredited or not. In this respect, this Board does not uphold the Appellant's Third Grievance.

In view of the above, this Board finds against Comtec Services Ltd and recommends that the deposit paid by the latter should not be refunded.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

6 September 2016