

PUBLIC CONTRACTS REVIEW BOARD

Case No. 974 – WID/T/47/2015: Period Contract for Hot Dip Galvanizing 2016 - 2018.

The Tender was published on the 6th May 2016. The closing date was on the 27th May 2016. The Estimated Value of the Tender was €76,000 (Exclusive of VAT)

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

On the 18th July 2016 New Steel Srl filed an Objection against the decision taken by the Contracting Authority to find their Tender administratively non-compliant.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Mr Richard A. Matrenza and Mr Carmel Esposito as members convened a hearing on Tuesday the 13th September 2016 to discuss the Objection.

Present for the hearing were:

New Steel Srl:

Mr Giorgio Russo
Mr Biagio Schembri

Representative
Representative

Joseph Caruana Company Limited:

Dr Michael Caruana

Legal Representative

Ministry for Transport and Infrastructure:

Mr Christopher Cremona
Mr Raymond Caruana
Mr Paul Gatt
Mr Gordon Zammit
Mr Marco Cassar

Chairman Evaluation Board
Member Evaluation Board
Member Evaluation Board
Member Evaluation Board
Representative

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

Mr Biagio Schembri on behalf of New Steel Srl said that their Tender had been found administratively non-compliant because through an error, the Bill of Quantity had not been uploaded with the Tender submission. He said that the necessary Bill of Quantity had been sent after receiving the Letter of Rejection. Mr Schembri contended that the Contracting Authority should have asked the Appellant to rectify this after Appellant paid the necessary €50 penalty and the Bill of Quantity would have been submitted within 5 days.

Mr Chris Cremona, the Chairman of the Evaluation Board said that the Appellant's Tender had failed to include the mandatory Bill of Quantity and therefore was not administratively compliant.

Mr Biagio Schembri for New Steel Srl insisted that the Contracting Authority should have asked the Appellant to rectify. He explained that he had telephoned the Ministry for Transport and Infrastructure to see why the Tender was discarded and it was explained to him that the Bills of Quantity was omitted. He was also informed that he could pay a penalty of €50 and rectify.

The Chairman explained that "Note 2" meant rectifiable and "Note 3" meant non-rectifiable. The Financial Offer, which included the Bills of Quantity, fell under note 3 which meant that it could not be rectified. Thus the Appellant could not be asked to rectify by submitting the Bill of Quantity at that stage.

Mr Marco Cassar for the Ministry for Transport and Infrastructure explained that the Appellant had phoned the office after receiving the Letter of Rejection. The reason for rejection was explained. It had also been explained to him that he had a right to file a Letter of Objection against payment of €400. He had not been told to rectify upon payment of a fine.

At this point the hearing was closed.

This Board,

Having noted the Appellant's Objection, in terms of the "*Reasoned Letter of Objection*" dated 18 July 2016 and also through their verbal submissions during the Public Hearing held on 13 September 2016 had objected to the decision taken by the Pertinent Authority, in that:

a) New Steel srl contend that through the Letter of Rejection received, they were informed that their offer was rejected due to the fact that in his submitted documentation, due to a human error, the Appellants did not include the Bill of Quantity.

In this regard, the Appellants are maintaining that the Contracting Authority should have informed him of this deficiency. In fact, as soon as he received the Letter of Rejection, he submitted the Bill of Quantity.

Having considered the Contracting Authority's Letter of Reply dated 20 July 2016 and also their verbal submissions during the Public Hearing held on 13 September 2016, in that:

a) The Ministry of Transport and Infrastructure insist that since the Bill of Quantity was not submitted by the Appellant, his offer could only be rejected.

Reached the following conclusions:

1. This Board, after having examined the relative documentation and heard submissions from the parties concerned, opines that this is a

straight forward example of an omission on a submission of the Tender Document.

This Board would like to credibly remind that the Bill of Quantity, apart from being an important document, formed an integral part of the Tender Document.

At the same instance, in such circumstances, where missing documentation arise, there can be no requests from the Contracting Authority, as otherwise it will amount to a rectification.

At the same time, it is the duty and obligation of the prospective bidder to ensure and check that all the relative documentation of the Tender Documents are in order, prior to the submission of his offer.

In this regard, this Board does not uphold the Appellant's Objection.

In view of the above, this Board finds against New Steel srl and recommends that the deposit paid by the latter should not be refunded.

Dr Anthony Cassar
Chairman

Mr Richard A Matrenza
Member

Mr Carmel Esposito
Member

23 September 2016