

## **PUBLIC CONTRACTS REVIEW BOARD**

---

### **Case 1118 – WSM 4/38/2017 – Tender for the Supply and Delivery of Various Safety Shoes**

The Publication Date of the Call for Tenders was 28 February 2017 whilst the Closing Date for Call of Tenders was 21 March 2017. The Estimated Value of the Tender, (Exclusive of VAT) was € 19,536.

Five (5) Bidders have submitted Fifteen (15) Offers for this Tender.

On 2 November 2017, Wurth Limited filed an Objection against the decision of WasteServ Malta to award Lots 1 and 2 of the Tender to Attrans Commercials Limited for the price of € 26,912.50 (Exclusive of VAT) against a deposit of € 400.

On 4 January 2018, the Public Contracts Review Board composed by Dr Anthony Cassar as Chairman, Mr Carmel Esposito and Mr Richard A Matrenza as members convened a Public Hearing to discuss the Objection.

The Attendance for this Public Hearing was as follows:

#### **Appellant – Wurth Limited**

|                   |                |
|-------------------|----------------|
| Mr Michael Attard | Representative |
| Mr Arthur Calleja | Representative |

#### **Recommended Bidder – Attrans Commercials Limited**

|                |                |
|----------------|----------------|
| Mr Eric Attard | Representative |
|----------------|----------------|

#### **Contracting Authority – WasteServ Malta**

|                 |                      |
|-----------------|----------------------|
| Mr Martin Casha | Representative       |
| Dr Gavin Gulia  | Legal Representative |

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board opened by saying that this Board's role was to ensure that the Tender was evaluated in the correct way. Although mistakes do happen these can neither be corrected at this stage and nor at any further stage.

Dr Gavin Gulia, the Legal Representative for WasteServ Malta said that if all parties are agreeing that there was a mistake, this Public Hearing can stop at that point.

Mr Arthur Calleja, representing Wurth Limited said that they mistakenly did not send one of the ten sizes which they had available in the Technical Data Sheet.

Dr Gavin Gulia, the Legal Representative for WasteServ Malta warned that there could be problems in future Tenders if the Public Contracts Review Board accepted this situation.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board reiterated that these errors do happen but they cannot be corrected.

Mr Carmel Esposito, another member of the Public Contracts Review Board said that once a Tender is submitted there was no way that it can be rectified.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board said that this Board feels that the procedure was done correctly.

Mr Arthur Calleja, on behalf of Wurth Limited explained that this was a data sheet which will not alter any circumstance since the shoes supplied would have been the same. It was a logical that when it comes to safety shoes, all sizes were available.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board pointed out that the Data Sheets were an important part of the Technical Specifications of the offer.

Mr Arthur Calleja, representing Wurth Limited countered that the sizes were not part of the Technical Specifications.

Dr Gavin Gulia, the Legal Representative for Wasteserv Limited said that if the Contracting Authority rectified the mistake, they would still have to appear before the Public Contracts Review Board since some other Bidder would have filed an Objection regarding this matter.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board concluded that no rectifications are allowed despite this being an unfortunate situation.

At this stage, the Public Hearing was adjourned to Tuesday 9 January 2018 at 09:00 wherein the Public Contracts Review Board will transmit the decision taken for this Objection verbally and then distribute a hard copy of the same to all parties concerned.

---

**This Board,**

**Having noted this Objection filed by Wurth Limited (herein after referred to as the Appellant) on 2 November 2017, refers to the Contentions made by the latter with regards to the award of Lots 1 and 2 in Tender of Reference WSM 4/38/2017 listed as Case No 1118 in the records of the Public Contracts Review Board, awarded by WasteServ Malta (herein after referred to as the Contracting Authority).**

**Appearing for the Appellant: Mr Arthur Calleja**

**Appearing for the Contracting Authority: Dr Gavin Gulia**

**Whereby, the Appellant contends that:**

- a) Although, inadvertently, they did not submit one of the ten sizes in the Technical Data Sheet, the sizes were not part of the Technical Specifications.**

**This Board also noted the Contracting Authority's "*Letter of Reply*" dated 8 November 2017 and its verbal submissions during the Public Hearing held on 4 January 2018, in that:**

**a) WasteServ Malta insists that the Evaluation Board assessed the Appellants' Offer on the information submitted by the latter. Since Wurth Limited failed to include all the sizes in the Technical Data Sheet, the Evaluation Board, quite appropriately, deemed the Appellants' offer as being technically non-compliant.**

**This Board, after having examined the relevant documentation to this Appeal and heard submissions made by the parties concerned, opines that Wurth Limited presented an admission that not all the required information, as per Tender Document, was duly submitted. At this stage of consideration, this Board would like to respectfully point out that its remit is to establish whether the procedure adopted by the Evaluation Board, in their deliberation, was correct or not, and not to amend deficiencies or failures in the Appellants' original submission.**

**In this particular case, this Board would like to First and Foremost confirm that the Technical Data Sheet which the Appellants submitted formed an important part of the Technical Specifications' requisite. It has also been admitted and duly established that the data sheet so submitted, did not contain specifications for all the sizes, so that there was missing information in the Appellants' Technical Offer. At the same instance, this**

**Board acknowledges and justifiably confirms that missing information cannot be rectified, so that it s a clear case of technical non-compliance on the part of the Appellants' Offer.**

**In this respect, this Board would like to emphasize that it is the responsibility of the Bidder to ensure that, prior to the submission of his offer; the latter document contains all the information as duly dictated in the Tender Document. At the same time, it is also imperative when technical data or literature is requested, such literature must be compliant with the information contained in the technical offer of the Bidder.**

**In view of the above, this Board finds against Wurth Limited, however due to the fact that this same Board is credibly convinced that the Appellants' offer deficiency consisted of a genuine mistake, this Board recommends that the deposit paid by the Appellants should be fully refunded.**

Dr Anthony Cassar  
Chairman

Mr Carmel Esposito  
Member

Mr Richard A Matrenza  
Member

*9 January 2018*