

PUBLIC CONTRACTS REVIEW BOARD

Case 1170 – MPU-MFCS/17029 – Tender for the Procurement of a Pottery Kiln to be used by the Low Ability Students at the Dun Manuel Attard Resource Centre

The publication date of the call for tenders was the 5th December 2017 whilst the closing date of the call for tenders was the 3rd January 2018 (extended to 8th January 2018). The estimated value of the tender (exclusive of VAT) was € 12,711.86.

There were two (2) bidders, but three (3) bids on this tender.

SR Environmental Solutions Ltd filed an appeal on 20th March 2018 against the Contracting Authority's decision to reject their offer as technically non-compliant. A deposit of € 400 was paid.

On 24th May 2018 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Mr Lawrence Ancilleri and Mr Richard A Matrenza as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellant – SR Environmental Solutions Ltd

Ing Ray Muscat	Representative
Ms Sarah Muscat	Representative

Recommended Bidder – Alka Ceramics Ltd

Ms Joan Haber	Representative
Ms Natalie Agius	Representative

Contracting Authority – Ministry for the Family, Children's Rights and Social Solidarity

Mr Nicholas Agius	Chairperson Evaluation Board
Mr Emanuel Bugeja	Member Evaluation Board
Mr Josef Grech	Member Evaluation Board
Ing Melchisedech Zarb	Member Evaluation Board
Ms Violet Galea	Representative

The Chairman of the Public Contracts Review Board, Dr Anthony Cassar, invited Appellants to make their submission.

Ms Sarah Muscat, Representative of SR Environmental Solutions Ltd stated that the Evaluation Committee had excluded them because their submissions did not meet the tender specifications.

Mr Nicholas Agius, Chairperson of the Evaluation Committee confirmed that Appellants had submitted technical specifications indicating a flat roof instead of an arched roof as the tender required. Clarification had been sought from the Procurement Unit whether they could seek clarification on Appellants' submission but they were advised that this was not possible.

The Chairman pointed out that technical literature formed part of the technical offer which had to confirm that the bidder was supplying what was requested, and if it did not agree then the bid does not qualify. The Evaluation Committee cannot assume. The tender does not allow rectification of technical matters.

Ms Muscat went on to explain that they were offering a customised arched version of the kiln; however the literature available could not illustrate an arched roof.

Ing Ray Muscat accepted that the standard literature available did not tally with the specifications, but they had made it very clear that they were able to provide a kiln as specified. He accepted that no clarification was possible but mentioned that the covering letter attached to the technical literature was part of their bid.

The Chairman re-iterated that no variance was allowed in the technical literature which must conform exactly to the technical form otherwise the Evaluation Committee could not consider it. He then thanked the parties for their submissions and declared the hearing closed.

This Board,

Having noted this Objection filed by SR Environmental Solutions Limited, (hereinafter referred to as the Appellants) on 20 March 2018, refers to the contentions made by the same Appellants with regards to the award of Tender

of Reference MPU-MFCS/17029 listed as Case No 1170 in the records of the Public Contracts Review Board, awarded by the Ministry for the Family, Children’s Rights and Social Solidarity, (hereinafter referred to as the Contracting Authority).

Appearing for the Appellants: Ing Ray Muscat

Ms Sarah Muscat

Appearing for the Contracting Authority: Mr Nicholas Agius

Whereby, the Appellant contends that:

- a) Their offer was discarded as it was deemed by the Contracting Authority to be technically non-compliant. In this regard, the Appellants insist that they did confirm that they were able to provide a kiln as duly specified in the Tender Dossier.**

This Board also noted the Contracting Authority’s “*Letter of Reply*” dated 21 March 2018 and its verbal submissions during the Public Hearing held on 24 May 2018, in that:

a) The Ministry for the Family, Children’s Rights and Social Solidarity contend that although the Technical Specifications dictated that the kiln must have an arched roof, the Appellants’ offer indicated a flat roof and in this regard, the Evaluation Committee had no other option but to deem their 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 the issue worth of consideration is the submission of the technical literature by SR Environmental Solutions Limited.

This Board would respectfully point out that the technical literature forms part of the technical offer of the Bidder. The purpose for such a request of the technical literature is for the Contracting Authority to ensure that what the Bidder had declared to provide in his Technical Offer, can, in fact, be provided and that the Technical Literature depicts the same specifications as those declared by the Bidder in his Technical Offer.

In this particular case, Section 4.1 of the Technical Specifications, specifies that the internal roof of the kiln has to have an arched roof and on the other hand, the Appellants, in their technical offer, specified that a “*custom-made*” roof would be supplied. At the same instance, the technical literature submitted confirmed that the internal roof of the kiln was not arched as requested in the technical specifications of the Tender Dossier.

This Board would also point out that since this deficiency on the part of the Appellants pertained to a technical nature, no clarification or rectification is permitted, as otherwise there would be a change in goal posts. In this case, it is evident that, there was a case of technical non-compliance.

In view of the above, this Board,

- i) Does not uphold the Contentions made by SR Environmental Solutions Limited;**

- ii) Upholds the decision of the Ministry for the Family, Children’s Rights and Social Solidarity in the award of the Tender;**

iii) Recommends that the deposit paid by the Appellant should not be refunded.

Dr Anthony Cassar
Chairman

Mr Lawrence Ancilleri
Member

Mr Richard A Matrenza
Member

5th June 2018