

PUBLIC CONTRACTS REVIEW BOARD

Case 1257 – HO/T/4070/PC3/2018 – Framework Agreement for Greenhouse Gas Emissions (EU ETS) Verification Audit

The publication date of the call for tenders was the 9th November 2018 whilst the closing date of the call for tenders was 12th December 2018. The estimated value of the tender (exclusive of VAT) was € 36,000.

On the 28th December 2018 SGS Italia SpA filed an appeal against Enemalta plc as the Contracting Authority objecting to not being awarded the tender on the grounds that their offer was not the cheapest. A deposit of € 400 was paid.

There were two (2) bidders.

On 24th January 2019 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Carmel Esposito as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – SGS Italia SpA

Mr Aaron Seguna	Representative
Mr Peter Cain	Representative

Recommended Bidder – Bureau Veritas Hellas S.A.

Mr Rodianos Papastefanou	Representative
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Contracting Authority – Enemalta plc

Dr Clement Mifsud Bonnici	Legal Representative
Eng Ivan Bonello	Chairperson Evaluation Committee
Eng Carmen Abela	Member Evaluation Committee
Eng Damian Baldacchino	Member Evaluation Committee
Eng Silvan Mugliett	Member Evaluation Committee

Dr Anthony Cassar Chairman of the Public Contracts Review Board welcomed the parties and invited submissions.

Mr Aaron Seguna Representative of SGS Italia SpA stated that the objection related to the financial part of the tender, although his firm had observed all the terms and conditions of the tender. The tender specified that 104 hours had been allotted to this task in the method statement. As the incumbent party they were prepared to do it in 76 hours representing a saving of € 7,600 over three years. They had endorsed their bid accordingly by a handwritten note.

Dr Clement Mifsud Bonnici Legal Representative for Enemalta plc said that it seemed that the Appellant was not well versed in the Public Procurement Regulations. The amount quoted in the financial bid form was the only figure that could be used by the evaluation committee and the handwritten note was quite correctly ignored by them. The fact that the Appellant firm was the incumbent was not relevant. If at all, the tender should have been challenged at the very beginning of the process.

The Chairman mentioned that in a tender the price cannot be conditional or qualified. He then thanked the parties for their submissions and declared the hearing closed.

This Board,

having noted this Objection filed by SGS Italia SpA, (hereinafter also referred to as the Appellants), on 28 December 2018, refers to the contentions made by the latter with regard to the Tender of Reference HO/T/4070/PC3/2018 listed as Case No 1257 in the records of the Public Contracts Review Board, awarded by Enemalta Corporation, (hereinafter referred to as the Contracting Authority).

Appearing for the Appellants:

Mr Aaron Seguna

Appearing for the Contracting Authority:

Dr Clement Mifsud Bonnici

Whereby, the Appellants contend that:

a) their offer was rejected due to the simple reason that apart from quoting for 104 hours as required in the method statement, and since they were incumbent party, they had endorsed through a hand written note, that they were willing to carry out the tendered service in 76 hours. This Board has also noted the Contracting Authority's "*Reasoned Letter of Reply*" dated 4 January 2019 and its verbal submissions during the Public Hearing held on 24 January 2019, in that:

Enemalta Corporation maintains that, through lack of awareness of the Public Procurement Regulations, the Appellants were not cognisant of the fact that the amount quoted in the financial bid is the only price which can be considered, during the evaluation process.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by the interested parties, opines that SGS Italia SpA were not familiar with the Public Procurement Regulations in that, apart from quoting a price for the correct number of hours allocated for the tendered services, they also submitted by way of a handwritten note, another price for a lesser number of hours.

It is evidently clear that the Appellants were not knowledgeable enough of the fact that what matters, in such similar cases, is the quoted price submitted on the Bid Form. The Appellants had the remedy to raise this issue prior to the closing date of submissions; however, this Board notes that, through lack of knowledge of the Public Procurement Regulations, the Appellants were not aware of such a remedy.

In view of the above, this Board,

- i) does not uphold the contentions made by SGS Italia SpA;**
- ii) upholds Enemalta Corporation's decision in the award of the Tender;**
- iii) directs that in view of the genuine circumstances of the case, a refund of two hundred euro (€ 200) is to be effected from the deposit made by the Appellants.**

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Carmel Esposito
Member

29th January 2019