

PUBLIC CONTRACTS REVIEW BOARD

Case 1456 – WSC/T/18/2020 – Supply, Delivery, Unloading, Commissioning and Training of New Forklift Truck for the Water Services Corporation.

The tender was published on the 27th March 2020 and the closing date of the tender was the 29th April 2020. The estimated value of the tender (exclusive of VAT) was € 154,500.

On the 9th June 2020 RCV Handling Machinery Ltd filed an appeal against the Water Services Corporation as the Contracting Authority objecting to their disqualification on the grounds that their bid was not technically compliant. A deposit of € 800 was paid.

There were four (4) bidders.

On 7th July 2020 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Mr Lawrence Ancilleri and Mr Carmel Esposito as members convened a public virtual hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – RCV Handling Machinery Ltd

Mr Ramon Vella	Representative
Mr Renald Curmi	Representative

Preferred Bidder – United Equipment & Co Ltd

Mr Stefan Borg	Representative
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Contracting Authority – Water Services Corporation

Dr Sean Paul Micallef	Legal Representative
Mr Martin Polidano	Member Evaluation Board
Mr Mark Grima	Member Evaluation Board
Ms Kirstie Grech	Secretary Evaluation Board

Dr Anthony Cassar Chairman of the Public Contracts Review Board welcomed the parties. He noted that since this was a virtual meeting all the parties had agreed to treat it as a normal hearing of the Board. He noted that the objection letter as submitted did not meet the Public Procurement Regulations requirements as it did not give reasons for the objection to the award. Despite this the Board would hear the case. He then invited submissions.

Mr Ramon Vella Representative of RCV Handling Machinery Ltd stated that the forklifts model offered by the preferred bidder does not meet the tender specifications whilst the model offered by Appellants did.

Mr Renald Curmi Representative of RCV Handling Machinery Ltd amplified the above by saying that the specifications of the model offered by the preferred bidder do not meet the requirements of the tender, whilst the manufacturers of the model Appellants were offering guaranteed that it met all the specifications.

Mr Martin Polidano (879382M) called as a witness by the Public Contracts Review Board testified on oath that he was one of the tender Evaluators. He stated that whilst he could not recall if the Appellants' offer was compliant on the requirement for oil immersed brakes they were certainly not compliant in respect of the power rating of the motors.

Mr Ramon Vella stated that the specifications of the tender were not made clear even after they sought a clarification which was not replied to. The lifter specified in the tender document is specific and could only be met by one named model.

The Chairman pointed out that Appellants could have lodged a precontractual appeal if they felt that that was the case and explained the purpose and scope of such a procedure. He then thanked the parties for their submissions and declared the hearing closed.

End of Minutes

Decision

This Board,

having noted this objection filed by RCV Handling Machinery Ltd (herein after referred to as the Appellants) on 9th June 2020, refers to the claims made by the same Appellants with regard to the tender of reference WSC/T/18/2020 listed as case No. 1456 in the records of the Public Contracts Review Board awarded by Water Services Corporation (herein after referred to as the Contracting Authority).

Appearing for the Appellants:

Mr Ramon Vella

Mr Renald Curmi

Appearing for the Contracting Authority: Dr Sean Paul Micallef

Whereby, the Appellants contend that:

- a) The preferred bidders' product does not comply with clauses 2.3b and 2.1e of the stipulated technical specifications of the tender document.**

This Board also noted the Contracting Authority's 'Letter of reply' dated 22nd June 2020 and its verbal submissions during the virtual hearing held on 7th July 2020, in that:

- a) The Authority maintains that the preferred Bidders' offer was fully compliant whilst Appellants' bid did not comply with clause 2.2(f) and 2.3(b) of the tender technical specifications.**

This same Board also noted the testimony of the witness namely:

Mr Martin Polidano, Evaluator, duly summoned by the Public Contracts Review Board.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by the parties concerned, including the testimony of Mr Martin Polidano, an Evaluator duly summoned opines that, the issue that merits consideration is the manner in which this appeal was presented to this Board.

- 1. First and foremost, this Board would point out that Appellants' 'Letter of Objection' dated 9th June 2020, lacked the basic requisites in that, although**

allegations were put forward with regards to the preferred bidders' offer, no proof was presented to substantiate Appellants' alleged claims.

- 2. During the hearing, this Board was made aware of the fact that Appellants had requested clarification and from the Appellants' submissions, it transpired that Appellants were still not satisfied, yet they submitted their offer. This Board would point out that, the fact that, once Appellants submitted their offer, they are signifying their acceptance of the conditions and technical specifications of the tender document.**
- 3. This Board also noted that, Appellants' claims points towards the technical specifications of the tender document and in this respect, the Board would respectfully remind the Appellants that the nature of such claims should not be brought up, at this stage of tendering process.**
- 4. This Board would point out that if Appellants' felt disadvantaged due to the contents of the technical specifications as stipulated in the tender dossier, they had the opportunity to seek remedies prior to their submission and in this regard, this Board notes that Appellants did not avail themselves of such remedies.**
- 5. Apart from all these deficiencies relating to this appeal, this Board was assured that the preferred bidders' offer was fully compliant whilst Appellants' offer was not compliant with clause 2.2(f) regarding the maximum gradient and clause 2.3(b) relating to the drive motor power rating.**

In conclusion, this Board opines that:

- a) Although this Board, considered the merits of this appeal, same Board finds the ‘Letter of Objection’ dated 9th June 2020, lacking the basic requirements which should have been contained therein and which were mentioned in paragraph 1 of this decision.**
- b) Appellants made allegations regarding the compliance of the preferred bidder’ offer, yet no justifiable proof was presented to this Board.**
- c) Appellants’ claims related to the technical specifications as stipulated in the tender document and such claims could have been verified or clarified through other remedies available to all bidders prior to the submission of their offer. In this regard, this Board notes that such remedies were not availed of by Appellants.**
- d) From the evaluation report this Board notes that, the evaluation process was carried out in a fair, just and transparent manner.**

In view of the above, this Board,

- i. does not uphold Appellants’ contention,**
- ii. upholds the Contracting Authority’s decision in the award of the tender,**
- iii. directs that the deposit paid by Appellants should not be refunded.**

Dr Anthony Cassar
Chairman

Mr Lawrence Ancilleri
Member

Mr Carmel Esposito
Member

8th July 2020