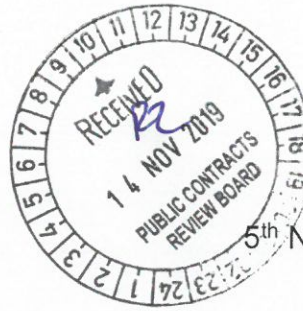


In the Public Contracts Review Board



5th November 2019

Re: CFT: 004-0449/19 – Tender for the Preventative Maintenance for HVAC System at CPSU San Gwann Stores

Reply of the Central Procurement and Supplies Unit (CPSU)

By a letter dated 28th October 2019, M.A&A Services Limited, hereinafter referred to as the objectors, submitted an objection following a letter dated 17th October 2019 issued by the CPSU whereby their offer was rejected since a cheaper technically compliant offer was awarded.

The objectors contend that their offer was fully compliant and that their offer was the cheapest offer.

Submissions

The issue with regards to the offer submitted by the objectors is as follows:

- 1) Primarily and without prejudice, CPSU contend that the claim that the contracting authority used a figure to justify the selection of the preferred bidder as being the cheapest technically compliant bidder but then failed to use the same figure in binding the company to deliver the contract for that figure and instead awarded the company a contract for (€63,000) for 3 years, is completely unfounded.

The Contracting Authority hereby clarify that the €63,000 indicated in the award was not the amount for which the preferred bidder would be carrying out the contract, but was the budget allocated for the said Tender based on previous contracts, which figure was erroneously published in the award.

The value of the offer of the preferred bidder results from the data sheet published on opening of tenders on the EPPS system.

Therefore, CPSU contend that such statement made by the objectors is to be withdrawn as it is false and misleading and in default of such withdrawal, the said statement is to be completely disregarded by this Honourable Board.

- 2) CPSU contend that the Call in question was for the provision of preventive maintenance both for an annual scheme as well as for call out preventive maintenance during normal, overtime and silent hours.

In this regard, the Technical offer of each bidder was to contain a technical Bill of Quantities.

The said Bill of Quantities was divided into 4 columns in the following manner;

- a. Item Number
- b. Item Description
- c. Service to be carried out or requested between/on
- d. Rate per Hour (Excluding VAT) – Euros

The primary issue with the offer of the appellants is that instead of quoting a Rate per Hour for Annual Preventive Maintenance Scheme during normal working hours (See Appendix 1), they quoted the over all price per annum, that being €15,779.87/per annum.

Due to this, the Contracting Authority requested a clarification request to the objectors wherein they requested the following;

“Dear Sir/Madam,

*Kindly confirm or otherwise that the price given in Item 1 of your submitted Financial Bid Form is based on Appendix 1. Schedule D. Also, **to give the Rate per Hour for this Item.**”*

To which, the objectors replied with the following response:

“Confirmed. Rate for normal working hours is €43.55 ex VAT”

Therefore, the objectors confirmed that their price per hour for normal working hours is that of €43.55.

CPSU hereby make reference to Schedule D – Approximate proposed hours on works estimated on an Annual Basis, thus referring to the Annual Preventive Maintenance for which the objectors submitted the €43.55 hourly rate. By means of this schedule D, the Contracting Authority indicated the number of three hundred and twenty six (326) annual working hours which would be required by the awarded bidder to carry out. Therefore, at the rate proposed by the objectors, the total amount excluding VAT for 326 hours would be that of fourteen thousand one hundred and ninety seven Euro and thirty cents (€14, 197.30).

The fact that the objectors stipulate that they are offering 362 hours instead of 326 does not put the objectors in a better position than other bidders which offered a price for 326 hours as requested in the Tender.

The comparison of the financial bid must be according to the hourly rate and not the global amount based on the number of hours.

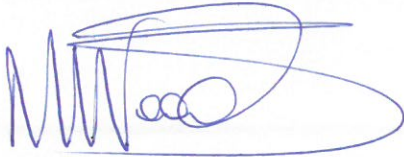
- 3) CPSU contend that as evidence from the above submission, the objectors bid did not win the Call in question as the preferred bidder simply provided for a lower hourly rate than that offered by the objectors.

Furthermore, when all items are calculated, the total final price is higher than the total final price for all items of the preferred bidder.

- 4) CPSU contend that the award criteria for the said Tender was based on the cheapest technically compliant offer received by the Contracting Authority, and in rejecting the objector's bid and awarding the Call to the preferred bidder for a cheaper price clearly indicates that the Contracting Authority abided by the said terms and conditions of the Tender and in line with the rules regulating Public Procurement¹.

CPSU is hereby reserving the right to present further evidence both written and orally in order to further their submissions in relation to the said rejection throughout the hearings.

In light of the above, the decision of the evaluation committee should be upheld and the deposit forfeited.



Dr Marco Woods

¹ The Public Procurement Regulations, S.L. 174.04 of the Laws of Malta.