PUBLIC CONTRACTS REVIEW BOARD

Case No. 446

MRRA/PARK/42/2010/2; Adv. No. 44/2012
Period Contract for the Supply and Delivery of Irrigation Water for the Park and Initiatives Unit (P.A.R.K.)

This call for tenders was published in the Government Gazette on the 28th February 2012. The closing date for this call with an estimated budget of € 24,600 was the 20th March 2012.

Three (3) tenderers submitted their offers.

Mr Victor Busuttil filed an objection dated the 30th May 2012 against the decision of the Ministry for Resouces and Rural Affairs to discard its offer due to the fact that the appellant's offer was considered to be administratively non compliant in view of the fact that the 'bidder quoted price per litre and not per cubic metre'.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr Joseph Croker and Mr Paul Mifsud as members convened a public hearing on Thursday, 9th August 2012 to discuss this objection.

Present for the hearing were:

Mr Victor Busuttil

Mr Victor Busuttil	Bidder

Joseph Caruana – Recommended Bidder for Item 1

Dr John Bonello	Legal Representative
Mr Joseph Caruana	Bidder

Mr Peter Paul Magro – Recommended Bidder for Item 2

Ministry for Resouces and Rural Affairs

Dr Joseph Bonello	Legal Representative
Dr Krista Calleja	Legal Representative

Evaluation Board

Mr David Attard	Member
Mr Emmanuel Borg	Member
Ms Therese Zammit	Secretary

After the Chairman's brief introduction, the appellant was invited to explain the motives of his objection.

Mr Victor Busuttil, in his own name, the appellant:-

i. stated that by letter dated May 2012 the contracting authority informed him that his offer was administratively non-compliant because he quoted the price per litre instead of per cubic metre and that the tender was recommended for award at the prices of €2.24 per cubic metre for item 1 and €3.28 per cubic metre for item 2;

and

ii. referred to his letter dated 30th May 2012 wherein he had indicated the prices of €1.70 per cubic metre and €2.0 per cubic metre for items 1 and 2 respectively which were equivalent to 17 Euro cents per litre and 20 Euro cents per litre for items 1 and 2 respectively.

The Public Contracts Review Board noted that:

(i) in his tender submission the appellant had quoted €0.0017 and €0.0020 per cubic metre for items 1 and 2 respectively in the 'Tenderer's Declaration' which prices were less than 1 euro cent and, as a result, unrealistic when considering that the recommended bidders quoted €2.24 and €3.28 per cubic metre respectively

and

(ii) column 'A' of the 'Schedule of Prices and Rates' referred to a unit rate inclusive of VAT per cubic metre and the rate in that schedule had to be reflected in the Tenderer's Declaration.

Mr Busuttil explained that in his original tender submission he had made a mistake by quoting €0.0017 and €0.0020 per cubic metre when it should have read per litre (email dated 12th April 2012 backed this statement) such that €0.0017 x 1000 litres and €0.0020 x 1000 litres would have resulted in the prices of €1.7 per cubic metre and €2.0 per cubic metre (Note: 1 cubic metre = 1000 litres) for items 1 and 2, respectively.

Dr Joseph Bonello, legal representative of the Ministry for Resouces and Rural Affairs, explained that when the evaluation board examined the extremely low prices submitted by Mr Busuttil it immediately occurred to it that there was some kind of misunderstanding and sought to clarify the matter by an exchange of correspondence with the appellant culminating in an email dated 12 April 2012 and a letter dated 30th May 2012. He added that from the explanations given by the appellant it was clear that what the appellant was proposing after the closing date of the tender amounted to a change in price/rates and the 'Schedule of Prices and Rates' clearly stated that failure *"to fill in the form, or a form with incomplete information, or form containing ambiguous financial information (e.g. rates, totals etc) shall disqualify the tendered submission"*.

At this point the hearing was brought to a close.

This Board,

- having noted that the appellants, in terms of their 'reasoned letter of objection' dated the 30th May 2012 and also through their verbal submissions presented during the hearing held on the 9th August 2012, had objected to the decision taken by the pertinent authorities;

- having noted all of the appellant's representative's claims and observations, particularly, the references made to the fact that (a) by letter dated May 2012 the contracting authority informed him that his offer was administratively non-compliant because he quoted the price per litre instead of per cubic metre and that the tender was recommended for award at the prices of €2.24 per cubic metre for item 1 and €3.28 per cubic metre for item 2, (b) referred to his letter dated 30th May 2012 wherein he had indicated the prices of €1.70 per cubic metre and €2.0 per cubic metre for items 1 and 2 respectively which were equivalent to 17 Euro cents per litre and 20 Euro cents per litre for items 1 and 2 respectively and (c) in his original tender submission he had made a mistake by quoting €0.0017 and €0.0020 per cubic metre when it should have read per litre (email dated 12th April 2012 backed this statement) such that €0.0017 x 1000 litres and €0.0020 x 1000 litres would have resulted in the prices of €1.7 per cubic metre and €2.0 per cubic metre (Note: 1 cubic metre = 1000 litres) for items 1 and 2, respectively;

- having considered the contracting authority's representative's reference to the fact that (a) when the evaluation board examined the extremely low prices submitted by Mr Busuttil it immediately occurred to it that there was some kind of misunderstanding and sought to clarify the matter by an exchange of correspondence with the appellant culminating in an email dated 12 April 2012 and a letter dated 30th May 2012 and (b) from the explanations given by the appellant it was clear that what the appellant was proposing after the closing date of the tender amounted to a change in price/rates and the 'Schedule of Prices and Rates' clearly stated that failure *"to fill in the form, or a form with incomplete information, or form containing ambiguous financial information (e.g. rates, totals etc) shall disqualify the tendered submission"*;

reached the following conclusions, namely:

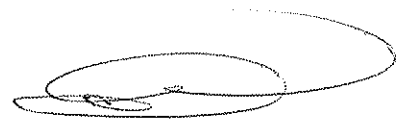
1. The Public Contracts Review Board feels that the issue was blatantly obvious considering the fact that, in his tender submission, the appellant had quoted €0.0017 and €0.0020 per cubic metre for items 1 and 2 respectively in the 'Tenderer's Declaration' which prices were less than 1 euro cent and, as a result, unrealistic when one considers that the recommended bidders quoted €2.24 and €3.28 per cubic metre respectively.

2. This Board observes that column 'A' of the 'Schedule of Prices and Rates' referred to a unit rate inclusive of VAT per cubic metre and the rate in that schedule had to be reflected in the Tenderer's Declaration.

In view of the above, this Board finds against the appellant and recommends that the deposit paid by the same appellant for the appeal to be lodged should not be reimbursed.

Alfred R Triganza
Chairman

Joseph Croker
Member



Paul Mifsud
Member

10th September 2012