

PUBLIC CONTRACTS REVIEW BOARD

Case No. 506

TD/T/3065/2012

Tender for the Supply of Fabricated Mild Steel Parts

This call for tenders was published in the Government Gazette on the 15th June 2012. The closing date for this call with an estimated budget of €65,616.88 was the 18th July 2012.

Five (5) tenderers submitted their offers.

JP Baldacchino & Co. Ltd filed an objection on the 18th October 2012 against the decision of Enemalta Corporation to disqualify its offer as technically non-compliant and to recommend the award of tender to Suzhou Everich Imp. & Exp. Co. Ltd.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr Carmel Esposito and Mr Paul Mifsud as members convened a public hearing on Friday, 14th December 2012 to discuss this objection.

JP Baldacchino & Co. Ltd

Mr Adrian Baldacchino Director

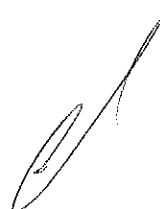
Suzhou Everich Imp. & Exp. Co. Ltd – no one attended the hearing

Enemalta Corporation

Dr Paul Micallef Grimaud Legal Representative

Evaluation Board

Ing. Ivan Bonello	Chairman
Ing. Stephen Camilleri	Member
Ing Jason Falzon	Member
Mr Saviour Micallef	Member



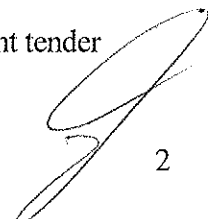
After the Chairman's brief introduction, the appellant company's representative was invited to explain the motives of the company's objection.

Mr Adrian Baldacchino, representing JP Baldacchino & Co. Ltd, the appellant company, made the following submissions:

- i. by email dated 11th October 2012 the appellant company was informed that its offer was adjudicated to be not technically compliant because the samples submitted had incorrect dimensions and were not hot dip galvanised to EN ISO1461:1999;
 - ii. the tender document requested the samples to be submitted to size and hot dip galvanised to EN ISO1461:1999;
 - iii. due to restricted time within which to submit the samples the company did not have the time to check if the samples were according to the sizes requested and hot dip galvanised;
 - iv. although the appellant company presented the samples for the contracting authority to check the quality of the material and not with all the details as laid down in the tender document, yet, the consignment would eventually be delivered according to tender specifications;
 - v. the samples presented were hand made or items from previous consignments but not according to the specifications of this tender because to manufacture and deliver from abroad a sample according to all tender specifications would take time and it costs about €1,000 and, at that stage, the bidder would not have been awarded the contract;
- and
- vi. apart from the fact that the appellant company had submitted an offer which was about €18,000 cheaper, there would be the performance guarantee and a 90 day credit period. Furthermore, in the event that the delivery would, eventually, not be up to specifications then the appellant company would be subject to penalties besides having to provide compliant items.

The Chairman remarked that:-

- a. if the appellant company anticipated a problem with regard to the submission of samples its representative/s should have raised the issue prior to the closing date of the tender so that if the complaint would be justified then a clarification would have been issued to all prospective tenderers;
- b. the bidder was requested and expected to submit samples according to specifications because the evaluation board had to check that the samples had to represent what would eventually be delivered;
- c. it was the responsibility of the bidder to present a clear and compliant tender submission;



2

- d. the tender first had to be technically compliant prior to taking the price into account;

and

- e. the cost of providing the samples should be considered as part of the costs on the part of the bidder.

Dr Paul Micallef Grimaud, legal representative of Enemalta Corporation, stated that the tender document required that the samples should be according to the drawings and specifications indicated in Volume 3 'Technical Specifications'.

Ing. Ivan Bonello, chairman of the evaluation board, remarked that:-

- a. whilst there were times when these items were manufactured by Enemalta Corporation itself, yet there were instances when these items were purchased and, to his recollection, not from the recommended tenderer because this was the first time that he had heard of Suzhou Everich Imp. & Exp. Co. Ltd;
- b. the estimated expense of €1,000 required to produce the samples was not disproportionate considering that the value of the tender was about €66,000;
- c. in order to avoid unnecessary expenses on the part of the bidders, the samples were not requested at tender submission stage but had to be submitted upon request during the evaluation process and, in this case, the contracting authority first asked the appellant company, being the cheapest bidder, to submit its samples and, on finding its bid to be technically non-compliant then asked the second cheapest, the recommended tenderer, whose samples were found according to specifications;
- d. although clause 19 'Samples' stated, among other things, that, upon request, the bidder had 5 working days to submit the samples, yet, the bidders could have prepared the samples from much earlier, namely from the publishing date of the tender;
- e. the samples had to be up to specifications so that if the actual delivery would not be according to the published specifications then the contracting authority would confront the bidder with the technically compliant samples submitted;

and

- f. the evaluation board noted various deviations in the dimensions of the samples submitted by the appellant, such as 136mm instead of 165mm; 348mm instead of 330mm; 625mm instead of 640mm and 645mm instead of 660mm.

Ing. Jason Falzon, a member of the evaluation board, stated that:-

- i. although one of the samples had to be hot dip galvanised to EN ISO1460:1999, yet, the sample provided by the appellant company was

painted and, as a consequence, the evaluation board was not in a position to see if it was properly and adequately galvanised or if it was galvanised at all and if the evaluation board were to scrape off the paint that would have damaged the galvanising and so no proper examination could be carried out;

- ii. it was imperative to stick to the dimensions and to the shapes of the items given in the tender document because they reflected the requirements of Enemalta Corporation otherwise the items would be entirely useless;
 - iii. Enemalta Corporation wanted a supply of compliant items and it was not simply a question of refusing non-compliant supplies or the forfeiture of the performance guarantee because a defective supply would hinder the execution of other works in progress;
- and
- iv. there was no particular supplier of these items because they could be easily supplied by more than one manufacturer.

At this point the hearing came to a close.

This Board,

- having noted that the appellant company, in terms of its 'reasoned letter of objection' dated 18th October 2012 and also through its representatives verbal submissions presented during the hearing held on the 14th December 2012, had objected to the decision taken by the pertinent authorities;
- having noted all of the appellant company's representative's claims and observations, particularly, the references made to the fact that (a) by email dated 11th October 2012 the appellant company was informed that its offer was adjudicated to be not technically compliant because the samples submitted had incorrect dimensions and were not hot dip galvanised to EN ISO1461:1999, (b) the tender document requested the samples to be submitted to size and hot dip galvanised to EN ISO1461:1999, (c) due to restricted time within which to submit the samples the appellant company did not have the time to check if the samples were according to the sizes requested and hot dip galvanised, (d) although the appellant company presented the samples for the contracting authority to check the quality of the material and not with all the details as laid down in the tender document, yet, the consignment would, according to the appellant company's representatives, eventually be delivered according to tender specifications, (e) the samples presented were hand made or items from previous consignments but not according to the specifications of this tender because to manufacture and deliver from abroad a sample according to all tender specifications would take time and it costs about €1,000 and, at that stage, the bidder would not have been awarded the contract, (f) apart from the fact that the appellant company had submitted an offer which was about €18,000 cheaper, there would be the performance guarantee and a 90 day credit period and (g) in the event that the delivery would, eventually, not be up to specifications then the appellant company would be subject to penalties besides having to provide compliant item;

- having considered the contracting authority's representative's reference to the fact that (a) whilst there were times when these items were manufactured by Enemalta Corporation itself, yet there were instances when these items were purchased and, to the Corporation representative's recollection, not from the recommended tenderer because this was the first time that he had heard of Suzhou Everich Imp. & Exp. Co. Ltd, (b) the estimated expense of €1,000 required to produce the samples was not disproportionate considering that the value of the tender was about €66,000, (c) in order to avoid unnecessary expenses on the part of the bidders, the samples were not requested at tender submission stage but had to be submitted upon request during the evaluation process and, in this case, the contracting authority first asked the appellant company, being the cheapest bidder, to submit its samples and, on finding its bid to be technically non-compliant then asked the second cheapest, the recommended tenderer, whose samples were found according to specifications, (d) although clause 19 'Samples' stated, among other things, that, upon request, the bidder had 5 working days to submit the samples, yet, the bidders could have prepared the samples from much earlier, namely from the publishing date of the tender, (e) the samples had to be up to specifications so that if the actual delivery would not be according to the published specifications then the contracting authority would confront the bidder with the technically compliant samples submitted, (f) the evaluation board noted various deviations in the dimensions of the samples submitted by the appellant, such as 136mm instead of 165mm; 348mm instead of 330mm; 625mm instead of 640mm and 645mm instead of 660mm, (g) although one of the samples had to be hot dip galvanised to EN ISO1460:1999, yet, the sample provided by the appellant company was painted and, as a consequence, the evaluation board was not in a position to see if it was properly and adequately galvanised or if it was galvanised at all and if the evaluation board were to scrape off the paint that would have damaged the galvanising and so no proper examination could be carried out, (h) it was imperative to stick to the dimensions and to the shapes of the items given in the tender document because they reflected the requirements of Enemalta Corporation otherwise the items would be entirely useless, (i) Enemalta Corporation wanted a supply of compliant items and it was not simply a question of refusing non-compliant supplies or the forfeiture of the performance guarantee because a defective supply would hinder the execution of other works in progress and (j) there was no particular supplier of these items because they could be easily supplied by more than one manufacturer,

reached the following conclusions, namely:

1. The Public Contracts Review Board recognizes the fact that the bidder was requested and expected to submit samples according to specifications because the evaluation board had to check that the samples had to represent what would eventually be delivered. As a consequence, it was the responsibility of the bidder to present a clear and compliant tender submission. This Board argues that if the appellant company anticipated a problem with regard to the submission of samples, its representative/s should have raised the issue prior to the closing date of the tender so that if the complaint would be justified then a clarification would have been issued to all prospective tenderers.

5

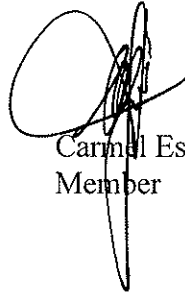
2. This Board finds that it is not acceptable that a participating tenderer refrains from submitting the samples as required by the tender specifications in view of a cost factor which was, anyhow, relatively low to produce and then expect the evaluation board and the Public Contracts Review Board to accept such a departure from the expected deliverable knowing that such mandatory conditions were applicable to all participating tenderers.

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

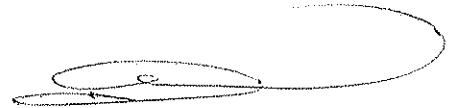


Alfred R Triganza
Chairman

18 December 2012



Carmel Esposito
Member



Paul Mifsud
Member