

Following a brief opening statement by the Chairman, the appellant's representative was invited to make his submissions.

Mr Mark Mifsud on behalf of the appellant said that the objection is being made because the two reasons given by the evaluation for the exclusion of appellant's offer do not tally with the tender. The reasons given were: a) the installer's experience does not fall within the time frame and thus no experience of work in the past twelve months could be noted; b) that bidder failed to provide the estimate of the total Geo-membrane areas installed, in breach of Clause 1.2.13. Mr Mifsud contended that this clause does not refer to the installer but to the contractor and at this stage appellant could not be called contractor but tenderer. There were no definitions in the tender document of 'installer'. Appellant submitted in its bid, a company who was to act as the installer. This company had all the necessary experience and this information was given in Clause 1.2.12. In Appendix 2, bidders had to provide the installer details and the installer's experience for the past twelve months. It does not specify what type of experience. He contended that appellant had provided this information by submitting with the tender a declaration whereby the company affirmed that "in the past 12 months the company realized works similar to those to be realized in the Ghallis Non-Hazardous Waste Landfill". Mr Mark Mifsud continued that appellant had also submitted the area of Geo-membrane installed. Since the tender did not provide a template, no area was given. But the same declaration by the foreign company stated specifically that it realized works similar to those asked for in the tender and that means of a similar area. Mr Mifsud contended that appellant had provided all the relevant documents, and feel that appellant should not have been excluded.

Ms Henriette Putzulu Caruana, Chairperson of the evaluation Board, on behalf of the contracting authority stated that ISTS's offer was rejected for two reasons. 1. The submitted experience submitted did not fall within the range of twelve months previous to the tender. Apart from the declaration by ECO Italia Srl, appellant also submitted CVs and resumes of employees with the said company whose experience did not fall within the range. The contracting authority wanted experience in similar works during the past twelve months. 2. The tender required a declaration of the estimate of the area in square meters of a similar installation. This was not found with the submission of the appellant's tender. Appellant's offer just referred to similar works performed by ECO Italia Srl., without giving the area.

Mr Mark Mifsud stated that appellant used the option allowable at law to avail itself partner's experience to provide proof of its experience. Mr Mifsud reiterated that by the submission of the declaration appellant's offer was compliant, because the works were similar.

The Chairman explained that the tender required that bidders had to provide lists of personnel to be used in the project showing that each of these had worked twelve months. This was mandatory. The contractor and the tenderer in these clauses had the same meaning.

Ms Putzulu Caruana confirmed that appellant had submitted a list of employees but these were out of range during the previous twelve months.

Dr Franco Galea on behalf of the preferred bidder said that the form at page 41 is clear. The installer experience for the past twelve months had to be listed. It was clearly indicated that one had to list the persons working on the project. The tender required persons with a certain amount of experience to work on the project and this was clearly shown and it was essential to provide the information. Bidders had to use employees with them to work on the project.

They could not use self-employed persons to do the job. The documents submitted by appellant show that these employees did not have the required experience.

At this point Mr Mark Mifsud for the appellant explained that he did not have the employees himself but was going to use the workforce of the Italian company. It was a joint venture. Appellant was the bidder.

Dr Franco Galea on behalf of the preferred bidder continued that on examining the tender specifications at page 19, Clause 7.1 specifies the square meters required for the project. Failure to submit the amount of square meters provided by the bidder, leads to the nullity of the bid. Therefore the contention that appellant satisfied this condition by the statement that the Italian company provided similar work does not hold. The document just identified that the company had provided Geosynthetic membrane before but not the area in square meters of the same. The tender was very specific in the requirements. The magnitude of the area was essential.

Replying to a question by the Chairman, Ms Putzulu Caruana stated that the tender document had specified the area of the project at 12,000 square meters.

Mr Mark Mifsud insisted that once appellant declared that the Italian company had provided similar work it meant the area as well. He insisted that the tender was not clear.

The Chairman summed up stating that the tender had two conditions to be satisfied: A list of employees being assigned to the project, who had experience of similar projects during the last twelve months; and the question of area. The Chairman asked appellant's representative why the area was not included in the tender offer.

Mr Mark Mifsud replied that it was not entered in the offer.

The Board also examined page 41 of the appellant's bid and it resulted that it was not filled-in.

The hearing was at this point brought to an end.

This Board,

Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 15th October 2013 and also through the Appellant's verbal submissions during the hearing held on 5th November 2013, had objected to the decision taken by the Pertinent Authority, in that:

- a) Appellant claimed that his offer was discarded due to the fact that not all documentation, as requested in the tender document, was submitted.**
- b) Appellant also insists that he pertains the necessary experience to carry out the required assignment as specified in the tender document.**

Having considered the Contracting Authority's verbal submissions during the hearing held on 5th November 2013, in that:

- a) **The Contracting Authority's submission did in fact explain in detail the basic reasons why the Appellant's bid was discarded, as follows:**
- i) **The Appellant did not have the required experience as stipulated in the tender document.**
 - ii) **The Appellant did not submit the mandatory declaration of the estimated area of similar works carried out by same.**

Reached the following conclusions:

- 1. The tender document indicated quite clearly the mandatory documents required that were to be submitted by the tenderer. In this regard the Appellant failed to abide by this requirement.**
- 2. The Appellant's bid failed to qualify in so far as the range of experience as stipulated in the conditions of the tender document.**
- 3. The Appellant had to substantiate estimated areas of similar works carried out by same. In this regard the Appellant confirmed to this Board that such information was not submitted as required in the tender document.**
- 4. This Board opines that whenever mandatory documentation is requested by the Contracting Authority, same should be submitted without fail and omission of submission leads to disqualification during the evaluation process.**

In view of the above, this Board finds against the Appellant Company and recommends that the deposit paid by the Appellant should not be reimbursed.

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Richard A. Matrenza
Member

13 January 2014