

PUBLIC CONTRACTS REVIEW BOARD

Case No. 629

WSM 092/2013

Tender: Period Contract for the Environmental Monitoring at Sant'Antnin Waste Treatment Plant for Air Emissions as peer Environmental Monitoring Program. (Lot 2: Air Monitoring for Fugitive Emissions).

The tender was published on the 23rd April 2013. The closing date was the 4th June 2013.

The estimated value of the Tender was: €37,200 (Exclusive of VAT).

Seven (7) bidders had submitted offers for this tender.

On the 18th October 2013 Robert Cortis filed an objection against the decision to discard its offer as being administratively non-compliant.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Richard A. Matrenza as members convened a hearing on Tuesday 5th November 2013 to discuss the appeal.

Present for the hearing:

Mr Robert Cortis – Appellant

Mr Robert Cortis Representative

Ecoserv Limited & CADA s.n.c - Preferred Bidder

Ms Sarah Debono Representative

WasteServ Malta - Contracting Authority

Ms Henriette Putzulu Caruana Chairperson Evaluation Board
Dr Victor Scerri Legal Representative.

After a brief introduction by the Chairman, the appellant was invited to make his submissions on the objection. It was remarked that the letter of objection failed to give any reasons for the objection.

Mr Robert Cortis, appellant stated that the main reason he did not agree with the contracting authority's decision was the definition of 'references'. The evaluation board interpreted references to mean letters of reference while the dictionary defines reference to be to refer to something.

The Chairman explained that when asking for reference, the meaning refers to a letter of reference.

Mr Robert Cortis continued that he understood Clause 1.2.15, where it said "*proof of the company's or its sub-contractors' involvement in at least two (2) Environmental Air Emissions Monitoring Projects in the form of references.*" to have the broader meaning and submitted a letter of reference and another one being a letter of acceptance issued by the said contracting authority itself for another job. In fact another tender issued last week by the same contracting authority corrected this.

Dr Victor Scerri on behalf of the contracting authority said that this Clause was inserted in the tender in order for the authority to have the references of similar works done by the bidders. One of the documents submitted by appellant was such a reference where appellant had completed a project and his client had then written the letter of reference. This was acceptable and was accepted. The other letter submitted by the appellant with his bid was a letter of acceptance for another project that was ongoing. This cannot be said to be a reference because the work was still ongoing and a reference is only issued when the work was completed and the client satisfied.

Ms Henriette Putzulu Caruana on behalf of the contracting authority stated that the evaluation board, of which she was the chairperson, had also consulted the dictionary, and one of the definitions of 'reference' is "*a written testimonial supporting an applicant etc.*"

Mr Robert Cortis insisted that there were more than one definition given in the dictionary, and the tender requested that bidders show their involvement in another project through this reference, which he did. He continued that he is an expert in air quality and approved by MEPA and it seems this fact was ignored by the evaluation board.

The Chairman explained that the evaluation procedure has to stop whenever a bid is found to be administratively non-compliant so the evaluation board could not go into the certificates the appellant produced in his technical offer.

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 18th 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) **The Appellant contends that his bid was discarded for not being ‘Administratively Compliant’ due to the fact that Appellant failed to submit the necessary documents with regards to references as specified in the tender document.**
- b) **Appellant also contends that his bid included the submissions as laid out in the tender document.**

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

- a) **The Tender document included a mandatory requirement wherein Appellant had to submit two references proving experience in similar assignments.**
- b) **Appellant submitted only one reference for executed works of a similar nature.**

Reached the following conclusions:

1. **This Board opines that the word ‘Reference’ as specified in the tender document could not have any other meaning except for reference to previous similar works carried out by the Appellant. In plain English, it means proof from a third party that the Applicant did in fact carry out similar assignments as that specified in the tender document.**
2. **The mandatory requirement of ‘Reference’ entailed ‘two’ similar works carried out by the Applicant. The Appellant submitted only one executed assignment of a similar nature.**

In view of the above, this Board finds against the Appellant 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

4 February 2014