

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 656**

**WSM/122/2013**

### **Period Contract for the Supply and Delivery of Galvanised Pipe Work and Ancillary Fittings at the Magtab Complex.**

The tender was published on the 21<sup>st</sup> May 2013. The closing date was the 18<sup>th</sup> June 2013.

The estimated value of the Tender was €41,454.35 (Exclusive of VAT)

Two (2) bidders had submitted offers for this tender.

On the 2<sup>nd</sup> December 2013 JP Baldacchino & Co Limited filed an objection against rejection of its bid for being administratively non-compliant.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancillieri as members convened a hearing on Thursday the 16<sup>th</sup> January 2014 to discuss the objection.

Present for the hearing were:

#### **JP Baldacchino & Co. Limited – Appellant**

Mr Adrian Baldacchino	Representative
Dr Joe Camilleri	Legal Representative

#### **AFS Limited - Preferred Bidder**

Mr Joseph P. Attard	Representative
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#### **WasteServ Malta Limited - Contracting Authority**

Mr Robert Micallef	Member Evaluation Board
Dr Victor Scerri	Legal Representative

The Chairman made an introduction and the appellant's representative was invited to make his submissions on the objection.

Dr Joe Camilleri on behalf of the appellant said that his client's offer was disqualified for changing the schedule of rates by offering 5.8 meter pipes when 6 meter pipes had been requested. However the 5.8 meter length pipes were more practical in use and could be loaded in containers 20 feet in length while the 6 meter pipes could not be fitted into these containers. In previous tenders the contracting authority used to ask either 6 meter length or 5.8 meter length as there was no difference to performance made by the length. Even the schedule of rates had in past tenders been altered by appellant, by striking out 6 meters, and this had never resulted in rejection of bids. In the present tender however, his client's bid was excluded for being administratively non-compliant because appellant had altered the schedule of rates to read 5.8 meters and inserted "screwed socket"; it was not excluded for being technically non-compliant. Appellant had to amend the schedule as otherwise he would have been accused of making a false declaration when offering 5.8 m pipes for 6 m pipes. On the other hand, appellant's bid was declared non-compliant for having altered the schedule and not for being technically non-compliant. Appellant was aware of clause 1.2.4 which stated that no change can be made to the schedule, but there were other instances decided by this Board where it was decided that formalism had to be avoided unless it was shown to be necessary. Dr Camilleri insisted that the changing of the schedule had been the usual practice for similar tenders. Appellant did not make any severe changes to the tender document.

Mr Robert Micallef on behalf of the contracting authority, answering a question by the Chairman said that for the purpose the pipes were to be used, the length of these did not make any material difference whether these were 5.8 m or 6 m.

Dr Victor Scerri on behalf of the contracting authority confirmed that the length of the steel pipes was immaterial, but the evaluation board had decided on administrative matters and not on technical matters. Since the tender contained clause 1.2.4, the board had to abide by it and exclude the appellant's offer. Appellant could have asked for a clarification whether he could submit 5.8 m pipes and the reply would have been yes it would be acceptable. This clarification would then have formed part of the tender document and circulated to all bidders. But since the appellant did not do this and because of the clause 1.2.4, the evaluation board could not accept the offer made by appellant.

Mr Joseph Attard on behalf of the preferred bidder said that the commercial aspect of the matter was being ignored. He explained that pipes of 5.8 meters were easier to manage and cheaper to transport. The preferred bidder chose to abide by the tender requirements however.

Dr Joe Camilleri for appellant stated that a request for clarification would not have solved the matter because his client's offer was not discarded because of the length of the pipes but for having changed the schedule, and the schedule listed 6 meters.

The Chairman explained that the Board was working to eliminate exaggerated formalism but still certain limits had to be in place. In the present case, a clarification would have been circulated to all interested parties and thus ensuring a level playing field.

Mr Adrian Baldacchino on behalf of appellant showed the Board samples of the pipes submitted by the appellant. He explained that these had screwed sockets, and were more expensive. From experience appellant knew that the contracting authority needed these types

of pipes and the omission of this fact from the tender was a mistake. Yet appellant's bid was excluded because it had the words "screwed socket" added to the schedule.

Dr Victor Scerri on behalf of the contracting authority said that while he empathised with appellant, the evaluation board had to draw a line and adjudicate according to the specifications.

At this point the hearing was brought to a close.

**This Board,**

**Having noted the Appellant's objection , in terms of the 'Reasoned Letter of Objection' dated 2<sup>nd</sup> December 2013 and also through Appellant's verbal submissions during the hearing held on 16<sup>th</sup> January 2014, had objected to the decision taken by the pertinent Authority, in that:**

- a) Appellant was disqualified due to the fact that he submitted slightly different specifications from those laid out in the tender document. These changes were immaterial.**
- b) From experience, Appellant contends that the product he offered was more practicable and this factor should have been taken into consideration by the Evaluation Board.**
- c) Appellant's bid was the cheapest.**

**Having considered the Contracting Authority's verbal submissions during the hearing held on 16<sup>th</sup> January 2014, in that:**

- a) The Evaluation Board confirmed that the Appellant's Bid was 'technically compliant', however Appellant should have asked for clarifications prior to submission of his tender.**
- b) The Evaluation Board could only evaluate the Appellant's bid on the technical specifications submitted by same. In this regard, Appellant submitted technical specifications which differed from those specified in the tender document.**

**Reached the following conclusions:**

- 1. This Board notes with regret that too much bureaucracy creates unnecessary additional burden on the taxpayer. This is a typical case in point.**
- 2. This Board opines that the Appellant should have made clarifications prior to the submission of his offer.**

**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. Lawrence Ancillieri  
Member

*20 February 2014*