

PUBLIC CONTRACTS REVIEW BOARD

Case No. 661

DH 2377/2012

Tender for the Provision and Maintenance of Bins on Wheels and of Open Skips, and the Regular Collection of Municipal Type and/or Other Bulky Recyclable Wastes from Public Healthcare Institutions in an Environmentally Friendly Manner.

The tender was published on the 8th March 2013. The closing date was the 11th April 2013.

The estimated value of the Tender was €107,567.00 (Exclusive of VAT).

Six (6) bids had been received for three lots of this tender.

On the 11th December 2013 Mr Saviour Mifsud filed an objection against the disqualification of his offer and the proposed award of Lot 1 to Joe Micallef & Son Express Skip Services Limited and Lot 2 to Green Skip Services Limited.

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 30th January 2014 to discuss the objection.

Present for the hearing were:

Mr Saviour Mifsud - Appellant

Mr Saviour Mifsud	Representative
Dr Christopher Chircop	Legal Representative
Dr Franco Galea	Legal Representative

Joe Micallef & Son Express Skip Services Limited - Preferred Bidder for Lot 1

Mr Joseph Micallef	Director
Dr Paul Micallef Grimaud	Legal Representative

Green Skip Services Limited - Preferred Bidder for Lot 2

Ms Mary Gaerty	Director
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Ministry for Health - Contracting Authority

Ms Stephanie Abela	Procurement Manager
Ms Noreen Mallia	Secretary Evaluation Board
Mr Matthew Mangion	Member Evaluation Board
Mr Lawrence Mifsud	Member Evaluation Board
Mr Saviour Pace	Member Evaluation Board

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

Dr Franco Galea on behalf of appellant explained that this tender comprised three Lots but his client was only objecting from his rejection of Lots 1 and 2. Appellant was disqualified from both these lots because it was claimed that he failed to submit the method of operation according to clause 1.6 of the Literature Form. This clause says that the tenderer has to provide "*Plans drawings, brochures, etc clearly showing the method of operation of the Bins on Wheels including their transport on site and emptying.*", which means that the clause left it to the bidders to use whatever method they deemed fit to use. He contended that with his bid, appellant had submitted photographs of the vehicles and the type of skips he would be using. These photos also explained how the skips would be used. Whoever compiled the tender did not do so restrictively, requiring a detailed report. It could easily be seen how the equipment would be used. He claimed that his client's bids for the two lots were the cheapest. He also contended that the photographs his client submitted with the bid satisfied the tender requisites and thus his bid was compliant. Dr Franco Galea explained that this was an e Tender and at this point showed the Board copies of the literature his client submitted with his bid. These had been scanned and uploaded together with appellant's tender. He contended that examination of the photos easily showed the method his client intended to use when the skips were being utilized.

Mr Saviour Pace, a member of the evaluation board, on behalf of the contracting authority said that the literature submitted by appellant was not sufficient. The specifications required more details as can be seen from clause 3.4 at page 14 of the specifications. This was comprehensive and in such detail as to show bidders the needs of the contracting authority and explained how the waste collection had to be managed. For example in the case of Lot 2, Mater Dei Hospital, there was a chain of events to be followed in waste disposal, where part of the waste has to be carried using tow carts. The tender requisites showed that those types of tow bars and tow plates were required. The appellant did not show these tow bars and it was essential that the evaluation board were made aware of the method appellant intended using.

Dr Franco Galea for the appellant submitted that the appellant's bid was not excluded on the basis of clause 3.4 but on the basis of clause 1.6 at page 34, that is, "failed to submit the method of operation". He contended that with the literature and the photos submitted by his client the appellant, his bid satisfied all the requirements of the tender and was compliant.

Mr Saviour Pace on behalf of the contracting authority said that the problem with appellant's bid was the tow bars. Clause 3.4 item 2 deals with the tow bars and tow plates specifically for Mater Dei. These tow bars are fixed to the skips and have to be wheel mounted. That is why the contracting authority provided the plans to all bidders so that they become aware of what was required. The appellant did not submit at least a photo of the tow bars. This clause falls under note³ and therefore no rectification is allowed. This tender was for 1 year and the contracting authority could not give a lengthy mobilization period. Especially for Lot 2, clauses 3 and 4 listed in detail the method of operation and the times when the waste was to be collected.

Dr Franco Galea asked whether the problems that led to the exclusion of his client arose only on the Mater Dei Lot 2, since his client was also excluded from Lot 1?

Mr Saviour Pace on behalf of the contracting authority said that for Lot 1 the contracting authority asked for the method of operation the bidder intended using to provide the service. The contracting authority wanted to know the bidder's timing, and how he would clean the skips, this information was requested in clause 1.6.

The Chairman asked the appellant why the requested method of operation was not submitted.

Dr Franco Galea for the appellant said that his client did provide his method of operation because the tender gave no choice; the conditions and times of collection were imposed by the contracting authority. When the bidder signed the tender he accepted all the conditions. On the other hand, clause 1.6 gave a very wide choice to the bidder and appellant had complied by submitting photos that tallied with the specifications. Here Dr Galea showed the Board photos of the trucks appellant had submitted with the offer.

Mr Saviour Pace for the contracting authority said that the evaluation board expected the bidder to submit detailed explanations of the times he would be making collections; the method used to clean the equipment and the place where he intended to clean the equipment, how he intended to supply the service. Replying to a question by the Chairman whether the evaluation board had any doubts on the ability of the appellant to provide the service, Mr Pace stated that appellant was technically non-compliant. The contracting authority wanted a written 'modus operandi' as confirmation in case of future default, and the appellant failed to produce it.

The Chairman recapitulated that the reason for disqualification of appellant for Lots 1 and 2 was the non submission of the written modus operandi and in addition, Lot 2 was disqualified because of the tow bars and tow plates.

Dr Franco Galea said that figures speak for themselves and the bids submitted by bidders are binding. He contended that the declarations signed by the bidders are binding on them. He reiterated that the method of operation was provided by the contracting authority itself. He reminded the Board that for Lot1 the difference in price between his client and the preferred bidder is €5000 while the difference between the price submitted by his client and the preferred bidder is around €30,000.

Mr Saviour Mifsud the appellant stated the tow bars submitted by him were compatible with the system used at Mater Dei and fit in.

Mr Saviour Pace for the contracting authority said that at Mater Dei the system requires that the tow truck pulls the skips for one kilometre. The tow bars and tow plates in question are fitted to skips to enable a number of these to be linked together for transport to the disposal room. The trucks submitted by appellant are compliant but the skips submitted by him are not compliant because they are not equipped with tow bars and tow plates.

Dr Franco Galea said that the photos show that one of the skips submitted, the third one, has a slot that tallies with the drawing provided with the contracting authority.

Mr Saviour Pace said that of all the skips submitted by appellant only one was compatible with the specifications but even this was not provided with a tow bar. He referred to clause 4.1.10.3. The tender contained great detail and a site visit was recommended. There were

certain constraints regarding the free passage of vehicles at Mater Dei since not all trucks would be able to pass. The evaluation board if possible could have opted for the cheaper offer but did not want to compromise the operation by doing so.

Ms Mary Gaety on behalf of Green Skips, the preferred bidder for Lot 2, said that in spite of appellant having long experience in the matter, he does not understand what tow bars are. Clause 3.4 required that the literature had to be in order. Clause 1.6 was also clear that bidders had to submit plans, drawings and brochures clearly showing the method of operation. If the tow bars did not feature in the literature this means that these were not offered and appellant did not even include the tow bars in the price.

Dr Paul Micallef Grimaud on behalf of Joe Micallef & Son Express Skip Services Ltd, the preferred bidder for Lot 1, said that if the tender specifications required the submission of a modus operandi and a bidder failed to submit this, then the bidder is technically non-compliant. The modus operandi binds the bidder, in this case the appellant, in the execution of the contract.

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 10th December 2013 and also through Appellant's verbal submissions during the hearing held on 30th January 2014, had objected to the decision taken by the pertinent Authority, in that:

- a) Appellant contends that through the literature submitted by same, he satisfied the requirements as to the 'Modus Operandi' as required in the tender document.**
- b) Appellant's bid was cheaper than the Preferred Bidder's offer.**

Having considered the Contracting Authority's verbal submissions during the hearing held on 30th January, 2014, in that:

- a) The literature which the Appellant submitted was not sufficient enough to enable the Evaluation Board to assess the Appellant's Bid as to how the 'waste collection procedure' was to be managed.**
- b) Appellant's Bid was not 'technically compliant'.**

Reached the following conclusions:

- 1. This Board opines that the technical 'mode of operation' was a very crucial requisite, especially when this service is to be carried out in a very sensitive area, such as Mater Dei Hospital.**

2. From the submissions, it was evidently clear that the Appellant's offer did not provide the adequate information as to how the 'mode of operation' was to be managed.

3. So that the Appellant's offer was 'technically non compliant'.

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

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Lawrence Ancillieri
Member

3 March 2014