

PUBLIC CONTRACTS REVIEW BOARD

Case No. 679

WSM 198/2013

Period Contract for Pipe Fitting Services at the Magtab Gas Extraction Upgrade.

The tender was published on the 27th September 2013. The closing date was the 18th October 2013.

The estimated value of the tender was €119,415 Excluding VAT.

Two (2) bidders had submitted their offer.

On the 5th February 2014 FM Core Limited filed an objection against the rejection of 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 4th March 2014 to discuss these concerns.

Present for the hearing were:

FM Core Limited - Appellant

Ing. Edward Cauchi	Representative
Ing. Matthew Gruppetta	Representative
Dr Stefan Camilleri	Legal Representative

Professional Marine Contractors & Services Limited - Preferred Bidder

Mr Emanuel Camilleri	Representative
Dr Alessandro Lia	Legal Representative

WasteServ Malta Limited - Contracting Authority

Ms Louise Sciberras	Chairperson Evaluation Board
Mr Morgan Bonnici	Member Evaluation Board
Mr Charles Zerafa	Member Evaluation Board
Dr Victor Scerri	Legal Representative

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

Dr Stefan Camilleri on behalf of the appellant firm FM Core Ltd said that his client's bid was disqualified because of clause 1.2.13 for failing to submit technical literature and illustrations. He contended that his client in fact did submit documentation under this clause, so the contracting authority had first to clarify whether the allegation is that it was missing or what was submitted was not was required.

Dr Victor Scerri on behalf of the contracting authority said that some information was submitted by appellant, and listed as technical literature, catalogues and illustrations, but this did not satisfy the requirements because no technical literature of the machinery was submitted. It was not what the contracting authority had requested. WasteServ wanted technical literature of the machinery that would be used to provide the pipe fitting services which was important.

Dr Stefan Camilleri for the appellant contended that the tender was for the provision of services. The materials, the pipes, were going to be provided by the contracting authority. The bidder would only provide the labour. The contractor would only be laying the provided pipes.

Dr Victor Scerri explained that the tender was for pipe fitting services involving labour, but this fitting required specialized machinery. The fitting was for gas extraction and required specific machinery. Not every kind of machinery was suitable for use in the tender.

Charles Zerafa on behalf of the contracting authority explained that the evaluation board had to see what machinery would be used by bidders because of the site constrains. The work involved the fusion welding of plastic pipes of different sizes on site and not all machinery would be suitable for the process. Certain machines that could not fit in small places would not be suitable. That was the reason for the request of submission of technical literature.

Dr Victor Scerri for the contracting authority explained that not all machines were suitable for the work because it depended on the size of the pipes. Different types of machines were required because it was not just a plain fitting of one pipe to another. Since the pipes were to be used for gas extraction the pipes had to be welded together and this required special machinery. That was the reason why the contracting authority asked for the submission of technical literature for the machines the bidders would be using, to see if it was suitable for the purpose required.

Dr Stefan Camilleri pointed out that this was not clearly explained in the tender document. The tender document should have been clearer. When offering labour services it is not usual to submit technical literature, so much so that a previous tender had been awarded to his client in spite of non-submitting any literature. The tender should have specified which machinery would be used. Clause 1.2.13 refers to equipment being "offered" and not to being "used". No such equipment is being offered since this is for labour only. The tender should have asked for a detailed submission by bidders of the machinery they would be using to provide the service.

Dr Victor Scerri said that appellant did not submit any technical literature but submitted a list of past experience.

Dr Alessandro Lia on behalf of the preferred bidder referred to page 41 of the tender where bidders had to list the rates and prices. Going through the list it is clearly seen that some of the items are “electro fusion” and this welding of gas pipes required the use of a fusion welder. He contended that the tender requested the submission of this. The tender involves the welding, the bending and threading of the pipes, and all these required the use of equipment and if a bidder failed to indicate what equipment he would be using, his offer would be null. As per clause 1.2.13, tenderers were also obliged to submit all documents in the form of technical literature, catalogues and illustrations relative to the supplies, plant equipment being offered to render the services. The Dr Lia cited *“For this purposes, bidders shall clearly mark or highlight the item/equipment/model being offered accordingly within the technical literature submitted.”*, and said that the clause ended *“Failure to submit the Technical Documents as requested in the ‘Specifications and Literature Form’ and in full compliance with this cause shall render the tender offer null.”* He contended that the appellant failed to inform the contracting authority which equipment would be used to provide the service.

Mr Emanuel Camilleri on behalf of the preferred bidder stated that the fusion welder was essential for the provision of the service and apart from this welder a pipe-bending machine and threading machines would be required in order to perform the work requested. The pipes in question could be from 63mm to 355mm and thus special machinery was required.

The Chairman remarked that he would have assumed that a person bidding for this tender would necessarily be in possession of the required equipment. From the photos shown to the board the equipment looks like any ordinary equipment, and not large machinery.

Dr Alessandro Lia for the preferred bidder disagreed. He insisted that if the tender document required the submission of documents to enable the contracting authority to decide, then this had to be complied with. The preferred bidder had provided extensive information about the equipment his client would be using.

Dr Stefan Camilleri for the appellant reiterated that this tender was for the provision of labour only and stressed that the tender mentioned “offered” (when referring to equipment) and since this tender was for labour provision no equipment was being offered. His client had the proper equipment to carry out the service.

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 5th February 2014 and also through Appellant’s verbal submissions during the hearing held on 4th March 2014, had objected to the decision taken by the pertinent Authority, in that:

- a) **The Appellant contends, that the alleged missing technical literature and specifications of the machinery to be utilised by Appellant, is irrelevant, as the tendered works consists of laying and welding of pipes. i.e. a ‘full labour content’ tender.**
- b) **Appellant does have the necessary and appropriate equipment to carry out the required services as laid out in the tender document.**
- c) **Appellant also contends that clause 1.2.13 of the tender document was somewhat confusing when referring to equipment ‘being offered’. In actual fact, no equipment is being tendered for but only ‘labour service’ for laying and welding of pipes.**

Having considered the Contracting Authority’s verbal submissions during the hearing held on 4th March 2014, in that:

- a) **Although Appellant did submit some technical information about the machinery intended for use, this information did not satisfy fully the requirements as stipulated in the tender document.**
- b) **Due to the delicate nature of works to be carried out, the technical specifications of the equipment to be employed by the Appellant are of utmost importance. For the proper execution of the tendering works.**

Reached the following conclusions:

- 1. This Board opines that, in general, a prospective tenderer should seek clarifications, if in doubt, prior to the submission of the tender document. In this particular case, Appellant could have sought clarifications with regards to the detailed technical requirements of the machinery to be employed on the tender works.**
- 2. Although, it is a fact that the tendered services comprised of a purely ‘Labour content’, the Contracting Authority had every right, for valid technical reasons, to impose knowledge of the technical specifications of the equipment to be utilised by the prospective bidder. From submissions made during the hearing, it transpired that the technical specifications of the equipment to be employed by the Tenderer were of great importance. In this regard, Appellant Company failed to abide by this mandatory requirement, as stipulated in the tender document.**
- 3. This Board also notes that the tender document clearly highlighted the fact that “ Failure to submit the technical documents as requested in the ‘Specifications and Literature Form’ and in full compliance with this clause shall render the tender offer null”**

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

8 April 2014