

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 887**

**CT 3024/2015**

**Tender for the Supply and Commissioning of Heavy/Light Plant Equipment and Refrigerated Truck for the Waste Treatment and Transfer Facility at Tal-Kus, Gozo (Lot 5).**

The Tender was published on the 23<sup>rd</sup> June 2015. The closing date was on the 1<sup>st</sup> October 2015. The estimated value of the Tender is €65,000.00 (Exclusive of Vat).

Ten (10) offers from three bidders had been submitted for this Lot.

On the 11<sup>th</sup> December 2015 United Equipment Co. (UNEC) Limited filed an objection against the rejection of their offer because of technical non-compliance.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a hearing on Tuesday the 5<sup>th</sup> January 2016 to discuss the objection.

Present for the hearing were:

### **United Equipment Co. (UNEC) Limited:**

Mr Gilbert Bonnici	Director
Mr Gilbert Debono	Sales Manager
Dr John L Gauci	Legal Representative

### **SR Environmental Solutions Limited:**

Mr Ray Muscat	Director
Mr Simon Zammit	Representative
Mr David Muscat	Representative
Dr Matthew Paris	Legal Representative

### **WasteServ Malta Limited:**

Mr Martin Casha	Chairperson Evaluation Board
Mr Ramon Vella	Member Evaluation Board
Dr Victor Scerri	Legal Representative

### **Department of Contracts:**

Mr Kevin D'Ugo	Procurement Manager
Dr Chris Mizzi	Legal Representative

## Lot 5 - Skid Steer Loader

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

Dr John L Gauci on behalf of the Appellant explained that his client had made 2 bids for Lot 5 which concerned the Skid Steer Loader. One was disqualified because the Evaluation Board decided that the Appellant's offer did not provide sliding windows and air-conditioner as required by the Technical Specifications items 2.4.3 and 2.4.4.

The other was disqualified because the operating capacity of the equipment offered was 1000kgs while the technical specifications wanted a range from 750kgs to 975kgs. The sliding windows and air-conditioning were in fact offered as could be seen from the document C enclosed with the Letter of Objection wherein is stated "*bucket made from light material and equipped with Toe Plate; Kit – Caterpillar cabin closed heater and air-conditioner for tropical ambient temperatures*" and these were exactly according to the requested specifications.

Furthermore, the Appellant had made it clear in his declaration that the offer was according to law. The same document also shows that the operating load of the vehicle offered was 975kgs and therefore within the requested range and technically compliant. It was not understood where the Contracting Authority came up with 1000kgs.

The Appellant had offered 2 options one for the Caterpillar and another brand and the operating load of that brand was 1000kgs. Dr John L Gauci contended that the Appellant's Tender should not have been discarded.

Dr Christopher Mizzi on behalf of the Department of Contracts said that Appellant's offer had provided conflicting specifications regarding the Caterpillar. This states that the cabin has "no heating doors and windows" and later on as a kit, that "cabin closed heater and air-conditioner." The Evaluation Board had concluded that this meant that this meant that in order to reach the requested specifications an additional kit was required and that this would have to be purchased additionally. The Literature provided by the Appellant gave the impression that this equipment was separate and additional.

With regards to the operating load of the equipment, Dr. Mizzi wanted to ask some questions to a member from the Evaluation Board, under oath.

Mr Ramon Vella, ID No 281485M, employed with the Contracting Authority and member of the Evaluation Board explained that the reason of rejection of Tender identity number TID 41606 was the excess operational load and not for TID 41605 which was within the parameters. Mr. Vella explained that Appellant had made two offers. The Caterpillar offered by the latter was qualified by TID 41605 and this was rejected because of there was no heating of the door and window.

At this point the hearing on Lot 5 was closed.

**This Board,**

**Having noted the Appellant's Objection, in terms of the "*Reasoned Letter of Objection*" dated 11 December 2015 and also through their verbal submissions during the Public Hearing held on 5 January 2016, had objected to the decision taken by the Pertinent Authority, in that:**

- a) The Appellant submitted 2 offers for the "*Skid Steer Loader*". One offer was discarded due to the alleged fact that the Equipment offered by the Appellant did not provide "*Sliding windows and Air Conditioner*". In this regard, the Appellant maintains that these requirements were submitted in accordance with the dictated specifications;**
  
- b) The Appellant contends that the other offer for the same lot was also disqualified due to the fact that the operating capacity of the Equipment offered by the same was 1000 kg, whilst the requested capacity range was between 750kg to 975 kg. In this regard, the Appellant maintains that the specifications of his equipment were within the dictated requirements.**

**Having considered the Contracting Authority's "*Letter of Reply*" dated 21**

**December 2015 and also their verbal submissions during the Public Hearing held on 5 January 2016, in that:**

- a) The Contracting Authority maintains that through the Technical Literature regarding the Caterpillar as submitted by the Appellant Company, it was clearly demonstrated that the Equipment offered by them did not have “*heating doors and windows*”.**

**Since later on, it was established that with a separate “*kit*”, the equipment would meet the required technical specifications. In this regard, the Contracting Authority concluded that the additional kit would cost the latter additional expense.**

- b) With regards to the “*Operational Load*”, the Contracting Authority contends that the reason why the Appellant’s second offer was rejected was simply due to the fact that model TID 41605 had no heating of the doors and windows.**

**Reached the following conclusions:**

- 1. With regards to the Appellant’s First Grievance, this Board, after having heard all submissions and examined the relevant**

documentation and clarifications, justifiably refers to the Literature submitted by the Appellant Company relating to “*Skid Steer Cat 242 D HF Canopy LCD*” with particular reference to the Paragraph describing the cabin as follows: “*Cabin: Cabin Open ROPS/FOPS full instrumentation, (No heating, door and window). Seat Mechanical suspension and adjustable with a retractable seat belt and adjustable armrests and console*”.

This Board credibly notes that the Technical Literature of the Equipment submitted by the Appellant declared that there is no heating in the doors and windows. The Evaluation Committee had to evaluate on the information submitted by the Appellant which clearly specified that the cabin of the Equipment did not meet the Technical Requirements.

The fact that the Evaluation Committee were later informed by the Appellant that the cabin would meet the dictated requirements through a separate “*Kit*”, does not hold but complicates further the issue.

This Board credibly opines that a “*Separate Kit*” would mean an additional expense to the Contracting Authority. At the same

**instance, this Board notes that the Literature submitted by the Appellant suggested that this equipment was separate and additional.**

**In this regard, this Board opines that the decision taken by the Evaluation Committee in discarding the Appellant's bid, was just, transparent and proper. This Board does not uphold the Appellant's First Contention.**

- 2. With regards to the Appellant's Second Contention, this Board, after having heard all submissions and examined the Pertinent Documentation regarding the issue of "*Operating Capacity*" of the Equipment offered by the Appellant Company, credibly refers to Clarification Note 46 where it was clarified to the latter that "*An operating capacity of maximum 1000kg is not acceptable.*"**

**This Board would also justifiably refer that the Appellant's claim that his equipment was technically compliant was later referred to a different model, which was not clearly specified by the same. This Board opines that the decisions taken by the Evaluation Board were just, transparent and proper.**

**At the same instance, this Board, as on numerous occasions, stated**

**that the Technical Specifications are not capriciously laid out in a Tender Document but are dictated to ensure that through the same, the Contracting Authority will obtain the best product, equipment or service for the benefit of the beneficiary. In this regard, this Board does not uphold the Appellant's Second Grievance.**

**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

*12 January 2016*