

PUBLIC CONTRACTS REVIEW BOARD

Case No. 907

WSM 043/2015

Tender for an On-Going Rodent Control Programme and Pest Control Services at Various Sites Managed and Operated by WasteServ Malta Limited.

The Tender was published on the 4th August 2015. The closing date was on the 1st September 2015. The estimated value of the Tender was €55,000.00 (Exclusive of Vat).

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

On the 18th January 2016 Salvarti Co. Limited filed an Objection against the decision of the Contracting Authority to award the Tender to Comtec Services Limited for the price of €32,572.80.

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 1st March 2016 to discuss the Objection.

Present for the hearing were:

Salvarti Co Limited:

Mr Oliver Borg
Dr Kevin Plumpton

Director
Legal Representative

Comtec Services Limited:

Mr Ronnie Galea
Ms Ioanie Mifsud

Technical Executive
Technical Manager

WasteServ Malta Limited:

Mr Stefan Salomone
Mr Martin Casha
Dr Victor Scerri

Member Evaluation Board
Purchasing Manager
Legal Representative

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

Dr Kevin Plumpton on behalf of the Appellant explained that there were two bidders for this Tender and as could be verified from the Schedule of Offers, his client had offered the service for €32,281.60 while the Recommended Bidder had offered the service for €11,242.20.

Yet the Letter of Rejection sent by WasteServ to the Appellants also quoted the price of the award of the Tender to Comtec as €32,572.80. The same letter also declared that the Appellant's offer had been fully compliant but was not the cheapest.

The Appellant was objecting because this figure is different from that shown in the schedule of prices and because at any rate, the offer submitted by the Recommended Bidder was higher than the offer made by his client. The Appellant had been asked for clarifications and had duly replied about the number of bait stations. They had rounded up the number and its offer was compliant with the Tender requirements.

Dr Kevin Plumpton explained that Comtec's offer as per schedule was €11,242.20 and this amount consisted of a fixed amount for the crawling insect part which in this case amounted to €10,296.00 and the rodent control part. If one deducted the fixed amount of €10,296 from the total of the Recommended Bidder's amount one is left with the amount of €946.20, which when multiplied by 24 months gives the amount of €22,708.80.

When this is added to the fixed amount, the total amount should read €33,004.80 which is higher than the Appellant's offer at €32,281.60. However the award amount is also different from this amount. Dr Plumpton added that when the Appellant asked for an explanation he was given Doc SA004 which shows that the amount offered by the Recommended Bidder was yet still another different figure of €31,766.40.

Mr Martin Casha for the Contracting Authority explained to the Chairman who had remarked that the Recommended Bidder's amount for rodent control was €928.20 that the latter had been asked for clarification on that amount and it resulted that that was the amount for just one month and had to be multiplied by 24.

Dr Kevin Plumpton for the Appellant remarked that even that amount of €928.20 when multiplied by 24 and added to the fixed part totalled €32,572.80 and this was still higher than the Appellant's offer. The latter was objecting because although its offer was found compliant and cheaper it had been ranked second. There were discrepancies in the values given by the Contracting Authority regarding the Recommended Bidder's offer.

Mr Martin Casha on behalf of the Contracting Authority explained that the values shown in the Schedule of Offers were corrected following a clarification and the correct figure for 24 months was taken. The Evaluation Board did not disqualify the Appellant because it had rounded downwards the number of baits required for the perimeters of the sites but the Evaluation Board had rounded up the number of baits required every 30 meters.

Clarifications had been asked from both bidders and both had replied. To arrive at which offer was cheaper the Evaluation Board had added the fixed crawling insect amounts for each bidder plus the number of baits required multiplied by the cost of each bait times 24, again for each bidder. In fact the Evaluation Board had carried out two exercises, calculating

amounts to arrive at the cheapest bid and in both instances it resulted that the Recommended Bidder's was the cheapest. This was done in order to compare like with like.

Dr Victor Scerri for the Contracting Authority explained that the Evaluation Board had used two formulas, based on the number of baits suggested by both bidders, to arrive at the cheaper offer.

Dr Kevin Plumpton on behalf of the Appellant said that the Tender requested rodent baits at a minimum of 30 meters between stations and had not specified the number of baits required for each site. This number was left to the bidders to fill in. The number of stations against crawling insects had however been supplied. He contended that the Evaluation Board should not have changed or altered the offers submitted by the bidders. He reiterated that he had explained the Recommended Bidder's offer amounted to difference between the total and the amount for crawling insects times 24 plus €10,296.00 that is €33,004.80 and not €32,572.80 as shown in the Letter of Rejection.

The Appellant's bait stations cost €1.60 each as could be seen from page 47 of the Tender offer. The number of bait to be used was part of the Tender offer and there was no need for any calculations. Thus the comparison should have been made on the offers as listed by the bidders themselves and not on any calculation.

Mr Martin Casha for the Contracting Authority said that the Recommended Bidder had clearly offered the baits for €928.20 per month and this multiplied by 24 gave the amount of €22,276.80 which when added to the fixed insect amount of €10,296.00 gave the total amount of €32,572.80. This amount was based on the quantities as requested in clause 4.1.2 (b) at page 41 that required bait stations as a minimum every 30 meters along the perimeter.

Dr Kevin Plumpton insisted that there was no need to round up or down the number of baits because these were to be fixed along the perimeter of the sites and thus ended up where they began. He finally reiterated that the Recommended Bidder's offer amounts to €33,004.80 which was higher than the Appellant's and that the Evaluation Board should not have changed or calculated any figures.

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 18 January 2016 and also through their verbal submissions during the Public Hearing held on 1 March 2016, and had objected to the decision taken by the Pertinent Authority, in that:

- a) **The Appellant’s Main Contention, is that, whilst his offer was the cheapest and technically compliant, the Contracting Authority awarded the Tender to a bidder quoting a higher bid price;**

- b) **The Appellant also maintains that the mode of assessment applied by the Contracting Authority was not based on the cheapest compliant bid as it was evidently clear that his offer was cheaper than that of the Recommended Bidder. The Appellant’s offer also complies with all the Technical Requirements as dictated in the Tender Document. In this regard, the Appellant contends that the method applied for assessing the bids was not transparent.**

Having noted the Contracting Authority’s “*Letter of Reply*” dated 28 January 2016 and also their verbal submissions during the Public Hearing held on 1 March 2016, in that:

- a) **The Contracting Authority contends that to compare on a “*Like with Like*” basis, the Evaluation Board assessed the bids on the number of “*Baits*” to be installed to cover the designated area.**

In this regard, the Contracting Authority maintains that when one

considers that the Recommended Bidder will be installing more “*Baits*” than the Appellant, it works out that in the long term, the Recommended Bidder’s offer is more advantageous.

Reached the following conclusions:

1. This Board, after having examined the relative documentation and heard submissions made by the parties concerned would justifiably point out that the dictated Technical condition as specified in the Tender Document was that “*Baits had to be installed at a minimum of 30 meters between stations*” to cover the specified area.

At no point in time, did the Technical Specifications dictate the number of “*Baits*” to be installed to achieve the desired Tendered Result.

This Board also credibly notes that the Appellant’s offer was Technically Compliant and the total price for the Tendered services was slightly cheaper than that of the Recommended Bidder. At the same instance, this Board would refer to the “*Award Criteria*” which was to be applied during the Evaluation Process and that was “*the cheapest priced Tender satisfying the Administrative and Technical*

Criteria".

The Tender Document did not dictate a "*Unit Price*" and at the same time clearly indicates that the Tender would be awarded to the cheapest fully compliant bidder. This Board also notes that the Evaluation Board based their calculation on the "*Number of Baits*".

In this regard, this Board credibly notes that in accordance with the "*Letter of Rejection*" dated 11 January 2016, the Contracting Authority confirmed that the Appellant was not successful due to the price quoted by the same.

This Board through evidence of facts justifiably contends that the Appellant's offer was Technically Compliant as confirmed by the same Contracting Authority so that what remains to be seen is the interpretation of the quoted price of both bidders.

The argument raised by the Contracting Authority's Evaluation Board with regards to the basis used for comparing "*Like with Like*" was not credibly proved to be the appropriate approach towards the financial assessment of the bids, in that the "*Award Criteria*" was the cheapest compliant bid.

It has been credibly established that the Appellant's offer was technically compliant, i.e. the Technical Aspect of the Appellant's bid would give the dictated result as required in the Tender Document, so what remained was the price.

This Board justifiably notes that since the Appellant's offer was fully compliant, the latter's total value of the Tender should have been taken into consideration without having to apply a "*unit price*" for the quantity of "*baits*" to be installed.

This Board credibly opines that since the Appellant's bid satisfied the Technical Requirements of the Tender, the Evaluation Committee should not have shifted the "*Goal Posts*" during the Evaluation Stage and in this respect, if the Evaluation Committee was to base its validation process on the basis on the number of "*Baits*", this condition should have been dictated in the Tender Document. In this regard, this Board upholds the Appellant's contentions.

In view of the above, this Board recommends that:

a) The Appellant's offer is to be integrated in the Evaluation Process.

**At the same instance, the Evaluation Board is to ensure that the
"Award Criteria" is properly adopted;**

**b) The deposit paid by the Appellant Company is to be fully re-
imbursed.**

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

9 March 2016