

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 621**

**WSC 840/2012**

### **Tender for the Supply of Turbidity Instruments.**

The tender was published on the 22<sup>nd</sup> January 2013. The closing date was the 22<sup>nd</sup> February 2013.

The estimated value of the Tender was €28,000 (Exclusive of VAT).

Eight (8) bidders had submitted an offer.

On the 24<sup>th</sup> September 2013, AFS Limited filed an objection against the rejection of its bid and the award of the tender to Messrs. U.E.O srl.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a hearing on Thursday 24<sup>th</sup> October 2013 to discuss the appeal.

### **Present for the hearing:**

#### **Messrs AFS Limited - Appellant**

Engineer Paul Refalo  
Mr Joseph P. Attard

Representative  
Representative

#### **Water Services Corporation - Contracting Authority**

Engineer Noel Formosa  
Mr Stefan Vella  
Engineer Antoine Psaila  
Mr Anthony Camilleri

Chairman Evaluation Board  
Secretary Evaluation Board  
Member Evaluation Board  
Representative

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

Mr Joseph P. Attard, Managing Director AFS Limited on behalf of the appellant, made reference to Clause 1.1 of the tender document, where the technical specifications asked for an instrument to measure turbidities in the range from 0.001 to 0.999. However the same Clause also required the instrument to be able to read accurately up to 9.999 NTU. Thus it speaks of accuracy and of scale. This was the basis of appellant's objection. He contended that the contracting authority wanted a meter to read up to three decimal places from 0 to 1, as well as to read accurately up to 10. Appellant offered a meter that read to three decimal places from 0 to 4, but keeping the same accuracy, could read up to 40. Thus while the contracting authority was asking for readings from 0 to 10, appellant offered 0 to 40. The whole difficulty was therefore on the third decimal place. Mr Attard stated that he would continue his submissions after hearing the contracting authority stating where the meter in question would be used, and what range it would be required to read.

Mr Noel Formosa, Chairman Evaluation Board on behalf of the contracting authority stated that specifications asked for a resolution of 0.001. The reason why appellant's offer was disqualified was because of the resolution of the meter it submitted was inferior to specifications. Appellant's bid offered a meter that read 0 to 4 and 0 to 40. Resolution equals .05% of the scale. Thus if appellant's lower scale is taken, that is 0 to 4, then .05% of 4 equals .002, this is not what was required and requested, resolution of .001. Not one of the scales offered by appellant reached this resolution of .001. Appellant's bid was therefore not according to specifications and was disqualified. It was very important that resolution of .001 was reached because the meter was going to be used for sea water that would be used on the membranes that were both very costly and had strategic importance. An increased level of turbidity must thus be noticed immediately, and accuracy was essential.

Mr Joseph P. Attard said that he wanted to clear the difference between accuracy and resolution. He contended that for a scale of between 0 to 4, the resolution to three decimal places is reached with an accuracy of 2%. This is accuracy of +- 2%. Accuracy and resolution cannot be mixed together. It is not understood why three decimal places from .001 to .999 and also up to 9.999 was asked for. He asked what range the instrument would be reading, from 0 to 1, 2 to 6, 8 to 10? Would the membranes mentioned earlier be affected by readings from 0 to 1 or over 1?

Replying to a question by the Chairman Public Contracts Review Board, Mr Noel Formosa said that the instrument offered by appellant was compliant regarding accuracy. The accuracy of the instrument submitted by appellant was never in doubt. He stated that in the letter of objection, appellant mixed up resolution and accuracy. .01 is the resolution and not accuracy. The range of use is normally from 0 to 1 but the contracting authority wanted flexibility. In the case of an accident, say an oil spill, this would increase the turbidity, and this was the reason why a range of 0 to 10 was also requested.

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 24<sup>th</sup> September 2013 and also through the Appellant's verbal submissions during**

**the hearing heard on 24<sup>th</sup> October 2013 , had objected to the decision taken by the pertinent Authority, in that:**

- a) The Appellant contends that the product being offered in his bid does in fact conform to the specifications as laid out in the tender document.**
- b) The Appellant questions the criteria adopted by the Evaluation Board in determining the ‘technical’ non compliance’ decision with regards to the Appellant’s bid.**

**Having considered the Contracting Authority’s verbal submissions during the hearing held on 24<sup>th</sup> October 2013, in that:**

- a) The technical reason why the Evaluation Board discarded the Appellant’s bid , on the technicality point of view ,was due to the simple fact that the ‘Resolution’ element of the product offered by the Appellant in his tender, was not up to the specifications as laid out in the tender document.**
- b) The Contracting Authority, through its technical Evaluators explained in great detail why the Appellant’s bid did not meet the technical ‘Resolution’ aspect of the specifications as required in the tender document.**

**Reached the following conclusions:**

- 1. Although the Appellant’s bid was ‘technically compliant’ in relation to the ‘accuracy’ of the equipment being provided, same equipment was not ‘technically compliant’ with regards to the ‘Resolution’ aspect.**
- 2. Through the submissions and technical explanations made by the technical Evaluators of the Evaluation Board, this Board opines that the decision taken to discard the Appellant’s bid was justified on technical grounds.**
- 3. The Adjudicating Board acted in a diligent manner in evaluating the Appellant’s bid.**

**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**

*4 December 2013*