

Following an introduction by The Public Contracts' Review Board Chairman, Dr Anthony Cassar, the Appellants were invited to make their submissions.

Mr Andrew Portelli on behalf of Joseph Cachia & Son, the local representatives of EcoGeo s.r.l opened by saying that due to the fact that they had requested a postponement of the Public Hearing.

Dr Anthony Cassar, Chairman Public Contracts Review Board, replied that at the present moment, this Board could not grant any postponements due to the tight schedule which currently has.

Mr Andrew Portelli for the Appellants then said that he is going to read a list of statements on behalf of EcoGeo s.r.l. Mr Portelli said that the Appellants are stating that they can deliver the work. They have over 30 years of experience in the field of studies, surveys and publications relating to similar project. Here Mr Portelli submitted three publications to sustain the above arguments.

The Appellants can apply modern methods recognized at European level, known as the Caravaggio method, which characterise river environment. This is a complex application which few can apply entirely. Mr Portelli here submitted also documents explaining the Caravaggio method.

EcoGeo s.r.l, continued Mr Portelli, is to deliver additional services useful to investigate and formulate the restoration plan. The Appellants had also explained how they will investigate during their works.

The Appellant's experts were to carry out some tasks namely:

- a) The mapping of the area by means of their drones at no extra charge;
- b) Deliver any specific documentation in 2D and 3D ortophotomaps;
- c) Carry out specific geological surveys using electrical tomography;
- d) Perform the water, soil and terrain analysis through accurate laboratory checks for any pollution within Chadwick Lakes;
- e) Carry Groundwater Mapping by using available data from nearby wells;
- f) Perform the works needed in vegetation and botany to the Contracting Authority's satisfaction
- g) Propose the latest ecology solutions, environmental engineering and upgrade of the landscape whilst respecting Wied Qlejgha's fragile ecosystem.

Dr Anthony Cassar, Chairman Public Contracts Review Board, requested that each point is to be discussed separately and asked the Contracting Authority to make their comments on the experience of the Appellants.

Ms Stephania Baldacchino, Chairperson of the Evaluation Board, said that the latter has mentioned both in the Evaluation Summary and in the Reasoned Letter of Reply that they have given their opinion on the bid and how much the Appellant was capable to deliver the requested works. The Appellant's offer was not explained as they requested and therefore marks were lost in the Technical part, hence being non compliant.

Mr Andrew Portelli for the Appellants replied that with regards the reason why they were not given enough marks, they have mentioned three main points on page 236 of the offers which were:

- a) Research Motivation;
- b) Environmental Restoration Plan;
- c) Popularization.

In their Letter, continued Mr Portelli, the Contracting Authority was saying that they did not submit anything regarding the Socio-Economic impacts. This was submitted in point form.

Mr Stephania Baldacchino, for the Sustainable Energy and Water Conversion Unit said that Sub Criterion A was divided into three items:

- a) Description of Current Context;
- b) Background of EU and National Legislation Policies relating to this project;
- c) The Major Challenges Linked to Valley Management which include Fresh ecology in Malta.

With regards point B, the Appellants have copied what was written in the Tender Document, said Ms Baldacchino which was not acceptable for the Contracting Authority. Point C, on the other hand, had the most marks. With regards to this point, the Appellants did not submit anything, hence losing ten marks.

Mr Andrew Portelli, for EcoGeo s.r.l, said that with regards to the EU Policies, these were mentioned in page 237 of their offer and that they just said that they will work in line with these policies.

Dr Anthony Cassar, Chairman Public Contracts Review Board, asked the Contracting Authority to confirm that the Appellant did not submit anything with regards to point C for which Ms Stephania Baldacchino, Chairperson Evaluation Board confirmed that the Appellants did not include anything. Mr Andrew Portelli, for the Appellants replied that they have included the objectives on Page 236 of their offer.

Dr Anthony Cassar, Chairman Public Contracts Review Board then asked the Contracting Authority whether the submissions were made in point form for which Ms Stephania Baldacchino for the Sustainable Energy and Water Conservation Unit replied that they wanted a paragraph from the Appellants which show how much the latter knew about the Maltese system.

Mr Andrew Portelli for EcoGeo s.r.l said that with regards to Criterion B, the Contracting Authority said that they did not give enough information. The Appellants had visited the site on 19 January 2016 and on 20 January 2016 and took also pictures prior and on the day of the site visit.

Dr Anthony Cassar, Chairman Public Contracts Review Board, then asked whether the Contracting Authority was aware of this for which Mr Portelli replied that this was part of Criterion B, presented in page 238 of the offer. The Appellant continued by saying that this shows the extent of interest took by them in the standard presented. The expected results were part and parcel of the objectives.

Ms Stephania Baldacchino for the Contracting Authority said that they requested a review of the Terms of Reference by the consultants. The Sustainable Energy and Water Conservation Unit have requested a critique of the terms which were irrelevant with the site visits to demonstrate how much they understood the contract. Without any answers, no marks can be given. On 20 January 2016, Ms Baldacchino was present for the site visit and no survey was made.

Mr Andrew Portelli on behalf of the Appellants said that Page 258 of their offer gave a description on how things should be made.

Ms Stephania Baldacchino, Chairperson Evaluation Board, said the Strategy Sub Criterion A has asked for a detailed step by step description of approach proposed to undertake the assignments established in the Terms of Reference. The latter requested an exact description on how these works were to be approached. This contract was requesting two activities:

- a) Assesment of the Ecological and the Environmental status of Wied il-Qlejgħa study area. This included a series of surveys which the bidders had to make in the area;
- b) Environmental Restoration Plan.

EcoGeo s.r.l, continued Ms Baldacchino, had only replied for the first activity but they did not mention anything regarding the second one. The latter activity was a crucial part of the Tender and without any plan there is going to be no project.

Mr Andrew Portelli, on behalf of EcoGeo s.r.l said that with respect to Sub Criterion E i.e. A description of the methodologies and systems to be used for ecology mapping exercise; the Appellants have filed their submissions on pages 259 and 269 of their offer.

Mr Alexander Borg, another member of the Evaluation Board, said that they had requested a methodology on how the ecological systems were going to be mapped. In the Tender Document, there was a description of the soil investigation, geological survey and water contamination analysis. The Contracting Authority was requesting information on how the data was going to be mapped.

Dr Anthony Cassar, Chairman Public Contracts Review Board, remarked that therefore the Sustainable Energy and Water Conservation Unit requested more details.

Mr Alexander Borg, Member Evaluation Board, replied that they requested the methodology of how the works were to be conducted.

Ms Stephania Baldacchino, Chairperson Evaluation Board, added that the Appellants mentioned only a few types of methodology which they were going to use and that the answer is to be found only on page 269.

Dr Anthony Cassar, Chairman Public Contracts Review Board, asked the Contracting Authority about the contents of page 259 for which Ms Stephania Baldacchino for the Sustainable Energy and Water Conservation Unit replied that Page 259 was replying to the Strategy Sub Criterion D which included the surveys. Here the discussion was all about the ecological mapping which happens after the survey.

Mr Andrew Portelli on behalf of EcoGeo s.r.l. replied that page 259 showed the maps and how the work is to be conducted with the GIS system while page 269 mentioned specific GIS; the RPGIS.

Mr Alexander Borg, for the Sustainable Energy and Water Conversion Unit, said that the reply was included in another part where the Appellant was replying to another question. In this particular section, they specifically requested this type of information and that when you read question and answer you can't use information from another part and say that this makes sense.

Mr Andrew Portelli for the Appellants said that Page 269 was indicating the equipment which was going to be used.

Mr Alexander Borg for the Contracting Authority, continued by saying that the methods used for on-site data collection were not mentioned in the Appellant's offer and that these had to include data which had to be collected from computers and geological information systems. The methodology was a small part of how the information is collected. The actual information, namely how it is to be collected in a digital way was not mentioned.

Mr Andrew Portelli, for EcoGeo s.r.l, said that on the 1st Paragraph of Sub Criterion E, they mentioned that a map of vegetation is to be drawn on the same software, (GIS) which was being stated that it was going to be used in the offer using both photographs and the field work made.

Ms Stephania Baldacchino, Chairperson Evaluation Board, said that the Contracting Authority needed the digitalization of the data of various studies and not only of the soil investigations. With regards, the experience issue raised by the Appellant earlier on, the Evaluation Board did not penalise the Appellants on the experience, which fell under the administrative side of the Tender but they penalised the latter only on the technical basis.

Mr Andrew Portelli, for the Appellants concluded by saying that their submission aimed to indicate how things were going to be done. The bullet points on page 3 are to be examined and discussed in the final reports which were to be eventually submitted since all the work cannot be done at Tender Stage. The works are to involve experts renowned at Universities.

At this stage, the Public Hearing was closed.

This Board,

Having noted the Appellant's Objection, in terms of the "*Reasoned Letter of Objection*" dated 28 June 2016 and also through their verbal submissions during the Public Hearing held on 6 October 2016 had objected to the decision taken by the Pertinent Authority, in that:

- a) ECOGEO s.r.l contend that, in general, it has submitted all the information as laid out in the Tender Document and also maintains that it has the necessary experience and capabilities to carry out the Tendered project.**

ECOGEO s.r.l lists the explanations to the alleged deficiencies as to, "*write up*", "*Terms of Reference*", "*Requested Plan*", "*Assumptions and Risks*", assignment of duties and "*Methodology*".

Having considered the Contracting Authority's "*Letter of Reply*" dated 18 July 2016 and also their verbal submissions during the Public Hearing held on 6 October 2016, in that:

a) The Sustainable Energy and Water Conservation Unit maintains that all the Appellant's contentions had insufficient details or missing information.

In general, the Contracting Authority contends that the Appellant's offer did not reflect the expected Appellant's capabilities and the latter's submissions did not provide sufficient information for the Evaluation Board to process further the Appellant's offer.

Reached the following conclusions:

1. This Board would like to treat the Evaluation Process adopted by the Sustainable Energy and Water Conservation Unit without going into too much Technical details of each section of the Objection.

However, all the relevant points will be treated in a General Context. It is noted that the explanations and reasons given by ECOGEO s.r.l. to the Objection took the form of clarifications which could have been checked prior to the submissions of the Tender Documentation.

This Board is referring to, in particular, the sections referring to “*Terms of Reference*”, “*Requested Plan*”, “*Assumptions and Risks*”, “*Assignment of Duties*” and “*Methodology*”.

- In general, this Board opines that ECOGEO s.r.l. failed to grasp the exact requirements as laid out in the Tender Document. From the submissions made, it has been credibly established that the information given by the Appellants lacked sufficient information and, in certain instances, missing information such as insufficient information regarding the “*Socio-Economic Impacts*” and missing “*Environmental Restoration Plan*”.**

Any missing information or insufficient data does not enable the Evaluation Board to assess further an offer and in this particular case, these omissions rendered ECOGEO s.r.l.’s bid as being Technically not compliant.

This Board would like to emphasize that the Appellants were being requested to submit specific information and if the Appellant had any doubts, he had the remedy to enquire prior to the submission of the Tender.

This case is a clear-cut situation where requirements in a Tender Document are interpreted in a hazy and unclear manner.

In this regard, this Board opines that, from the relative documentation and submissions, it has been established that the requirements of the Tender were clear enough not to be misunderstood or misinterpreted by any potential Bidder.

- **This Board, after having examined all the events which led to the rejection of the Appellant's offer, credibly opines that the Tender's Technical Requirements were clear enough to enable a Bidder to submit his offer without any misinterpretation of the same and at the same instance, this Board would like to assert that ECOGEO's offer did not contain the necessary information to enable the Evaluation Board to assess further the latter's offer.**
- **This Board would like to also confirm that the Evaluation Board acted in a fair and diligent manner during the Evaluation Process.**

In view of the above, this Board finds against ECOGEO s.r.l and recommends that the deposit paid by the latter should not be refunded.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Carmel Esposito
Member

13 October 2016