

PUBLIC CONTRACTS REVIEW BOARD

Case 991 – SEWCU/TD/T/7/2016 – Tender for the Design, Supply, Delivery & Commissioning of Energy Efficient and Environmentally Friendly Fixed Furniture Requirements at the SEWCU Premises

The Publication Date of the Call for Tenders was 29 July 2016 whilst the Closing Date for Call of Tenders was 9 August 2016. The Estimated Value of the Tender was € 67,000. (Exclusive of Vat).

Two (2) Bidders have submitted offers for this Tender.

On 23 August 2016, Omnistat Ltd filed an Objection against the decision of the Sustainable Energy and Water Conservation Unit to award the Tender to Makaw Ltd for the price of € 78,757.69 (Exclusive of VAT) against a deposit of € 400.

On 13 October 2016, the Public Contracts Review Board composed by Dr Anthony Cassar as Chairman, Mr Lawrence Ancilleri and Mr Carmel Esposito as members convened a Public Hearing to discuss the Objection.

The Attendance for this Public Hearing was as follows:

Appellant – Omnistat Ltd

Mr Mark Schembri	Representative
Dr Stefan Zrinzo Azzopardi	Legal Representative

Recommended Bidder – Makaw Ltd

No Representatives present for this Public Hearing

Contracting Authority – Sustainable Energy and Water Conservation Unit

Ms Elysia Camilleri	Secretary, Evaluation Board
Ing Charles Buttigieg	Member, Evaluation Board
Ing Therese Galea	Member, Evaluation Board
Mr Maurizio Schembri	Member, Evaluation Board
Ing John Chircop	Representative
Dr Katrina Borg Cardona	Legal Representative

Witness Present for this Hearing

Mr David Gatt	Procurement Manager, Department of Contracts
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Following an introduction by The Public Contracts' Review Board Chairman, Dr Anthony Cassar, the Appellants were invited to make their submissions.

Dr Stefan Zrinzo Azzopardi, Legal Representative, Omnistat Ltd said that his clients were objecting on the basis of the reasons given by the Contracting Authority in the Letter of Rejection dated 19 August 2016 wherein was stated that a particular document which was mandatory for the Tender was not submitted by the Appellants.

The Appellants are reiterating that they are so sure that they have submitted everything which was required in the Tender Specifications that if there was a missing item in their offer, it would have not been possible for Omnistat Ltd to submit the bid so they were not understanding why their bid was disqualified when the Appellants have submitted everything which was required in the Technical Specifications.

The Public Contracts Review Board must evaluate whether the Evaluation Board had made the correct evaluation, concluded Dr Zrinzo Azzopardi.

Dr Katrina Borg Cardona, Legal Representative, Sustainable Energy and Water Conservation Unit said that they have summoned a representative from the Department of Contracts who can state what was submitted through the Electronic Procurement System since this was the best proof which one can give of what was submitted by the Appellants.

At this point, Mr David Gatt, ID 5879 M, Procurement Manager, Department of Contracts was summoned to witness under oath.

Mr Gatt stated that on 2 September 2016 he received an e-mail from the Sustainable Energy and Water Conservation Unit querying whether Omnistat Ltd had sent the form in question. In cases like this, the Department of Contracts send the queries to the Web Developers in Greece who confirmed that there was an attachment but it was not the one requested by the Contracting Authority.

When asked by Dr Anthony Cassar, Chairman Public Contracts Review Board, in what consisted the attachment, Mr David Gatt replied that the attachment consisted of a brochure which was irrelevant with what the Contracting Authority was requesting.

Dr Katrina Borg Cardona for the Sustainable Energy and Water Conservation Unit asked whether Mr Gatt specifically asked the web developers whether the attachment included the Technical Compliance Grid which was specifically requested for in the Tender for which the witness replied that the attachment was about something else and not the Technical Compliance Grid requested by the Contracting Authority.

Dr Stefan Zrinzo Azzopardi for Omnistat Ltd asked whether from the witness' side, they have any proof of what the web developers said that resulted for them when they opened the attachment for which the witness replied that they have seen a brochure which was irrelevant with the Tender Requirements.

Dr Anthony Cassar, Chairman Public Contracts Review Board asked whether the attachment was compliant with the Tender for which Mr David Gatt replied that it was not.

Ing John Chircop for the Sustainable Energy and Water Conservation Unit said that Clause 7.1 Section C of the Tender Document *inter alia* said, “*The bidder is to fill the Technical Compliance Grid (form) in full, which form will be considered as the Tenderer’s Technical Offer. An incomplete Technical Compliance Grid (form), will be considered as an incomplete Technical offer.*”

The form, continued Ing Chircop, should have been downloaded. The system has an electronic depository wherein there was a file which was not the Technical Compliance Bid Form. The Evaluation Board, after a thorough search to all files did not find the requested form, hence asking the Department of Contracts for confirmation regarding the matter. The Evaluation Board received an e-mail on 2 September 2016 wherein it was confirmed that instead of the Technical Compliance Bid Form, a Brochure was uploaded.

Dr Anthony Cassar, Chairman Public Contracts Review Board asked the Appellants what documents did they sent through the Electronic Procurement System for which Mr Mark Schembri, for Omnistat Ltd replied that they have submitted what the Contracting Authority was requested.

Mr Schembri continued by saying that here we are looking at a Tender with a large amount. If one looks at the Tenders submitted, Omnistat Ltd submitted two offers and in both they have submitted the Technical Compliance Grid.

Mr Carmel Esposito, Board Member Public Contracts Review Board, remarked that it is better for everyone if proofs are presented if these are available.

Dr Stefan Zrinzo Azzopardi for Omnistat Ltd said that the PDF is accessible.

Ing John Chircop for the Sustainable Energy and Water Conservation Unit added that the offer was submitted to the Public Contracts Review Board on a CD.

Dr Stefan Zrinzo Azzopardi for Omnistat Ltd contended that the matter was whether the Technical Compliance Grid Form was there or not and that the Public Contracts Review Board knew what they wanted to find.

Dr Anthony Cassar, Chairman Public Contracts Review Board concluded by saying that the CD submitted by the Sustainable Energy and Water Conservation Unit will be checked and eventually the decision will be issued.

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 23 August 2016 and also through their verbal submissions during the Public Hearing held on 13 October 2016 had objected to the decision taken by the Pertinent Authority, in that:

- a) Omnistat Ltd contends that its offer was discarded due to the alleged fact that it had not submitted the "*Technical Compliance Bid*". In this regard, the Appellants maintain that he has submitted all the necessary information including the alleged missing document.**

Having considered the Contracting Authority's "*Letter of Reply*" dated 6 October 2016 and also their verbal submissions during the Public Hearing held on 13 October 2016, in that:

- a) The Sustainable Energy and Water Conservation Unit insist that they had to evaluate the Appellants' offer on the submissions made by the latter. The Appellant failed to submit the "*Technical Compliance Grid*" which forms part of the Tender Document hence the Evaluation Board discarding the Appellant's offer as being Non-Technically Compliant.**

Reached the following conclusions:

- 1. This Board, after having examined the relative documentation and heard the submissions made by the parties concerned justifiably opine that the solution to this Appeal is to examine in detail the CD which faithfully records all the documentation submitted by the Bidders through the E-Tendering system.**

At the same instance, this Board would emphasize the importance of the “*Technical Compliance Bid*” as forming part of the Tender Document.

This Board, after having examined in detail the CD would justifiably confirm that the submitted documentation by Omnistat Ltd did not include the “*Technical Compliance Grid*”.

This Board also points out that the Evaluation Board could not seek clarifications on missing documents and therefore the Appellant’s offer was credibly deemed to be Non-Technically Compliant.

In view of the above, this Board finds against Omnistat Ltd and recommends that the deposit paid by the Appellant should not be refunded.

Dr Anthony Cassar
Chairman

Mr Lawrence Ancilleri
Member

Mr Carmel Esposito
Member

18 October 2016