

PUBLIC CONTRACTS REVIEW BOARD

Case 1038 – ECCD 113/2016 – Tender for the Supply, Installation, Testing and Commissioning of a Fire Alarm System for Msida and Mosta Homes for the Elderly

The Publication Date of the Call for Tenders was 4 November 2016 whilst the Closing Date for Call of Tenders was 2 December 2017. The Estimated Value of the Tender, (Exclusive of VAT) was € 57.000.

Four (4) Bidders have submitted Eight (8) offers for this Tender.

On 16 March 2017, Masco Security Services Ltd filed an Objection against the decision of the Active Ageing & Community Care Directorate to award the Tender to Alberta Fire & Security Equipment Ltd for the price of € 47,165.39 (Exclusive of VAT) against a deposit of € 400.

On 11 April 2017, the Public Contracts Review Board composed by Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Carmel Esposito as members convened a Public Hearing to discuss the Objection.

The Attendance for this Public Hearing was as follows:

Appellant – Masco Security Services Ltd

Mr Joseph Bartolo	Representative
Mr Karl Bartolo	Representative
Mr Dean Debono	Representative

Recommended Bidder – Alberta Fire & Security Equipment Ltd

Mr Karim Cassar	Representative
Dr Ian Borg	Legal Representative

Contracting Authority – Active Ageing & Community Care Directorate

Mr Gino Pavia	Chairperson, Evaluation Board
Ms Mary Grace Balzan	Secretary, Evaluation Board
Mr Gordon Bondin	Member, Evaluation Board
Mr Matthew Mangion	Member, Evaluation Board
Mr Alexander Vella	Member, Evaluation Board
Ing Edwin Aquilina	Technical Expert
Ms Alexia Vella	Representative

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

Mr Karl Bartolo, on behalf of Masco Security Services Ltd opened by saying that they feel that their Bid was compliant with the Technical Specifications and that they were disqualified because of certain reasons for which they have made their replies.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board asked what were these reasons.

Mr Karl Bartolo for the Appellants replied that the first reason why their Bid was disqualified was because the panel offered was not LPCB approved. LPCB is a Standard regarding fire protection. The model submitted by Masco Security Services Ltd does not follow exactly the LPCB since it follows a different standard which is still compliant with EU levels.

The second reason why the Appellants were disqualified was because the panels submitted were not of the quality requested by the Contracting Authority. Masco Security Services Ltd have reviewed their Specifications and confirm that their panel is explosive proof as requested by the Tender Document.

Ing Edwin Aquilina, representing the Active Ageing and Community Care Directorate submitted that he was asked by the Contracting Authority to prepare all the necessary documentation for this Tender. He also took part in the latter's Adjudication and made all the correspondence which was relating to this Appeal.

It was clear in the Technical Specifications that the panel, which was to be installed at an old people's home, had to be LPCB certified. By LPCB it meant a Loss Prevention Council Board, a Third Party approved body which was Lucas Certified. They have huge laboratories where they test all fire equipment and therefore it was requested that the panels were to be LPCB certified.

Ing Aquilina continued by explaining that in this case, Masco Security Services Ltd never gave a proof that their panel was LPCB certified and therefore their bid was disqualified. Besides, the Appellants were saying that LPCB and IMO are the same. For this, he referred to the Reasoned Letter of Reply dated 18 March 2017 wherein in BS 5839 part 1/2013, there was a clause which states that the panel submitted by the Appellants does not satisfy the requested requirements.

The Contracting Authority's representative continued by explaining that Masco Security Services Ltd's panel has 240 devices in a whole loop, which controls an area which one has to protect through a fire alarm. The usual standards request that no more than 126 devices are to be controlled with one loop.

The panel provided by the Appellants clearly indicates that over 240 devices with one card were submitted whilst the Tender Document requested two cards. The reason why a second card was requested was because if one card fails, a large area would have been lost whilst the Standard requests that if a card is lost, one cannot lose more than 10,000 square meters. Therefore in view of the fact that the panels were not ECB and that the Appellant submitted one loop card opposite to the two requested by the Tender Document, the Active Ageing & Community Care Department had no option but to refuse Masco Security Services Ltd's offer.

With regards to the second point raised by the Appellants, Ing Aquilina argued that the latter have the Solenoid Valve, a valve that in case of an emergency closes the gas. He requested the valve to be 8X certified, which means that the valve is good in case that there was an explosive and MASCO quoted a directive issued by the European Union, 94/9/EC which became obsolete in April 2016 and replaced by directive 2014/34/EU. This was pointed out in the Reasoned Letter of Reply dated 18 March 2017 and therefore the Tender falls under the latter directive.

Ing Aquilina continued to explain that even in the document presented by the Appellants in their Letter of Objection dated 15 March 2017; the latter insisted that the Tender falls under the old EU directive which was not acceptable from the part of the Contracting Authority.

Mr Karl Bartolo, representing Masco Security Services Ltd, countered that both in the Specifications which they have submitted and also in the Original Technical Offer, the Literature submitted says that the panel has “*one loop expandable to eight*”. The Appellants highlighted the fact that they were presenting the Smart Loop 2080. It has a “*Control Panel with two loop expandable to eight*”, which was up to spec with the Tender Document. Both the questionnaire and the Technical Offer have this number submitted by the Appellants.

Ing Edwin Aquilina, the Technical Expert for the Active Ageing & Community Care Department replied that he had said previously that the panels had to be LPCB certified. The fact that the Tender Specifications stated that the panel should have been a two loop card agrees with what Masco Security Services Ltd was saying and therefore he withdrew the statement said previously.

Dr Anthony Cassar requested the Contracting Authority to state what part of the Reasoned Letter of Reply dated 18 March 2017 they were going to withdraw for which Ing Edwin Aquilina replied that they were keeping the main point that the panels were not LPCB Certified since this was not yet proven.

Mr Carmel Esposito, a member of the Public Contracts Review Board asked whether this was a reason given to the Appellants in the Letter of Rejection dated 6 March 2017 for which Ing Edwin Aquilina for the Contracting Authority replied by illustrating to the Board the point where the two loop panel was being mentioned in their Reasoned Letter of Reply dated 18 March 2017.

Mr Carmel Esposito reiterated that the original reason why the Appellant’s Bid was not conform was not mentioned. Ing Aquilina added that the Contracting Authority rejected the latter’s offer on the grounds of the latter not being LPCB certified.

Mr Carmel Esposito, a member of the Public Contracts Review Board, said that the reason why Masco Security Services Ltd was disqualified was not because of the panel. Ing Edwin Aquilina replied that the latter was only mentioned in the Reasoned Letter of Reply.

Mr Karl Bartolo, on behalf of the Appellants countered that with regards the LPCB certification, all the equipment which they have apart from the panel was all certified by the latter. The panel was tested by another third party company which was in the same level of LPCB. Mr Bartolo had a declaration in his possession which said that LPCB was in the same level as CPR.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board asked whether this was submitted together with the Appellant’s offer for which Mr Karl Bartolo, on behalf of the

Appellant replied that this was submitted with the Letter of Objection dated 15 March 2017. When submitting their offer Masco Security Services Ltd confirmed that they are CPR approved.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board remarked that when one submits something with the offer which was equivalent to what was requested by the Tender Document, generally one had also to submit proofs that the item submitted is really equivalent with what the Contracting Authority was requesting in their Tender.

Mr Karl Bartolo, on behalf of Masco Security Services Ltd, replied that he imagines that the Contracting Authority were aware of this for which Dr Anthony Cassar, the Chairman of the Public Contracts Review Board replied that this Board is only interested in knowing whether the Evaluation Board has enough documentation to make the correct assessment of all the offers. It was too late for the Appellants to submit any further documentation at this stage.

On a question by Mr Bartolo, why there was the right of Appeal, Dr Anthony Cassar, the Chairman of the Public Contracts Review Board replied that the Appellants had every right to file an Objection and that was the reason why the latter Board convened a Public Hearing and that they were interested to judge Masco Security Services Ltd on what did they present to the Active Ageing and Community Care Directorate.

Ing Edwin Aquilina, representing the Contracting Authority said that it was clear that in their Technical Specifications each loop takes 240 devices while the British Standard says that when one loop takes 240 or more devices it goes out of spec because if this particular card fails, a big area would have been lost and therefore that is the only reason why the panel can never be conform with that standard and therefore it is impossible for that loop to get an LPCB Certification.

Ing Aquilina knew what he was saying because all the Tenders which were LPCB certified have this limit that the most addresses which they can take was 126 devices. This was clear and the panel submitted by the Appellants can never be compliant with the Technical Specifications.

Mr Karl Bartolo, on behalf of Masco Security Services Limited replied that the fact that the card says that it can take up to 250 devices, does not mean that the card has to take the whole 250 devices. Technically it is according to how many loops are to be used according to the British Standard.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board queried whether the more area is taken by the loop, the more area is lost in case of a power loss or corruption for which Ing Edwin Aquilina on behalf of the Contracting Authority replied that the standard requires that the maximum which the card can take was 10,000 square meters. If one covers a greater area, there would be more losses and therefore the risk would increase in case of a fault.

Mr Joe Bartolo, on behalf of Masco Security Services Ltd argued that he understood the Contracting Authority's arguments but the latter were mixing up the areas and the number of devices. It does not mean that one was bound by areas; one was also bound by the number of devices. The truth was that one might have an area of 5,000m which might have a number of devices while one might have an area of 10,000m with a less number of devices.

The Regulation which Ing Aquilina was mentioning in his submissions was obvious that it was based on that amount. The new European Union regulations on fire speak clearly on the fact that the number of devices is not relevant with the number of areas since in a single room one might have ten devices while in another room one might have five devices.

Ing Edwin Aquilina, the Technical Expert for the Active Ageing and Community Services countered that Mr Joe Bartolo's arguments still does not convince him that the panels were LPCB certified which was requested clearly by the Tender Document and that all Bidders knew about it.

Mr Karl Bartolo, on behalf of Masco Security Services Ltd replied that it was true that the panels were not LPCB approved but these were CPR approved which are similar and equivalent.

Mr Carmel Esposito, a member of the Public Contracts Review Board countered that the Public Procurement Regulations state that this should have been proved when submitting the Bid. Mr Karl Bartolo, on behalf of the Appellants replied that he can proof what he was saying.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board replied that now was not the time to show the proofs as these should have been shown at Bidding Stage. He continued by saying that the Public Contracts Review Board's role was to ensure whether the Contracting Authority had made their Adjudications in a fair and equitable manner. This was stated by both the Public Procurement Regulations and also the Hon Court of Appeal. It was too late for new proofs to be submitted.

Mr Karl Bartolo, representing Masco Security Services Ltd argued that in the Original Tender Specifications, no EU directive was mentioned and neither specifications. The 8X was mentioned only in the Bills of Quantity.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board asked whether this was mentioned in the Clarifications for which Ing Edwin Aquilina, on behalf of the Active Ageing and Community Services replied in the affirmative while adding that there was a Bill item which specified the type of 8X requested.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board noted that the Clarifications form part of the Tender Document.

Mr Karl Bartolo, for the Appellants said that the latest directive was mentioned after that they have filed the Objection for this Tender.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board concluded that one had to submit proofs at this stage.

At this stage, the Public Hearing was adjourned to Tuesday 18 April 2017 at 09:00 wherein the Public Contracts Review Board will transmit the decision taken for this Objection verbally and then distribute a hard copy of the same to all parties concerned.

This Board,

Having noted this Objection filed by Masco Security Services Ltd (herein after referred to as the Appellant) on 16 March 2017, refers to the Contentions made by the latter with regards to the award of Tender of Reference ECCD 113/2016 listed as Case No 1038 in the records of the Public Contracts Review Board, awarded by the Central Procurement and Supplies Unit (herein after referred to as the Contracting Authority).

Appearing for the Appellant: Mr Karl Bartolo

Appearing for the Contracting Authority: Ing Edwin Aquilina

Whereby, the Appellant contends that:

- a) Although his product was not LPCB certified, it follows a different standard which is compliant with EU Standards. In this regard, Masco Security Services Ltd contends that his product is technically compliant.**

This Board also noted the Contracting Authority's "*Letter of Reply*" dated 18 March 2017 and its verbal submissions during the Public Hearing held on 11 April 2017, in that:

a) The Active Ageing & Community Care Directorate insists that the Appellants did not provide proof that their panel was LPCB certified. In this regard, the Evaluation Board had no other option but to consider Masco Security Services Ltd's offer to be Technically Non Compliant.

This Board, after having treated the merits of this case, arrived at the following conclusions:

1. This Board, after having examined the relative documentation and heard submissions from all parties concerned, justifiably establishes that the main issue at stake is the certification of the panels being offered by Masco Security Services Ltd.

This Board notes that the Tender Document requested that the panels were to be LPCB Certified. It was vividly explained that the equipment was to be installed at an Old People's Home and the reason for the certification was to ensure that the equipment is well equipped to cater for fire and other related safety precautions.

In such situations, where a certification is obtained and is different from that dictated in the Tender Document, it is the duty and

obligation of the Bidder to provide proof and explanation to justify such equivalency.

In this particular case, this Board justifiably notes that no such explanation or relative documents were sent by the Appellant with the Tender Document. This Board also notes that an explanation to the certification equivalency was presented with the Appellant's "*Letter of Objection*".

In this regard, this Board opines that it is futile for such documentation to be presented at this particular stage, as the same documentation should have been submitted at Tendering Stage. In this particular regard, this Board must emphasize the fact that the Evaluation Board evaluates the offers on the information submitted by the Bidders and in this respect, it is being noted that during Evaluation Stage, the Appellant's Panel Certification was missing and thus the Evaluation Board, quite correctly, had no other option but to discard Masco Security Services Ltd's Bid.

On the other hand, this Board justifiably points out that the correspondence relating to the equivalent certification of the panels was not submitted with the Tender but presented with the Objection Letter.

At this point, it was useless for Masco Security Services Ltd to present such documentation at Appeal stage when the same should have been submitted with the Tender Document.

In this regard, this Board opines that the Appellants failed to provide the LPCB Panel certification or its equivalent as requested and at the same instance, this Board confirms that the Evaluation Board has carried out its evaluation process in a just and prudent manner. Therefore, this Board does not uphold the Appellants' Contention.

In view of the above, this Board finds against Masco Security Services Ltd and recommends that the deposit paid by the Appellants should not be reimbursed.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Carmel Esposito
Member

18 April 2017