

PUBLIC CONTRACTS REVIEW BOARD

Case 1054 – EWA/TD/1/2016 – Service Tender for a Topographic Survey, a Land Ownership Study and the Development of a Conceptual Project Design for the Chadwick Lakes Rehabilitation Project

The Publication Date of the Call for Tenders was 17 March 2017 whilst the Closing Date for Call of Tenders was 3 April 2017. The Estimated Value of the Tender, (Exclusive of VAT) was € 110,000.

Three (3) Bidders have submitted offers for this Tender.

On 15 May 2017, EcoGeo srl filed an Objection against the decision of the Energy and Water Agency to award the Tender to Right Projects Ltd for the price of € 118,000 (Exclusive of VAT) against a deposit of € 590.

On 15 June 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 – EcoGeo srl

Ms Maronia Filletti	Representative
Mr Andrew Portelli	Representative

Recommended Bidder – Right Projects Co Ltd

Mr Mario Cassar	Representative
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Contracting Authority – The Energy and Water Agency

Ms Stephania Baldacchino	Member, Evaluation Board
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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.

Mr Andrew Portelli, representing EcoGeo srl, opened by saying that they have received a Letter on 3 May 2017 from The Energy and Water Agency wherein it was mentioned that they have not submitted the cheapest compliant offer. According to the Appellants this was incorrect. They have submitted a Bid amounting to € 43,500 excluding VAT whilst the other offers amounted to € 118,000 and € 164,276.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board whilst noting that there was another Letter sent on 11 May 2017 which supersedes the first one, warned also that one had to be careful when using the word "*cheapest*" as in this case, this means, "*cheapest compliant*".

Mr Andrew Portelli for the Appellants then proceeded by referring to Point 2 of their Letter of Objection dated 15 May 2017 whereby it was stated that their offer was discarded because they did not submit an organigram. Mr Portelli submitted that made a list with the Key Experts and what tasks will they be performing on the project. This was to be found in sub criterion c of the offer.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board asked whether this was requested in the organigram for which Mr Andrew Portelli for EcoGeo srl replied that they have submitted the Key Experts and the works which they will be performing.

The Chairman of the Public Contracts Review Board explained that an organigram is a chart showing people involved with their responsibilities and so on.

Ms Maronia Filletti for the Appellants admitted that they did not submit a chart as requested but that they have submitted all the information requested in the form of a list which was very detailed. If one had to see their offer, it was very detailed with the qualifications of each person and what task each was going to perform. This is also shown from their Job Title.

Mr Andrew Portelli, also for EcoGeo srl, then continued by referring to Point 3 of their Letter of Objection dated 15 May 2017 where it was suggested that their offer was being rejected since they did not submit a Gantt Chart with the timing, sequence and duration of each of the proposed activities. The Appellants were disagreeing with this and in Appendix 2 attached with the same Letter, they have submitted a Gantt Chart which was part of their submitted Bid which was illustrating line by line the milestones vis a vis the months which divide the project.

Ms Maronia Filletti, on behalf of EcoGeo srl, was wondering what information was not submitted according to the Contracting Authority since they have also submitted a time table of activities and also the list of activities which they were going to do which can be found on the left of the table.

Ms Stephania Baldacchino, representing the Energy and Water Agency, submitted that the Tender was to be awarded on the Best Price Quality Ratio, (BPQR) basis. This meant that the Bid had to be seen first from a Technical perspective and then from a Financial perspective. Ms Baldacchino then referred to Clause 9.1 of the Tender Document which *inter alia* stated,

*“The Technical Scores awarded to the offers by 0.70
The Financial Scores awarded to the offers by 0.30”*

In the same Clause 9 of the Tender Document there was an Evaluation Grid which was requesting the items which were mandatory in the Bid. The same clause was warning that anyone who failed any of the sub criterion listed in the Tender would be eliminated.

Ms Baldacchino continued by explaining that the Appellants were arguing that they gave a list of key experts. This cannot be considered to be a Team Organigram and the latter was clear in the Tender Document that it was a mandatory requirement and given such, they have failed in the particular sub criterion.

With regards the Appellant’s Third Objection, continued Ms Baldacchino, the Energy and Water Agency has requested a Gantt Chart and not a time table which they have eventually submitted.

Ms Maronia Filletti for the Appellants countered that this was a matter of substance over form since they have submitted a Gantt Diagram.

Ms Stephania Baldacchino for the Contracting Authority replied that the Gantt Chart requested had to be accompanied by the description of timing, sequence and duration of the proposed activities. The Evaluation Board did not see them in EcoGeo srl’s offer and had to work on what was submitted.

Although the Appellants did submit a Gantt Chart this was not made in detail with regards the method with which they were going to work. This was mandatory and the Evaluation Board could not award marks on items which were not submitted.

Ms Maronia Filletti for EcoGeo srl replied that they did submit a description of the Gantt Chart which was the Land Ownership Survey and its report. If the Contracting Authority wanted a fuller description or further details, this was a matter of substance over form. The Appellants have given more than an organigram since they gave them a list which was repeated in both sections and then they have made a subdivision of the EcoGeo srl team. They went one step further since the only thing which can be found in an organigram was the name and the job title.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board queried whether the list submitted had included a Chart for which Ms Maronia Filletti on behalf of the Appellants replied that they gave a list of roles but again this was a question of substance over form.

The Appellants’ representative continued by arguing that if things weren’t clear, she was expecting the Energy and Water Agency to make a request for clarification. Ms Filletti felt that they have given more than enough information from which the Contracting Authority can draw their conclusions since they have entered in detail on all information required.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board then asked the Contracting Authority whether the same information could have been extracted from what EcoGeo srl has submitted for which Ms Stephania Baldacchino, on behalf of the Energy and Water Agency replied that the list of Key Experts was requested in another section. One

cannot accept that the information submitted for a particular section will get marks also for another section.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board then asked whether the information submitted by the Appellants belonged to another section of the Tender.

Ms Stephania Baldacchino for the Contracting Authority replied that the List of Experts was the same one submitted in the Administrative Compliance Section. With regards the Project Manager, the Energy and Water Agency was requesting an Architect with a warrant which the Appellants did not submit.

Ms Maronia Filletti for EcoGeo srl objected to this by saying that this point was not included in the Letter of Rejection received.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board asked whether this request was in the Tender Document for which Ms Stephania Baldacchino for the Contracting Authority replied in the affirmative and referred to Clause 6 of the Terms of Reference issued in the Tender Document which in this regard said,

“A Perit (MQF Level 6) or equivalent. The Perit should hold a valid warrant issued by the National Competent Authorities in Malta or equivalent Authority in any EU member state. Proficiency in written and spoken English”.

Ms Maronia Filletti for EcoGeo srl contended that she did not understand why this issue is being raised during the Public Hearing since it does not have to do with the two points for which they were disqualified from the Tender.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board said that this Board would be only considering the points raised in the Letter of Objection issued by EcoGeo srl on 15 May 2017 while he reminded the Appellants’ representatives, who in the meantime were going to mention again the price issue that the latter was not going to be considered since it was at the last stage of Evaluation.

Ms Stephania Baldacchino for the Energy and Water Agency admitted that the Letter sent on 3 May 2017 was sent erroneously and that it was sent prior to Objection Stage.

Ms Maronia Filletti for EcoGeo srl concluded by saying that they had submitted a time frame, a description and a Gantt Chart. On the other hand, it was true that they did not submit an Organigram in the shape required but they transferred the information to Section C of the offer and submitted also the description of each representative together with the tasks which each member of the group was going to be assigned to. For these items, the Appellants were being eliminated at the expense of a Bid which was 271% more expensive than theirs.

At this stage, the Public Hearing was adjourned to Tuesday 20 June 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 EcoGeo srl (herein after referred to as the Appellant) on 15 May 2017, refers to the Contentions made by the latter with regards to the award of Tender of Reference EWA/TD/1/2016 listed as Case No 1054 in the records of the Public Contracts Review Board, awarded by the Energy and Water Agency (herein after referred to as the Contracting Authority).

Appearing for the Appellant: Ms Maronia Filletti

Mr Andrew Portelli

Appearing for the Contracting Authority: Ms Stephania Baldacchino

Whereby, the Appellant contends that:

- a) The “*Letter of Rejection*” dated 15 May 2017 informed him that his offer was rejected due to the fact that, allegedly, he did not submit an Organigram. In this respect, EcoGeo srl maintains that the submitted information regarding the key experts and their respective tasks were vividly explained;**

b) The Appellant is also maintaining that another alleged reason why his offer was discarded was due to the fact that he did not submit a Gantt chart. In this respect, the Appellant reiterates that all the information so requested was to be submitted via a Time Table and a List of Activities.

This Board also noted the Contracting Authority's "*Letter of Reply*" dated 15 May 2017 and its verbal submissions during the Public Hearing held on 15 June 2017, in that:

- a) The Energy and Water Agency maintains that the list of key experts and their respective duties does not constitute a Team Organigram, which was a mandatory requisite;**
- b) With regards to the Gantt Chart, the Contracting Authority insists that the Appellant did not submit such information in his offer and that the Evaluation Board had no other option but to disregard the latter.**

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

- 1. With regards to EcoGeo srl's First Contention, this Board would like to respectfully point out that being the cheapest offer does not necessarily imply that the offer is the best of choice. The offer, in itself, must be first fully compliant and the price element comes as the last deciding factor in the Evaluation Process. During the Public Hearing, this Board has clearly opined that such a Grievance does not merit further consideration;**

- 2. With regards to EcoGeo srl's Second Grievance, this Board, after having examined closely the Appellant's submitted documentation and the relative requisites in the Tender Document, opines that, in the first instance, the Tender mandatorily requested that a Team Organigram is to be presented.**

At this particular stage of deliberation, one must establish what is meant by an Organigram. This Board credibly opines that an Organigram is a "*Diagram*" or "*Chart*" showing the structure of the people involved in an organization or entity with their respective rank positions and their respective duties or departments they are responsible for. This Board notes that this requisite was mandatory and that the Tender Document requested all Bidders who failed to

submit any of the listed items in this sub criterion were to be eliminated.

This Board respectfully notes that the information submitted by the Appellant in the form of a “*List of Experts*” and their respective duties, does not, in any statistical manner, represent an Organigram. As has been mentioned on numerous occasions, this Board emphasises the importance of submission of the information in an offer which represent exactly what the Energy and Water Agency, via the Tender Document, has dictated.

This obligation rests on the part of the prospective Bidder and at the same instance; the Evaluation Board should not be faced with a situation of presumptions. On the contrary, the Energy and Water Agency should have been presented with all the mandatory information, so requested, to enable the Evaluation Board to fulfil its duties in a fair, just and transparent manner.

In this case, this Board finds no clear evidence that the information submitted by the Appellant, in this regard, could substitute the mandatory requisite of an Organigram. In this regard, this Board does not uphold the Appellant’s Second Grievance.

3. With regards to EcoGeo srl's Third Contention, again, this Board, after having examined the Appellant's submissions, opines that the submission of a Gantt Chart had to be accompanied by a description of timing, sequence and duration of the proposed activities. Again this Board would define a Gantt Chart as being a Chart of a Diagram in which a series of horizontal lines showing the amount of work which was to be done or completed in certain periods of time in relation to the amount planned for those periods.

In this particular case, the tender document requested that the Gantt Chart had to be accompanied by the description of timing, sequence and duration of the proposed activities. This Board notes that although a form of chart was submitted by the Appellant, this did not include the mandatory features which make a Gantt Chart.

In this particular regard, this Board opines that this deficiency is not a matter of "*substance over form*" but rather a matter of missing substance consisting of mandatory details which had to be submitted in the form of a Gantt Chart. In this regard, this Board does not uphold the Appellant's Third Contention.

4. On a general note, this Board would like to respectfully point out that the main issue of this case is the non-submission of the correct information as duly dictated in the Tender Document. It has been credibly established that this was requested in the Tender but was not submitted with the requisite details to form the substance of the dictated mandatory requirements.

This Board also noted that certain issues were raised during the Public Hearing which did not form part of the Objection. In this particular regard, this Board would like to also point out that such issues should have also been included in the “*Letter of Rejection*” so that the Appellant can justly exercise his rights.

In view of the above, this Board finds against EcoGeo srl. However, due to Note 4 above, this Board recommends that the deposit paid by the latter should be fully refunded.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Carmel Esposito
Member

20 June 2017