



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

Mr Claude Cazaoulou, representing ECA Robotics, opened by making a brief introduction of the Company he is representing. He then added that all vehicles submitted for this Tender have been designed for a depth of 300m and this was clearly mentioned in their offer for six times.

Dr Christopher Mizzi, the Legal Representative for the Department of Contracts said that they have a Technical Witness present who can testify on why the Appellant's Bid was rejected.

At this point, Mr Timothy Gambin, a member of the Evaluation Board holding ID Card Number 438067 M was summoned by the Department of Contracts and the Planning Authority to testify under oath before the Public Contracts Review Board.

Following Mr Gambin's testimony, Mr Keith Cappello, the Head of Procurement at the Planning Authority, holding ID Card Number 491582 M was summoned by the Department of Contracts and the same Planning Authority to testify under oath before the Public Contracts Review Board

At this stage, the Public Hearing was adjourned to Tuesday 19 December 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.

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**This Board,**

**Having noted this Objection filed by ECA Robotics (herein after referred to as the Appellant) on 24 November 2017, refers to the Contentions made by the latter with regards to the award of Tender of Reference CT 3076/2017 listed as Case No 1112 in the records of the Public Contracts Review Board, awarded by the Planning Authority (herein after referred to as the Contracting Authority).**

**Appearing for the Appellant: Mr Claude Cazaoulou**

**Appearing for the Contracting Authority: Dr Ian Borg**

**Whereby, the Appellant contends that:**

- a) All the vehicles, as duly dictated in his offer, are designed to operate to a depth of 300 metres. In this regard, the Appellant insists that this particular specification was well denoted in his offer more than once, so that the Contracting Authority failed to take such a specification into consideration;**
  
- b) ECA Robotics is contesting the technical ability of the Recommended Bidder in the execution of the Tendered Works.**

**This Board also noted the Contracting Authority's "*Letter of Reply*" dated 29 November 2017 and its verbal submissions during the Public Hearing held on 12 December 2017, in that:**

- a) The Planning Authority maintains that the Literature supporting the Appellant's Technical Offer, did not indicate that the vehicles can be operative at a depth of 300 metres. In fact, the same literature denoted that, the vehicles to be deployed on the Tendered project can be operated at depths of 3 – 200 metres.**

**In this regard, the Contracting Authority points out that the Literature formed part of the Technical Offer, the latter of which could not be clarified or rectified, hence, the Appellant's offer was deemed to be as technically non-compliant.**

**b) The Planning Authority also insists that since the Appellant's offer was disqualified, the Appellant has lost his juridical interest to make claims against other Bidders.**

**This same Board also noted the Testimonies of the witnesses duly summoned by the Planning Authority namely:**

- 1. Mr Timothy Gambin;**
- 2. Mr Keith Cappello.**

**This Board, after having examined the relevant documentation and heard submissions made by all parties concerned, including the Testimonies of the Witnesses duly summoned by the Contracting Authority, opines that the two main issues of this Appeal are, the Literature submitted by ECA Robotics and the latter's alleged claim relating to Alberta Fire & Security Equipment Limited's ability to execute the Tendered Assignments. These two issues are going to be considered as follows:**

## **1. Literature Submitted**

**With regards to ECA Robotics' First Grievance, this Board would respectfully refer to the Tender Document and the testimony of the Witness, where it was clearly confirmed that the "*Literature*" had to be submitted with the Technical Offer. At this point in time, this Board notes that the said Literature was mandatorily requested to be submitted with the offer and not during Evaluation Stage, so that its importance is duly highlighted and well denoted.**

**The Literature is requested for the sole purpose of justifying the Bidder's offer with regards to the Technical Specifications of the product being offered by the same. Whenever, the Technical Literature is requested, the latter forms part of the Technical Offer and must represent the product with the same characteristics and specifications as that proposed in the Technical Offer. At the same instance, this Board would point out that since the Literature Forms an integral part of the Technical Offer, no rectifications are allowed as referred to in Note 3 of the Tender Document.**

**In this particular case, ECA Robotics submitted the Literature where, under vehicle type “*H 1 – One modular light weight Autonomous Underwater Vehicle (AUV), it was clearly indicated that this type of vehicle which is the equipment to be utilised for the Tendered Works, operates at depths of 3 – 200 meters*”, whilst the Tender Document clearly requested that such a vehicle has to operate up to 300m depth.**

**This Board, justifiably notes that the specifications dictated in the Technical Literature, so submitted by the Appellant does not substantiate the Technical Offer. In this regard, this Board opines that, the Appellant’s claim that his offer denoted the operational depth of the vehicle to be 300 metres, all along, does not in any credible way, justify the fact that the Literature did not specify the same operational depth as that stated in the Appellant’s Technical Offer and as duly dictated in the Tender Document.**

**This Board would like to also point out that this deficiency could not be clarified by the Evaluation Board, as in doing so; the latter would have breached the conditions of the Tender Document, as the Technical Offer is non-rectifiable. At the same instance, this Board would like to point out that it is the Appellant’s obligation and duty that the documentation to be submitted in a Tendering process, should in all respects, conform with the conditions as laid out in the**

**Tender Dossier. In this regard, this Board confirms the decision taken by the Evaluation Board to discard the Appellant's Offer due to its Technical Non-Compliance and does not uphold the latter's First Grievance.**

**2. ECA Robotics' alleged claim relating to Alberta Fire & Security Equipment Limited's ability to execute the Tendered Assignments**

**With regards to the Appellant's Second Grievance, this Board respectfully refer to the Hon Court of Appeal's rulings on this particular issue in that, once a Bidder is disqualified due to the fact that his own offer does not meet with the Tender Requirements, the Appellant does not have any judicial interest to confront other Bidders' offers or the decision taken by the Evaluation Board in the Award of the Tender.**

**In this regard, due to the fact that the Appellant's offer did not meet the Technical Requirements as dictated in the Tender Document and was therefore disqualified from the participation of the Tender, opines that ECA Robotics has lost all judicial interest to question or confront the ability and professionalism of the Recommended Bidder, so that this Board does not uphold the Appellant's Second Contention.**

**On a general note, this Board justifiably opines that the price element is irrelevant, as this is the last stage of consideration in an Evaluation Process and the Appellant's offer did not qualify to be considered for this aspect.**

**In view of the above, this Board finds against ECA Robotics and confirms the decision taken by the Planning Authority to award the Tender to Alberta Fire & Security Equipment Limited. Moreover, this Board recommends that the deposit paid by the Appellants should not be refunded.**

Dr Anthony Cassar  
Chairman

Mr Lawrence Ancilleri  
Member

Mr Carmel Esposito  
Member

*19 December 2017*