

permeate port. The Appellants' submissions, including the literature, were exactly as requested in the tender, and they were therefore requesting a re-evaluation as their product is compliant.

Dr Sean Paul Micallef Legal Representative for the Water Services Corporation referred to paragraph 17p of the Technical specifications which states that the ports are to be supplied with a DN25D32 adapter. The evaluation committee based their adjudication on this requisite which was simply not mentioned in Appellants submission, but they accept that it was stated in the literature. Appellants reply to the technical questionnaire seemingly contradicted the literature and therefore the evaluation was stopped. Appellants reply in the questionnaire, regarding the port connection ('we can offer 1" female or 1¼" NPT male) was subject to different interpretations and the evaluation committee now accept that there could be a different interpretation to Appellants' answer.

Mr Attard stated that his firm had offered what was specified. This was highlighted in the literature submitted. Regrettably what was offered in the reply to point 7p in the questionnaire had been misinterpreted in the evaluation process.

Engineer Kyle Alamango (441788M) called as a witness by the Public Contracts Review Board testified on oath that he was a member of the evaluation committee. He stated that the reply to the questionnaire did not tally with the literature and was not compliant. There were instances where vessels were supplied complete with integral adapters, which was not the case in this instance, but what was offered did not meet the tender requirements.

Mr Attard said that two data sheets had been submitted showing how the parts came together, and indicating that this was not an additional item but an integral part and there were no extra costs involved.

Dr Micallef concluded by saying that the evaluation committee wanted submissions according to the terms of the tender. The wording of Appellants' submissions was not obvious, and whilst the literature was correct the reply to the questionnaire was not clear to the evaluation committee – it all boiled down to a matter of interpretation. Clarification in this case was not possible.

The Chairman thanked the parties for their submissions and declared the hearing closed.

End of Minutes

Decision

This Board,

having noted this objection filed by Attard Farm Supplies Ltd (herein after referred to as the Appellants) on 30 September 2019, refers to the claims made by the same Appellants with regard to the tender of reference WSC/T/59/2019 listed as case No. 1391 in the records of the Public Contracts Review Board, awarded by Water Services Corporation (herein after referred to as the Contracting Authority).

Appearing for the Appellants: Mr Joseph Attard

Appearing for the Contracting Authority: Dr Sean Paul Micallef

Whereby the Appellants contend that:

- a) Their main concern refers to the fact that their offer was rejected due to the Authority's alleged claim that the reply to the questionnaire did not tally with the literature. In this regard, Appellants maintain that they had submitted the requested information in their original offer so that they request a re-evaluation of their offer.**

This Board also noted the Contracting Authority's 'Letter of Reply' dated 17 October 2019 and its verbal submissions during the hearing held on 26 November 2019, in that:

a) The Authority maintains that, the literature submitted by Appellants did not collaborate with the reply to the questionnaire and in this respect, the Evaluation Committee had to abide by the conditions and requirements as stipulated in the tender document and since no clarification was permissible, same Committee had no other option but to deem Appellants' offer as technically non-compliant.

This same Board also noted the testimony of the witness namely:

Engineer Kyle Alamango duly summoned by the Public Contracts Review Board.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by the parties concerned, including the testimony of the witness duly summoned, opines that the issue that merits consideration is the literature submitted by Appellants.

- 1. First and foremost, this Board would respectfully point out that, when the Authority requests technical literature in a tender, such documentation forms an integral part of the technical specifications contained in the tender dossier.**

- 2. The purpose for which technical literature is requested is for the Authority to ensure that what the bidder has declared to provide, is available on the market and the technical literature of the manufacturer confirms that the product has the technical features as duly declared by the bidder, in his submissions.**

- 3. In this particular case, Appellants, in their submissions, via the questionnaire, stated that, they can offer (1” Female or 1^{1/4}” NPT Male). At the same instance, the technical literature (Data Sheet) indicated the correct dimensions, the latter of which did not collaborate or confirm what had been declared to be supplied by Appellants.**

- 4. At this particular stage, the Evaluation Committee where in duty bound to adhere to the principle of self-limitation, in that, the technical literature had to confirm the same technical specification as duly declared in Appellants’ questionnaire. In this particular instance, the data sheet did not confirm what has been declared to be supplied and the Evaluation Committee could not request a clarification from Appellants as such a request would have amended the original submissions to the**

effect that there would have been instigated a rectification, the latter of which is not permissible.

5. This Board would respectfully point out that whilst it is the duty and obligation of the Authority to abide by the principles of self-limitation, equal treatment and transparency, at the same instance, it is the duty and responsibility of the bidder, to ensure that, prior to his submissions, he has offered the product with the technical specifications as duly stipulated in the tender dossier.

6. This Board would respectfully point out that if Appellants had any doubts about the interpretation of any clause dictated in the tender dossier, they had the remedies to clarify same, prior to the submission of their offer. In this regard, this Board notes that such remedies were not availed of by Appellants.

In conclusion, this Board opines that:

a) The questionnaire submitted by Appellants is an integral part of Appellants' offer technical specification.

- b) The technical literature submitted by Appellants does not conform with the technical specifications as duly declared by Appellants in their questionnaire.**

- c) The evaluation process was carried out in an appropriate, just and transparent manner.**

- d) Appellants had available remedies to clarify any misunderstanding or misinterpretation of any clause in the tender dossier, prior to their submissions.**

- e) The Evaluation Committee could not request a clarification from Appellants as this would have instigated a rectification which is not allowed.**

In view of the above, this Board,

i. does not uphold Appellants' contentions,

ii. upholds the Contracting Authority's decision in the award of the tender,

iii. directs that the deposit paid by Appellants should not be reimbursed.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

3 December 2019