

PUBLIC CONTRACTS REVIEW BOARD

Case 1418 – MTIP/WID/038/2019 – Framework Agreement for the Provision of Fountain Water Testing for the Ministry for Transport, Infrastructure and Capital Projects - Re-Issue

The tender was published on the 24th September 2019 and the closing date of the call for tenders was the 15th October 2019. The estimated value of the tender (exclusive of VAT) was € 37,830.

On the 19th December 2019 Asail Ltd filed an appeal against the Ministry for Transport, Infrastructure and Capital Projects as the Contracting Authority objecting that they were disqualified on the grounds that they were technically non-compliant. A deposit of € 400 was paid.

There were three (3) bidders.

On 28th January 2020 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Carmel Esposito as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – Asail Ltd

Dr Veronica Spiteri	Legal Representative
Mr Mark Camilleri	Representative

Preferred Bidder – PM Matic Ltd

Ms Denise Grima Connell	Representative
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Contracting Authority – Ministry for Transport, Infrastructure and Capital Projects

Dr Mark Sammut	Legal Representative
Arch Raymond Farrugia	Chairperson Evaluation Committee
Dr George Buhagiar	Member Evaluation Committee
Mr Joe Mifsud	Member Evaluation Committee
Mr Martin Scicluna	Representative
Ms Daniela Galea	Representative

Dr Anthony Cassar Chairman of the Public Contracts Review Board welcomed the parties and invited submissions.

Dr Veronica Spiteri Legal Representative for Asail Ltd said that the reason for the appeal was that her clients had definitely uploaded the files requested following a clarification notice issued by the

Contracting Authority but these failed to upload on the ePPS site and they had consequently been disqualified.

Architect Raymond Farrugia Representative of the Ministry for Transport, Infrastructure and Capital Projects said that out of the three offers received two were not compliant. In the case of the Appellant the Evaluation Clarification Report indicated that they had dealt with the clarification but nothing had been uploaded on the ePPS. The evaluation committee had contacted Mr Jason Grech the official in charge of the IT system at the Department of Contracts who confirmed that there had been no uploads and who advised them that there must have been some technical hitch in the submissions. A screen shot of the ePPS showing the lack of files was tabled (Doc 1).

Mr Mark Camilleri Representative of Asail Ltd said that he had uploaded the files himself. The system indicated that the first file was successfully uploaded and there was no indication that the second file had failed to upload.

The Chairman stated that occurrences of files failing to be uploaded on the ePPS were happening often and in the Board's decision on this case it will be suggested that the IT department at the Department of Contracts deals with the reason why submissions appear not to be received at their end. He then thanked the parties for their submissions and declared the hearing closed.

End of Minutes

Decision

This Board,

having noted this objection filed by Asail Ltd (hereinafter referred to as the Appellants) on 19 December 2019, refers to the claims made by the same Appellants with regard to the tender of reference MTIP/WID/038/2019 listed as case No. 1418 in the records of the Public Contracts Review Board awarded by Ministry for Transport, Infrastructure and Capital Projects (herein after referred to as the Contracting Authority).

Appearing for the Appellants:

Dr Veronica Spiteri

Appearing for the Contracting Authority: Dr Mark Sammut

Arch. Raymond Farrugia

Whereby, the Appellants contend that:

- a) Following a clarification request, they had uploaded the relevant files and submitted the information. In this respect, the Authority maintained that such information was not received at their end, through the ePPS system, so that their offer was disqualified, although it was the cheapest.**

This Board also noted the Contracting Authority's 'Letter of reply' dated 23 December 2019 and its verbal submissions during the hearing held on 28 January 2020, in that:

- a) The Authority maintains that Appellants had indicated that they submitted the information so requested in the clarification report however, attachments thereto were not received through the ePPS system, so that the Evaluation Committee had no other option but to deem Appellants' offer as being non-compliant.**

This Board has also taken note of the documents submitted by Ministry for Transport which consisted of:

Document No. 1 – A screen shot of the ePPS showing non-receipt of requested information

This Board, after having examined the relevant documentation to this Appeal and heard submissions made by the parties concerned opines that, the issue that merits consideration is the non-receipt of the requested clarifications by the Authority.

- 1. First and foremost, it must be acknowledged that any clarification requests made by the Authority form an integral part of the tender document. At the same instance, one must mention the obligation of the Evaluation Committee to adhere to the principal of self-limitation in the deliberation, during the evaluation process.**
- 2. Similar cases have been brought before this Board and same Board had gone into the mechanics of the ePPS and after obtaining all the necessary technical confirmations, it can justifiably establish that documentation sent through the ePPS system, if remitted in the correct manner, arrive and are recorded at the receiving end.**

- 3. In this particular case, the Evaluation Committee has carried out the necessary and appropriate investigations to determine why Appellants' alleged submitted documentation, was not recorded as received through the ePPS and also obtained the necessary technical explanation in that, there was a technical hitch in the submission of such documentation.**

- 4. This Board's remit is to establish whether the evaluation process was conducted in a fair and transparent manner and in this regard, it is credibly convinced that the Evaluation Committee carried out the adjudicating process in an efficient and proper procedure.**

In conclusion, this Board opines that:

- a) The clarification request was an integral part of the evaluation process so that the information requested therein forms part of the conditions laid out in the tender dossier.**

- b) The Authority presented proof enough to credibly confirm that the documents requested in the clarification note, were not received by the Authority, through the ePPS system.**

- c) The Evaluation Committee carried out the necessary investigation to establish that the non-receipt of the requested documents was due to a fault from the submission end.**

- d) The Evaluation Committee carried out the evaluation process in a just, fair and transparent manner.**

- e) It would recommend that training on the submission of documentation through the ePPS system, be intensified by the IT section of the Department, to avoid such instances, where the Contracting Authority is forced to incur payment of additional costs due to such unnecessary mishaps which can be avoided to the benefit of the Contracting Authority and the economic operator.**

In view of the above, this Board,

- i. does not uphold Appellants' contention,**
- 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 Carmel Esposito
Member

30 January 2020