

PUBLIC CONTRACTS REVIEW BOARD

Case 1424 – WSC/T/26/2019 – Tender for the Supply and Delivery of ø600mm and ø900mm Manhole Covers and Frames for the Water Services Corporation

The tender was published on the 1st March 2019 and the closing date of the call for tenders was the 29th March 2019. The estimated value of the tender (exclusive of VAT) was € 79,200 for Lot 1.

On the 22nd January 2020 3Tech Ltd filed an appeal against Water Services Corporation as the Contracting Authority objecting to their disqualification on the grounds of their bid being deemed to be non-compliant. A deposit of € 400 was paid.

There was six (6) bidders.

On 18th February 2020 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – 3Tech Ltd

Dr Alessandro Lia	Legal Representative
Mr Joseph Bugeja	Representative

Recommended Bidder – Attard Farm Supplies Ltd

Mr Joseph Attard	Representative
Eng Paul Refalo	Representative

Contracting Authority – Water Services Corporation

Dr Sean Paul Micallef	Legal Representative
Eng Stefan Cachia	Chairperson Evaluation Committee
Ms Shirley Farrugia	Secretary Evaluation Committee
Eng Charles Camilleri	Member Evaluation Committee
Eng Stephen Galea St John	Member Evaluation Committee

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

Dr Alessandro Lia Legal Representative of 3Tech Ltd sought permission to call a witness.

Mr Joseph Bugeja (100463M) called as a witness by the Appellants testified on oath that he is the Managing Director of 3Tech Ltd. Referred to the letter of the 17th January 2020 from the Water Services Corporation he confirmed that the product offered had a spring lock mechanism but this mechanism was not an elastic band and the manhole cover needed a lever to open it.

Questioned to differentiate between these terms witness stated that the spring lock on their product could not be described as elastic and there was no band on the cover. The lock was internal and an integral part of the manhole.

Dr Lia tabled a photocopy of the manhole in question (Doc 1)

The Board were invited to physically examine a sample of the actual product offered by Appellants.

Dr Lia, on resumption made a preliminary plea. In case 1373 the Board had directed the Authority to re-integrate Appellants bid in the evaluation process. What the Contracting Authority appears to have done is to re-assess the offers from the beginning. Re-integration does not mean starting the process all over again. In the appeal in Case 1373 the Board did not allow an additional reference to lack of a locking mechanism and yet this is now being re-introduced to the detriment of the Appellants.

Dr Sean Paul Micallef Legal Representative for the Water Services Corporation said that re-integration by its very nature meant re-evaluation of all the bids.

The Chairman pointed out that there is a clear distinction between the two terms. Re-integration is a continuation of the original process and continues after the original objection is assessed and the Authority cannot create new objections during this stage.

Dr Lia referred to clause 4.1g vii of the technical specifications which specify a locking mechanism. According to regulation 1241 of 2015 regulating manhole covers a spring lock mechanism makes no reference to keys and the selection of the type of appropriate locking necessary is the responsibility of the specifier not the manufacturer.

Dr Micallef said that the product offered was secure but not lockable.

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 3 Tech Ltd (hereinafter referred to as the Appellants) on 22 January 2020, refers to the claims made by the same Appellants with regard to the tender of reference WSC/T/26/2019 listed as case No. 1424 in the records of the Public Contracts Review Board awarded by Water Services Corporation (hereinafter referred to as the Contracting Authority).

Appearing for the Appellants: Dr Alessandro Lia

Appearing for the Contracting Authority: Dr Sean Paul Micallef

Whereby, the Appellants contend that:

- a) On a preliminary note, this Board (PCRB) had decided to integrate their offer in the evaluation process. In its decision, same Board disallowed additional reference to lack of a locking system. In this respect, this Authority is raising this issue again to justify Appellants' offer rejection.**
- b) Their product included an internal and integral locking system so that it satisfies clause 4.1.g of the technical specifications of the tender document.**

This Board also noted the Contracting Authority’s ‘Letter of reply’ dated 31 January 2020 and its verbal submissions during the hearing held on 18 February 2020, in that:

- a) The Authority insists that it had abided by the decision of the PCRB dated 7 November 2019, so that Appellants’ offer was reintegrated, however, Appellants’ product failed to possess a locking mechanism and in this regard, the Evaluation Committee had no other option but to deem Appellants’ offer technically non-compliant.**

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

Mr Joseph Bugeja managing director of Appellants’ company duly summoned by 3 Tech Ltd.

This Board has also taken note of the documents submitted by 3 Tech Ltd which consisted of:

Document number 1 - a photocopy image of Appellants’ product.

On a Preliminary Plea presented by 3 Tech Ltd, whereby Appellants’ are contesting the fact that, through a decision dated 7 November 2019, the PCRB directed the Authority to re-integrate Appellants’ offer in the evaluation process, whilst same Authority are now presenting another issue through a re-evaluation process, this Board would respectfully point out that:

- i. Through a re-integration order of an offer, the stages of the evaluation process must be carried out in order to arrive at the best offer. In this particular case, Appellants' offer was re-integrated as duly instructed and during the evaluation process, the Evaluation Committee noted that Appellants' product failed to possess the requested locking mechanism, which represents the issue of this appeal and the merits of which will be considered.**
- ii. At the same instance, it was the duty and obligation of the Evaluation Committee to point out any issues which did not adhere to the conditions as stipulated in the tender document, so that, in this particular case, this Board does not uphold Appellants' Preliminary Plea and will now consider the merits of Appellants' objection.**

In this regard, 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, what merits consideration are the technical specifications of Appellants' product.

- 1. This Board would refer to article 1.g (vii) of section 4-Technical Specifications of the tender document which stipulates that:**

“vii Have a Locking Mechanism”

In this respect, this Board had a visual illustration of Appellants’ product and notes that the product itself has an internal locking system mechanism, which to all intents and purposes, conforms with article 4.1.g (vii), however, the Authority is maintaining that such a mechanism can be easily unlocked through the use of a crow bar.

- 2. First and foremost, this Board would point out that it is the responsibility and obligation of the Contracting Authority to formulate the technical specification of a tender, in a clear and understandable manner so as not to create confusion or misinterpretation on any of the technical clauses, by the prospective bidder.**
- 3. In this particular case, the tender requested a locking mechanism and Appellants’ product does possess an internal locking device. If on the other hand, the Authority wanted a specific type of a locking mechanism, it should have specified such a requirement in the tender document.**
- 4. At the same instance, one must also mention the fact that a choice of a locking mechanism should not be made by Authority during the evaluation stage of the tendering process but if so required, the type of locking mechanism should have been clearly denoted in the technical**

specifications. In this regard, this Board notes that nowhere, in the technical specification, is the type of locking system mentioned or denoted.

In conclusion, this Board opines that:

- a) Although there is a difference between a re-integration and a re-evaluation, it was the duty and obligation of the Evaluation Committee to identify any issue which it deemed not to conform with the technical specifications of the tender document, so that Appellants' Preliminary Appeal is not being upheld.**
- b) The technical specifications relating to the locking mechanism of the manhole cover and with particular reference to the description of same as per clause 4.1.g (vii) are vague and not specific.**
- c) Appellants' offer does conform to the generic technical requirements of clause 4.1.g (vii).**
- d) It is the responsibility of the Contracting Authority to specify in a clear and understandable manner the type of locking system in the tender document and in this particular case such stipulation is lacking.**

In view of the above, this Board,

- i. does not uphold the Contracting Authority’s decision in the award of the tender,**
- ii. due to the fact, that, as per submissions, the Authority actually required a ‘Key Locking Mechanism’, which was never indicated in the tender document, this Board directs that the tender be cancelled.**
- iii. Directs that the deposit paid by Appellants be fully refunded.**

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

5 March 2020