

PUBLIC CONTRACTS REVIEW BOARD

Case 1450 – CT 2116/2019 – Framework Agreement for the Supply and Delivery of Environmentally Friendly Cleaning Products – Lot 2

The tender was published on the 31st January 2020 and the closing date of the tender was the 3rd March 2020. The estimated value of the tender (exclusive of VAT) for Lot 2 was € 84,284.

On the 11th May 2020 General Cleaners Co Ltd filed an appeal against Wasteserv Malta Ltd as the Contracting Authority objecting to their disqualification on the grounds that their bid was not technically compliant. A deposit of € 422 was paid.

On 4th June 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 virtual hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – General Cleaners Co Ltd

Mr Ramon Fenech Representative

Contracting Authority – Wasteserv Malta Ltd

Mr Louis Borg	Chairperson Evaluation Committee
Mr Anthony Camilleri	Member Evaluation Committee
Mr Sylvan Borg	Member Evaluation Committee
Mr Carlos Galea	Member Evaluation Committee

Department of Contracts

Mr Mark Mizzi	Representative
Mr Nicholas Aquilina	Representative

Dr Anthony Cassar Chairman of the Public Contracts Review Board welcomed the parties. He noted that since this was a virtual meeting all the parties had agreed to treat it as a normal hearing of the Board. He invited submissions.

Mr Ramon Fenech Representative of General Cleaners Co Ltd said that the Contracting Authority disqualified their bid because his company submitted the manufacturers' technical literature indicating the product packed in five litre bottles. Appellants had already made an agreement to provide 750 millilitre labels (as requested in the tender) with intention of decanting the product into the right sized bottles. The Contracting Authority had not sought any clarification for this apparent anomaly.

The Chairman pointed out that the literature which is there to provide proof that the correct product will be supplied is part of the technical specifications which do not allow clarifications. Appellants should have asked the manufacturer to provide a declaration that they were able to meet the requirements of the tender.

Mr Louis Borg stated that he was the Chairperson of the Evaluation Committee and the reason for the disqualification had been clearly stated in the letter sent to Appellants. The specifications were very clear but despite this Appellants had offered five litre bottles.

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 General Cleaners Co Ltd (hereinafter referred to as the Appellants) on 11th May 2020, refers to the claims made by the same Appellants with regard to the ‘Framework Agreement’ of reference CT 2116/2020 listed as case No. 1450 in the records of the Public Contracts Review Board awarded by Wasteserv Malta Ltd (hereinafter referred to as the Contracting Authority).

Appearing for the Appellants: Mr Raymond Fenech

Appearing for the Contracting Authority: Mr Louis Borg

Whereby, the Appellants claim that:

- a) Their main contention refers to the fact that, the manufacturer’s literature which was submitted represented a general overview of what their Suppliers can provide. In this regard, Appellants had already made arrangements with**

the manufacturers to supply the product in accordance with the specifications as stipulated in the tender document.

- b) They also maintain that, the Authority should have requested a clarification, through which any doubts or misunderstanding could have been clarified.**

This Board also noted the Contracting Authority's 'Letter of reply' dated 18th May 2020 and its verbal submissions during the virtual hearing held on 4th June 2020, in that:

- a) The Authority maintains that, the specifications as dictated in the tender dossier, were very clear and Appellants failed to provide the manufacturer's literature which collaborates with the declared product's specifications.**
- b) The Authority also insists that, there was no instance whereby the Evaluation Committee could ask for a clarification.**

This Board, after having examined the relevant documentation to this appeal and heard submissions made by the parties concerned opines that, the issues that merit consideration are two-fold namely:

- a) The Technical Literature submitted by Appellants and**
- b) Appellants' alleged contention for a Clarification Request during the Evaluation Process.**

Technical Literature

- 1. With regard to the technical literature, this Board would respectfully point out that, when the Authority requests technical literature, such documentation is not capriciously stipulated. The technical literature must conform and complement the declared technical specifications of the product being offered by the bidder.**
- 2. The technical literature is requested when the Authority wants to ensure that the product being requested and declared to be deliverable by the bidder can be made available from suppliers or manufacturers and is on the market.**
- 3. In this particular case, Appellants submitted a manufacturer's general literature which does not show or prove that they can supply the product with the technical specifications as duly stipulated in the tender dossier, so that, the technical literature so submitted does not complement and confirm what has been declared to be deliverable.**
- 4. This Board would also point out that, the Evaluation Committee is bound by the principle of self-limitation so that, it must ensure that what was being requested in the tender document is being evidenced through technical literature submitted by the bidder. In this particular instance, Appellants failed to provide technical literature which matches the technical specifications dictated in the tender dossier.**

5. This Board would also point out that, Appellants, if in doubt or uncertain about the documentation which they are to provide, had all the remedies prior to the submission of their offer, to either seek clarifications from the Authority or file a ‘Call for Remedies’ to determine what type of technical literature would be acceptable to the Authority. In this respect, this Board notes that Appellants failed to avail themselves of such remedies.

Clarifications

6. With regard to Appellants’ second contention, this Board would respectfully point out that, clarifications can only be made to clarify a submitted document and such clarification should not be exercised by the Evaluation Committee to rectify or amend such documentation.

7. In this particular case, it must also be said that, the technical literature forms an integral part of the technical specifications so declared by the bidder, in their offer. The technical offer falls under clause 7c(ii), wherein it is clearly stated as follows:

“(ii) Literature as per Form marked ‘Literature List’ to be submitted with the Technical offer at tendering stage. Alternatively, an Economic Operator can quote a reference number under which he/she has already supplied items so that there would be no need to submit literature. (Note 28)

No changes to information provided in the Literature submitted will be allowed. Literature submitted shall be rectifiable only in respect of any missing information.”

8. At the same instance, if the Evaluation Committee requested clarification regarding Appellants literature as submitted, such a request would have breached the above-mentioned clause, as it would have amounted to a rectification, which is not permitted.

In conclusion, this Board opines that,

- a) The technical literature submitted by Appellants does not collaborate and confirm the technical specifications as duly stipulated in the Framework Agreement.
- b) The technical literature forms an integral part of the technical specifications, both of which cannot be rectified.
- c) A clarification, in this particular case would have amounted to a rectification which is not allowable.
- d) The Evaluation Committee acted in a just and fair manner applying the principles of self-limitation and equal treatment.

In view of the above, this Board,

- i. does not uphold Appellants’ contentions,

- ii. upholds the decision of the Contracting Authority,**
- iii. directs that the deposit paid by Appellants should not be refunded.**

Dr Anthony Cassar
Chairman
8th June 2020

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member