

PUBLIC CONTRACTS REVIEW BOARD

Case 1454 – WSC/T/91/2019 – Supply and Delivery of CCTV Systems for the Water Services Corporation

The tender was published on the 5th August 2019 and the closing date of the tender was the 9th September 2019. The estimated value of the tender (exclusive of VAT) was € 17080.50

On the 29th May 2020 Alberta Fire & Security Equipment Ltd filed an appeal against the Water Services Corporation as the Contracting Authority objecting to their disqualification on the grounds that their bid was not technically compliant. A deposit of € 400 was paid.

There were four (4) bidders.

On 29th 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 – Alberta Fire & Security Ltd

Dr Ryan Pace	Legal Representative
Dr Maxine Gatt	Legal Representative

Preferred Bidder – Global Tech Malta

Mr Clive Ebeyer	Representative
Mr Alex Zerafa	Representative

Contracting Authority – Water Services Corporation

Dr Sean Paul Micallef	Legal Representative
Eng Anthony Tanti	Chairperson Evaluation Committee
Eng Charmaine Tanti	Member Evaluation Committee
Eng Steve Dimech	Member Evaluation Committee
Mr Hansel Mallia	Member Evaluation Committee

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.

Dr Ryan Pace Legal Representative of Alberta Fire and Security Equipment Ltd said that the basis of his clients' appeal was that the Contracting Authority failed to follow the terms of the tender. Appellants' offer was fully compliant as they offered equipment of equivalent standard besides their offer being the most economical.

Dr Sean Paul Micallef Legal Representative of Water Services Corporation referred to the annexes in the letter of reply which indicated that whereas the tender requested a 32 channel interface Appellants were indicating equipment which provided only 16 channel interface. This fact is backed by the literature submitted with the offer and is in conflict with and contradictory to the offer.

Mr Adrian Cutajar (525476M) called as a witness by Alberta Fire and Security Equipment Ltd testified on oath that he was the person who managed the tender process. The bid had followed the tender specifications and witness referred particularly to item 1 clause 14; item 2 clause 18 and item 3 clause 17 of the technical specifications which specifically dealt with compatibility and equivalence of equipment offered. The letter of rejection stated that Appellants' offer was not technically compliant as the equipment offered had less than 32 synchronous playback channels equivalent to 1080p. Hikvision in their e-mail of the 22nd May 2020 (tabled as Document 1) confirmed that 32 channels can be supported through the use of extra decoder.

Questioned by Dr Micallef witness stated that bidder offered 32 channels recording equipment but the brochure refers to synchronised playback on how many screens can be viewed at once – in other words they had offered 32 channel recording and 16 channel viewing screens at a time. Witness agreed that according to the e-mail from Hikvision extra decoder was necessary to view 32 channels at once.

Eng Anthony Tanti (403387M) called as a witness by the Public Contracts Review Board testified on oath that he was the Chairperson of the evaluation committee. He stated that the Appellants offer did not have the capacity to view 32 channels at once, and there was no provision for an alternative system giving the required result.

Questioned by Dr Pace witness said that he did not agree that the alternative offered by Appellants gives the same end result; however he agreed that the tender asked for one of two exclusive suppliers and that both suppliers offered the correct equipment and Alberta's offer was the cheapest.

Eng Charmaine Tanti (6248G) called as a witness by the Public Contracts Review Board testified on oath that she was one of the evaluators of the tender. Questioned by the Chairman she said that the objective of the tender was that one would be able to see the pictures from 32 cameras on the screen but Alberta's offer was limited to 16 screens. The preferred bidder had offered two units of 16 channels each.

Dr Pace said that Appellants' offer was administratively compliant – it was now proven that it was also technically compliant and they had made the most economically advantageous offer. Hikvision confirmed that to achieve 1080p an additional decoder is required – Alberta offered the equivalent at the cheapest price. The evaluation committee had abandoned the principle of self limitation through accepting a higher priced offer and ignoring an equivalent product.

Dr Micallef said that the difference in price in the offers was due to the successful bidder adjusting their offer by offering more hardware to meet the specifications.

The Chairman pointed out that once an equivalent product is offered and to comply with the principle of self limitation the evaluation committee has to accept what is offered once the offer meets the objectives of the tender requirements.

Dr Pace said that the preferred bidder had offered two units which led to a higher price, they therefore cancelled the equivalence and self limitation aspects.

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

End of Minutes

Decision

This Board,

having noted this objection filed by Alberta Fire and Security Ltd (hereinafter referred to as the Appellants) on 29th May 2020, refers to the claims made by the same Appellants with regard to the tender of reference WSC/T/91/2019 listed as case No. 1454 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 Ryan Pace

Dr Maxine Gatt

Appearing for the Contracting Authority: Dr Sean Paul Micallef

Whereby, the Appellants contend that:

- a) Their main contention refers to the fact that, the Evaluation Committee failed to abide by the principle of self-limitation in that, their offer was fully**

compliant and the cheapest. At the same instance, Appellants maintain that, they had offered an equivalent equipment which would satisfy the Authority's objective and the specifications as stipulated in the tender dossier.

This Board also noted the Contracting Authority's 'Letter of reply' dated 12th June 2020 and its verbal submissions during the virtual hearing held on 29th June 2020, in that:

- a) The Authority contends that, Appellants offer did not comply with the technical requirements as duly stipulated in item 2, No. 6 and item 3, No. 5 of the technical specifications of section 4 of the tender, so that, the Evaluation Committee had no other option but to deem Appellants' offer as technically non-compliant.**

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

Mr Adrian Cutajar duly summoned by Alberta Fire and Security Equipment Ltd

Eng. Anthony Tanti duly summoned by the Public Contracts Review Board

Eng. Charmaine Tanti duly summoned by the Public Contracts Review Board

This Board, after having examined the relevant documentation with particular reference to the Evaluation report and heard submissions made by the parties concerned, including the testimony of the witnesses duly summoned opines that, the issue that merits consideration is Appellants' offer in general.

1. The whole issue of this appeal centres around the fact that, the tender document requested Synchronous Playback of not less than 32 channels and such an issue was one of the main objectives of the Authority. In this regard, it is being contended that Appellants’ offer could only offer a playback screening of 16 channels.
2. At the same instance, Appellants maintain that they had offered equipment which, through an extra decoder, would achieve what the Authority requested.
3. This Board examined the evaluation report and noted that, the preferred bidders’ offer included, under item 6, the following:

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<i>6. Number of synchronous Playback Channels</i>	<i>16 IP and 16 analogue 32 channel</i>	<i>Pg 2</i>
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The above submission consisted of 2 units of 16 channels each whilst the tender document stated, not less than 32 channels. Such submission was confirmed through the testimony of Eng. Charmaine Tanti.

4. On the other side of the coin, this Board noted that, Appellants’ offer also confirmed that through an extra decoder, their offer can achieve the desired results.
5. One of the main principles, in the compilation of technical specifications, is that, the specifications must be clear, easily understood by the prospective

bidder and are to be stipulated in a manner so as to reach the objectives of the Contracting Authority.

- 6. In this particular case, the objective of the Authority was to have the relative equipment capable of achieving a ‘Synchronous Playback’ of at least 32 channels. It is not the technical manner through which such a requirement will be executed but the real objective is to enable the viewer to view at least 32 images on the screen simultaneously.**
- 7. From the relative documentation, this Board notes that, Appellants’ offer is also capable of offering the equipment with a Synchronous Playback of 32 channels, so that his offer should have been considered further by the Evaluation Committee.**
- 8. This Board also notes that, in their deliberations, the Evaluation Committee diverted from the principle of self-limitation and level playing field, in that, both the preferred bidder and Appellants offered a configuration of equipment, not clearly denoted in the tender document, but achieving the playback of 32 channels, which represent the end result as duly stipulated in the tender dossier.**

In conclusion, this Board opines that:

- a) Appellants’ offer can achieve a Synchronous Playback of 32 channel, through the inclusion of an extra decoder.**

- b) The Evaluation Committee, in their evaluation process should take into consideration the final objective of this procurement process. The Committee should also take into account the final and global price of each offer, to include all the necessary equipment to achieve the tender's objectives on a level playing field whilst applying the principle of self-limitation.**
- c) The final and global price should represent the total cost of all the equipment requested to be able to provide a 'Synchronous Playback' of 32 channels.**

In view of the above, this Board,

- i. does not uphold the Contracting Authority's decision in the award of the tender,**
- ii. upholds Appellants' contentions,**
- iii. directs that Appellants offer be reintegrated in the re-evaluation process,**
- iv. directs the Authority to carry out a re-evaluation process taking into consideration this Board' findings,**
- v. directs that the deposit paid by Appellants be fully refunded.**

Dr Anthony Cassar
Chairman
2nd July 2020

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
member