

PUBLIC CONTRACTS REVIEW BOARD

Case 1484 – MECP 105/2020 – Tender for the Purchase of Three (3) New Electric Vehicles for the Ministry for the Environment, Climate Change and Planning

The tender was published on the 13th April 2020 and the closing date of the tender was the 4th May 2020. The estimated value of the tender (exclusive of VAT) was € 76,500.

On the 16th July 2020 Motors Inc Ltd filed an appeal against the Ministry for the Environment, Climate Change and Planning 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 9th September 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 virtual hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – Motors Inc Ltd

Mr Stephen Aquilina	Representative
Mr Sandro Grech	Representative
Mr Andy Portelli	Representative

Contracting Authority – Ministry for the Environment, Climate Change and Planning

Dr Daniel Tabone	Legal Representative
Dr Godwin Cini	Legal Representative
Mr Gaetano Vella	Chairperson Evaluation Committee
Mr Franco Schembri	Member Evaluation Committee
Ms Joanna Grioli	Representative

Recommended Bidder – Michael Attard Ltd

Dr Reuben Farrugia	Legal Representative
Mr Michael Attard	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 agreed to treat it as a normal hearing of the Board. He then invited submissions.

Mr Sandro Grech Representative of Motors Inc Ltd stated that Appellants accept that they failed to submit completed pages 2, 4 and 6 of the Technical Specifications. Whilst the Appellants indicated in their submissions that the jack was being supplied as an extra they did not intend it to be an extra cost but they meant to supply it as part of their offer.

Prior to asking the Contracting Authority to make their submissions the Chairman noted that the reasoned letter of reply had not come from the Authority but from the Chairperson of the Evaluation Committee. This procedure was to be deplored and must stop as evaluation committees are not an interested party in an appeal and the Board was perfectly entitled to ignore such submissions in future. Exceptionally in this case the Board will hear submissions.

Dr Daniel Tabone Legal Representative for the Ministry for the Environment, Climate Change and Planning said that Appellants' offer had pages missing in their submission which meant that since this part falls under Note 3 no clarification was possible and therefore their offer was not compliant. He referred to PCRB Case 1125 which dealt precisely with this point.

Dr Reuben Farrugia Legal Representative for Michael Attard Ltd said that the Board was correct in hearing this appeal as verbal submissions were allowed. Previous PCRB decisions had always followed the principle that if the technical offer was not complete then the offer fails. *Ex admisis* Appellants had accepted that they had failed to make a full submission and they had offered the jack as an extra. Since no rectification or clarification was permitted their bid did not meet the requirements of the tender.

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 Motors Inc Ltd (hereinafter referred to as the Appellants) on 16th July 2020, refers to the claims made by the same Appellants with regard to the tender of reference MECP 105/2020 listed as case No.1484 in the records of the Public Contracts Review Board recommended for award by Ministry

for the Environment, Climate Change and Planning (hereinafter referred to as the Contracting Authority).

Appearing for the Appellants: Mr Stephen Aquilina

Mr Sandro Grech

Appearing for the Contracting Authority: Dr Daniel Tabone

Appearing for the Recommended Bidder: Dr Reuben Farrugia

Whereby, the Appellants contend that:

- a) Although, in their offer, they had indicated that, the ‘Jack’ would be supplied as an extra, they did not intend it to be an extra cost to the Authority but would be included in their offer.**
- b) Appellants admit that, through an inadvertent mishap on their part, pages 2, 4 and 6 of the technical specifications could not be submitted with their offer.**

This Board also noted the Contracting Authority’s ‘Letter of reply’ dated 23rd July 2020 and its verbal submissions during the virtual hearing held on 9th September 2020, in that:

- a) Appellants’ offer failed to include pages 2, 4 and 6 of the technical specifications. The latter fell under note 3, where no rectification or clarification can be effected.**
- b) Appellants, in their offer, included the ‘Jack’ as an extra cost to the Authority.**

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

- a) Appellants' failure to submit pages 2, 4 and 6 of the technical specifications and**
- b) Appellants' contention of the lack of a clarification from the Authority regarding the supply of the 'Jack'.**

1. Failure to Submit a Complete Technical Offer

- 1.1. Appellants in their 'Objection Letter' admitted that, through a technical problem, on their part, they indeed failed to submit pages 2, 4 and 6 of the technical specifications.**
- 1.2. The technical specifications of a tender document represent the core of the procurement process, as it is only through such submission, that the Evaluation Committee can assess whether the product being offered, conforms to the Authority's requirements as duly stated in the tender dossier or not.**
- 1.3. In this particular case, it is an unfortunate circumstance that Appellants submitted incomplete technical specifications of their product, so that, the Evaluation Committee were not in a position to consider Appellants' offer further. In this regard, this Board confirms the Authority's decision to reject Appellants' offer.**

2. Clarification Request regarding the Supply of the ‘Jack’

2.1. It must be appreciated and acknowledged that the technical specifications in the tender document fall under note 3, that is, no rectification and/or clarification is allowed in regard to the supply of the ‘Jack’.

2.2. The same mandatory regulations apply for any clarification in this regard as it would amount to a rectification which, again, is not permitted.

In conclusion, this Board opines that:

- a) *Ex admissis*, Appellants accept the fact that, they failed to submit pages 2, 4, and 6 of the technical specifications of their offer so that, their offer was technically incomplete.**
- b) With regard to Appellants’ denoted offer in respect of the ‘Jack’, this Board confirms that their submission indicated an extra cost to the Authority.**
- c) The Evaluation Committee could not make a request for clarification on Appellants’ offer as this would have amounted to a rectification which is strictly not allowed.**
- d) The evaluation process was carried out in a fair and transparent manner.**
- e) The ‘Reasoned Letter of Reply’ should have originated from the Contracting Authority and not the Evaluation Committee.**

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 refunded.**

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Carmel Esposito
Member

10th September 2020