

PUBLIC CONTRACTS REVIEW BOARD

Case 1502 – WSC/T/91/2019 – Tender for the Supply 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 € 17,080.50.

On the 19th September 2020 Global Tech Malta (KSL) 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 compliant.

A deposit of € 400 was paid.

There were four (4) bidders.

On 16th October 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 – Global Tech Malta (KSL Ltd)

Mr Alex Zerafa Representative

Contracting Authority – Water Services Corporation

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| Dr Sean Paul Micallef | Legal Representative |
| Eng Anthony Tanti | Chairperson Evaluation Committee |
| Ms Andreana Sacco | Secretary Evaluation Committee |
| Eng Charmaine Tanti | Member Evaluation Committee |
| Eng Steve Dimech | Member Evaluation Committee |
| Mr Hansel Mallia | Member Evaluation Committee |

Recommended Bidder – Alberta Fire & Security Equipment Ltd

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| Dr Ryan Pace | Legal Representative |
| Mr Adrian Cutajar | 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 also mentioned that the letter of objection was not signed and very vague in the nature of the claim although an email had been sent confirming the intention to appeal. He then invited submissions.

Dr Ryan Pace Legal Representative for Alberta Fire & Security Equipment Ltd (Alberta) said that apart from the fact that the letter of objection did not identify the objector it was simply seeking clarification on the award of the tender.

Mr Alex Zerafa Representative of Global Tech Malta (KSL Ltd) said that his Company had been advised by the Contracting Authority that their bid was not successful due to their product having a different number of channels to those requested. After the first appeal heard on this tender the company sought a clarification and found out that an external switch was not acceptable to enable all 32 channels to be viewed. The recommended bidder was now offering a product that does not power 32 channels – they could only achieve this by offering two units of 16 channels. The decoder offered by Alberta does not offer 32 channels but only 16 and thus did not meet specifications.

Dr Sean Paul Micallef Legal Representative for the Water Services Corporation said that Alberta were offering what the Corporation required – the question on the previous appeal hearing was on the number of cameras not on the inputs which is the grievance being raised now.

Dr Ryan Pace said that the appeal was vague and it was not in order to widen the parameters of the objections at this hearing. The letter of objection deals only with the one aspect of the PoE switch. Three months are the first appeal it is disrespectful to the Board for the Appellants to start bringing in fresh points.

The Chairman pointed out that after submissions at the first appeal it was agreed that the objectives of the tender were met and agreed that a decoder would fulfil the tender requirements.

Engineer Charmaine Tanti (6284G) called as a witness by the Public Contracts Review Board testified on oath that she was one of the Evaluators in this tender. She stated that the Evaluation Committee had followed the Board's decision in evaluating the offers. The Committee was satisfied that the technical offer of the recommended bidder met the tender requirements, although they had not checked the technical literature.

In reply to questions from Dr Pace witness confirmed that the Contracting Authority had followed the Board's previous decision and confirmed that Alberta had offered what was requested at the first hearing.

Mr Zerafa re-iterated that it was clear that at the re-evaluation stage the data sheets had been ignored and the Corporation was ready to accept 16 cameras although told that 32 were being offered.

Dr Micallef said that was not correct and in any instance Appellants offer could not be accepted as it was not the cheapest even if Alberta were eliminated.

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 Global Tech Malta (KSL Ltd) (hereinafter referred to as the Appellants) on 19th September 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. 1502 in the records of the Public Contracts Review Board recommended for award by the Water Services Corporation (hereinafter referred to as the Contracting Authority).

Appearing for the Appellants: Mr Alex Zerafa

Appearing for the Contracting Authority: Dr Sean Paul Micallef

Appearing for the Preferred Bidder: Dr Ryan Pace

Whereby, the Appellants contend that:

- a) The product being offered by the recommended bidder was not compliant with what was being requested. Reference, in this respect is being made to the claim that, the successful offer does not power 32 channels.**

This Board also noted the Contracting Authority's 'Letter of reply' dated 5th October 2020 and its verbal submissions during the virtual hearing held on 16th October 2020, in that:

- a) **The Authority maintains that, the recommended offer was technically compliant, in that, it offered two units of 16 channels each, which satisfied the objectives of the Authority in relation to the 32 synchronous playbacks.**

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

Eng Charmaine Tanti member of the Evaluation Committee duly summoned by the Public Contracts Review Board.

This Board, after having examined the objection raised by Appellants and heard submissions made by all the interested parties, including the testimony of the witness duly summoned by this Board, would respectfully treat Appellants' grievance as follows:

- 1. First and foremost, this Board would point out that, the 'Letter of Objection' leaves much to be desired in that, *prima face*, it does not denote clearly the identity of the objector; it is not signed and does not comply with the relative provisions of the Public Procurement Regulations. In this regard, this Board would remind the objector that, the 'Letter of Objection' must be formulated in such a manner so as to identify the objector, specify and substantiate with proof the reasons as to why the objection is being submitted. Although this Board has the remit to reject such an irregular appeal, it would be in the interest of all the interested parties to proceed with the treatment of Appellants' grievance.**

- 2. This Board would respectfully remind the parties to this appeal that, same Board had already published its decision on 27th July 2020, on this particular tender. Such a decision related to the ‘32 Synchronous Playback’ and in that regard, the Board decided that, as long as the objectives of the Authority could be met through the inclusion of an extra decoder, Alberta’s (Recommended Bidder) offer should be integrated in the revaluation process.**
- 3. This Board notes that, the Evaluation committee carried out the instructions given by this Board and after a re-evaluation process, same authority recommended the most advantageous offer which also happened to be the cheapest.**
- 4. It must be emphasized that, the technical issue was the requirement by the authority to have available 32 Synchronous Playbacks and not PoE inputs. It must also be mentioned that, the recommended bidder, through a decoder and without additional expense to the Authority, complied to be in a position to provide the facility of 32 Synchronous Playbacks, thus being compliant.**
- 5. Appellants are claiming that, the recommended offer is not compliant with clarification No. 2, as it includes an external switch. From submissions made, this Board notes that, the preferred offer does not specify the need for an external switch.**
- 6. This Board is somewhat surprised as to why the present claim relating to PoE inputs and external switch was not raised during the hearing held on**

29th June 2020, when all the technical specifications were extensively reviewed by this Board.

7. From the testimony of Engineer Charmaine Tanti, this Board is comfortably assured that, the recommended offer is technically compliant to meet the Authority's objectives.

In conclusion, this Board opines that:

- a) The 'Letter of Objection' lacked the basic mandatory requirements of the Public Procurement Regulations.**
- b) The claim being raised by Appellants, should have been presented during the hearing held on 29th June 2020.**
- c) From submissions made by the Authority, this Board is comfortably assured that, the recommended offer is fully compliant and conforms with the decision of this Board dated 2nd July 2020.**

In view of the above, this Board,

- i. Does not uphold Appellants' contentions,**
- ii. Upholds the Authority's decision in the recommendation of award,**
- iii. Directs that the deposit paid by Appellants should not be reimbursed.**

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

20th October 2020

