

PUBLIC CONTRACTS REVIEW BOARD

Case 1510 – MHSE/154/2020 – Tender for the Supply, Delivery, Installation and Commissioning of a Multiple Display Monitoring Solution and Local Area Network Hardware in an Environmentally Friendly Manner to the Critical Infrastructure Protection Directorate (Lots 1 & 2)

The tender was published on the 6th May 2020 and the closing date of the tender was the 29th May 2020. The estimated value of the tender (exclusive of VAT) for Lot 1 was € 120,000 and for Lot 2 was € 4,500.

On the 23rd October 2020 AVL Services filed an appeal against the Critical Infrastructure Protection Directorate as the Contracting Authority objecting to their disqualification on the grounds that their bid was not technically compliant.

A deposit of € 622.50 was paid.

There were seven (7) bidders for Lot 1 and three (3) bidders for Lot 2.

On 12th November 2020 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Mr Lawrence Ancilleri 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 – AVL Services

Mr Johann Saliba	Representative
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Contracting Authority – Critical Infrastructure Protection Directorate

Dr Miguel De Gabriele	Legal Representative
Mr Matthew Yeomans	Member Evaluation Committee
Ms Doreen Seracino	Representative

Recommended Bidder – DAB Electronica Co Ltd

Mr Dione Falzon	Representative
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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 Johann Saliba Representative of AVL Services stated that he disagreed with the Contracting Authority's decision for reasons stated in his letter of appeal dated 23rd October 2020.

Mr Matthew Yeomans (47981M) called as a witness by the Contracting Authority testified on oath that he was an evaluator on this tender. He gave a detailed account of the purpose of the two lots specified in the tender. Lot 1 specifically had a technical compliance form for the economic operator to indicate the devices to be used and which had to include a technical data diagram to tie up the components to be used with those devices. This was all specified in the tender document and was necessary to ensure that since different bidders might offer different configurations each offer had to meet the specifications.

A clarification was sent to the Appellants seeking confirmation that all components had been included; instead the Authority was presented with a schematic diagram which straightaway changed the Appellants' offer. Certain other bidders submitted the diagrams from the start and were compliant.

On the appeal on Lot 2 Appellants failed to indicate whether they agreed with the request that their financial offer allowed for tweaking/reprogramming of all control systems as requested under the Control System Programming section of the tender (page 21) and was not related to the drag and draw control feature which Appellants seemed to combine with this requirement in their appeal.

In reply to various questions witness stated that the original schematic drawings submitted did not indicate if bidder was offering encoders or decoders and different bills of quantity were submitted. Appellants offer did not comply since the original submission of drawings was mandatory and what was submitted was totally different with what the tender requested.

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 AVL Services (hereinafter referred to as the Appellants) on 23rd October 2020, refers to the claims made by the same Appellants with regard to the tender of reference MHSE/154/2020 listed as case No. 1510 in the records of the Public Contracts Review Board recommended for award by Critical Infrastructure Protection Directorate (hereinafter referred to as the Contracting Authority).

Appearing for the Appellants: **Mr Johann Saliba**

Appearing for the Contracting Authority: **Dr Miguel De Gabriele**

Appearing for the Preferred Bidder: **Mr Dione Falzon**

Whereby, the Appellants contend that:

- a) With regard to Lot No. 1, their submission included all the necessary technical requirements as duly dictated in the tender document. In this regard, since their offer was compliant with what was being requested and there was no deviation from such requirements, they did not submit the ‘Schematic Diagram’ in their original submission.**
- b) With regard to ‘Drag and Drop’ Appellants maintain that all the stipulated information was submitted in their original offer.**

This Board also noted the Contracting Authority’s ‘Letter of reply’ dated 4th November 2020 and its verbal submissions during the virtual hearing held on 12th November 2020, in that:

- a) With regard to Appellants’ first grievance, the Authority maintains that the ‘Schematic Diagram’, which was part of the technical specifications, was not submitted by Appellants in their original offer.**
- b) With regard to Appellants’ second grievance, the Authority requested a confirmation that the offer will include a provision for tweaking/re**

programming of all control systems up to four months after project completion and Appellants failed to submit such declaration.

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

Mr Matthew Yoemans, Evaluator duly summoned by Critical Infrastructure Protection Directorate (Contracting Authority).

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, the issues that merit consideration are two-fold namely:

- a) Submission of ‘Schematic Diagram’ and**
- b) Requested declaration re: ‘Control System Programming’**

1. Schematic Diagram

1.1. This Board would respectfully refer to page 21 of the tender document wherein it is stated that:

“Bids shall include:

- Basic functional drawing illustrating conceptual system architecture where any proposed equipment/system deviates from the tender documents.”*

The above clause clearly describes what is being requested by the Authority, where deviation from the proposed system is being proposed by the Bidder.

- 1.2. From the credible testimony of Mr Yeomans, this Board was vividly made aware of the importance of the ‘Schematic Diagram’ in that, the Authority wanted to be assured that, all the components and devices stipulated in the tender document are included in the system being offered by the bidders.**
- 1.3. On the 30th June 2020, the Authority applied note 2 to clause 5 of the tender document whereby Appellants were asked to clarify and confirm that, all the stipulated components were included.**
- 1.4. Basically the clarification request necessitated the identification of ‘Drag and Drop control by mouse and cross display switching feature that allow keyboard and mouse to be more seamlessly across connected displays’. from the submitted literature. By way of a reply, Appellants submitted a technical response, which denoted a deviation from their original offer.**
- 1.5. In this regard, this Board notes that, the ‘Schematic Diagram’ showing all the components to be included, had to be submitted with Appellants’ original offer. Moreover, the fact that Appellants’ offer system deviated from that stipulated in the tender document, necessitated even more, the**

submission of the ‘Schematic Diagram’ showing evidence that, Appellants’ proposed system is equivalent and can achieve the same results, at the very outset.

1.6. One has to appreciate and acknowledge that, the Evaluation Committee is bound to adhere to the principle of self-limitation whilst the prospective bidder is also bound to adhere to the conditions as duly stipulated in the tender dossier. If in doubt Appellants had the remedies to clarify any misunderstanding prior to the submission of their offer and this Board notes that such remedies were not availed of by Appellants.

2. Control System Programming

2.1. With regard to Appellants’ second grievance, this Board would refer to the last paragraph on page 21 of the tender dossier, which stipulates that:

“Control system programming

Financial offer shall allow for tweaking/ reprogramming of all control systems up to four 4 months after project completion to alter user interfaces, sequences of operation or operational levels as instructed by the Contracting Authority.”

2.2. The above-mentioned clause requested that bidders should include, in their financial bid, a provision to cater for the above-mentioned additional services. In this respect, Appellants had to confirm that they will provide the services as stated above and include the technical support as duly stipulated on page 23 of the tender document and in this regard, Appellants failed to submit such a confirmation.

In conclusion, this Board opines that:

- a) Appellants failed to submit the ‘Schematic Diagram’ in their original offer. Such a mandatory requirement forms an integral part of the technical specifications.**
- b) The technical specifications fall under note 3 of clause 5 of the tender document, whereby no rectifications are allowed.**
- c) The evaluation process was carried out in a just and transparent manner.**
- d) Appellants’ had the remedies to clarify the requirements with Authority, however, these remedies were not availed of by same.**

In view of the above, this Board,

- i. does not uphold Appellants’ contentions,**
- ii. upholds the Contracting Authority’s decision in the recommendation for award,**

iii. directs that the deposit paid by Appellants should not be refunded.

Dr Anthony Cassar
Chairman

Mr Lawrence Ancilleri
Member

Mr Carmel Esposito
Member

17th November 2020