

PUBLIC CONTRACTS REVIEW BOARD

Case 1493 – MTIP/WID/016/2020 – Tender for the Supply, Delivery, Installation and Commissioning of a Fire Detection System at MTIP, Office Block A, Triq Francesco Buonamici, Floriana.

The tender was published on the 15th May 2020 and the closing date of the tender was the 5th June 2020. The estimated value of the tender (exclusive of VAT) was € 24,540.

On the 30th July 2020 Masco Security Services Ltd filed an appeal against the Ministry for Transport, Infrastructure and Capital Projects 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 six (6) bidders.

On 25th September 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 – Masco Security Services Ltd

Dr Peter Borg Costanzi	Legal Representative
Mr Dean Debono	Representative

Contracting Authority – Ministry for Transport, Infrastructure and Capital Projects

Dr Mark Sammut	Legal Representative
Arch Anton Camilleri	Chairperson Evaluation Committee
Eng Conrad Casha	Member Evaluation Committee
Eng George Xuereb	Member Evaluation Committee
Ms Alberta Callus	Representative
Ms Eleonora Camilleri	Representative
Mr Marco Cassar	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.

Dr Peter Borg Costanzi Legal Representative for Masco Security Services Ltd stated that although various points were raised in the letter of appeal the main concern was regarding the omission on the fire resistant cable. Despite this the clarification of the 23rd June sent by the Contracting Authority made no reference to the cable and Appellants therefore assumed that there was no problem on that score in their submissions. Although there were other points for their disqualification the cable problem had a domino effect on the Authorities' thinking.

Dr Mark Sammut Legal Representative for the Ministry for Transport, Infrastructure and Capital Projects pointed out that the failure to insert the brand of the fire resistant cable in the Technical Specifications came under Note 3 and was therefore not rectifiable and disqualified the bidder at that stage.

Architect Anton Camilleri Chairperson of the Evaluation Committee confirmed that the reference to the cable was left blank contrary to tender requirements. However, following the guidelines of the Department of Contracts the Contracting Authority had to proceed with a full evaluation of Appellants' bid and that was the reason why further points were raised.

Dr Borg Costanzi accepted that the reference to the cable had been left blank but from the prices submitted it was obvious that the cable had been included and this should have been taken into consideration.

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 Masco Security Services Ltd (hereinafter referred to as the Appellants) on 30th July 2020, refers to the claims made by the same Appellants with regard to the tender of reference MTIP/WID/016/2020 listed as case No. 1493 in the records of the Public Contracts Review Board recommended for award by Ministry for Transport, Infrastructure and Capital Projects (hereinafter referred to as the Contracting Authority).

Appearing for the Appellants:

Dr Peter Borg Costanzi

Appearing for the Contracting Authority: Dr Mark Sammut

Whereby, the Appellants contend that:

- a) **Although, it is a fact that, Appellants, inadvertently left out details regarding the ‘Fire Resistant Cable’ in the questionnaire (Technical Offer), same had submitted sufficient information to enable the Evaluation Committee to realise that the ‘Cable’ was obviously included in their offer and in this respect, Appellants maintain that, their offer should not have been rejected for this particular omission.**

This Board also noted the Contracting Authority’s ‘Letter of reply’ dated 10th August 2020 and its verbal submissions during the virtual hearing held on 25th September 2020, in that:

- a) **The Authority, insists that, since the technical offer questionnaire fell under note 3, the Evaluation Committee could not request any clarification/rectification, but regrettably, this Committee had no other option but to deem Appellants’ offer technically non- compliant.**

This Board, after having examined the relevant documentation to this appeal and heard submissions made by the parties concerned opines that, the issue that merits

consideration is Appellants' omission of details as duly requested in the 'Technical Offer Questionnaire' relating to item 1.13 (Fire Resistant Cable).

- 1. The Technical Offer Questionnaire (TOQ) requested that, the bidder had to specify the details of the manufacturer of the relative items so listed and the model / catalogue number of the particular item offered as part of the technical offer.**
- 2. This Board would respectfully point out that, such a mandatory requisite is not capriciously requested by the Authority but it is the duty and obligation of the Evaluation Committee to verify that, what has been offered by Appellants does indeed comply with the full specifications as duly declared by Appellants in their offer.**
- 3. One has to acknowledge that, the principle of self-limitation must be maintained throughout the evaluation process and such adherence will safeguard other important principles in Public Procurement namely, transparency and equal treatment. These are the basic principles that must prevail by denoting 'Note 3' and although it may sound too rigid, such condition safeguards the treatment of the evaluation process on a level playing field for all the offers submitted.**
- 4. In this particular case, it is true that Appellants' submission, on face value denoted the inclusion of the 'Fire Resistant Cable' but the technical questionnaire under item 1.13 requested, on a mandatory basis, that the**

information dictated therein had to be filled in and Appellants failed to submit such information.

- 5. It must also be said that, whilst the Evaluation Committee is bound by the principles of self-limitation, the bidder is also obliged to adhere to the conditions and specifications as dictated in the tender dossier. If Appellants encountered problems in submitting this mandatory information, they had the remedies to resolve the problem prior to the submission of their offer.**

In view of the above, this Board,

- i. does not uphold Appellants' contentions,**
- ii. upholds the Contracting Authority's decision in the recommendation of the award,**
- iii. directs that the deposit paid by Appellants should not be reimbursed.**

Dr Anthony Cassar
Chairman
29th September 2020

Mr Lawrence Ancilleri
Member

Mr Carmel Esposito
Member