

PUBLIC CONTRACTS REVIEW BOARD

Case 1613 – MCST/2021/27/CFQ. Call for Quotations for the Supply, Laying, Termination and Testing of Fibre and Cat-6 cable and the Supply and Installation of PoE Cameras in the Cot Lift Reception Area at Esplora

12th August 2021

This Board,

Having seen the letter of objection filed by Justin Fenech on behalf of Arkafort Limited, hereinafter referred to as the appellant, on the 14th May 2021;

Having also seen the letter of reply filed on the 21st May 2021 by Paul Mifsud on behalf of The Malta Council for Science and Technology, hereinafter referred to as the Contracting Authority;

Having taken into consideration all the submissions made during the virtual hearing held on the 3rd August 2021, and having examined all the documents produced;

Having noted the minutes of the public hearing of the 3rd August 2021 that are hereunder being incorporated;

Minutes:

The Call for Quotations was published on the 23rd February 2021 and the closing date was the 9th March 2021. The value of the call was € 9999.

On the 14th May 2021 Arkafort Ltd filed an appeal against the Malta Council for Science and Technology as the Contracting Authority contesting their disqualification on the grounds that their offer was not compliant.

A deposit of € 400 paid.

There were four (4) bidders.

On 3rd August 2021 the Public Contracts Review Board (PCRB) composed of Dr Charles 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:

Appellant – Arkafort Ltd

Dr Franco Galea	Legal Representative
Mr Justin Fenech	Representative
Mr David Zammit	Representative

Contracting Authority – The Malta Council for Science and Technology

Mr Mario Borg	Representative
Ms Zoe Field	Member Evaluation Committee
Mr Joseph Degabriele	Member Evaluation Committee

Preferred Bidder – Comsec Ltd

Eng David Bonello	Representative
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Dr Charles Cassar Substitute 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 in line with Article 89 of the Public Procurement Regulations. He then asked Appellant's representative to make his submissions.

Dr Franco Galea Legal Representative for Arkafort Ltd stated that the tender documents (page 6 item 3.2.3) requested two cameras and on page 13 requested four different cameras but literature was submitted for only one set of cameras. Instead of seeking clarification the Authority disqualified the bidder. In the meantime the Authority accepted that there was lack of clarity and proposed cancellation of the tender when all they had needed to do was to seek clarification.

Mr Mario Borg Representative for the Malta Council for Science and Technology agreed that the description for the two cameras was missing and noted that the Authority was not allowed to seek rectification of the specifications. Unfortunately the bidder did not provide the correct specifications and the Authority could not request change of specifications.

Dr Galea pointed out that only the literature was missing otherwise the bid was correct and a simple rectification would have sorted things out.

Mr Borg said that the literature provided referred to different cameras and hence the bidder had not followed the specifications.

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

End of Minutes

Hereby resolves:

Appellant's tender had been disqualified because a camera that was offered was not up to specifications. Appellant had in fact admitted that the wrong datasheet had been erroneously uploaded for the PTZ Camera. This datasheet formed part of the Technical Offer of the tender and the technical offer does not allow any rectifications. Therefore there was no way that the appellant's offer could be amended through the submission of the correct datasheet.

On receiving the letter of objection, the contracting authority re-investigated the tender and discovered that an important paragraph had been omitted in the tender document regarding a POE camera. The Bill of Quantity had asked for four (4) cameras, while the tender spoke of two (2) cameras. The Contracting Authority had therefore asked in their reply for permission to cancel the tender.

Dr Franco Galea insisted that appellant's tender should have been rectified and claimed that the contracting authority could have cancelled the tender of its own accord.

This Board has already noted that rectification of the technical offer could not be carried out since the technical offer is qualified by note 3, which means that only clarifications are permissible. The Board also observes that the contracting authority could not have just cancelled the tender because when the discrepancy in quantities was discovered the present objection had already been filed, and therefore the permission of this Board was needed.

For these reasons the Board rejects appellant's request and confirms the decision reached by the evaluation committee in declaring appellant's tender non-compliant. This Board also orders that the Call for Quotations be cancelled and re-issued without errors.

The deposit paid by appellant shall not be refunded.

Dr Charles Cassar
Chairman

Mr Lawrence Ancilleri
Member

Mr Carmel Esposito
Member