

PUBLIC CONTRACTS REVIEW BOARD

Case 1599 – SAPP. 20.90. Call for Quotations for Cable Management Works, in preparation for a Network System including the Supply, Delivery and Installation of Data Cabinets, at various sites of Agenzija Sapport

3rd September 2021

The Board,

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

Having also noted the letter of reply filed on the 4th May 2021 by the Evaluation Board on behalf of Agenzija Sapport, hereinafter referred to as the contracting authority;

Having taken into consideration the oral submissions made by the legal representative of the appellant, Dr Franco Galea and those made by Mr Giancarlo Farrugia on behalf of the contracting authority during the virtual hearing held on the 13th July 2021;

Having also examined and taken notice of all the documentation produced, including the minutes of the hearing of the 13th July 2021 which is hereunder being incorporated.

Minutes:

The call was published on the 12th March 2021 and the closing date was the 16th April 2021. The value of the tender was € 8,188.

On the 14th May 2021 Arkafort Ltd filed an appeal against Agenzija Sapport 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 13th July 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

Contracting Authority – Agenzija Sapport

Mr Giancarlo Farrugia	Chairperson Evaluation Committee
Ms Caroline Debono	Secretary Evaluation Committee
Mr Shawn Caruana	Member Evaluation Committee
Mr Liam Caruana	Member Evaluation Committee

Preferred Bidder – Alberta Fire and Security Equipment Ltd

Mr Robert Farrugia	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 said that the basis for this appeal is that the Evaluation Committee claims that they could not retrieve the C.V. of the key expert even after a clarification had been sought and the Document resubmitted. No indication of this was given to the Appellant by the Contracting Authority who had a responsibility to notify them of this shortcoming. The bid should not have been excluded and no party would be prejudiced by re-instating the Appellant’s bid.

Mr Giancarlo Farrugia Representative for Agenzija Sapport stated that he was the Chairperson of the Evaluation Committee. The document in question was submitted as a link in ‘url’ format and could not be retrieved since the technical offer was in ‘PDF’ format. The clarification sought was replied to by resubmitting the document in exactly the same format as previously.

Dr Galea said that the upload of the document had actually happened and Appellant had not been requested to submit it in a different format. This is an administrative problem and on that basis the bid should be re-evaluated.

Mr Farrugia pointed out that the Authority should not be expected to suggest which format a bidder should use. Appellant was responsible for its action.

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

End of Minutes

Hereby resolves:

First of all this Board would point out that both the letter of rejection dated the 21st May 2021 and the letter of reply to appellant's objection was signed by Evaluation Committee. This is highly irregular. Evaluation Committees are appointed to evaluate the tenders and their function ceases as soon as they file the Evaluation Report. It should be the Contracting Authority that sends rejection letters or replies to objections and not the evaluation board.

That the case is about the submission or non-submission of the Key Expert form. Appellant insists that the form was uploaded through the ePPS system and states that the said system confirmed the successful uploading of the document.

The contracting authority claims that the document in question could not be accessed by the Evaluation Board since it was in "url" format. Appellant was given the chance to rectify this but still submitted the document in url form that could not be accessed.

From the screen shot supplied, it can be seen that when the appellant replied with the rectification, the document enclosed was clearly marked "**35118154335.url**" while in the same screen shot the rectification request can be seen as being in **pdf** format. Any document sent through the ePPS cannot be in url format since this is just a link or an address to a web page.

The evaluation board thus could not access the document submitted in url format, and since the problem remained unresolved even after the appellant was requested to rectify, the evaluation board had no option but to reject appellant's tender.

For this reason therefore, appellant's objection is being rejected. The deposit paid shall not be refunded.

Dr Charles Cassar

Mr Lawrence Ancilleri

Mr Carmel Esposito

Chairman

Member

Member