

PUBLIC CONTRACTS REVIEW BOARD

Case 1629– SPD/2021/065. Tender for the Supply, Delivery and Installation of Consol Finite Element Analysis, Solver and Multiphysics Simulation Software or Equivalent

The tender was published on the 21st April 2021 and the closing date was the 12th May 2021. The value of the tender excluding VAT was € 21,190.

On the 1st July 2021 Arkafort Ltd filed an appeal against Malta College of Arts, Science and Technology as the Contracting Authority objecting to their disqualification on the grounds that their bid was considered technically non-compliant.

A deposit of € 400 was paid.

There was one (1) bidder.

On 28th September 2021 the Public Contracts Review composed of Dr Charles Cassar as Chairman, Mr Lawrence Ancilleri and Dr Vincent Micallef 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

Contracting Authority – Malta College of Arts, Science and Technology

Dr Jean Carl Abela

Legal Representative

Architect Deborah Borg

Chairperson Evaluation Committee

Eng Dr Alex Rizzo

Member Evaluation Committee

Eng Louis Aquilina

Member Evaluation Committee

Mr Clive Seguna

Member Evaluation Committee

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 invited submissions.

Dr Franco Galea Legal Representative for Arkafort Ltd stated that Appellant offered the requested software on which the Contracting Authority sought clarification and whilst agreeing that the battery design module includes fuel cells it stated that it covers most items and offered the Authority a different module which has all fuel cells. If the Authority wanted something different to what Appellant was offering it was possible for them to take up this offer – instead they decided to cancel the tender. . As a point of interest Dr Abela mentioned that the budget figure for this tender was well exceeded by Appellant’s bid and the tender would have failed on the financial aspect as well.

Dr Galea objected to the budget figure being considered by the Board as it was not raised in the original reply. The tender requested battery fuel cells which included all elements but did not request both modules – the module submitted did offer a generic battery and fuel cells.

Dr Abela re-iterated that bid was not compliant, and the budget aspect was important too. Certain modules had not been offered and hence the bid was not compliant.

Engineer Dr Alex Rizzo (508664M) called as a witness by the Authority testified under oath and displayed on screen the data evaluation requirement and indicated under Physics Interfaces section where the offer had failed to meet the tender requirements under the Hydrogen Fuel Cell heading.

Dr Galea conceded that the hydrogen fuel cell offer is missing but said that in other pages in the tables displayed, all fuel cell module has been offered. There was no indication in the tender that the hydrogen fuel cell was included. A product new on the market had been offered.

Dr Abela said that this was simply a question of the tender requesting fuel cells which were not offered making the bid non-compliant.

End of Minutes

4th October 2021

Decision

This Board,

Having noted this objection filed by Arkafort Ltd. (herein after referred to as appellant) on 1st July 2021, refers to the claims made by the same appellant with regard to the tender listed as case No.1629 in the records of the Public Contracts Review Board awarded by MCAST (herein after referred to as the Contracting Authority) and their verbal submissions during the hearing on 28th September 2021.

Having heard the testimony of witness Engineer Dr Alex Rizzo summoned by the Authority

Having noted the minutes of the Board hearing on the 28th September 2021 reproduced above

Whereby, the appellants contend that:-

- a) Arkafort Ltd offered the requested software on which the Contracting Authority sought clarification and whilst agreeing that the battery design module includes fuel cells it stated that it covers most items and offered the Authority a different module which has all fuel cells
- b) If the Authority wanted something different to what Appellant was offering it was possible for them to take up this offer – instead they decided to cancel the tender.

The Board also noted the letter of reply dated 7th July together with its verbal submissions during the hearing on the 28th September 2021.

Whereby, the Contracting Authority contends that:

- a) A clarification was requested from the Appellant by the Departmental Contracts

Committee. With reference to the battery and fuel cells module, the appellant was requested "to indicate where in your literature it is stated that the battery includes fuels cells." (Doc. MCAST3);

b) The Appellant replied to the clarification by stating that "The Battery Design Module includes fuel cell and covers most items, however additional module is available covering specific items." (Doc. MCAST4). As outlined in the appellants' attachment with the clarification response (Doc. MCAST 5) the software includes both a Battery Design Module and a Fuel Cell & Electrolyzer Module, however said Fuel Cell & Electrolyzer Module was not offered;

Malta College of Arts, Science and Technology contend that the one battery offered by Appellant ex admissis contained some but not all items and identified a different module which however was not offered to the Appellant.

The Board also noted the testimony of Engineer Dr Alex Rizzo (called as a witness by the Authority) who under oath displayed on screen the data evaluation requirement and indicated under Physics Interfaces section where the offer had failed to meet the tender requirements under the Hydrogen Fuel Cell heading.

In conclusion after the Board considered the arguments and documentation from both parties namely the appellant and the contracting authority, it concludes that not all the items requested by the contacting authority were offered.

The Board concludes and decides that:

- a) Does not uphold the Appellant's Letter of objection.
- b) Upholds the Contracting Authority's decision cancelling the tender.
- c) Directs that the deposit paid by the Appellant not to be reimbursed

Dr Charles Cassar
Chairman

Mr Lawrence Ancilleri
Member

Dr Vince Micallef
Member