

PUBLIC CONTRACTS REVIEW BOARD

Case 1630 – WSC/T/41/2021 – Supply and Delivery of Automatic Power Factor Correction Units for the Reverse Osmosis Plants to the Water Services Corporation.

29th September 2021

The Board,

Having noted the letter of objection filed by Mr Louis Borg acting for and on behalf of ECO Group Ltd, (hereinafter referred to as the appellant) filed on the 8th July 2021;

Having also noted the letter of reply filed by Dr Sean Paul Micallef acting for the Water Services Corporation (hereinafter referred to as the Contracting Authority) filed on the 29th July 2021;

Having heard and evaluated the testimony of the witness Ing Noel Formosa (Member of the Evaluation Committee) as summoned by Dr Sean Paul Micallef acting for the Water Services Corporation;

Having taken cognisance and evaluated all the acts and documentation filed, as well as the submissions made by representatives of the parties;

Having noted and evaluated the minutes of the Board sitting of the 28th September 2021 hereunder-reproduced;

Minutes

Case 1630 – WSC/T/41/2021. Tender for the Supply and Delivery of Automatic Power Factor Correction Units for the Reverse Osmosis Plants to the Water Services Corporation

The tender was published on the 27th April 2021 and the closing date was the 28th May 2021. The value of the tender excluding VAT was € 20,000.

On the 8th July 2021 Eco Group Ltd filed an appeal against the Water Services Corporation 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 were six (6) bidders.

On 28th September 2021 the Public Contracts Review composed of Mr Kenneth Swain as Chairman, Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a public virtual hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellant – Eco Group Ltd

Mr Louis Borg Representative

Contracting Authority – Water Services Corporation

Dr Sean Micallef	Legal Representative
Eng Stefan Cachia	Chairperson Evaluation Committee
Ms Christine Scicluna	Secretary Evaluation Committee
Eng Noel Formosa	Member Evaluation Committee
Eng James Grima	Representative
Eng Anthony Muscat	Representative

Preferred Bidder – Test Measurement Instrumentation Ltd

Eng Stephen Buhagiar Representative

Mr Kenneth Swain 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.

Mr Louis Borg Representative for Eco Group Ltd detailed the points on which his bid was found to be non-complaint, viz:

- Clause 1.1 - he had offered 210kVar as tender requested but Authority claim that they were asking for 215kVar
- Clause 1.0 - bidder offered 400 V but Authority claim they requested 433V
- Clause 2.1- bidder offered rectangular cabinet in which the capacitors cannot all be bunched together while tender indicates they should be partitioned
- Clause 3 – bidder offered 1.6 Ir instead of the 1.5 requested – hence a better offer

Overall Appellant claims that his offer is better than tender requested.

Dr Sean Micallef Legal Representative for the Water Services Corporation said that the technical evaluation had to adhere to what was requested in the Technical Questionnaire. On the individual points raised by Appellant the Authority replied as follows:

- Clause 1.1 – tender clearly requested 212.5kVar (page 14)
- Clause 1.0 - tender requested 433V and not 400 as offered (page 13)
- Clause 2.1 – problem here was not with the shape of the cabinet but with the segregation of the contents
- Clause 3.0 – offer does not comply with the tender which asked for 200 times rated current (page 18)

Eng Noel Formosa (153867M) called as a witness by the Contracting Authority testified on oath and explained the significance of the process for the requirements in Clause 3 of the tender. The offer of 1.5Ir gave no indication of the relation between the figure offered to the rated current. The voltage

capacity of the panel at 433V is the standard used by the Corporation and bidder should have clarified this point before offering a 400V panel.

In reply to a question by the Chairman bidder confirmed that he had not sought any clarifications but maintained that the information requested was not clear.

Dr Micallef said that the points on the first three items were very clear and if not clear should have been clarified before tendering or through a call for remedy. The Evaluation Committee followed the correct procedure.

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

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 28th September 2021.

Having noted the objection filed by Mr Louis Borg (hereinafter referred to as the Appellant) on 8th July 2021, refers to the claims made by the same Appellant with regards to the tender of reference WSC/T/41/2021 listed as case No. 1630 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Mr Louis Borg

Appearing for the Contracting Authority: Dr Sean Paul Micallef

Whereby, the Appellant contends that:

- a) The product offered in the Tender is equivalent or of higher quality than the one requested, therefore Clauses 1.1 to 3.0 in the rejection letter were all honoured.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 29th July 2021 and its verbal submission during the virtual hearing held on 28th September 2021, in that:

- a) In their Technical Offer the Appellant stated that the maximum 'kVar' which their product can deliver is that of 210 kVar. However, clause 1.1 of the Technical Specifications specifies that the two Automatic Power Factor Correction units being requested must be able to handle up to 212.5 kVar.

- b) In their Technical Offer the Appellant stated that the voltage rating of their product's panel is that of 400V 50Hz. Contrarily, Clause 1.0 of the Technical Specification specifies that the *"APFC panel shall be rated for use on a 3phase + neutral network with a nominal rms voltage of 433 Vac at 50Hz"*.
- c) In their Technical Offer the Appellants stated that the form factor of the panel is that of a *"rectangular cabinet"*. Under Paragraph 8 of Clause 2.1 of the Tender Specifications it has been stipulated that *"The construction of the equipment shall be fully compliant with the requirements of Form 4 Segregation. Each capacitor bank shall be segregated from each other and shall offer modular design with over temperature protection"*. Such segregation of the internal volume of each panel reduces the risk exposure to electrical hazards. Therefore, the question does not refer to the external shape of the panel but to the Forms of internal separation inside the panel. For their offer to be deemed compliant in this regard, the Appellant had to reply with 'Form 4' and not 'rectangular cabinet' in view of Clause 2.1 of the Technical Specifications. The reason for such a requirement is that the Evaluation Committee must ensure that the eventual contractor is aware of the above when designing / constructing the panel.
- d) In their Technical Offer the Appellants stated that the maximum inrush transient current withstand capacity for the capacitors is '1.5 – Ir including combined effects of harmonics, overvoltages and capacity.' Such figures were deemed to be non-compliant with Clause 3.0 of the Technical Specifications which requires that the 'Maximum inrush transient current withstand capacity not less than 200 times rated current.'
- e) It is important to note that the Evaluation Committee could not ask the Appellant to rectify their Technical Offer given that the latter is governed by Note 3.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties including the testimony of the witness duly summoned, will consider Appellant's grievances, as follows:

- a) The Board refers to the Technical offer as submitted by the Appellant company, which is a document / submission which falls under 'Note 3', i.e. *"No rectification shall be allowed. Only clarifications on the submitted information may be requested."*
- b) This Board will elaborate in detail with regards to two out of four reasons for the deemed non-compliance of the proposed bid by the Appellant company.
 - i. Reference is made to **Clause 1.0** Section 3 of the Tender Dossier whereby *"The APFC panel shall be rated for use on a 3 phase + neutral network with a nominal rms voltage of 433Vac at 50 Hz."*The Technical Offer submitted by Appellant company was that of 400Vac 50 Hz. Such inconsistencies render the proposed bid as technically non-compliant. Technical

arguments that the panel was to have rms voltage of 400Vac 50 Hz were to be clarified by a ‘call for remedies’ in accordance with regulation 262 of the Public Procurement Regulations.

- ii. Reference is made to **Clause 1.1** Section 3 of the Tender Dossier whereby “... *the kVAr values mentioned in the below tables shall at least be provided. The two automatic power factor correction units shall then be as follows: Reactive Power at 433Vac / kVAr – 212.5*” The Technical Offer submitted by Appellant company was that of 210 kVAr. Such inconsistencies render the proposed bid as technically non-compliant. Technical arguments were to be addressed by a clarification request or clarified by a ‘call for remedies’ in accordance with regulation 262 of the Public Procurement Regulations.

This Board opines that should the Evaluation Committee have requested the Appellant company to amend and / or rectify its Technical Offer, it would have deviated from the principle of self-limitation which is so crucial in Public Procurement. Hence the Evaluation Committee ensured a level playing field between all prospective bidder and participants in this tendering procedure.

Finally this Board does not uphold the Appellant’s grievances.

The Board,

Having evaluated all the above and based on the above considerations, concludes and decides:

- a) Does not uphold Appellant’s Letter of Objection and contentions,
- b) Upholds the Contracting Authority’s decision in the recommendation for the award of the tender,
- c) Directs that the deposit paid by Appellant not to be reimbursed.

Mr Kenneth Swain
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member