

Mr Anthony Falzon said that in his view the generator offered by him met the dimensions requested in the tender.

Dr Sean Paul Micallef Legal Representative for the Water Services Corporation referred to the letter of reply which outlined the reason for the rejection, namely that the model number and the length of the generator submitted in the technical literature differed from that requested in the tender. A different model number had been offered which was clearly an oversight when uploading the documents. The evaluation committee are bound to follow the submitted offer.

Mr Falzon said that he did not notice that the equipment suppliers had sent him literature with incorrect details. He offered the correct equipment but the wrong literature.

The Chairman pointed out that the evaluators can only deal with the submissions made which must agree with the technical literature.

Dr Micallef confirmed that this was a case where a clarification could not be asked for.

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

End of Minutes

Decision

This Board,

having noted this objection filed by Mr Anthony Falzon (hereinafter referred to as the Appellant) on 4th December 2020, refers to the claims made by the same Appellant with regard to the tender of reference WSC/T/61/2020 listed as case No. 1535 in the records of the Public Contracts Review Board recommended for award by Water Services Corporation (hereinafter referred to as the Contracting Authority).

Appearing for the Appellant:

Mr Anthony Falzon

Appearing for the Contracting Authority: Dr Sean Paul Micallef

Appearing for the Recommended Bidder: Mr Chris Paul Attard

Whereby, the Appellant contends that:

- a) **His offer was compliant, although the technical literature, through an oversight, stated the incorrect model number thus giving dimensions which were different from those requested in the tender document. In this respect, Appellant maintains that his offer was technically compliant but inadvertently accompanied by the wrong literature.**

This Board also noted the Contracting Authority's 'Letter of reply' dated 15th December 2020 and its verbal submissions during the virtual hearing held on 26th January 2021, in that:

- a) **The Authority contends that the model number and the length of the generator were different from those stipulated in the tender document. In this regard, the Authority had no other option but to deem Appellant's offer as 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 is

relevant in this particular case is the Appellant's submissions relating to the technical literature.

- 1. It must be stated that, the technical literature forms an integral part of the technical specifications stipulated in the tender document.**
- 2. The request for technical literature is not capriciously made but such documentation serves as a guideline and evidence to the Contracting Authority that, the product which the bidder is offering is available on the market and the specifications denoted in the technical literature conform with those stated in the bidder's technical offer.**
- 3. In this particular case, this Board notes that, Appellant was not cognisant of the fact that, the model number referred to in the technical literature was the incorrect one thus having different specifications from those stipulated in the tender document.**
- 4. This Board would respectfully point out that, the Evaluation Committee can only adjudicate offers on the submissions made by tenderers and since the technical literature forms an integral part of the technical specifications, it cannot be clarified, hence the Evaluation Committee had no other option but to deem Appellant's offer as technically non-compliant.**

In view of the above, this Board,

- i. does not uphold Appellant's contention,**

- ii. upholds the Contacting Authority’s decision in the award of the tender,**
- iii. due to the inadvertent circumstances surrounding this particular case, same**
Board directs that the deposit paid by Appellant be fully refunded.

Dr Anthony Cassar
Chairman
27th January 2021

Mr Lawrence Ancilleri
Member

Mr Carmel Esposito
Member