

PUBLIC CONTRACTS REVIEW BOARD

Case 1331 – WSC/T/63/2019 – Framework Agreement for the Supply and Delivery of PPR Manifolds for the Water Services Corporation

Remedy before Closing Date of a Call for Competition

The publication date of the call for tenders was the 28th May 2019 whilst the closing date was the 4th July 2019. The estimated value of the tender (exclusive of VAT) was € 416,573.47.

On the 26th June 2019 Mr Russlan Cilia sought a Remedy against the Water Services Corporation as the Contracting Authority requesting correction of certain parts of the tender specifications.

On 25th July 2019 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Mr Lawrence Ancilleri and Mr Richard Matrenza as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellant – Mr Russlan Cilia

Not represented

Contracting Authority – Water Services Corporation

Dr Sean Paul Micallef	Legal Representative
Eng Pierre Cassar	Member Evaluation Committee
Ms Kirstie Grech	Member Evaluation Committee
Mr Jonathan Scerri	Representative

Dr Anthony Cassar, Chairman of the Public Contracts Review Board, welcomed the attendees and noted that the Board had been waiting for the Appellant to turn up for forty-five minutes, and had been unable to contact him despite several attempts. Under the circumstances the Board will deal with this Case on the basis of the written submissions. He then declared the hearing closed.

This Board,

having noted ‘Call for Remedy prior to the Closing Date’ filed by Mr Russlan Cilia (herein after referred to as the Appellant) on 26 June 2019, refers to the

claims made by the same Appellant with regard to the Tender of reference WSC/T/63/2019 listed as case no 1331 in the records of the Public Contracts Review Board.

Appearing for the Appellant: In Absentia

Appearing for the Contracting Authority Dr Sean Paul Micallef

Whereby, the Appellant contends that:

- a) with regards to the manifold, the Authority did not state which one of the drawings, out of the three provided, is to be used. In this regard, through various clarifications requested, it appears that the Authority itself is not certain which drawing for each manifold, will be applied;**

- b) the period of delivery of each order is stated at two hours from the issue of the purchase order. In this respect, apart from the fact that the delivery time is unreasonable, each manifold must be manufactured, and the necessary certificates provided so that, such a delivery period is impossible to be achieved;**

- c) with regard to the insurance cover for a product liability policy, the amount dictated to cover each damage is much too high, apart from the**

fact that the product supplied will be modified during the works, the latter activity being outside the control and supervision of the supplier.

This Board also noted the Contracting Authority's 'Letter of Reply' dated 8 July 2019 during the hearing held on 25 July 2019, in that:

- a) the Authority maintains that the drawings supplied with the tender document are only meant for reference of the typology of manifolds and these will be ordered in accordance with the needs of the Authority;**

- b) with regards to the delivery time of two hours from the issue of purchase orders, such a requirement is based on the usual market practice and past tenders' performance;**

- c) the Authority maintains that the insurance policy required is to cover against manufacturing defects of the pipe and fittings and this should not increase the costs, as such a policy is part and parcel of the cost of the material.**

Due to the fact that, Appellant, without giving any due notice, did not attend the hearing, this Board will consider Appellant's concern on the submissions

made in his ‘Letter of Objection’ dated 26 June 2019. After having examined the relevant documentation to this ‘Call for Remedy’, this Board opines that the issues that deserve consideration are:

- **Drawing Submitted with Tender Document**
- **Delivery Time of the Product**
- **Insurance Coverage**

1. Drawings Submitted by the Contracting Authority

With regard to Appellant’s first contention in that, the Authority did not specify which of the drawings is to be applied to each manifold, this Board would refer to clarification number three dated 5 June 2019, as follows:

“Question 1:

None of the replies so far have thrown any clarity on what you actually require. With your last response you only looked at price considerations. But not to the actual product, importation and delivery. I will try to explain. I will exaggerate purposely to make the point. But the example applies to any manifold requested which has more than 4 to 6.

Let us take item 13 in your financial Bid List. This has 14 Ports. If things remain as they stand this could be according to each of the three types of drawings. So, what will happen when we come to order this item. To which drawing shall we request this item. To drawing 1, Drawing 2 or Drawing 3?

Reply 1:

The PPR manifolds shall be ordered by means of email. The tender clauses of the Non-Technical tender specifications clauses 2 and 3 state that the orders shall be done by email. The exact type of manifold will be clearly indicated in the email. Due to the varied type of water meter setups is sometimes constrained by the available space at customers and number of consumers in a single block, therefore different typologies may be necessary. Thus, to continue with the example of the item referred to in the query, the way these can be ordered are:

- Please supply 14 port manifold with straight inlet and ports all on same side, or*
- Please supply 14 port manifold with tee inlet and ports all on same side, or*

- *Please supply 14 port manifold with straight inlet ports all on same side with final port finishing in an elbow, or*
- *Please supply 14 port manifold with tee inlet and 10 ports on one side and 4 ports on opposite side, etc.*

This contract is a period contract that shall last for three years as indicated in the instructions to tenderers. This quantities in the bill are an estimate for evaluation purposes and the exact quantities may vary.”

From the above Authority’s reply, it is being explained that first and foremost, the drawings submitted with the tender document, are for reference to what is basically being required. In its reply the Authority did not specifically indicate which type of definite drawing for each manifold, will be applied.

- 2. One of essential elements to considered, when drafting technical specifications, is that such specifications must be clear and unambiguous so that, the bidder understands exactly what the Authority is requesting. In this regard, the reply to clarification number three, should be amplified to formulate a direct reply to the question raised by Appellant.**

3. Delivery time of Product

With regard to Appellant's second concern, this Board takes note of the fact that, from past experience, the Authority is confirming that such a time limit of delivery, was based on actual market practise and past tenders having similar stipulations, without any negative feedback from the economic operator, so that, this Board finds no justifiable cause why such a practice cannot be applied and continued.

- 4. One must also take into consideration that such requests for procurement are not capriciously ordered but are effected in emergency circumstances which the Authority cannot predict. At the same instance, from documentation made available to this Board, the latter notes that there are several suppliers in Malta who can provide such a requisite, in the dictated delivery time. Such instances can be proved to be possible from past tenders for the same product, so that, in this regard, this Board opines that due to the exceptional circumstances, such a condition is truly justified.**

5. Insurance Coverage

With regard to Appellant’s third concern, this Board refers to clause two, section four, as follows:

“2. The rigid polypropylene pipe shall be guaranteed by the parent manufacturer for 10 years for product liability with an insurance cover of grater [greater??] than €1,000,000 per damage event. The pipe material shall be designed to give fifty (50) year service life, operating continuously at 24 bar at temperatures up to 20°C and 12 bar at temperatures up to 60°C. Diameter to wall thickness ration[ratio??] shall not exceed an SDR of 7.4. Pipes shall be mechanically stabilized by a multilayer composite to limit linear expansion to 0.15mm/mK. Connections for PPR material shall [be??]by means of thermal fusion.”

This Board acknowledges the fact that, the Authority must safeguard itself against any defective product and bad workmanship and in this respect, it is not the remit and prudence of this Board to determine an amount for such an eventuality. However, the above-mentioned clause does create confusion and misunderstanding to the prospective bidder.

6. In this regard, this Board opines that such an insurance cover be stipulated to accommodate separately, a cover for the manifold itself, the fittings and the labour content involved in the laying and installation of the product being tendered for.

In conclusion, this Board opines that:

- a) the Authority should clarify more explicitly the reply to the clarification request number three and reply in a direct mode to Appellant's request;**
- b) the delivery time of two hours from the issue of purchase orders, is justified and proven from past tender's performance and should be continued;**
- c) insurance coverage should be broken down into supply of manifold, fittings and laying and installation under separate coverage.**

In view of the above, this Board,

- i. directs that, through a clarification note the Authority will amplify the reply to clarification note number three;**

- ii. directs that, through a clarification note, the Authority will amend article two of section four, to reflect this Boards' opinions;**

- iii. directs that, the closing date of submissions be extended by fifteen days, to allow prospective bidders to submit realistic offers.**

Dr Anthony Cassar
Chairman

Mr Lawrence Ancilleri
Member

Mr Richard A. Matrenza
Member

1 August 2019