

PUBLIC CONTRACTS REVIEW BOARD

Case 1488 – CFQ 004/2020 – Quotation for the Supply, Delivery, Installation and Commissioning of Six (6) Split-Type Air Conditioning Units at Different Sections of the Ministry for Transport, Infrastructure and Capital Projects

The tender was published on the 7th April 2020 and the closing date of the tender was the 28th April 2020. The estimated value of the tender (exclusive of VAT) was € 7,900.

On the 3rd July 2020 Cassar Airconditioning Systems Ltd filed an appeal against the Ministry for Transport, Infrastructure and Capital Projects 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 eleven (11) bidders.

On 14th September 2020 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Richard Matrenza as members convened a public virtual hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – Cassar Airconditioning Systems Ltd

Mr Glen Mercieca Representative

Contracting Authority – Ministry for Transport, Infrastructure and Capital Projects

Dr Mark Sammut	Legal Representative
Mr Anthony Camilleri	Chairperson Evaluation Committee
Eng Roberta Vella	Member of the Evaluation Committee
Mr Marco Cassar	Representative

Dr Anthony Cassar 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. He then invited submissions.

Mr Glen Mercieca Representative of Cassar Airconditioning Systems Ltd said that his Company's appeal was based on their letter of 3rd July complaining that they had been disqualified even though they offered the unit that met the tender requirement.

Dr Mark Sammut Legal Representative for the Ministry for Transport, Infrastructure and Capital Projects said that the model offered by bidders was not specified in the literature submitted as the code number was different, so the Evaluation Committee chose the model number nearest to what the tender requested.

Mr Mercieca said that in the Financial Bid the correct model number had been indicated but the technical literature showed a one letter difference on that model. Inexplicably the Evaluation Committee opted to choose the smaller (5.3Kw) (CS 18) model rather than the next higher (6.1Kw) (CS24) model thus making their offer non-compliant.

Eng Roberta Vella a member of the Evaluation Committee pointed out that that code number shown in the financial bid was not shown in the literature submitted. This was confirmed by Mr Anthony Camilleri Chairperson of the Evaluation Committee who said that this omission was not rectifiable as it came under Note 3.

Dr Sammut pointed out that the technical evaluation precedes the financial assessment and therefore Appellants' bid was non-compliant at that stage.

The Chairman pointed out that the reasoned letter of reply should have come from the Contracting Authority and not the Evaluation Committee. He then thanked the parties for their submissions and declared the hearing closed.

End of Minutes

Decision

This Board,

having noted this objection filed by Cassar Airconditioning Systems Ltd (hereinafter referred to as the Appellants) on 3rd July 2020, refers to the claims made by the same Appellants with regard to the tender of reference CFQ 004/2020 listed as case No. 1488 in the records of the Public Contracts Review Board recommended for award by Ministry of Transport, Infrastructure and Capital Projects (hereinafter referred to as the Contracting Authority).

Appearing for the Appellants: Mr Glen Mercieca

Appearing for the Contracting Authority: Dr Mark Sammut

Whereby, the Appellants contend that:

- a) Their concern refers to the fact that, the Authority alleged that, their offer was rejected due to the fact that, the product offered did not meet the tender requirement. In this regard, Appellants maintain that, in the Financial Bid Form, the correct model number, which satisfies the stipulated requirements, was clearly indicated.**

This Board also noted the Contracting Authority's 'Letter of reply' dated 15th July 2020 and its verbal submissions during the virtual hearing held on 14th September 2020, in that:

- a) The Authority maintains that the model offered was not specified in the technical literature submitted by Appellants, to the effect that, Appellants' offer was deemed technically non-compliant at this particular stage of the evaluation process.**

This Board, after having examined the relevant documentation to this appeal and heard submissions made by the parties concerned. Opines that, the issue that merits consideration is the technical literature submitted by Appellants.

- 1. This Board would respectfully point out that, the evaluation process consists of three stages namely, administrative, technical and financial. Where an offer is deemed to be non-compliant in any of these mentioned stages of evaluation, same offer does not proceed to the next adjudication process.**
- 2. It is also important to mention the fact that, whenever the Authority requests the submission of the manufacturer's technical literature, such documentation is not capriciously stipulated. The technical literature must compliment and confirm all the specifications as duly declared by the bidder in his technical submissions.**
- 3. In this particular case, Appellants' duly submitted literature did not include the model offered by them and such an event was detected during the technical evaluation stage and since, the technical process falls under note 3, no clarification or rectification is allowed so that, Appellants' offer was appropriately deemed technically non-compliant.**
- 4. The fact, that, the correct model number was indicated in the Financial Bid Form is irrelevant, as Appellants' offer was rejected at the technical adjudication stage and could not proceed to the financial assessment stage.**

In view of the above, this Board

- i. does not uphold Appellants' contentions,**
- ii. upholds the Contracting Authority's decision in the award of the quotation,**
- iii. directs that the deposit paid by Appellants should not be reimbursed.**

Dr Anthony Cassar
Chairman
18th September 2020

Dr Charles Cassar
Member

Mr Richard A Matrenza
Member