PUBLIC CONTRACTS REVIEW BOARD

Case 1535– WSC/T/61/2020 – Supply and Delivery of Diesel Generator to the Water Services Corporation

The tender was published on the 15th June 2020 and the closing date of the tender was the 31st July 2020. The estimated value of the tender (exclusive of VAT) was € 120,000.

On the 4th December 2020 Mr Anthony Falzon filed an appeal against the Water Services Corporation as the Contracting Authority objecting to his disqualification on the grounds that his bid was not technically compliant.

A deposit of € 600 was paid.

There were twenty (20) bidders.

On 26th January 2021 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Mr Lawrence Ancilleri and Mr Carmel Esposito as members convened a public virtual hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellant - Mr Anthony Falzon

Mr Anthony Falzon Representative

Contracting Authority – Water Services Corporation

Dr Sean Paul Micallef Legal Representative

Eng David Sacco Chairperson Evaluation Committee
Mr Louis Pullicino Secretary Evaluation Committee
Eng Kyle Alamango Member Evaluation Committee

Eng Anthony Muscat Representative

Recommended Bidder - Attrans Commercials Ltd

Mr Chris Paul Attard 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 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

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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