

PUBLIC CONTRACTS REVIEW BOARD

Case 1232 – HO/DO/2209/2018 –DPS Security Road Barriers and Turnstiles

The publication date of the call for tenders was the 23rd January 2018 whilst the closing date of the call for tenders was 12th June 2018. The estimated value of the tender (exclusive of VAT) was € 15,000.

On the 15th October 2018, Alberta Fire & Security Ltd filed an appeal against Enemalta plc as Contracting Authority objecting to being disqualified on the grounds that their offer was not compliant. A deposit of € 400 was paid.

There were three (3) bidders.

On 15th November 2018 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Carmel Esposito as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – Alberta Fire & Security Ltd

Dr Ryan C Pace	Legal Representative
Mr Karim Cassar	Representative
Mr Carl Mizzi	Representative

Recommended Bidder – Firetech

Dr Antoine Naudi	Legal Representative
Mr Brian Vassallo	Representative

Contracting Authority – Enemalta plc

Dr Clement Mifsud Bonnici	Legal Representative
Eng Johann Zammit	Chairman Evaluation Committee
Mr Charles Cassar	Member Evaluation Committee
Eng Damian Baldacchino	Member Evaluation Committee
Eng Ivan Bonello	Representative

Dr Anthony Cassar, Chairman of the Public Contracts Review Board, welcomed the parties and invited submissions. He regretted that the letter of rejection had not been sent and urged adherence to the procurement procedures.

Dr Clement Mifsud Bonnici Legal Representative of Enemalta plc pointed out on a point of principle that Appellants' letter of objection was very brief and not detailed contrary to section 270 of the Public Procurement Regulations.

Dr Ryan Pace Legal Representative of Alberta Fire & Security Ltd (Alberta) started his submission by stating that his clients' appeal was based on the change of basis of adjudication during the evaluation process by the Contracting Authority. The final instructions misguided Appellants on the final price to be quoted, and hence the brief letter of rejection. In their e-mail of 23rd January 2018 Enemalta requested quotations and asked for compliance lists for two lots to be supplied. Three bids and four offers were submitted on the 23rd February. Alberta submitted two offers one for around € 10,000 and one for around € 18,000. Prior to that and quite separately the Contracting Authority had sent technical specifications to Alberta for an Access Control System (ACS). Alberta was asked if they met these requirements and they asked for a bill of materials, which was never supplied as they were advised to abide by the list of the 29th January. On the 16th March 2018 they were requested to submit a lump sum offer. There were further communications leading to a meeting on 2nd May 2018 – subsequent to this Mr Carl Mizzi was asked for quotations for an ACS. Alberta enquired if quotations were required for the tender and separately for the ACS. By means of an email on the 1st June 2018 Mr Damian Baldacchino advised Alberta that one offer only was required for both parts, which obviously led to a higher price being quoted. The amount tendered by Firetech was € 17,000 – a difference of € 20,000 between the winning bid and Alberta's since the ACS was not included in the former's offer.

Dr Mifsud Bonnici said that the misguidance claimed by Appellant was due to a misunderstanding of the tender requirements on their own part. The ACS was not within the orbit of the tender and was never requested in the RfQ. The mistake should have been realised as the ACS covers a separate system.

Mr Carl Mizzi (297484M) called as a witness by Alberta, testified on oath that he was the Project Leader and in charge of submitting the tender offer. The RfQ of the 23rd January asked for quotations for barriers and half waist turnstiles which had to be integrated with the ACS. On the 29th January Appellant received technical specification that ACS was compliant and explained the type of technology to be used and the necessary interfacing with the system. Alberta submitted two offers one for around € 10k and a superior one for around € 18k both offering additional optional items which from experience bidder felt would be required. On the 16th March two compliance lists were received as well as a request to submit lump sum offers instead of itemised prices – these lists were identical to the specifications in the RfQ. On the 1st June Appellants were asked to include the options on the ACS and the barriers and turnstiles as one offer, to which they complied by return – the cheaper option had now risen to over € 38k and the other to over € 48k. On the 5th October 2018 Appellants were notified that their offer had not been accepted.



Questioned by Dr Mifsud Bonnici witness confirmed that there was an agreement with Enemalta to replace the old AMPR system (car number recognition system) by an ACS and that those technical specifications were provided. An e-mail of the 1st June from Mr Ian Stafrace referred to the special agreement for the provision of the ACS as a separate matter from the actual tender. Witness confirmed that the 4th June e-mail from Mr Damian Baldacchino indicated that the matters were to be considered separately.

In reply to a question from Dr Pace witness confirmed that in the 29th January specifications there was no mention of the ACS.

Eng Damian Baldacchino (543389M) called as a witness by Alberta, testified on oath that he was a Compliance Officer and a member of the evaluation committee. The RfQ (for which three bids and four offers were submitted) requested offers for barriers and turnstiles capable of integrating with any ACS. This requirement never changed throughout the process. Firetech and Dago Elettronica offered their own systems which could integrate with any ACS.

In reply to questions from Dr Pace witness confirmed that the 29th January e-mail refers to the technical specifications whilst the 16th March e-mail clarified the compliance lists (also referred to as technical specifications) and asked for a lump sum price. He also confirmed that the 23rd March offer of Alberta was technically compliant. Witness further confirmed that in an e-mail of the 1st June he had requested bidders to submit one offer “as they were no longer being considered separately”. Witness did not communicate further with bidders after that.

The Chairman said that the Board wanted to establish that Appellants offer was compliant and that the offers are looked at on a like for like basis.

Dr Mifsud Bonnici stated that the Contracting Authority had asked for offers on a lump sum basis. Taking Alberta’s cheapest offer of €38K it was still higher than the preferred bidder even if the cost of the ACS was removed. The onus is on the bidder to ensure how he submits his offer.

Dr Pace said that when the RfQ was issued the cost of spares was asked for on an optional basis – since Alberta were the only bidder to include them their cost should be disregarded in the final calculations so as to treat the bids on a like for like basis. Once removed then Alberta’s bid would be the cheapest. When Appellants put in their offers in March they were compliant, but the e-mail of the 1st June misguided them as it determined their final offer on which the tender was adjudged. If this fact is ignored it prejudices the Appellant.

The Chairman noted that the e-mail of the 1st June does not relate to the rest of the e-mails sent by the Contracting Authority.

Dr Mifsud Bonnici said that according to the procurement principles an offer should be clear and unambiguous – Firetech and Dago understood the requirements perfectly and there were no problems there – it was only Alberta who got themselves confused. The RfQ was clear – the



hardware had merely to be capable to be interoperable with the ACS. The evaluation committee had judged correctly on the global price of the offers, otherwise they would have been disregarding the Public Procurement Regulations.

This Board,

having noted this Objection filed by Alberta Fire & Security Limited, (hereinafter also referred to as the Appellants), on 15 October 2018, refers to the contentions made by the same Appellants with regards to the award of Tender of reference HO/DO/2209/2018 listed as Case Number 1232 in the records of the Public Contracts Review Board, awarded by Enemalta plc, (hereinafter also referred to as the Contracting Authority).

Appearing for the Appellants: Dr Ryan C Pace

Appearing for the Contracting Authority: Dr Clement Mifsud Bonnici

Whereby, the Appellants contend that:

- a) **their offer, although it was the cheapest, was discarded due to the fact that following the instructions through a clarification, they included a quotation for an Access Control System, (ACS). In this regard, the Appellants insist that, if this inclusion is disregarded by the Contracting Authority and ~~compare~~ all offers are compared on a “like with like” basis, their offer is fully compliant and the cheapest.**



This Board has also noted the Contracting Authority's "*Reasoned Letter of Reply*" dated 25 October 2018 and its verbal submissions during the Public Hearing held on 15 November 2018, in that:

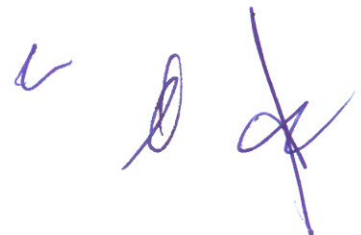
- a) Enemalta plc insists that the Appellants based their offer on the wrong assumptions. The technical specifications were clear and the Appellants included items which were not requested by the Contracting Authority and being a lump sum offer, Alberta Fire & Security Limited's offer, although compliant was not the cheapest.

This same Board has also noted the testimony of the following witnesses duly summoned by Alberta Fire & Security Limited, namely:

1. Mr Carl Mizzi
2. Eng Damian Baldacchino

This Board, after having examined the relevant documentation and heard submissions made by the parties concerned, including the testimony of the witnesses, opines that the main issue of this Appeal relates to the composition of Alberta Fire & Security Limited's offer and its corresponding quoted price.

1. First and foremost, this Board regretfully notes that Enemalta plc failed to issue a "*Letter of Rejection*" to Alberta Fire & Security Limited and in this regard, this Board would remind the Contracting Authority



that such a “*Letter of Rejection*” of offers is a mandatory obligation under the Public Procurement Regulations and the “*Notice of Award*” sent to the Appellants does not constitute a “*Letter of Rejection*” with proper and specific reasons for the discarding of the Appellants’ offer.

2. It is one of the basic principles of Public Procurement Regulations that each offer is treated and evaluated on a level playing field with the other competing bids. In this particular case, the request for quotation consisted of two lots, (Lot 1 and Lot 2). At the same instance, the quoted price had to be on a global sum basis. Lot 1 referred to “*Gate Infrastructure*” and Lot 2 referred to “*Turnstiles*”, so that the Evaluation Process had to be carried out on these two items of each offer submitted. From the Evaluation Report, this Board notes that the Evaluation Committee deemed that the Appellants’ financial offer was notably higher than that of the successful Bidder by approximately € 20,000.

3. At this stage of consideration, this Board notes that Alberta Fire & Security Limited’s offered price included the costs of “*Supply and Install Access Control System*”, which represented a total price of € 19,310 and

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which was not included in the other competing bids, so that, this Board would point out that the Evaluation Committee's conclusion, in that the Appellants' bid was excessively higher than that of the Preferred Bidder, by approximately € 20,000 is not correct and the Evaluation Board's recommendations, in their report, was somewhat misleading. For the sake of clarity, this Board opines that the statistical comparison of offer should be as follows:

	Alberta Fire & Security Limited	Firetech	Dago Elettronica
Gate Infrastructure	€ 6,967	€ 4,143	€ 12,423
Turnstiles	€ 12,358	€ 15,232	€ 37,515
Total	€ 19,325	€ 19,375	€ 49,938

4. This Board would consider the incidence of the Appellants' inclusion of the cost of the "Access Control System" and in this regard, this same Board would respectfully refer to extracts from the "Request for Quotation" document, as follows:

“Access Control System Requirements for Vehicles and Pedestrians

The access control system has to be in line with the following requirements:

a) Pedestrian Access

<i>Requirement Description</i>
<i>The access control for Pedestrian Access must be through turnstiles</i>
<i>Opening method shall be by means of card readers which authenticates whether a card is allowed/declined and shows card owner details on a GUI at the Security Guard Room</i>
<i>Three types of cards are required:</i> <i>a. Employee access cards</i> <i>b. 1-month access cards for long term contractors/visitors</i> <i>c. 1-day access card for visitors</i>



b) Vehicle Access

<i>Requirement Description</i>
<i>The access control for Vehicle Access (including driver and passengers) must be through the scanning of cards by means of handheld readers</i>
<i>Each vehicle will have a dedicated card that will be scanned by a handheld reader</i>
<i>The driver and any passengers within the vehicle are to be logged in the system with the same handheld reader</i>
<i>Qty 2 handheld readers have to be included in the scope of this RFQ</i>
<i>The gate will be operated manually by the security guard after a valid card has been presented by the vehicle, driver and passengers, if any. The reader must verify graphically and by an audio tone that the presented card is allowed/declined</i>



c) *Proof of design*

<i>Requirement Description</i>
<i>The Access Control Module must be scalable, robust and reliable in terms of volumes of alert handling and support high availability setups.</i>
<i>The contractor must provide proof of such qualities</i>
<i>The Bidder is required to submit a complete system design including necessary schematics to prove that the system being offered meets Enemalta requirements.</i>

d) *General – Requirements*

<i>Requirement Description</i>
<i>The Bidder must confirm that the access control system must interface with the existing Advancis WinGuard Physical Security Information Management (PSIM) System</i>
<i>The Bidder must confirm that the access control system is able to interface with further Electronic Visitor Management Systems</i>
<i>Ideally the Access Control Systems shall support the following PSIM interfaces:</i>



- *KABA – EXOS 9300/B-COMM/B-COMM Java*
- *Siemens – SIPass/SiPort/SPC*

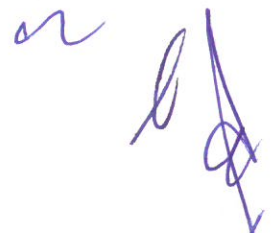
The Bidder must confirm that the access control system is compatible with any gate/turnstile infrastructure and must stipulate any necessary hardware requirements/restrictions”

It is evidently clear that the “*Access Control System*” has been given the prominence in the requirements of the “*Call for Quotation*” and such prominence does give the impression that the latter system has to form part of the offer. Even so, this Board would respectfully refer to an e-mail dated 1 June 2018 whereby, Engineer Damian Baldacchino, representing Enemalta plc, confirmed to Alberta Fire & Security Limited what had to be included, as follows:

“Good Afternoon Damian,

With reference to the below request kindly advise:

- *include license software for up to 16 doors, (we will go for the system with up to 1000 card holders for now)*



this is the option we propose in Quota Rev 6 – Please confirm

- *include the barrier (including the canopy) and turnstiles costs – please clarify – canopy requirements was on the turnstiles/barrier tender not on the access control.*

Do we need to amend both the tender and Access Control offers?

Regards

Carl Mizzi

Design and Proposals Executive”

The reply to the above request for clarification was as follows:

“Dear Carl,

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yes please include the option proposed in the first quote. The access control system, barrier, canopy and turnstiles are to be considered as one offer. They are no longer being considered separately. Thanks.

Best Regards

Damian Baldacchino

Manager Compliance

Compliance Office

Enemalta plc”

From such correspondence, this Board opines that the communication between Alberta Fire & Security Limited and Enemalta plc were somewhat confusing and in this regard, this Board would remind the Contracting Authority that the technical specifications should promote the following features:

- be precise in the way they describe the requirements;
- be easily understood by the prospective Bidders;
- have clearly defined, achievable and measureable objectives.



In this respect, this Board opines that the technical requirements do give the understanding that the Access Control System is part of the offer.

5. In conclusion, this Board,

- i) does not uphold Enemalta plc's decision in the award of the "*Request for Quotation*";**
- ii) upholds Alberta Fire & Security Limited's contentions and recommends that the deposit paid by the same is to be fully refunded;**
- iii) instructs the Contracting Authority to re-integrate the Appellants' offer in the Evaluation Process taking into consideration this Board's findings and ensure that the principle of "*Level Playing Field*" is strictly adhered to.**

Dr Anthony Cassar
Chairman

27th November 2018

Dr Charles Cassar
Member

Mr Carmel Esposito
Member