

## PUBLIC CONTRACTS REVIEW BOARD

### Case 1876 – WSC/T/78/2022 – Supplies – Supply, Delivery, Installation and Commissioning of Water Quality Monitoring Stations and Instrumentation for AI in Water Blending for Water Services Corporation - LOT 1

6<sup>th</sup> June 2023

The tender was issued on the 9<sup>th</sup> August 2022 and the closing date was the 15<sup>th</sup> September 2022. The estimated value of the tender for Lot 1, excluding VAT, was € 370,000.

On the 24<sup>th</sup> April 2023 Reactilab Ltd filed an appeal on Lot 1 against the Water Services Corporation as the Contracting Authority on the grounds that their bid was deemed to be non-compliant.

A deposit of € 1,850 was paid.

There were ten (10) bids on Lot 1.

On the 30<sup>th</sup> May 2023 the Public Contracts Review Board composed of Dr Charles Cassar as Chairman, Mr Lawrence Ancilleri and Mr Richard Matrenza as members convened a virtual public hearing to consider the appeal.

The attendance for this public hearing was as follows:

#### **Appellant – Reactilab Ltd**

|                     |                      |
|---------------------|----------------------|
| Dr Joseph Camilleri | Legal Representative |
| Mr Stephen Debono   | Representative       |
| Mr Jonas Schlumbohm | Representative       |

#### **Contracting Authority – Water Services Corporation**

|                      |                                  |
|----------------------|----------------------------------|
| Dr Christopher Vella | Legal Representative             |
| Eng Sigmund Galea    | Chairperson Evaluation Committee |
| Eng Ranier Xuereb    | Evaluator                        |
| Mr Sean Dimech       | Secretary Evaluation Committee   |

#### **Preferred bidder – Ferox Trading Ltd**

|                     |                      |
|---------------------|----------------------|
| Dr Stefan Camilleri | Legal Representative |
| Mr Edward Cauchi    | Representative       |
| Mr Vinayak Pandey   | Representative       |

Dr Charles Cassar Acting Chairman of the Public Contracts Review Board welcomed the parties and invited submissions.

Dr Joseph Camilleri Legal Representative for Reactilab Ltd said that this appeal was on Lot 1 and the award was based solely on price. The budget figure for this tender was € 370,000

and both the preferred bidder's offers were well over budget. Appellant was deemed to be technically non-compliant and quoting from the letter of refusal Dr Camilleri said that the tender required one analyser for nitrates and turbidity whilst the offer by Appellant comprised separate sensors for nitrates and turbidity. The Authority allege there were several other shortcomings in Appellant's bid but this argument is inadmissible as the Board cannot decide on matters that they have not been made aware of and hence they cannot be introduced now. The tender required one analyser whilst the Appellant offered one analyser with two sensors which meet the measuring ranges required in the tender. The Authority claim that one sensor is required and that the Appellant offer consisted of an analyser with two sensors. The reason for this offer is technical in that the measuring ranges required in the tender cannot be achieved unless two separate sensors are used – the terms of the tender do not exclude this. The Contracting Authority claim that Appellant is confusing analyser and sensor when in fact they themselves are using the terms interchangeably. The reply to Clarification Note 2 confirms that a turbidity sensor is required: it does not state that a single sensor is required.

Mr Thorsen Knutz (PP No. 1KG06R26) called to testify by the Appellant stated on oath that his background qualification is in water quality treatment and that he is fully aware of the bid offered by Reactilab. He assisted in the preparation of the tender submissions. Witness stated that it was impossible, and against EU requirements to reach the spectrometry measurement range required in the tender (200-720nm) using only one sensor.

Questioned by Dr Christopher Vella Legal Representative for the Water Services Corporation (WSC), witness confirmed that the item shown in figure 2 on page 3 of the Authority's letter of reply was included in the offer by Appellant. Referring to a screenshot witness confirmed that an analyser made by his Company (whose products were offered by the Appellant) indicated a dual analyser but he re-iterated that this did not meet the range required and was not in line with EU regulations for drinking water. A single component was not for measuring drinking water and they had assisted Reactilab to offer what best meets the tender requirements and to fulfill EU regulations. Ranges mentioned in the tender document were for drinking water testing.

Mr Stephen Debono (47373M) called to testify by Appellant stated that the documents displayed in the screenshare had not been submitted in Reactilab's bid. The equipment suppliers (GO Systemelektronik) produced a wide range of equipment and offered what the tender required. Five brochures had been submitted covering nitrates, chlorine, conductivity, nitrates and turbidity. What Reactilab had submitted was one analyser with two sensors. A clarification had confirmed that two sensors could be offered.

Eng Rainier Xuereb (33277M) called to testify by the Contracting Authority stated on oath that he was employed as a mechanical engineer with the WSC and was one of the evaluators of the tender and had written the tender dossier. The Authority required spectrometers which is an analyser which can measure different parameters, and they required just one analyser not two. The offer by Appellant is not for a spectrometer but for a different system. The equipment sought by WSC was new technology in online monitoring and does not require constant calibration and was therefore less expensive to operate. The Appellant was offering a product which does not meet the principle of spectrometer. Ironically GO produce this component but did not offer it in their bid. The preferred bidder

offered one analyser which measures both nitrates and turbidity. Whilst product offered by Reactilab was considerably cheaper it cannot be upgraded for future requirements.

Questioned by Dr Joseph Camilleri, witness disagreed that the Authority was using terms interchangeably – the term used is spectrum analyser which has sensors inbuilt. What WSC required was one analyser that measures different parameters. The preferred bidder was the only bidder to offer the single analyser. The tender required a measurement range of 200 to 720nm precisely chosen to accommodate GO equipment and give everyone a fair chance, but Reactilab decided to take a different route. The maintenance costs are based on the history in using the present equipment.

This concluded the testimonies.

Dr Joseph Camilleri noted that out of all the bidders only one made an offer in line with the tender requirements; a clear indication that other bidders had reached the same conclusion as the Appellant which offer was in line with EU standards and tender parameters. Appellant contends that its offer is practical to operate and cheaper and the maintenance cost is irrelevant in this context. Appellant insists on the return of the deposit should the decision not favour it as the wording in the tender and the subsequent clarification is unclear.

Dr Stefan Camilleri Legal Representative for Ferox Trading Ltd said that the preferred bidder found nothing confusing in interpreting the tender requirements and provided just that. The price difference is not a factor as here one is not comparing like with like. The product offered is cheaper to operate anyway. All specifications are to be followed and it was not up to a bidder to decide which to follow.

Dr Vella stated that the tender was clear as to what was requested and was not subject to any confusion – it required one component that measured two items and the reason for this was explained clearly by Engineer Xuereb in his testimony. If the Authority had accepted Appellant's offer it would have gone against the principle of transparency and equal treatment. Bidders cannot take arbitrary decisions. Go produce a single analyser but opted not to offer it.

There being no further submissions the Chairman thanked the parties and declared the hearing closed.

End of Minutes

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This Board,

Having noted the objection filed by Reactilab Ltd. (herein after referred to as appellant), on the 24<sup>th</sup> April 2023. The objection refers to the claims made by the same appellant against the Water Services Corporation regarding tender listed as case No.1876 in the records of the Public Contracts Review Board.

The Board also noted the letter of reply by the Water Services Corporation (herein after referred as the Contracting Authority) dated 3<sup>rd</sup> May 2023, together with its verbal submissions during the hearing on the 30<sup>th</sup> May 2023.

The Board also noted the verbal submissions made by Dr Stefan Camilleri on behalf of Forex Trading Ltd, the preferred bidder.

The Board also took cognisance of the Minutes of the meeting of the 30<sup>th</sup> May 2023 appended above, all further documentation, the verbal submissions and the testimony of the witnesses called to testify.

Whereby,

The Appellant contended that:

- A) Reactilab Ltd. offered one analyser with two separate sensors which meets the measuring ranges required in the tender, thus the tender specifications were met.
- B) Only one bidder made an offer in line with the tender requirements, namely one analyser which could measure different parameters; a clear indication that other bidders had reached the same conclusion as the Appellant thus the wording in the tender and the subsequent clarification indicate that the wording is unclear. Appellant's offer meets EU standards requirements on drinking water.

The Contracting Authority argued that:

- A) The tender was clear as to what was requested. The requirement was one component that measured two items, and the appellant offered one component with an additional sensor to measure two items. (Two components to measure two items). This new single component technology specified in the tender would save the Authority considerable expense in future.
- B) If the Appellant's offer was deemed to be compliant the Authority would have gone against the principle of transparency and equal treatment. Bidders cannot take arbitrary decisions in deciding what to offer. Appellant's product suppliers (Go Systemelektronic) produce a single analyser but Appellant opted not to offer it.

The Board :

Considered the arguments and documentation from all parties, and the testimony of the witnesses called to testify, and is of the view that Appellant did not offer what was required. The appellant offered two separate items to measure Nitrates and Turbidity while what the tender requested was one analyser which can measure different parameters.

The Board therefore concludes and directs that:

- a) Does not uphold the Appellant's Letter of objection.
- b) Upholds the Contracting Authority's decision in the award of the tender.

c) Directs that the deposit paid by the Appellant not to be reimbursed.

**Dr Charles Cassar**  
**Chairman**

**Mr Lawrence Ancilleri**  
**Member**

**Mr Richard A Matrenza**  
**Member**