

Public Contracts Review Board



CT2385/2021

Suratek Limited

Vs

Department of Contracts et

Reply of the Contracting Authority Saint Vincent De Paul Long-Term Care Facility

Humbly submits

1. That on the 28th of July 2023, by virtue of a note submitted in the acts of the proceedings, the Objector Suratek Limited raised two additional grounds of objection in addition to the objections raised in the appeal application lodged on the 9th of June 2023.
2. That, following a hearing held on the 3rd of August 2023, the PCRB decided to concede the Contracting Authority and the Recommended Bidder ten days to file their respective replies to the additional grounds of objection raised by the Objector.
3. That, the Contracting Authority will be addressing such additional grounds of objection.

First additional ground of objection

4. That, in its first additional ground of objection, the Objector is claiming that the evaluation committee was not permitted to issue the request for rectification dated 22nd February 2023, and this because, according to the Objectors, no "Literature List" Form was attached to the procurement documentation and therefore the evaluation committee could not have requested a rectification based on a document which does not exist. Essentially, Objector is claiming that the lack of a literature list is a factor which should have led to the exclusion of the recommended bidder and which could not be rectified.
5. That, the Contracting Authority humbly submits that the Objector is adopting a rather narrow-sighted view of the facts. While it is conceded that a literature list was not attached to the documentation, the Recommended Bidder had indeed submitted its literature, backing its offer, from the outset and this in

compliance with the tender requirements, particularly Section 1 – Instructions to Tenders, No 5 (C)(ii).

6. In fact, if one had to look at the wording of Section 1 – Instructions to Tenders, No 5 (C)(ii), one could see that it is the submission of the literature itself which was actually a requirement and not the submission of the form through which such literature is submitted. This can also be attested through the fact that the word “literature” itself is marked in bold, as opposed to the rest of the tender clause.
7. That, similarly, through the rectification issued on the 22nd of February 2023, the evaluation committee requested a rectification of the literature, in relation to clause 2.20.2 of the tender document and not a literature list.
8. That, in addition to the above, the Contracting Authority also submits that, as evidenced from Section 1 – Instructions to Tenders, No 5 (C)(ii), such requirement (i.e. the submission of the relevant “literature”) is marked as a Note 2 requirement, which means that “2. Tenderers will be requested to either clarify/rectify any incorrect and/or incomplete documentation, and/or submit any missing documents within five (5) working days from notification.”
9. That, it therefore follows that, what the Objector is claiming is entirely incorrect since the evaluation committee was indeed permitted to issue a request for rectification.
10. That, without prejudice to the above, the Contracting Authority also submits that, according to jurisprudence, in the event that a bidder submits the requested documentation, such as literature, however not in the prescribed form, the principle of substance over form is applied. This means that, a bidder is still deemed compliant with the tender requirements if it submits the requested documentation irrespective of the manner or form, which principle may be applied to the present case.

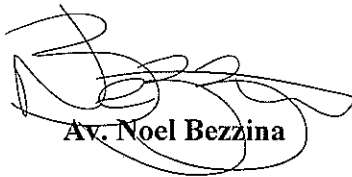
Second additional ground of objection

11. That, in its second additional ground of objection, the Objector is claiming that, following the request for rectification sent by the second evaluation committee, the bidder could not have submitted, and the evaluation committee could not have considered a document which did not exist at the time of the closing of submission of tenders.
12. Once again, the Objector is incorrect in its assertions. At the time of the closing of the submission of tenders, the Recommended Bidder had submitted its literature which it had at the time, and this in full compliance with the tender

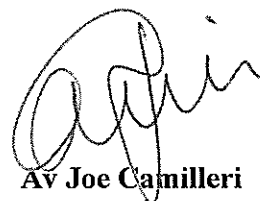
requirements. When the evaluation committee, issued a request for clarification, the Recommended Bidder submitted updated versions of the literature, along with the literature which had already been submitted initially. In fact, it is to be noted that the Objector is only raising this issue now (after the PCRB had already decided the merits of this case and a re-evaluation has been conducted) and did not address such issue during the first proceedings before the PCRB. Also, it is being submitted that this fact can be very easily verified by the PCRB as presently composed since all the literature and submissions were part of the first proceedings before the PCRB.

13. Additionally, the statement that the recommended bidder's bid is administratively and technically not compliant is absurd, since, if this had been the case, the PCRB in the initial proceedings, would have deemed the Recommended Bidder as such in its *decide*, which was not the case. Indeed, the PCRB did not order that the contract be awarded to the second-best offeror, but requested the re-evaluation of the tender.
14. As to the Notes to Clause 5, specifically to "*Requests for Clarifications and/or Rectifications concerning a previous request dealing with the same shortcoming shall not be entertained*", it is being submitted that no prior requests on the same shortcoming were issued by the Contracting Authority and therefore this clause does not apply.

Therefore, on the basis of the above, the Contracting Authority humbly submits that the additional grounds of the Objector should also be rejected by the PCRB.



Av. Noel Bezzina



Av Joe Camilleri