

PUBLIC CONTRACTS REVIEW BOARD

Case 1913 – WSC/T/37/2023 – Supplies – Framework Agreement for the Leasing of Multifunction Network Printers including Administration and Management Utility, with reduced Environmental Impact, for the Water Services Corporation.

26th September 2023

The tender was issued on the 5th April 2023 and the closing date was the 5th May 2023. The estimated value of this tender, excluding VAT, was € 350,000.

On the 25th July 2023 MB Distribution Ltd filed an appeal against the Water Services Corporation as the Contracting Authority objecting to their disqualification on the grounds that their offer was not technically compliant.

A deposit of € 1,750 was paid.

On the 19th September 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 – MB Distribution Ltd

Dr Joanne Farrugia	Legal Representative
Mr Ian Darmanin	Representative

Contracting Authority – Water Services Corporation

Dr John L Gauci	Legal Representative
Eng Anthony Muscat	Chairperson Evaluation Committee
Ms Kirstie Grech	Secretary Evaluation Committee
Mr Chris Sant	Evaluator
Mr Paul Farrugia	Evaluator
Mr Mark Sammut	Evaluator

Preferred Bidder – SG Solutions

Dr Andrew Galea Salomone	Legal Representative
Mr Tony Saliba	Representative
Me Edwin Attard	Representative

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

Dr Joanne Farrugia Legal Representative for MB Distribution Ltd said that Appellant would be relying on its written submissions and the later affidavit of Mr Ian Darmanin.

Dr John Gauci Legal Representative for the Water Services Corporation requested that a witness be heard.

Engineer Anthony Muscat (465162M) called to testify by the Contracting Authority testified on oath that he was the Chairperson of the Tender Evaluation Committee (TEC). He referred to the tender requirement regarding the dots per inch (dpi) and mentioned that Appellant had offered a different dpi to that requested. Although overall the number of dots offered (1,440,000) was the same the configuration offered by the Appellant did not meet the tender terms (section 3, article 4, clause 1.5) and consequently this reflected in a different alignment of dots. Witness explained that there is a different dots configuration between print and digital media resolution. No clarification was sought by Appellant at any stage of the process and the TEC had no option but to adjudge their bid as non-compliant.

Questioned by Dr Farrugia witness confirmed that the tender requested a certain configuration not a number of dots although he agreed that both bidders had submitted offers with the right number of dots. He confirmed that he had seen the affidavit submitted. The specifications in the tender were clear and were followed by the TEC.

In reply to a question from Dr Gauci, witness confirmed that the configurations offered differed between the two bidders.

This concluded the testimony.

Dr Farrugia said that the Appellant expertise in this industry had led them to offer what they felt was best suited and the best offer. The number of dpi was as requested and witness could not recall what difference the configurations made. The offer of the Appellant was compliant and should not have been excluded.

Dr Gauci said that there is a clear admission by the Appellant that they did not meet the specifications but are now trying to prove that somehow they have met those specifications. If Appellant was convinced that its product was suitable then there were remedies available. The Contracting Authority's hands were tied and it had no option except to exclude – their decision should be confirmed.

Mr Edwin Attard representative for SG Solutions said that apart from offering a different configuration there was also the matter of the duty cycle which did not meet the tender requirements.

Dr Andrew Galea Salomone Legal Representative for the preferred bidder stated that his clients maintained the industry standards in high quality printing requested in the tender and it was absurd to try to equate print quality between the offers. The technical specifications were not subject to interpretation.

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

End of Minutes

Decision

This Board, having noted this objection filed by MB Distributions Ltd (herein after referred to as the appellant), on the 25th July 2023. The objection refers to the claims

made by the same appellant against the Water Services Corporation (herein after referred to as the contracting authority) regarding the tender WSC/T/37/2023 listed as case No.1913 in the records of the Public Contracts Review Board and its verbal submissions during the hearing on 19th September 2023

The Board also noted the letter of reply by the Contracting Authority dated 2nd August 2023 , together with its verbal submissions during the hearing on the 19th September 2023, and the submissions made by the preferred bidder during the hearing, as well as the testimony of Engineer Anthony Muscat on behalf of the Contracting Authority.

Finally, the Board took into consideration the Minutes of the hearing of the Board on the 19th September 2023 appended above.

Whereby,

The Appellant contended that :

- A. The Appellant's expertise in this industry had led them to offer what they felt was best suited the requirements of the tender. .
- B. The overall the number of dots offered (1,440,000 dpi) was the same as requested by the tender in question.

The above was counter argued by the Contracting Authority as follows.

- A. The Appellant made a clear admission that they did not meet the specifications but are now trying to prove that somehow, they have met those specifications.
- B. Although the number of dots offered by Appellant was as requested the configuration was totally different and this reflected in a different alignment of dots.
- C. If Appellant was convinced that its product was suitable then there were remedies available.

After the Board considered the arguments and documentation from both parties, the testimonies of the witness and the preferred bidder's submissions and taking note of the specification in the tender Document (section 3, article 4, clause 1.5), the Board's view was that the Appellant's claim is not sustainable.

The Board concludes and decides 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
Chairperson

Mr Lawrence Ancilleri
Member

Mr Richard Matrenza
Member