

## **PUBLIC CONTRACTS REVIEW BOARD**

### **Case 1933 – WSC/T/44/2023 – Supplies - Supply, Delivery and Commissioning of Oil Free Compressors to the Water Services Corporation**

**6<sup>th</sup> November 2023**

The Board,

Having noted the letter of objection filed by Mr Alistair Ciantar acting for and on behalf of iAutomate (Malta) Ltd, (hereinafter referred to as the appellant) filed on the 11<sup>th</sup> September 2023;

Having also noted the letter of reply filed by Dr John L Gauci on behalf of Dr John L Gauci & Associates acting for the Water Services Corporation (hereinafter referred to as the Contracting Authority) filed on the 21<sup>st</sup> September 2023;

Having heard and evaluated the testimony of the witness Mr Alistair Ciantar (Representative of iAutomate (Malta) Ltd) as summoned by Dr Steven Farrugia Sacco acting for iAutomate (Malta) Ltd;

Having heard and evaluated the testimony of the witness Ing Charmak Camenzuli (Chairperson of the Evaluation Committee) as summoned by Dr John L Gauci acting for Water Services Corporation;

Having heard and evaluated the testimony of the witness Mr Jeremy Spiteri (Representative of Proenergy Solution) as summoned by Dr Andrew Borg Cardona acting for Proenergy Solution;

Having taken cognisance and evaluated all the acts and documentation filed, as well as the submissions made by representatives of the parties;

Having noted and evaluated the minutes of the Board sitting of the 31<sup>st</sup> October 2023 hereunder-reproduced;

#### **Minutes**

#### **Case 1933 – WSC/T/44/2023 – Supplies – Supply, Delivery and Commissioning of Oil-Free Compressors for the Water Services Corporation**

The tender was issued on the 27<sup>th</sup> April 2023 and the closing date was the 25<sup>th</sup> May 2023. The estimated value of this tender, excluding VAT, was € 252,000.

On the 11<sup>th</sup> September 2023 iAutomate (Malta) Ltd filed an appeal against the Water Services Corporation as the Contracting Authority objecting to their disqualification on the grounds that the their bid was deemed to be technically not compliant.

A deposit of € 1,260 was paid.

There were six bids.

On the 31st October 2023 the Public Contracts Review Board composed of Mr Kenneth Swain as Chairman, Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

**Appellant – iAutomate (Malta) Ltd**

Dr Steven Farrugia Sacco	Legal Representative
Mr Alistair Ciantar	Representative

**Contracting Authority – Water Services Corporation**

Dr John Gauci	Legal Representative
Eng Charmak Camenzuli	Chairperson Evaluation Committee
Eng Tonio Muscat	Evaluator
Ms Catherine Degabriele	Representative
Ms Christine Scicluna	Representative

**Preferred Bidder – Proenergy Solutions Ltd**

Dr Andrew Borg Cardona	Legal Representative
Mr Jeremy Spiteri	Representative

Mr Kenneth Swain Chairman of the Public Contracts Review Board welcomed the parties and invited submissions.

Dr Steven Farrugia Sacco Legal Representative for iAutomate Ltd said that this appeal hinged on the claim by the Appellant that the recommended bidder failed to comply with clauses 2.7 to 2.11 of the tender specifications.

Dr John Gauci Legal Representative for the Water Services Corporation referred to the letter of appeal of the 11<sup>th</sup> September and said that in that letter the only allegation made referred solely to clause 2.5 of the tender. The allegation had been replied to by the Authority. The method of this appeal did not meet the requirements of the Regulations since the necessary elements of the appeal were not satisfied. No reasons and no request to cancel the award were given.

Dr Andrew Borg Cardona Legal Representative for Proenergy Solutions Ltd said that the appeal is null as submitted. The bid by the preferred bidder was technically compliant and it was a matter of concern that it appeared as if certain confidential documents ended in the hands of the Appellant.

The Chairman stated that the Board took cognisance of the points raised. Following recent Court directions the case must be heard on the basis of the letter of appeal. The Public Procurement Regulations lay down the exact basis for an appeal. Despite Dr Farrugia Sacco's point that the Board is self-regulating and can hear submissions on any point, Regulation 270 ties the Board's hands.

Prior to calling a witness Dr Farrugia Sacco noted that all documents in the hands of Appellant were legally obtained.

Mr Alistair Ciantar (192085M) called to testify by the Appellant stated on oath that he is a Director of the Appellant Company. On receipt of the disqualification letter he had requested information on the product offered by the preferred bidder from which he discovered that the requested compressor did not meet the specifications in clause 2.5 of the tender. There was also a price difference in the offers.

Through a screenshare of the manufacturer's literature the claimed difference in the configurations of the different compressors was compared.

In reply to a question from Dr Gauci, witness stated that he had identified the difference by examining the data sheets.

Questioned by Dr Borg Cardona witness said that according to the tender the compressor had to be in a silent canopy with a decibel rating of 76 and not 77 as offered.

Engineer Charmak Camenzuli (398873M) called to testify by the Authority stated on oath that he was the Chairperson of the Evaluation Committee and that in the process of the evaluation of the offers all submissions were checked with the technical literature. Clause 2.5 specified an integrated refrigerant drier unit which was similar to a unit already in use. The PowerPoint illustration indicates that the drier unit is included and the data sheets were checked and found the product to be compliant.

Questioned by Dr Farrugia Sacco witness said that the manufacturer confirmed that the components in the unit were integrated. Through a screenshare witness displayed a document from MultiAir Italia that states that the offer meets the specifications of the tender on the decibel level and confirmed the inclusion of the Silence Hood.

In reply to a question from Dr Borg Cardona witness stated that the three evaluators on this tender were engineers and all agreed on the decision.

Mr Jeremy Spiteri (491176M) called to testify by the preferred bidder confirmed on oath that the Silence Hood was an optional item for which they had paid extra to meet the specifications.

This concluded the testimonies.

Dr Farrugia Sacco said that the appeal is valid since Regulation 270 does not specify the form the appeal should take – the claim that the preferred bidder was not compliant plus the request for re-evaluation were sufficient to fulfill the requirements. The specifications of clause 2.5 had not been met and the preferred bidder was not compliant.

Dr Borg Cardona said the outcome of this appeal is to ensure that the technical input of the preferred bidder's offer is correct. Engineer Camenzuli confirmed that the evaluators having seen all the submissions concluded that the offer was compliant. Documents had been used to provide a theoretical point and Appellant had not proved that the evaluation was faulty.

Dr Gauci stated the appeal lacks legal validity as it lacks the request on what the appeal requires. The Chairperson of the Evaluation Committee gave a detailed account on the evaluation process on clause 2.5. The preferred bidder is bound by its declaration and the documents submitted in support meet the tender requirements.

The Chairman thanked the parties for their submissions and declared the hearing closed.

End of Minutes

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**Hereby resolves:**

The Board refers to the minutes of the Board sitting of the 31<sup>st</sup> October 2023.

Having noted the objection filed by iAutomate (Malta) Ltd (hereinafter referred to as the Appellant) on the 11<sup>th</sup> September 2023, refers to the claims made by the same Appellant with regards to the tender of reference WSC/T/44/2023 listed as case No. 1933 in the records of the Public Contracts Review Board.

Appearing for the Appellant:	Dr Steven Farrugia Sacco
Appearing for the Contracting Authority:	Dr John L Gauci
Appearing for the Preferred Bidder:	Dr Andrew Borg Cardona

Whereby, the Appellant contends that:

- a) On requesting the technical submission from Water Services corporation of the product being offered from the recommended bidder, we confirm that the specs provided do not fulfil tender specification 2.5: *“I/We declare and confirm that the compressed air shall be cooled by a refrigerant dryer integrated on the same frame of the compressor. It should be appropriately sized to cater for the maximum flow of the compressor operating at the conditions indicated at Clause 2.9.”* Alup, the manufacturer being proposed does not manufacture this type of configuration.

This Board also noted the Contracting Authority’s Reasoned Letter of Reply filed on 21<sup>st</sup> September 2023 and its verbal submission during the virtual hearing held on 31<sup>st</sup> October 2023, in that:

- a) First and foremost, we would like to bring to your attention that the Objection does not comply with the detailed reasoning requirements as stipulated by law, specifically Regulation 270 of the Public Contracts Regulations. This regulation explicitly states that any objector must submit their objection to the Public Contracts Review Board in a very clear manner, providing detailed reasons for their complaints. Additionally, the objection in question does not contain the required appeal demands as mandated by procedural law. It is essential that objections not only state grievances but also outline the specific relief or remedy sought by the objector in accordance with the procedural requirements. Given these substantial shortcomings in the objection's content and in adherence to the legal framework governing public procurement, we kindly request that the Public Contracts Review Board carefully consider the objection's compliance with the legal requirements as it proceeds with its review.
- b) Nevertheless, we would like to reiterate our response to the substantive issue raised in the objection. The specific concern raised in the objection pertains to Section 2.5 of the tender specifications, which stipulates the requirement for the compressed air to be cooled by a refrigerant

dryer integrated on the same frame of the compressor, appropriately sized to cater for the maximum flow of the compressor under specified conditions. It has been alleged that Alup, the manufacturer represented by Proenergy Solutions (hereinafter 'the Recommended Bidder'), does not manufacture this type of configuration. In response to this concern, we refer to the Technical Questionnaire submitted by the Recommended Bidder as part of their tender submission. In this questionnaire, it was explicitly confirmed that the compressed air shall indeed be cooled by a refrigerant dryer integrated on the same frame of the compressor. Furthermore, the literature submitted by the Recommended Bidder, corroborated with the requirements outlined in clause 2.5 of the tender specifications, as detailed in the Data Sheet attached to their submission.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties, including the testimony of the witnesses duly summoned, will consider now Appellant's grievances.

a) **Regulation 270 –**

Regulation 270 of the Public Procurement Regulations ("PPR") states "*..... any tenderer or candidate concerned,..... may file an appeal by means of an objection before the Public Contracts Review Board, which shall contain in a very clear manner the reasons for their complaints.*" (bold emphasis added)

When correlating the specific requirements of this regulation to the letter of objection filed by the appellant, one cannot but notice that the letter of objection is poorly drafted. Without a shadow of a doubt, it lacks in the requirement of 'in a very clear manner the reasons.....' when it only states that "*Alup, the manufacturer being proposed does not manufacture this type of configuration.*" and it stops there.

It is also not requesting any specific actions from this Board. Is the appellant demanding the cancellation of this tender procedure? Is he asking for a re-evaluation to be performed?

No remedies are being formally sought.

Therefore, this Board cannot but uphold the arguments as brought forward by the Contracting Authority.

b) **Merits –** even though the Board has pronounced itself in a clear manner that the letter of objection does not meet the requirements of regulation 270 of the PPR, in this particular situation, it will still analyse and decide on the merits of the case.

This Board notes that during the hearing, the appellant tried to raise arguments on clauses 2.7 and 2.11 stating that the preferred bidder's submission is also technically non-compliant on such specifications. These clauses were not in any way mentioned in its letter of objection. As per prescribed procedure, this Board can only pronounce itself on grievances brought forward before

it. That said, this Board's will therefore decide on the grievance related to clause 2.5 (page 12) of the tender document.

Clause 2.5 states that *The compressed air shall be cooled by a refrigerant drier integrated on the same frame of the compressor. It should be appropriately sized to cater for the maximum flow of the compressor operating at the conditions indicated at Clause 2.9.*"

Reference is made to the testimony under oath of Ing Charmak Camenzuli whereby he stated that *"Clause 2.5 specified an integrated refrigerant drier unit which was similar to a unit already in use. The PowerPoint illustration indicates that the drier unit is included and the data sheets were checked and found the product to be compliant."*

Moreover, through a screenshare the witness displayed a document from MultiAir Italia (part of the submission of the preferred bidder) that states that the offer meets the specifications of the tender on the decibel level and confirmed the inclusion of the Silence Hood (requirement of Clause 2.5).

Therefore, this Board cannot but reject the grievance as brought forward by the Appellant.

#### **The Board,**

Having evaluated all the above and based on the above considerations, concludes and decides:

- a) Does not uphold Appellant's Letter of Objection and contentions,
- b) Upholds the Contracting Authority's decision in the recommendation for the award of the tender to Proenergy Solutions Limited,
- c) Directs that the deposit paid by Appellant not to be reimbursed.

**Mr Kenneth Swain**  
Chairman

**Dr Charles Cassar**  
Member

**Mr Lawrence Ancilleri**  
Member