

PUBLIC CONTRACTS REVIEW BOARD

Case 1951 – SPD5/2023/035 – Supplies - Framework Contract for the Supply, Installation, Testing and Commissioning of Environmentally Friendly CCTV Systems across different Localities in the Western Regional Council

22nd January 2024

The Board,

Having noted the letter of objection filed by Mr Leonard Agius acting for and on behalf of Alarmtech Ltd, (hereinafter referred to as the appellant) filed on the 24th November 2023;

Having also noted the letter of reply filed by Dr Dean Hili and Dr Rachel Powell on behalf of Dalli Advocates acting for and on behalf of Western Regional Council (hereinafter referred to as the Contracting Authority) filed on the 4th December 2023;

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 18th January 2024 hereunder-reproduced.

Minutes

Case 1951 – SPD5/2023/035 – Supplies – Framework Contract for the Supply, Installation, Testing and Commissioning of Environmentally Friendly CCTV Systems across different Localities in the Western Regional Council

The tender was issued on the 24th August 2023 and the closing date was the 29th September 2023.

The estimated value of this tender, excluding VAT, was € 117,126.03.

On the 24th November 2023 Alarmtech Ltd filed an appeal against the Western Regional Council objecting to their disqualification on the grounds that their bid was not technically compliant.

A deposit of € 650 was paid.

There were four bids.

On the 18th January 2024 the Public Contracts Review Board composed of Mr Kenneth Swain as Chairman, Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a virtual public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – Alarmtech Ltd

Mr Leonard Agius Representative

Contracting Authority – Western regional Council

Dr Rachel Powell	Legal Representative
Mr Sandro Azzopardi	Chairperson Evaluation Committee
Ms Elke Sghendo	Representative
Mr Neil Muscat	Representative
Mr Mario Sammut	Representative
Mr Daniel Grima	Representative

Recommended Bidder – AIS Technology Ltd

Mr Darryl Schembri Representative

Department of Contracts

Mr Nicholas Aquilina Representative

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

Mr Leonard Agius Representative for Alarmtech Ltd said that the Contracting Authority was claiming that the Technical Offer form was missing from the tender submission. The Company had attempted to upload this form but the folder appeared to be full once the Gantt Chart was uploaded, and further attempts proved abortive.

Dr Rachel Powell Legal Representative for the Contracting Authority stated that all other bidders had successfully uploaded the technical form without any problems. Since this was a Note 3 document no rectification was possible. The general guidelines were clear regarding what platform should be used.

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

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 18th January 2024.

Having noted the objection filed by Alarmtech Ltd (hereinafter referred to as the Appellant) on 24th November 2023, refers to the claims made by the same Appellant with regard to the tender of reference SPD5/2023/035 listed as case No. 1951 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Mr Leonard Agius

Appearing for the Contracting Authority: Dr Rachel Powell

Whereby, the Appellant contends that:

- a) The basis of our appeal is that we submitted the full Technical Offer made available to us when downloading the "Forms.zip" file from the e-tenders portal. The only document within the "Technical Offer" folder is the Gantt Chart, which was submitted.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 4th December 2023 and its verbal submission during the hearing held on 18th January 2024, in that:

- a) The tender Special conditions clearly specifies under article 3.1.1 that the Contractor's technical offer is an integral component of the contract. The Instructions to Tenderers specifically provides under section 5 Selection and Award Requirements (C) Specifications that: (i) Tenderer's Technical Offer in response to specifications to be submitted online through the prescribed Tender Response Format and by using the Tender Preparation. Tool provided. (Note 3). The Technical Offer is composed as follows: Technical Requirements 2. Technical Questionnaire 3. Declaration to be completed by the Bidder. It therefore follows that the bidder was aware of what documents were requested under the Technical Offer section, and while the complete submission of said documents rest solely on the bidder, failure to do so is not a rectifiable error in line with Note 3 - i.e. no rectification shall be allowed in respect of the documentation as accompanied by Note 3.
- b) The Contracting Authority also notes that the Electronic Tendering Website in its 'Information Area' also specifies the browsers supported by the platform. Hence it was further incumbent on the bidder to make ensure that offers are submitted through any one of the indicated platforms.
- c) The principle of equal treatment and the corollary transparency requirements establish clear constraints on what the CA can accept by what of tender correction, supplementation or clarification. These requirements are not merely cosmetic but serious. The tenderer did NOT meet the tender criteria. If it allowed and permitted exceptions or unauthorised amendments, the CA would be acting illegally and allowing for an uneven playing field in stark contrast to the above-cited jurisprudence, echoed in local judgments.

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

- a) The Board makes reference to the Evaluation Report which shows that four (4) economic operators participated in this tender procedure. Two (2) operators were considered to be fully compliant, whilst another two (2), including the appellant, were deemed to be technically non-compliant. The reason provided for technical noncompliance however differs between the latter. It is only the appellant that was deemed to be technically non-compliant due to the non-submission of his Technical Offer Form. This proves without a shadow of a doubt that the Technical Offer Form was indeed well available in the ePPS system since three (3) out of four (4) participants correctly downloaded and submitted it as per tender requirements.
- b) The Board also notes that the Technical Offer Form is a Note 3 document which therefore cannot be rectified.

Hence, this Board does not uphold the Appellant's grievances.

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

Mr Kenneth Swain
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member