

PUBLIC CONTRACTS REVIEW BOARD

Case 1991 – RLC/T/213/23 – Supplies - Supply and Installation of Energy Efficient and Durable Solar Street Lighting at Tas-Salib, ir-Rabat

19th April 2024

The Board,

Having noted the letter of objection filed Mr James Agius acting for and on behalf of Mica Med Ltd, (hereinafter referred to as the appellant) filed on the 26th February 2024;

Having also noted the letter of reply filed by Mr Anthony Bonello acting for the Rabat Local Council (hereinafter referred to as the Contracting Authority) filed on the 7th March 2024;

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 15th April 2024 hereunder-reproduced.

Minutes

Case 1991 – RLC/T/213/23 – Supplies – Supply and Installation of Energy Efficient and Durable Solar Street Lighting at Tas-Salib, ir-Rabat

The tender was issued on the 29th June 2023 and the closing date was the 28th July 2023

The estimated value of this tender excluding VAT, was € 100,000.

On the 26th February 2024 Mica Med Ltd filed an appeal against the Rabat Local Council objecting to their disqualification on the grounds that their bid was deemed to be technically non-compliant.

A deposit of € 500 was paid.

There were five bids.

On the 15th April 2024 the Public Contracts Review Board composed of Mr Kenneth Swain as Chairman, Ms Stephanie Scicluna Laiviera and Dr Vincent Micallef as members convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – Mica Med Ltd

Mr James Agius

Representative

Mr Adam Agius

Representative

Contracting Authority – Rabat Local Council

Dr Richard Sladden

Legal Representative

Ms Roberta Galea	Chairperson Evaluation Committee
Mr Anthony Bonello	Secretary Evaluation Committee
Ms Romina Perici Ferrante	Evaluator
Eng Mario Sammut	Evaluator
Eng Michaela Xuereb	Evaluator

Mr Kenneth Swain Chairman of the Public Contracts Review Board welcomed the parties and prior to inviting submissions stated that the Board notes that the appeal as filed is very basic and sporadic as it lacks the proper details required under the Public Procurement Regulations. The Board's decisions are based on the requests made in an appeal which in this case are lacking. Following the principle of substance over form the Board will in this case hear the Appellant's submissions and decide thereon.

Mr James Agius Representative for the Appellant said that the first clarification regarding the key expert and technical literature was replied to. It was subsequently informed that the second clarification was not replied to. However the Appellant never received this e-mail and there was no indication of any clarifications on the ePPS. In any case the information requested in the second clarification had already been provided in the original submission.

Dr Richard Sladden Legal Representative for the Rabat Local Council stated that the appeal gave no indication of what Appellant requested. The Local Council replied in detail to what appeared to be an objection and the least they expected was that the Appellant would point out that they had already provided the information requested. The two clarifications were for different requests with the second clarification being very specific about technical details. Checks were carried out with the Department of Contracts to verify that the clarification was not answered.

At this stage Appellant presented a printout document of the ePPS report which could not be accepted as it was not filed in time. The Appellant was given the opportunity to provide proof of this document but this was not availed of.

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 15th April 2024.

Having noted the objection filed by Mica Med Ltd (hereinafter referred to as the Appellant) on 26th February 2024, refers to the claims made by the same Appellant with regard to the tender of reference RLC/T/213/23 listed as case No. 1991 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Mr James Agius

Appearing for the Contracting Authority: Dr Richard Sladden

Whereby, the Appellant contends that:

- a) Please note that through the E-tenders system, we have only received the first clarification which we had responded to as instructed. Please note that after discussion with local council representative, the second clarification that we did not receive the notification for, was for the assembly of the solar street pole. Our original submission included the assembly of the solar pole and had all the required information, making the clarification unnecessary even though it was not responded from our side since we did not receive the clarification notice.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 7th March 2024 and its verbal submission during the hearing held on 15th April 2024, in that:

- a) The Contracting Authority confirms the first line as indicated that is Clarification No 3, having a deadline of 20 December 2023, that is an evaluation rectification sent to Mica Med bearing the contents of:

With reference to your submitted bid:

- *The Key Expert number 2 should be recognised from the listed OHS A officers. Please change the key expert and submit the relevant qualifications*
- *Provide the technical literature showing that the solar panel is rated at 300Wp - 320Wp as per Clause 4.3 of the Technical Specifications*

Reply given on the 19 December 2023

- *Key Expert number 2 updated. Qualifications updated*
- *Literature for solar power attached*

- b) With regards to 'after discussion with local council representative' the Executive Secretary was instructed by the Mayor, Mr Sandro Craus to phone Mr Adam Agius after he failed to answer the second clarification indicated below: Other Evaluation Rectification to Micamed having a deadline of the 4.1.24;

- *Following the clarification reply, kindly submit the literature of the entire system showing how the Photovoltaic Panel is going to be integrated with the luminaire and the pole.*
- No Reply: Unanswered until deadline date and time

The Executive Secretary confirmed that Mica Med Ltd has indeed failed/ignored to reply as they in fact did.

With regards to the second clarification sent to Mica Med Ltd, it is to be noted that it differed from the first one. The first clarification was about submitting the 'Literature for solar power' whilst the second unanswered clarification was more specific since it requested proof of how the 'Photovoltaic Panel is going to be integrated with the luminaire and the pole'. As the CFT title

specifies the emphasis of the tender is on Energy Efficiency and Durable Solar Street Lighting. Thus, evaluators needed a certain assurance to this regard.

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) This Board opines that the argument brought forward by appellant, whereby it was stated that the 'clarification request' was 'unnecessary', is irrelevant at this particular point in the appeal process.
- b) Once proof was provided, by the Contracting Authority that the clarification request was duly uploaded on the ePPS system, it is incumbent on the economic operator to provide the necessary reply in the pre-determined timeframe.
- c) The General Rule Governing tenders, section 16 state the following:
"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."
*"Rectification/ s must be submitted within five (5) working days from notification, and will be free of charge: **failure to comply shall result in the tender offer not being considered any further.**"* (bold & underline emphasis added)
- d) Therefore, once a rectification request, which was duly uploaded onto the ePPS system, was not replied to on time, this Board rejects the Appellant's grievance.

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

Mr Kenneth Swain
Chairman

Dr Vincent Micallef
Member

Ms Stephanie Scicluna Laiviera
Member