

PUBLIC CONTRACTS REVIEW BOARD

Case 2033 – WSMQ 012/313/2024 – Quotation request for the Supply and Delivery of a Drone for Surveying and Mapping Solutions Equipped with Thermal Imaging Capabilities at the Ecohive Complex, Naxxar, Malta

28th November 2024

The Board,

Having noted the letter of objection filed by Dr Carl Azzopardi and Dr Mario De Giovanni acting for and on behalf of Pharmascint Ltd, (hereinafter referred to as the appellant) filed on the 7th October 2024;

Having also noted the letter of reply filed by Dr Pearl Agius and Dr John Axiak acting for the Wasteserv Malta Limited (hereinafter referred to as the Contracting Authority) filed on the 17th October 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 November 2024 hereunder-reproduced;

Minutes

Case 2033 – WSMQ 012/313/2024 – Quotation request for the Supply and Delivery of a Drone for Surveying and Mapping Solutions Equipped with Thermal Imaging Capabilities at the Ecohive Complex, Naxxar, Malta

The tender was issued on the 31st July 2024 and the closing date was the 5th September 2024

The estimated value of this tender, excluding VAT, was € 7,200.

On the 7th October 2024 Pharmascint Ltd filed an appeal against Wasteserv Malta Ltd objecting to its disqualification on the grounds that its bid was not technically compliant.

A deposit of € 400 was paid.

There were seven bids.

On the 15th November 2024 the Public Contracts Review Board composed of Mr Kenneth Swain as Chairman, Dr Vincent Micallef and Dr Eng Damien Gatt as members convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – Pharmascint Ltd

Dr Eng Carl Azzopardi

Representative

Contracting Authority – Wasteserv Malta Ltd

Dr Pearl Agius	Legal Representative
Dr John Axiak	Legal Representative
Ms Laisa Rodrigues Leal	Evaluator
Ms Molina Guerra Yanibeth Del Carmen	Evaluator
Mr Alan Cachia	Evaluator
Mr Louis Cordina	Representative

Preferred Bidder – Hawker Aerospace Ltd

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

Dr Carl Azzopardi Representative for Pharmascint Ltd said that his firm offered two different models of the drone requested in the tender. The main concern of the Contracting Authority was that the literature submitted referred to a different model to that specified which met all the criteria of the tender and was the cheapest offer. It was not clear what the Evaluation Committee was complaining about as the submitted literature referred to the correct model. Appellant never stated that all literature was relevant – the point was that the literature covered all queries raised. The Authority claim that only eight out of fifteen points raised were dealt with. This came as news to the appellant as it had not been mentioned earlier and therefore it denied it the opportunity to supply further literature. Certain details which the Authority was requesting were not specified in the tender document, as for example, the dimensions of the carrying case or the size of the screwdriver. Appellant did not change the structure of the tender requirements and the reason for disqualification was not as originally stated.

Dr Pearl Agius Legal Representative for Wasteserv Malta Ltd said that appellant had only corroborated eight out of fifteen points queried. Items mentioned in quotations or financial bids were not part of the literature and could not be considered as such. The technical literature provided did not meet the information requested from the bidder. The literature list required details that corroborated the technical requirements but in this instance no new information was submitted. Quotations and declarations of conformity are not part of the literature.

Dr John Axiak Legal Representative for Wasteserv Malta Ltd stated that the claim by appellant that the supplier of the product did not provide all requested information is not a valid one. The Contracting Authority must be provided with a brief idea of what the appellant is providing even if it is not stated in the tender.

Dr Azzopardi said that the Authority contends that the quotation is not accepted as part of the literature as it does not provide technical details. If that is the case why did the Contracting Authority request the appellant to indicate if such a document was being presented?

Dr Agius said that it was not the intention of the Authority to cause confusion. In Case T 415/10 the CJEU held that in calls for tenders one cannot depart from the set conditions and it therefore follows that the Authority would not have been treating all bidders equally if it followed what the appellant was requesting. In Court of Appeal Case *Projeckte Global vs Kunsill Lokali ta Marsascala* it was stated that all documents have to be presented by the closing date of the tender and it is up to the bidders to comply. In Case 249/23/1 the Appeal Court held that it is up to the bidders to follow tender requests

scrupulously whilst in Case 20/2019/1 it was held that the Court of Appeal is not expected to find out what is in the bidders' mind.

As there were 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 November 2024.

Having noted the objection filed by Pharmascint Ltd (hereinafter referred to as the Appellant) on 7th October 2024, refers to the claims made by the same Appellant with regards to the tender of reference WSMQ 012/313/2024 listed as case No. 2033 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Carl Azzopardi

Appearing for the Contracting Authority: Dr Pearl Agius & Dr John Axiak

Appearing for the Preferred Bidder: Mr Roger Xuereb Archer

Whereby, the Appellant contends that:

a) ***All relevant literature was submitted at bidding stage -***

Pharmascint Limited submitted offer 214992 proposing an Autel EVOII Dual 640T RTK V3 drone. A total of four documents were submitted in the literature document • Pharmascint's quotation - This detailed the Autel EVO II Dual 640T RTK V3, and the contents of the delivery kit referred to as a "Rugged Bundle"; Declaration of Conformity - This showed the range of products (of course including the Autel EVO II Dual 640T RTK V3) that are certified under the Declaration of Conformity; • EVO II RTK Series V3 User Manual - This user manual is for the Evo II RTK V3 Series - and is therefore applicable to the model in question (the Autel EVO II Dual 640T RTK V3), as referred to in pages 63 and 64 of the manual; • Autel Robotics Products Brochure - This includes the entire product range, but dedicates specific pages to the model in question, the Autel EVO II Dual 640T RTK V3 Drone, as shown in pages 33 and 34.

b) ***WasteServ Malta declared in their Evaluation Rectification, that the literature submitted refers to different model numbers -***

WasteServ Malta issued an evaluation rectification request. We observe that WasteServ Malta believes that the literature submitted refers to DIFFERENT model numbers, to that submitted in the technical offer. This statement is incorrect. The literature may indeed refer to VARIOUS model numbers, but it certainly includes and details the specifics of the relevant model number - that being the Autel EVO II Dual 640T RTK V3 Drone - amongst those listed. This is evidenced by the following documents submitted as a literature bundle: 1. Pharmascint's quotation 2. The declaration of Conformity. 3. The EVO II RTK Series V3 User Manual 4. The Autel Robotics Products Brochure.

In the rectification request response, Pharmascint Ltd. sought to clarify any possible misconceptions in the submitted literature by taking the below steps: • Presenting a letter clarifying the relevance of each document in the submission, including highlighted sections from the literature submitted as requested by the rectification request. • In the quote, rephrasing the item opening description to Autel EVO II Dual (640T) RTK V3 / Grey - Rugged Bundle", to ensure that the wording "Rugged Bundle" does not cause any confusion.

c) ***In its letter of regret, WasteServ Malta declared our offer numbered 214992 as technically non compliant -***

In its letter of regret, WasteServ Malta declares our offer numbered 214992 as technically non-compliant for the following reason: *"Following a rectification letter sent on the 13th September 2024, the requested literature was not completely submitted."* This statement is incorrect. Pharmascint Ltd, in its response to the Evaluation Rectification request, re-submitted the complete set of literature, which specifically mentions the proposed model, the Autel EVO II Dual 640T RTK V3 Drone. Pharmascint Ltd further submitted a letter highlighting the relevant sections which specifically mention this model number and any associated specifications, that the Evaluating committee may have needed during its evaluation stage.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 17th October 2024 and its verbal submission during the hearing held on 15th November 2024, in that:

a) ***Appellant states that "all relevant literature was submitted at bidding stage" -***

In their objection, appellant Pharmascint Ltd. insists that all the literature has been submitted from their end including but not limited to the quotation, the declaration of conformity, the user manual and a products brochure. Whilst WasteServ Malta Limited does not negate that the appellant has submitted literature documentation, it however takes issue with the statement that all relevant literature has been submitted and also disagrees with Pharmascint Ltd that the literature submitted is "all relevant". Pharmascint Limited submitted a voluminous amount of literature many of which is irrelevant to Offer 214992, and which ultimately does not corroborate the technical offer submitted by the appellant with the technical specifications listed and required by WasteServ.

Hence why, Pharmascint Limited's cheapest offer (No. 214992) was deemed as technically non-compliant.

b) ***WasteServ Malta Limited declared that the literature submitted refers to different model numbers -***

In its technical specifications, WasteServ Malta Limited listed 15 required specifications that the drone must possess. In the Tenderer's Technical Offer, Pharmascint Limited confirmed that the drone they were offering WasteServ meets all the technical specifications required by WasteServ. Pharmascint offered the EVO II Dual 640T RTK V3 and whilst 8 of these specifications could be corroborated through the literature submitted by the appellant, the others could not. For example, specification number 2 which is in relation to the drone transportation carrying case/bag, the appellant, in their technical offer, they(sic) referred WasteServ to the quote they had submitted. The quote submitted simply lists the products that are to be provided however, no literature was found to corroborate this. In fact, the only times a bag is mentioned in the literature submitted by the appellant is in the Packing List of the EVO Nano Series and EVO Lite Series drones listed in the Autel Robotics Products Brochure. There was no mention of a carrying case or a bag in the EVO II RTK Series V3 User Manual. One must keep in mind that any Literature to be submitted must be originating/accompanied by relevant manufacturer literature.

The same scenario is noted with regard to the USB-C Cable and the USB-C to USB-C Cable.

In relation to the screwdriver needed for the drone: the only time a screwdriver is mentioned in the literature submitted by the Appellant is in the packing list of the EVO Nano Series which is an altogether a(sic) different product from the one required by WasteServ Malta Limited.

Furthermore, the multi-battery charger (at least charges 3 sequentially) including 3 extra batteries specification, was also not corroborated; the technical offer once more refers the Evaluating Committee to the quote submitted by the appellant which offers no literature to verify the offer. The EVO II RTK Series V3 User Manual shows a charger which is only capable of charging 2 batteries sequentially whilst the only multi-battery chargers which are capable of charging 3 batteries sequentially are once again only noted in the packing lists for the EVO Nano series and EVO Lite Series.

The Contracting Authority would also like to highlight that no new literature was submitted with the reply to the rectification letter but rather the appellant simply resubmitted the same information with bits and pieces highlighted to supposedly support and verify Pharmascint's offer. However, it was the quote they submitted which was mainly highlighted by the appellant, which quote provides absolutely zero literature to corroborate the offer. Therefore, with the above taken into consideration one can easily conclude that the Appellant did not submit the required literature to corroborate the offer. At most they tried to corroborate the technical offer through one complicated jigsaw puzzle by combining different literatures pertaining to various drone models that go beyond the one indicated in the Tenderer's Technical Offer. The Tender Evaluation

Committee abiding by the principle of self-limitation could only take in consideration what was requested in the procurement documents and thus could not deem such a collage of literature information as corroborating the submitted technical offer.

Independently from the fact that the offer was not technically compliant for aforementioned reasons, it can be noted that Pharmascint Limited amended the format of the Technical Offer document provided by WasteServ: in the last column of the first technical specifications row, the document issued by WasteServ read 'Brand and Model' and not 'Mandatory' as is written in the document submitted by Pharmascint Limited at bidding stage. This in itself, as per applicable General Rules Governing Tender, article 9.4 is enough to disqualify their offer.

c) ***Offer numbered 214992 is technically non-compliant -***

The Contracting Authority issued a letter of regret after the Evaluation Committee deemed Pharmascint's offer as technically non-compliant even following a rectification letter. The Appellant feels aggrieved by this statement, saying it is incorrect because the appellant resubmitted the literature which specifically mentions the Drone that they offered. As can be clearly deduced from the above, the Evaluation Committee had no other option but to deem the offer as technically non-compliant because even after submitting a reply to a rectification letter, the appellant still did not submit the relevant information to corroborate the technical specifications with the appellant's offer.

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) Reference is initially made to the Technical Offer document, which falls under the remit of Note 3, whereby within it, it is stated that *"For each item offered, the respective supporting documents and **printed manufacturer's technical literature shall be submitted** by the bidder as per the form marked ***"Literature"***". (bold & underline emphasis added)*
- b) Reference is then made to the Technical Offer document, as submitted by the appellant, whereby for a number of 'Mandatory' items, in the column entitled *"Reference in the technical literature where this is being stated / shown"*, the appellant's declaration was *"Refer to quote"*.
- c) This Board notes that within the 'Quotation', as submitted by the same economic operator / appellant, all that is stated in relation to items which were not specifically corroborated by the manufacturer's technical brochure, are item 'names' with no other description whatsoever. For example, in relation to the 'Protector Case', there are no specific criteria and / or descriptions to ascertain that what is going to be provided would in fact be usable with the item subject matter of this procedure. Same argument refers to the other items which were listed "Refer to quote" in the appellant's 'Technical Offer'.
- d) Once the Contracting Authority also afforded the appellant the opportunity to remedy its situation via the clarification note issued on 13th September 2024 and the 'Quotation Dossier' clearly states that *"Requests for Clarifications and/or Rectifications concerning a previous request dealing with the same*

shortcoming shall not be entertained.”, then it follows that the Contracting Authority could not re-contact the economic operator, now appellant, again on this same matter.

Therefore, 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 Vincent Micallef
Member

Dr Damien Gatt
Member