

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 929**

**REWS 17/2015**

**Tender for the Provision of Fuel Analysis for the Regulator For Energy and Water Services.**

The Tender was published on the 6<sup>th</sup> November 2015. The closing date was on the 27<sup>th</sup> November 2015. The estimated value of the Tender is €77,122.00 (Exclusive of VAT).

Two offers (2) had been received for this Tender.

On the 28<sup>th</sup> January 2016 Saybolt Malta Limited filed an objection against the decision of the Contracting Authority to discard its Tender as it was deemed administratively non-compliant.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a hearing on Tuesday the 19<sup>th</sup> April 2016 to discuss the objection.

Present for the hearing were:

**Saybolt Malta Limited:**

Mr Etienne Brincat	Representative
Ms Moira Bugeja	Representative
Mr David Gauci	Representative

**Inspectorate Malta Limited:**

Ms Vanessa D'Amato	Representative
Mr Noel Sciortino	Representative

**Regulator for Energy and Water Services:**

Ms Miriam Micallef Sultana	Chairperson Evaluation Board
Mr Carmel Farrugia	Secretary Evaluation Board
Mr Brian Borg	Member Evaluation Board
Ms Bernice Bruno	Member Evaluation Board
Ms Liana Mercieca	Member Evaluation Board

The Chairman made a brief introduction and invited the Appellant's representative to make his submissions.

Mr David Gauci for the Appellant explained that their Tender had been rejected because it was found to be non compliant, having omitted to prove equivalence according to clause 8.5.1 of the Tender. He submitted that:

- a) The certification was not included with the Tender because Saybolt Malta Ltd had written "YES" in the required column in the Specifications Form to show that offer met the Tender's minimum requirements;
- b) The Appellant had considered that this declaration to be sufficient;
- c) In a previous Tender that had been awarded to Saybolt Malta Ltd, the same procedure had been used and accepted. The Appellant had even asked for clarification on the point in that other Tender.

The Chairman pointed out that although the submission of equivalent products was admissible; the bidders had to produce proof of such equivalence with their Tender submissions.

Mr Brian Borg on behalf of the Contracting Authority explained that the Tender had listed acceptable methods of sample testing but then left it to the laboratories themselves to prove the equivalence of their offers through documentation. This was in terms of clause 8.5.1 of the Tender Document. The same clause was used in all previous Tenders.

In a previous Tender, issued two years ago, the present Appellant had complied with this provision and produced the necessary proof. In fact the latter had been awarded the Tender. In the present Tender, although it was specifically requested, Saybolt Malta Ltd did not produce this and the Tender was declared to be administratively non-compliant because of this.

Mr David Gauci reiterated that Appellant had thought that putting down "YES" in the appropriate column was enough.

At this point the hearing was closed.

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**This Board,**

**Having noted the Appellant's Objection, in terms of the "*Reasoned Letter of Objection*" dated 28 January 2016 and also through their verbal submissions during the Public Hearing held on 19 April 2016 had objected**

**to the decision taken by the Pertinent Authority, in that:**

- a) The Appellant contends that his offer was discarded due to the fact that he failed to prove equivalence of the product being offered by the same. In this regard, the Appellant maintains that he did indicate compliance by writing “Yes” in the Technical Specification Form.**

**Having considered the Contracting Authority’s “*Letter of Reply*” dated 2 February 2016 and also their verbal submissions during the Public Hearing held on 19 April 2016, in that:**

- a) The Contracting Authority maintains that the Tender Specifications clearly dictated that “*Equivalence*” of the Product had to be proven by submitting the specific documentation proving such equivalence. In this regard, the Appellant did not abide by this condition.**

**Reached the following conclusions:**

- 1. This Board would like to credibly accentuate the basic “*Maxim*” that conditions dictated in a Tender Document must be strictly adhered to. The Tender Document and submissions thereof, once signed and remitted to the Contracting Authority is purely and simply enacting a**

**contractual obligation on both parties.**

**In this Particular case, the Tender Document dictated that if an equivalent supply of the Tendered good is offered by a bidder, the latter has to provide proof that his product does meet the Technical Specifications as laid out in the Tender Document.**

**Proof of equivalence represent a tangible demonstration that the product has the equivalent technical requirements of the Tender Document and will give the equivalent final result as that requested in the same document.**

**In this particular case, this Board is comforted by the fact that Saybolt Malta Ltd tangibly proved that they did not submit the requested documentation to substantiate and prove the *“Equivalency”* of the product which they were offering.**

**Assumption that a *“Yes”* in the column where proof of equivalency had to be provided does not in any credible way represent an adherence to this requirement. In this regard, this Board does not uphold the Appellant’s Contention.**

**In view of the above, this Board finds against the Appellants and recommends that the deposit paid by the latter should not be reimbursed.**

Dr Anthony Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Lawrence Ancilleri  
Member

*25 April 2016*