

PUBLIC CONTRACTS REVIEW BOARD

Case 1134 – CFT:009-6073/17 – Tender for the Supply of Back-up Batteries

The publication date of the call for tenders was the 6th October 2017 whilst the closing date of the call for tenders was the 23rd October 2017. The estimated value of the tender (exclusive of VAT) was € 60,000.

There were six (6) bidders on this tender.

Melita Marine Group filed an appeal on 22nd January 2018 against the Contracting Authority's decision that their tender had been rejected as it was considered that their product did not meet the technical specifications. A deposit of €400 was paid.

On 20th February 2018 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Mr Carmel Esposito and Mr Lawrence Ancilleri as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellant – Melita Marine Group

Dr Joseph Sammut	Legal Representative
Mr Andrew Scicluna	Representative

Contracting Authority – Central Procurement and Supplies Unit

Dr Stefan Zrinzo Azzopardi	Legal Representative
Ing. Frankie Caruana	Chairman Evaluation Board
Mr Stephan Farrugia	Secretary Evaluation Board
Mr Charles Attard	Member Evaluation Board

After a brief introduction Dr Anthony Cassar, Chairman of the Public Contracts Review Board, invited the parties to make their submissions.

Dr Joseph Sammut, Legal Representative of Melita Marine Group, stated that his clients' objection was based on the fact that the wrong analysis had been made by the Contracting Authority of the documents his clients had submitted with the tender. The layout of the terminals depended on the angle that the battery was looked at. The documents submitted indicated all the positions of the terminals. The additional photograph submitted was further clarification, but could be excluded if this confused the issue. The data was very clear, and an examination of data sheets 4 and 5 clearly indicated that the literature submitted had been misinterpreted.

The Chairman requested witnesses to testify.

Mr Charles Attard (34771M) testified on oath that he was the Adjudicator of the Evaluation Board on this tender. The CPSU requested 4 different types of batteries, and if one of these types did not qualify the total tender would be disqualified. In this Case item 3 of the tender failed due to the wrong layout of the battery terminals. Mr Attard tabled a document showing the various layout of battery terminals requested. He pointed out the importance of the polarity and position of the terminals which had to fit existing apparatus at Mater Dei Hospital. Referring to the document tabled, he said that the layout referring to item 3 should have referred to item 4; therefore the terminals layout and polarity were incorrect.

Mr Andrew Scicluna, (185883M) representative of Melita Marine Group, was next to testify under oath. He exhibited two samples of a battery which he claimed were similar in specifications requested regarding the item under dispute in the tender. He contended that the layout had been misinterpreted and since it was this that determined the position of the terminals the data submitted by his firm met the specifications.

The Chairman asked for an exact explanation of the layout requested as there seemed to be conflicting views.

Mr Charles Attard stated that the layout determines two things – the position of the terminals and the polarity. The drawings of the layouts were part of the tender and could not be disregarded. Photographs of samples were not taken into consideration.

The Chairman said that the drawings of layout 3 and 4 submitted with the tender do not agree and the photograph and the layout were conflicting.

Dr Stefan Zrinzo Azzopardi, legal representative of the Contracting Authority, said that the appeal hinged on the Board's interpretation of the layout of item 3. The technical specifications

indicate the position of the terminals and the layout and the diagrams submitted should be the sole determinants of the issue in this Case.

After thanking both parties for their submissions he declared the hearing closed.

This Board,

Having noted this Objection filed by Melita Marine Group (herein after referred to as the Appellant), on 22 January 2018, refers to the contentions made by the same Appellant with regards to the award of Tender of Reference CFT 009-6073/17 listed as Case 1134 in the records of the Public Contracts Review Board, awarded by the Central Procurement and Supplies Unit, (hereinafter referred to as the Contracting Authority).

Appearing for the Appellant: Dr Joseph Sammut

Appearing for the Contracting Authority: Dr Stefan Zrinzo Azzopardi

Whereby, the Appellant contends that:

- a) Their offer was discarded due to the incorrect interpretation of the documentation which they have submitted. In this regard, the Appellants insist that, as can be seen from the Technical Literature duly**

submitted, their offer was technically compliant and should not have been rejected by the Contracting Authority.

This Board also noted the Contracting Authority’s “*Letter of Reply*” dated 2 February 2018 and its verbal submissions during the Public Hearing held on 20 February 2018, in that:

- a) The Central Procurement and Supplies Unit contend that from the technical specifications and the technical diagram of the battery, duly submitted, it was evidently clear that the layout diagram did not refer to the correct layout of the battery as stipulated on Page 15 of the Technical Specifications of the Tender Dossier. In this regard, the Evaluation Board had no other option but to deem the Appellants’ offer as being technically non-compliant.**

This same Board also noted the testimonies of the following witnesses:

- 1. Mr Charles Attard, duly summoned by the Central Procurement and Supplies Unit;**
- 2. Mr Andrew Scicluna duly summoned by Melita Marine Group.**

This Board has also taken note of the following items which were presented during the Public Hearing:

1. Samples of the Batteries presented by Melita Marine Group;

2. Layout samples presented by the Central Procurement and Supplies Unit;

This Board, after having examined the relevant documentation to this Appeal and heard submissions made by the parties concerned, including the testimony of the witnesses duly summoned, opines that the issue to be considered is the “*interpretation of the layout of the battery*” as submitted by the Appellants.

First and foremost, this Board would remind all parties concerned that the technical literature forms part of the technical offer, so that the former must collaborate with what the Bidder is offering. At the same instance, in cases where additional literature is requested by the Contracting Authority, the principle of self limitation must always be applied by the Evaluation Board, so that if the submitted literature does not represent what has been declared in the technical offer, the latter would be deemed technically non-compliant.

In this particular case, the technical offer, submitted by the Appellant, was technically compliant; however, the literature which contained the diagram of the layout of the polarity of the battery did not correspond with the technical

specifications as dictated in the layout on Page 15 of the tender dossier, the latter specifications had a very objective purpose, as credibly explained by the technical witness who stated:

“Barra minn hekk, għandna ukoll il-polarita’ tal-batterija. Jigifieri barra l-connections irid ikollha positive u negative li jinqelbu, jigifieri f’ każ ta’ 1 u 2 huma l-istess haġa identiċi imma b’ polarita’ maqluba. Jekk naraw fi 3 u 4 l-istessn imma l-polarita’ maqluba. Dan għaliex jagħmel sens għalina? Għaliex ahna għandna apparat ġewwa Mater Dei fejn ir-racks tagħhom jiehdu numru ta’ batteriji li jiġu illinkjati b’ cables mill-manufacturer li jekk ma tiġix bil-layout eżatt kif tlabna, ma jlahhaqx il-connections, allura dik għalina hija importanti hafna.”

From the above testimony, this Board justifiably establishes that the positioning and layout of the polarity of the batteries was an important issue for the Contracting Authority in the procurement of the product. This Board also notes the valid and credible reasons why the technical specifications and diagrams had to conform to the layout as vividly dictated on page 15 of the tender dossier. At the same instance, on examining the appellants’ submitted layout, this Board is credibly convinced that the appellants’ submission in this regard, referred to a different stipulated layout.

This Board would emphasize the fact that the tender dossier clearly denoted which diagram is applicable and the appellants submitted the incorrect layout which does not complement the technical offer of same. In this regard, this Board also noted the samples presented by Melita Marine Group during the Public Hearing; however, what matters was what was submitted by the Appellants. Through the principle of self limitation, the Evaluation Board had no other option but quite appropriately, deem the Appellants' offer as technically non compliant.

This Board also considered the fact that, as had been opined on numerous occasions, it is the responsibility of the bidder, to ensure that prior to the submission of his offer; he ensures that the technical literature and/or diagrams conform to the technical offer submitted by the same. At the same instance, appellants, if in doubt, had all the remedies to rectify the situation prior to the closing date for the call for competition, however this remedy was not availed of by Melita Marine Group.

In view of the above, this Board,

- i) Upholds the decision of the Central Procurement and Supplies Unit in the award of the Tender;**

ii) Does not uphold Melita Marine Group's contentions;

iii) Recommends that the deposit paid by the Appellants should not be refunded.

Dr Anthony J Cassar
Chairman

Mr Carmel Esposito
Member

Mr Lawrence Ancilleri
Member

1st March 2018