



Dr Anthony Cassar, Chairman of the Public Contracts Review Board, welcomed the parties and invited Appellant to make his submissions.

Mr Michael Farrugia, Representative of Reliability and Maintenance Services Ltd stated that he was advised by the Contracting Authority that his tender was not compliant as certain information was missing in the documentation of his bid. He contended that he supplied all the necessary paperwork as requested.

Dr Marco Woods, Legal Representative of the Central Procurement and Supplies Unit, said that there was no reference to the 'reference probe' in the technical literature. There was a reference to this instrument in the financial bid – however the lack of reference to the probe at the technical evaluation stage meant that his bid was incomplete and thus not compliant.

Mr Michael Farrugia pointed out that in the technical bid forms there was no space or indication to supply details of the reference probe. In fact, he pointed out an instance where there were two conflicting requests in the tender documents. The financial bid was therefore the only area where he could make reference to the probe.

Mr Joseph Catania (488765M) testified on oath that he was the Evaluator in this tender. He was shown literature submitted by Appellant and in reply he said that the probe in question had been identified by a number but it was not specified if this was a reference probe. The latter instrument was required to calibrate the 40 probes requested. As there were no details regarding the reference probe he was not aware if there was any difference between ordinary probes and reference probes in the literature submitted.

Mr Farrugia re-iterated that the documents he had submitted were correct. It was the bidders' responsibility to provide a working system; there was no specific request for a reference probe in the technical literature and he felt his system had fulfilled the tender requirements.

The Chairman thanked the parties for their submission and declared the hearing closed.

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**This Board,**

**Having noted the Objection filed by Reliability and Maintenance Services Limited, (herein after referred to as the Appellant) on 25 March 2018, refers**

**to the contentions made by the same Appellant with regards to the cancellation of Tender of Reference T 027-6067/2017 listed as Case No 1161 in the records of the Public Contracts Review Board.**

**Appearing for the Appellant: Mr Michael Farrugia**

**Appearing for the Contracting Authority: Dr Marco Woods**

**Whereby, the Appellants contend that:**

- a) They had submitted all the requested information and due to the fact that there was no dedicated space to indicate “*references to the probe*” in the Technical Offer they had submitted this same requested information in the financial offer.**

**This Board also noted the Contracting Authority’s “*Letter of Reply*” dated 5 April 2018 and its verbal submissions during the Public Hearing held on 8 May 2018, in that:**

**a) The Central Procurement and Supplies Unit maintains that the Technical Literature formed part of the technical specifications and in the latter documentation, the Appellants did not submit reference to the probe, so that the latter's offer was deemed as technically non-compliant.**

**This same Board also noted the testimony of the witness, namely Mr Joseph Catania, duly summoned 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 Witness, opines that the issues worth of consideration are twofold:**

- 1. The requested technical specifications;**
- 2. Reliability and Maintenance Services Limited's submissions in this regard;**

## **1. The requested Technical Specifications**

**First and foremost, this Board would point out that the Technical Specifications in a Tender Dossier must be clear, direct and must be achievable. At the same instance, same specifications must not favour any particular brand or product and must represent the requirements of the Contracting Authority.**

**In this particular case, the Central Procurement and Supplies Unit, under Section 4 – Technical Specifications, with particular reference to Item 1.1.6, requested that**

***“Reference probe to be used for onsite calibration even by the end user, including any software.”***

**In this regard, the Appellants are claiming that there was no space indicated where such information is to be submitted, in the technical offer form, so that this requested information was included in the financial bid. In this respect, this Board opines that the Appellants had all the remedies to clarify such an ambiguity in the Tender Dossier prior**

**to the closing date of the Tender and the same Appellants failed to avail themselves of such remedies.**

**At the same instance, this Board notes that the Tender Dossier requested an unlimited number of sensors but the Appellants' offer stated a software version 2.0 up to 49 sensors and the reference probe that was requested was not included in the Technical Offer. In this scenario, this Board opines that the Evaluation Committee had no other option but to deem Reliability and Maintenance Services Limited's offer as technically non-compliant.**

**In this regard, this Board would point out that the Technical Specifications and the description thereof could have been more direct and informative to avoid such ambiguity. At the same instance, the Technical Offer schedule should have catered specifically for the individual technical specifications as dictated in Section 4 – Technical Specifications, Clause 1.1.**

**In this respect, this Board has also taken into consideration the testimony of the witness, namely Mr Joseph Catania, one of the**

**evaluators. However, from such testimony, this Board has established that the mode of formulation of the Technical Specifications leaves much to be desired and there was ample room for possible ambiguities and misunderstandings.**

**2. Reliability and Maintenance Services Limited's Submissions**

**With regards to the Appellants' claim that they included the requested information in the financial offer, this Board would respectfully point out that the Evaluation Committee could not have taken such an issue into consideration due to the simple fact that the Appellants' offer did not reach the financial evaluation stage and in this respect, this Board applies the principle of self limitation, so that the Evaluation Committee after having deemed the Appellants' offer to be technically non compliant, could not assess the latter's offer financially. In this regard, such contention is not upheld by this Board.**

**In view of the above, this Board:**

- i) Upholds the decision taken by the Central Procurement and Supplies Unit to cancel the Tender;**
  
- ii) Does not uphold the contentions made by Reliability and Maintenance Services Limited. However, due to the circumstances of this case, this Board recommends that the deposit paid by the Appellants should be refunded.**

Dr Anthony Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Carmel Esposito  
Member

*17<sup>th</sup> May 2018*