

PUBLIC CONTRACTS REVIEW BOARD

Case 1203 – FTS Q 008/2018 – Quotation for the Supply and Delivery of Surge Protection Devices

The publication date of the call for tenders was the 1st May 2018 whilst the closing date of the call for tenders was the 14th May 2018. The estimated value of the tender (exclusive of VAT) was € 9,842.

On the 19th July 2018, Constant Power Solutions filed an appeal against the Foundation for Tomorrow's Schools' decision to cancel the tender as the only bid received was not fully compliant. A deposit of € 400 was paid.

There was one (1) bid.

On 28th August 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 – Constant Power Solutions

Ms Sharon Geng	Representative
Mr Alexander German	Representative
Mr Howard Bruce Glushakow	Representative

Contracting Authority – Foundation for Tomorrow's Schools

Dr Dennis Zammit	Legal Representative
Eng. Simon Scicluna	Chairman Evaluation Board
Ms Alexia Sammut	Secretary Evaluation Board
Eng. Melchisedech Zarb	Member Evaluation Board

Dr Anthony Cassar, Chairman of the Public Contracts Review Board, welcomed the parties and asked Appellants to make their submissions.

Mr Alexander German, Representative of Constant Power Solutions said that he will attempt to indicate to the Board that their offer was compliant.

Mr Howard Bruce Glushakow testified on oath that he represented MCG Electronics Inc manufacturers of surge protectors. He went on to demonstrate visually a total of eleven points

regarding the compatibility of their equipment and how it met all the requirements specified in the bid. The surge protector offered by his firm was internationally used and he tabled a Certificate of Conformity in support of his claim.

Dr Dennis Zammit, Legal Representative for Foundation for Tomorrow's Schools said that the decision to exclude was based on the documents presented in the tender. On 18th May 2018 the Evaluation Board had asked for further clarification as those documents did not indicate that the bid met the requirements.

Engineer Simon Scicluna, Chairman of the Evaluation Board referred to the Technical specification form and particularly to the clarification requested regarding the type of surge protector required (class 1/2/3). In reply bidders offered class 2 which they claimed was equivalent to the specifications. This was not compliant. Moreover there were omissions in the Test Sequence Report where certain requested details were left blank.

The Chairman said that the Board was only empowered to judge on documents submitted – their function was to ensure that the process had been correctly carried out not on the technical assessment of the equipment offered.

He then thanked the parties for their submission and declared the hearing closed.

This Board,

having noted this Objection filed by Constant Power Solutions, (hereinafter referred to as the Appellants) on 19 July 2018, refers to the contentions made by the same Appellants with regards to the cancellation of Tender of reference FTS Q 008/2018 issued by the Foundation for Tomorrow's Schools and listed as Case No 1203 in the records of the Public Contracts Review Board.

Appearing for the Appellants: Mr Alexander German

Appearing for the Contracting Authority: Dr Dennis Zammit

Whereby, the Appellants contend that:

- a) **Their main concern is that their product is fully compliant and in this respect, they do not agree with the Contracting Authority's decision to cancel the Tender.**

This Board has also noted the Contracting Authority's "*Reasoned Letter of Reply*" dated 30 July 2018 and also its verbal submissions during the Public Hearing held on 28 August 2018, in that:

- a) **The Foundation for Tomorrow's Schools insists that from the submissions made by the Appellants, the technical specifications of their product do not fulfil the stipulated requirements in the tender document.**

This Board, after having examined the relevant documentation to this Appeal and heard submissions made by the parties concerned opines that the issue worth of consideration is the content of submissions made by Constant Power Solutions.

First and foremost, this Board would emphasize the importance which should be given to the documentation to be submitted by the Bidder. Technical Specifications in a tender document are stipulated so that the prospective bidder would be aware and fully understand what is being requested by the

Contracting Authority. At the same instance, both the bidder and the Evaluation Committee are subject to the principle of self-limitation.

This important principle has been emphasized on numerous occasions by this Board, due to the basic fact that such a principle precludes both the bidder and the Contracting Authority from effecting any variations to the specifications as dictated by the tender document. At the same instance, such a principle safeguards the concept of equal treatment to all bidders.

In this particular case, the Foundation for Tomorrow's Schools requested a clarification relating to the type of surge protector so requested to fall into class 1, 2 and 3. The Appellants confirmed that their product, in this particular regard, has a class 2 category, the latter of which is not compliant. This Board was also made aware of the fact that there were also omissions in the "*Test Sequence Report*", as certain details were disregarded. In this regard, this Board acknowledges and confirms that such deficiencies do justifiably constitute technical non-compliance.

This Board also noted that the technical witness confirmed that Appellants' submissions could have been better explained and represented. In this respect, this Board would stress the very basic fact that, the Evaluation Committee can only assess the offers on the documentation so submitted by

the bidders and the latter cannot expect to regularise their offer during the public hearing of their Appeal.

In view of the above, this Board,

- i) Upholds the decision of the Foundation for Tomorrow's Schools to cancel the tender;**
- ii) Does not uphold Constant Power Solution's grievances;**
- iii) Considers that in view of the cancellation of the Tender, the deposit paid by the Appellants should be fully refunded.**

Dr Anthony Cassar
Chairman

Mr Carmel Esposito
Member

Mr Lawrence Ancilleri
Member

6th September 2018