

PUBLIC CONTRACTS REVIEW BOARD

Case 1205 – GN/DPS/T/3050/2018 – Tender for the Supply, Delivery and Commissioning of Station Transformer for Delimara Power Station

The publication date of the call for tenders was the 23rd February 2018 whilst the closing date of the call for tenders was the 5th April 2018. The estimated value of the tender (exclusive of VAT) was € 350,000

On the 2nd August 2018, Siemens SpA filed an appeal against Enemalta plc as Contracting Authority against their exclusion on the grounds that their offer was technically not compliant. A deposit of € 1,750 was paid.

There were seven (7) bidders

On 4th September 2018 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Richard A Matrenza as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellant – Siemens SpA (represented by JRD Systems Ltd)

Mr Christopher Cassar Torregiani Representative

Recommended Bidder – Test and Measurement Instrumentation Ltd

Eng. Stephen Buttigieg Representative

Contracting Authority – Enemalta plc

Dr Clement Mifsud Bonnici	Legal Representative
Eng. Ivan Bonello	Chairperson Evaluation Board
Eng. Mario Micallef	Member Evaluation Board
Eng. Steven Scott	Member Evaluation Board
Eng. Charles Bugeja	Member Evaluation Board
Eng. Joseph Farrugia	Member Evaluation Board

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

Mr Christopher Cassar Torregiani, Representative of Siemens SpA, said that Appellants were objecting to their exclusion on three points. On two of the points they were offering alternative solutions as allowed in the tender, namely ‘functionally equivalent’ (FE) solutions, although it was likely that it was not clearly explained what the solutions were.

The Chairman pointed out that it was not enough to claim that one was offering FE as an alternative – one had to prove that it is the equivalent of what was requested.

Mr Cassar Torregiani said that he conceded that point. The third point raised by the Contracting Authority was a technical point on an engineering question where Siemens held a different view from Enemalta.

Dr Clement Mifsud Bonnici, Legal Representative of Enemalta plc, said that in seeking FE solutions the onus was on the bidder to prove to the Evaluation Committee the equivalence of the solutions. In this instance the bid did not indicate the equivalence of their submitted alternative.

Mr Cassar Torregiani said he would not press his points and hoped the Board would see its way to refund the deposit paid.

The Chairman said that unless there were any objections the Board would refund the deposit; he thanked both parties for their submissions and declared the hearing closed.

This Board,

having noted this Objection filed by Siemens SpA, (hereinafter referred to as the Appellants) on 2 August 2018, refers to the contentions made by same Appellants with regards to the award of Tender of reference GN/DPS/T/3050/2018 awarded by Enemalta plc and listed as Case No 1205 in the records of the Public Contracts Review Board.

Appearing for the Appellants: Mr Christopher Cassar Torregiani

Appearing for the Contracting Authority: Dr Clement Mifsud Bonnici

Whereby, the Appellants contends that:

a) Their objection refers to the alleged non-compliance with regards to “*weight of covers*”, “*base thickness*” and “*earthing resistor*”. In this regard, the Appellants contend that their specifications on these items are equivalent to those stipulated in the tender dossier; however, the same appellants admit that, on their part, they should have submitted more explanative information to prove their equivalency.

This Board has also noted the Contracting Authority’s “*Reasoned Letter of Reply*” dated 17 August 2018 and also their verbal submissions during the Public Hearing held on 4 September 2018, in that:

a) Enemalta plc insists that the onus is on the Appellants to prove their products’ equivalency to the technical specifications as dictated in the Tender Dossier. In this regard, due to the fact that such verification was not submitted, the Evaluation Committee had no other option but to deem Siemens SpA’s offer as being technically non-compliant.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by the parties concerned, acknowledges and appreciates Appellants’ gesture, in that, they conceded the fact that their offer on the three issues being objected on, could have been better explained and substantiated to prove the functional equivalency of the items under review.

This Board would respectfully point out that, it is the duty and responsibility of the Bidder to submit proof and all other necessary documentation to prove a product's functional equivalency.

In view of the above, this Board,

- i) upholds Enemalta plc's decision in the award of the Tender;**
- ii) does not uphold Siemens SpA's grievances but at the same instance, appreciates the Appellants' cooperation during the Public Hearing for this appeal;**
- iii) in view of point ii) above, this Board recommends that the deposit paid by the Appellants it to be fully refunded.**

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Richard A Matrenza
Member

11th September 2018