

PUBLIC CONTRACTS REVIEW BOARD

Case 1384 – CFT 019-0653/19 – Tender for the Supply of Low Smoke Halogen Free Shielded Cables

The publication date of the call for tenders was the 2nd July 2019 whilst the closing date was the 22nd July 2019. The estimated value of the tender (exclusive of VAT) was € 80,000

On the 9th October 2019 Eurosupplies Ltd filed an appeal against the Central Procurement and Supplies Unit as the Contracting Authority on the grounds that their tender had been disqualified as being not technically compliant. A deposit of € 400 was paid.

There was one (1) bidder.

On 14th November 2019 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman Dr Charles Cassar and Mr Carmel Esposito as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – Eurosupplies Ltd

Mr Julian Borg	Representative
Mr Anton Borg	Representative
Mr Andre Ferreira	Representative

Contracting Authority – Central Procurement and Supplies Unit

Dr Marco Woods	Legal Representative
Eng Samuel Bonanno	Member of Evaluation Committee
Mr Dominic Camilleri	Member of the Evaluation Committee
Ms Silvana Spiteri	Secretary of the Evaluation Committee

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

Mr Anton Borg Representative of Eurosupplies Ltd stated that this appeal hinged on the technical documents submitted in the tender which specified that the sheathing of the cable had to be white. The data sheet submitted which represents the standards of the product stated that the cable was black as that is the standard colour of the sheathing, whilst the Declaration of Conformity indicated that the product will be supplied in the colour white as requested. Appellants were the only tenderers and it would not have been out of place for the Contracting Authority to request a clarification on this apparent anomaly.

Dr Marco Woods Legal Representative of the Central Procurement and Supplies Unit said that this case was similar to the one decided by the Board in case 1362 in that what was declared in the offer and what was indicated in the technical literature had to conform. The Evaluation Committee had seen all the papers submitted and applied the principle of self limitation in concluding that the documents were contradictory. Clarification was not possible as this would have changed the submissions and the evaluation committee had no alternative except to disqualify the bidder.

Mr Borg re-iterated that the declaration of conformity is part of the technical literature and was submitted together with all other documents. The technical data is a standard document and is the sole reason why it states that the cable is black in colour.

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

End of Minutes

Decision

This Board,

having noted this objection filed by Eurosupplies Ltd (herein after referred to as the Appellants) on 9 October 2019, refers to the claims made by same Appellants with regard to the tender of reference CFT 019-0653/19 listed as case No. 1384 in the records of the Public Contracts Review Board published by Central Procurement and Supplies Unit (herein after referred to as the Contracting Authority).

Appearing for the Appellants:

Mr Anton Borg

Appearing for the Contracting Authority: Dr Marco Woods

Whereby, the Appellants contend that:

- a) The data sheet of their product which was duly submitted, indicated the standard colour of the sheathing as black, however in their declaration of conformity, same indicated that the product will be supplied in white colour. In this regard, Appellants feel that their offer was unjustly rejected and the Authority, in this case, should have sought a clarification as all the necessary documentation was submitted.**

This Board also noted the Contracting Authority's 'Letter of Reply' dated 21 October 2019 and its verbal submissions during the hearing held on 14 November 2019, in that:

- a) The Authority maintains that the Technical Literature which was represented through the data sheet submitted by Appellants, is the official documentation on which the Evaluation Committee had to deliberate and the literature indicated specifically that the colour of the cable is black, so that same Committee had no other option but to deem Appellants' offer as technically non-compliant.**

This Board, after having examined the relative documentation to this appeal and heard submissions made by the parties concerned, opines that the issue that merits consideration is the data sheet submitted by Appellants.

- 1. This Board would respectfully point out that when the tender document stipulates the submission of the Technical Literature with the offer, such documentation has to prove and complement the technical details and characteristics of the product as duly declared in the technical offer form.**
- 2. In this particular case, Appellants submitted a technical data sheet which denotes the characteristics of the product so that the data sheet represented the technical literature of the product, as duly requested in the tender dossier.**
- 3. This Board would also refer to ‘Notes to Clause 7 (3)’ wherein it is being stated that:**

“Literature submitted will be allowed. Literature submitted shall be rectifiable only in respect of any missing information i.e. documentation.

All Rectifications are free of charge.

3.No rectification shall be allowed. Only clarifications on the submitted information may be requested.”

In this regard, this Board notes that the data sheet submitted by Appellants contained all the technical information to represent the technical literature so requested by the Authority. In this respect, since the information submitted was complete, rectification to this documentation was not permissible.

4. With regard to Appellants’ contention that the Evaluation Committee should have sought clarifications, this Board would respectfully point out that clarifications should not be effected so that original technical submissions made by a bidder are consequently altered or corrected, as this would be in breach of note 3 of ‘Notes to Clause 7’ of the tender document.

5. With regard to Appellants’ contention that ‘Declaration of Conformity’ specified that the sheath is white and hence the reason why the Authority should have sought a clarification, this Board would point out that the technical data sheet submitted by Appellants represented the technical

literature so that the Evaluation Committee had to evaluate Appellants' offer on the latter documentation in accordance with the principle of 'Self-Limitation'.

In conclusion, this Board opines that:

- a) The 'Declaration of Conformity' should not supersede the technical literature but rather confirm the technical details contained in the offer and the literature of the product being offered by the bidder. In this particular case, the Declaration of Conformity did not conform to such a requirement.**

- b) The technical data sheet submitted by Appellants in their offer represented the technical literature and, in this regard, it did not complement the offer as duly submitted by Appellants.**

- c) The Evaluation Committee were in duty bound to adhere to the principle of self-limitation and conform with article 3. of 'Notes to Clause 7' of the tender dossier.**

In view of the above, this Board,

i. does not uphold Appellants' contentions,

ii. directs that the deposit paid by Appellants should not be reimbursed.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Carmel Esposito
Member

21 November 2019