



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

Mr Frank Borda on behalf of the appellant contended that although the ISO certificate presented by appellant with the offer had lapsed, the panels offered were covered by certification since these were manufactured while the certification was valid.

He explained that Sharp had the panels manufactured in Germany by Astro Energy and the latter had the necessary ISO Certification. However it stopped production in March 2019.

The panels asked for by the tender are to be rated 265 Watts, but these are no longer being produced. 330 watt panels are now being produced. Appellant had some in stock and offered these panels and was able to offer them at half price.

The Chairman here explained to Mr Borda this Board's remit and asked if the tender document had asked for a valid certification.

Dr Danielle Vella for the contracting authority said that the tender specified that the offers be covered by a valid ISO certificate, while that produced by appellant had lapsed. The evaluation board had no option but to disqualify.

Mr Brian Cauchi for the appellant said that his firm had submitted two tenders. The 265W panels offered in this tender were manufactured in Germany by Astro Energy and are no longer produced. The requested ISO 9001 relates to the manufacturing process of the product, and at the time of manufacture, the PV panels in question were in fact covered by certification since at that time the certificate was still valid. In fact the certificate was not included in appellant's offer but was submitted after being requested by MITA through a clarification. Appellants had submitted documentation, including the serial numbers, that showed that the manufacture was made under valid certification. He reiterated that the panels offered had been covered by certification at manufacture stage.

Lawrence Fenech for the preferred bidder explained that the ISO certificate requested in fact relates to the manufacturer and not to the product being made.

Mr Frank Borda stated again that 265Watt panels are not being imported anymore because these were substituted by 330 Watt ones. However his firm had them in stock. These were covered by the certificate and also were guaranteed for twenty five years.

The Chairman thanked the parties and the hearing was closed.

**Decision**

**This Board,**

**having noted this objection filed by Frank Borda Ltd (herein after referred to as the Appellants) on 4 December 2019, refers to the claims made by the same Appellants with regard to the tender of reference T 082/19 listed as case No. 1409 in the records of the Public Contracts Review Board awarded by Malta Information Technology Agency (herein after referred to as the Contracting Authority).**

**Appearing for the Appellants: Mr Brian Cauchi**

**Appearing for the Contracting Authority: Dr Danielle Vella**

**Whereby, the Appellants contend that:**

- a) Although the ISO certificate presented expired on 31 March 2019, same certificate confirms that the specific product, at the time of its manufacture, was compliant with ISO 9001/2015 and ISO 14001/2015. In this regard, since the offered solar module was compliant when**

**specifically manufactured, their offer should not have been discarded by the Authority.**

**This Board also noted the Contracting Authority's 'Letter of reply' dated 17 December 2019 and its verbal submissions during the hearing held on 7 January 2020, in that:**

- a) The Authority insists that the submission of a valid ISO certification presented by Appellants expired on 31 March 2019, well before the closing date for submissions, so that the Authority had no other option but to deem Appellants' offer as administratively non-compliant.**

**This Board, after having examined closely the relevant documentation to this appeal and heard submissions made by all the interested parties opines that, the issue that merits consideration is the validity of the ISO certificate submitted by Appellants.**

- 1. This Board would respectfully refer to criterion iii) of section 3, whereby it is being stipulated that:**

*“the tenderer is required to confirm that the PV panels manufacturer is ISO 9001 certified. The tenderer is requested to provide a valid copy of the ISO 9001 certification of the manufacturer.”.*

**The above article clearly dictates that the ISO certification must be a valid one. In this regard, Appellants submitted certification valid up to 31/03/2019. This Board takes into consideration the fact that, the closing date for submissions was 25/10/2019, so that the validity of the ISO certificate expired seven months prior to the submissions of offers.**

- 2. This Board, as it has on numerous occasions, would point out that, the Evaluation Committee must always adhere to the principle of self-limitation so that, the other important principles of equal treatment and level playing field will prevail throughout the evaluation process.**
  
- 3. This Board also noted that the explanation as to why such an ISO certificate was valid up to 31/03/2019, was not explained and brought to the notice of the Evaluation Committee via Appellants’**

**original submissions and/or through their reply to the clarification request sent by the Authority.**

**4. Appellants were well aware of the fact that, they had to submit the ISO certification of the manufacturer of the panels and it was their duty and responsibility to ensure that such certification had to be a valid one as at the date of submission of their offer. If Appellants had any doubt about the admissable validity of such certification, they had the remedies to clarify prior to the submission of their offer, however this Board notes that such remedies were not availed of by Appellants.**

**5. This Board would respectfully point out that the ISO certification submitted by Appellants was only valid up to 31 March 2019 and at the same instance, this Board takes into consideration that, such mandatory requirement refers to the technical ability of the manufacturer and not to the product itself. In this regard, it is the responsibility of the Authority to ensure that the manufacturer of the product being offered is ISO certified, at the time of submission of the offer.**

**In conclusion, this Board opines that:**

- a) The manufacturer's ISO certification was a mandatory requirement.**
  
- b) The ISO certification submitted by Appellants was not a valid one, as at the date of submission of offers.**
  
- c) The Evaluation Committee quite appropriately, applied the principle of self-limitation so that it had no other option but to deem Appellants' offer as administratively non-compliant.**
  
- d) The preferred bidder was the cheapest and fully compliant with all the conditions stipulated in the tender document.**

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

- i. does not uphold Appellants' contention,**

**ii. upholds the Contracting Authority's decision in the award of the tender,**

**iii. directs that the deposit paid by Appellants on this appeal should not be reimbursed.**

Dr Anthony Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Richard A Matrenza  
Member

*21 January 2020*