

Dr Marco Woods Legal Representative for the Central Procurement and Supplies Unit stated that the points outlined by Appellants were dealt with in the letter of reply. There was a clarification to request literature and in reply the Appellants sent the first data sheet with numerous specifications missing. The second clarification sought the addition of the words ‘stranded and annealed’ which were missing in their first reply. Appellant then changed the literature submitted and since no rectification to literature was allowed Appellants were in breach and their offer was technically not compliant.

Eng Samuel Bonanno (1188M) called as a witness by the Public Contracts Review Board testified on oath that he was a member of the evaluation team and carried out the technical adjudication. Clarifications were sought as significant words were missing from the technical data submitted (referred to Docs DS1/DS2 filed with letter of reply). The evaluation committee requested bidder to provide manufacturers declaration to ensure that the product they were offering met the requirements. Bidder replied by submitting a third data sheet (DS3 in letter of reply) instead of a manufacturers’ declaration. The tender did not allow changes to documents.

Mr Ferreira said that the request for the manufacturing declaration was not received, to which Dr Woods produced an e-mail dated 12th September 2019 (tabled as Doc 1) which made such a request. He stated further that the original literature submitted was changed as the second data sheet altered the original specifications. The basis of the CPSU’s rejection is fully stated in the letter of reply and indicates that Appellants changed not rectified their submissions.

Mr Ferreira finally stated that oversights in the tender documents had disadvantaged the bidder and created confusion and hoped this will be born in mind when assessing the costs of this appeal.

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 (hereinafter referred to as the Appellants) on 14 November 2019, refers to the claims made by the same

Appellants with regard to the tender of reference CFT 019-0598/19 listed as case No. 1417 in the records of the Public Contracts Review Board.

Appearing for the Appellants: Mr Andre' Ferreira

Appearing for the Contracting Authority: Dr Marco Woods

Whereby, the Appellants contend that:

- a) The tender document did not stipulate the requirement of a literature list whilst the Contracting Authority is alleging that the technical data sheet submitted does not conform to the tender's requirements. In this regard, Appellants maintain that they had submitted all the requested information through the replies to the clarification requests.**

This Board also noted the Contracting Authority's 'Letter of reply' dated 26 November 2019 and its verbal submissions during the hearing held on 16 January 2019, in that:

- a) The Authority contends that, after reviewing the technical literature submitted by Appellants and the replies to the clarification requirements,**

it was found that, the technical data sheet submitted through the first clarification request, the technical literature contained therein was changed, so that the Authority had no other option but to deem Appellants' offer technically non-compliant.

This same Board also noted the testimony of the witness namely:

Eng. Samuel Bonanno duly summoned by the Public Contracts Review Board.

This Board has also taken note of the documents submitted by the Public Contracts Review Board which consisted of:

Document No. 1 - email dated 12 September 2019 requesting further information from Eurosupplies Ltd

This Board, after having examined the relevant documentation to this appeal and heard submissions made by the parties concerned, including the testimony of the witnesses duly summoned opines that, the issue that merits consideration is the technical literature submitted by Appellants.

- 1. First and foremost, this Board would respectfully point out that clarifications form an integral part of the tender dossier, so that, although**

the tender document did not stipulate the submission of the technical literature, it complimented such a requirement through a clarification note.

- 2. In this particular case, through a clarification request, tenderers were asked to submit the technical literature of the products being offered. Upon receipt of Appellants' reply the Evaluation Committee noted missing information relating to conductor type, core identification colours and colour of outer sheath of the cable.**

- 3. A further clarification request dated 16 August 2019, was sent to Appellants to confirm that the three issues mentioned above conform with the technical specifications as stipulated in section 4 of the tender document.**

- 4. Upon receipt of a second reply to the clarification request, the Authority noted further shortcomings on the technical specifications of the cable so that a third clarification was sent to Appellants, dated 26 August 2019, requesting a manufacturer's declaration to confirm technical compliance, as follows:**

“Eurosupplies Limited i.d. no: 116200

***CPSU No: 1523/18 Tender of 4 Core Screened Non-Armoured LSZH Power
Cables cft no:019-0598/2019***

Reference is made to the tender in caption, and to your submission for same.

*The Evaluation Committee noted the following shortcomings with regard to
your submission:*

*Kindly confirm and substantiate through manufacture declaration that the
cable conductor being offered is: **Stranded, annealed and tinned, circular
annealed copper.***

*In terms of Article 7.1 of the Instructions to Tenderers, you are hereby being
given the opportunity to clarify these shortcomings within five (5) working
days of notification till the 2nd August 2019 at 11.45 pm..*

*The requested information is to be submitted through the appropriate
Electronic Public Procurement (ePPS) module.*

*This clarification opportunity is being sent without any commitment
whatsoever on the part of the Contracting Authority, and does not imply that
your offer will be accepted as it may still be deemed administratively,
technically or financially non-compliant during the evaluation process.”*

Following such a request, Appellants, instead of submitting a manufacturer's declaration, submitted an amended technical data sheet.

- 5. This Board would point out that the Evaluation Committee gave all the available opportunity for Appellants to clarify their technical literature and moreover, Appellants failed to produce the manufacturer's declaration of technical conformity.**

- 6. This Board would point out that it was the duty and obligation to provide the Authority with the requested information and documentation which the Authority, quite appropriately deemed necessary to conduct a fair and transparent evaluation of the offers on equal treatment and a level playing field.**

- 7. It must also be mentioned that whilst it is also the duty and obligation of the tenderer to submit his offer in conformity with the conditions and requirements stipulated in the tender document, it is the responsibility and duty of the Evaluation Committee to abide by the principles of self-limitation thus ensuring transparency and equal treatment during the evaluation process.**

In conclusion, this Board opines that:

- a) The clarifications sent by the Authority, formed an integral part of the tender dossier.**

- b) Appellants failed to submit the manufacturer's declaration of conformity, as duly requested in clarification dated 26 August 2019.**

- c) Appellants, in their submissions changed the technical specifications as duly denoted in the original technical data sheet.**

- d) The Evaluation Committee carried out the evaluation process in a fair, just and transparent manner.**

In view of the above, this Board,

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

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

iii. directs that the deposit paid by Appellants should not be refunded.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

23 January 2020