

## **PUBLIC CONTRACTS REVIEW BOARD**

### **Case 1643 – CFT 009-0763/21 (CPSU 1674/21) – Tender for the Design, Supply, Delivery, Testing and Commissioning of Distribution Board for EV Charging Stations**

**9<sup>th</sup> November 2021**

The Board,

Having noted the Call for Remedies filed by Ing Stephen Buttigieg acting for and on behalf of Test and Measurement Instrumentation Ltd, (hereinafter referred to as the appellant) filed on the 15<sup>th</sup> September 2021;

Having also noted the letter of reply filed by Dr Alexia J. Farrugia Zrinzo, Dr Leon Camilleri and Ing Noel Psaila acting for the Central Procurement and Supplies Unit (hereinafter referred to as the Contracting Authority) filed on the 24<sup>th</sup> September 2021;

Having heard and evaluated the testimony of the witness Ing Stephen Buttigieg (Representative of Testing and Measurement Instrumentation Ltd) as summoned by Dr Franco Galea acting for the Appellant.

Having heard and evaluated the testimony of the witness Ing Eugenio Balconi (Representative of Agent Company for the Appellant) as summoned by Dr Franco Galea acting for the Appellant.

Having heard and evaluated the testimony of the witness Ing Noel Psaila (Representative of the Contracting Authority) as summoned by Dr Alexia J. Farrugia Zrinzo acting for the Contracting Authority.

Having taken cognisance and evaluated all the acts and documentation filed, as well as the submissions made by representatives of the parties including the letters filed by Appellant of 4<sup>th</sup> November 2021 and Contracting Authority of 5<sup>th</sup> November 2021 dealing with final submissions;

Having noted and evaluated the minutes of the Board sitting of the 26<sup>th</sup> October 2021 hereunder-reproduced;

#### **Minutes**

### **Case 1643–CFT 009-0763/21. Tender for the Design, Supply, Delivery, Testing and Commissioning of Distribution Board for EV Charging Stations**

#### **Remedy before Closing Date of a Call for Competition**

The tender was published on the 31<sup>st</sup> August 2021 and the closing date was the 24<sup>th</sup> September 2021. The value of the tender excluding VAT was € 50,000.

On the 15<sup>th</sup> September 2021 Test and Measurement Instrumentation Ltd filed a request for a remedy against the Central Procurement and Supplies Unit as the Contracting Authority claiming that the tender restricts open market participation.

A deposit of € 400 was paid.

On 26<sup>th</sup> October 2021 the Public Contracts Review composed of Mr Kenneth Swain as Chairman, Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a public virtual hearing to consider the appeal.

The attendance for this public hearing was as follows:

**Appellant – Testing and Measurement Instrumentation Ltd**

Dr Franco Galea	Legal Representative
Eng Stephen Buttigieg	Representative

**Contracting Authority - Central Procurement and Supplies Unit**

Dr Alexia Farrugia Zrinzo	Legal Representative
Eng Noel Psaila	Representative
Mr Hristov Hristo Ivanov	Representative

Mr Kenneth Swain Chairman of the Public Contracts Review Board welcomed the parties. He noted that since this was a virtual meeting all the parties agreed to treat it as a normal hearing of the Board in line with Article 89 of the Public Procurement Regulations. He then invited submissions.

Dr Franco Galea Legal Representative for Test and Measurement Instrumentation Ltd said that the appeal followed the points made in the letter of 15<sup>th</sup> September on this tender which superseded a previously cancelled similar tender which however had to be re-issued as it referred to a particular brand.

Dr Alexia Farrugia Zrinzo Legal Representative for the Central Procurement and Supplies Unit stated that there is no equipment that is mentioned by name in this tender and that the Authority does not agree with the comments made on the technical points.

Engineer Stephen Buttigieg (159771M) called as a witness by the Appellant testified on oath that he wishes the Board to acquaint themselves with some illustrations of the equipment referred to in this tender and which he wishes to place on record to explain clearly the tender requirements. He explained that the yard where the distribution board is to be fitted is large and open to the elements and therefore a bigger box could easily be fitted and that his firm had fitted similar boards in other Government buildings. The stated dimensions of the board came straight out of the ABB catalogue. The problem with an 800 amp board is that it required good ventilation and some difficulty in fixing cables – size therefore mattered. The glass door requested was only for aesthetic reasons and the offer of a polycarbonate door is safer and considered best practice. Requesting an energy meter for the self protection unit does not make sense.

Questioned by Dr Farrugia Zrinzo witness agreed that the tender referred to the words ‘or equivalent’ when referring to equipment and that there was a request to present solutions within the tender in regard to the surge protection device.

Engineer Eugenio Balconi (CA 58756BB) called as a witness by Appellant, testified on oath that he was the Manager of an Engineering firm with extensive experience of working overseas. He confirmed that the agent in Malta for his company's products was Engineer Stephen Buttigieg. The technical issue with the tender was the different types of distribution boards where size affects the thermal power and so it is necessary to increase ventilation. In his experience most glass panels collapse over time and so after research his firm uses polycarbonate which is long lasting and can be inflammable.

Questioned by Dr Farrugia Zrinzo witness stated that glass doors are readily available on the market and that the size of board requested complies with the standard.

Engineer Noel Psaila (464070M) called as a witness by the Contracting Authority testified on oath that the Authority has checked the market regarding the dimensions of the board; there are three companies which could meet their requirements in that respect and they had opted for a size which was not the smallest available. As there were plans to use the spare space in the yard they had set the dimensions accordingly. The gland sizes are sufficient for the planned cables whilst the glass doors are readily available from several firms and they desired glass as it does not lose its transparency. The multifunction meter was required to be provided as a spare to cover the possibility of further expansion of the wiring.

In reply to questions from Dr Galea witness agreed that the chosen dimensions in the tender match the details in the ABB catalogue but the dimensions requested are meant to meet the requirements of the Authority and could be procured from three sources. Witness was not aware if the evaluation committee has yet been formed but agreed that a former employee formed part of the drafting committee of the tender.

Dr Galea said that he would suggest that since the Board still had to view the illustrations referred to by Engineer Buttigieg the closing submissions should be done in writing at a later date.

This was agreed to by Dr Farrugia Zrinzo.

The Chairman therefore directed that the illustrations had to be in the hands of the Board by Friday 29<sup>th</sup> October and the written closing submissions by the 5<sup>th</sup> November 2021. He then thanked the parties for their submissions and declared the hearing closed.

End of Minutes

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**Hereby resolves:**

The Board refers to the minutes of the Board sitting of the 26<sup>th</sup> October 2021.

Having noted the Call for Remedies filed by Test and Measurement Instrumentation Ltd (hereinafter referred to as the Appellant) on 15<sup>th</sup> September 2021, refers to the claims made by the same Appellant with

regards to the tender of reference CFT 009-0763/21 (CPSU 1674/21) as case No. 1643 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Franco Galea

Appearing for the Contracting Authority: Dr Alexia J. Farrugia Zrinzo & Dr Leon Camilleri

Whereby, the Appellant contends that:

- a) **Dimensions** - The clause 2.17 requests that the panel dimensions be no greater than 2500x 2200hx 500d mm. These dimensions correspond to the ABB MNS kit. We have visited the yard at SAMOC where the DB will be placed, this measures 4.8 by 2.8m with almost 1.5 storeys high. Thus, the yard has no space limitations. We have made a request for clarification and requested that the following dimensions be accepted namely a depth of 750mm (instead of 500mm) and a height of 2300mm instead of 2200mm. This was blatantly refused via clarification note 6. The proposed alternative dimensions will in no way cause any restrictions or inconvenience and will still leave 1 m clearance to the other wall with the panel doors wide open. Rather than offer a customised panel with the dimensions requested, we are insisting on these slightly larger dimensions for two reasons:
  - i. An 800A panel requires certain minimum dimensions to ensure necessary natural ventilation and cooling considering the heat loads generated by the electric current. Thus we are basing our offer on TYPE Tested designs, that is panel designs which have been submitted and verified by independent laboratories where the temperature rises have been verified. Reducing these dimensions would be irresponsible from our side. The tender itself after all asks for type tested constructions (Clause 2.27.2).
  - ii. Given the amount and size of cables (listed in the tender) which will be terminated in the side of the DB, we cannot guarantee they can be glanded comfortably in a depth of 500mm. From a mechanical point of view this is not physically possible and not technically viable to have large cables crowded together on a small glandplate. The plate will eventually buckle to the mechanical stresses.
- b) **Glass doors** - The tender specs (in the schedule) request double door with glass. For safety reasons our principals do not use glass as this is easily shattered but use transparent poly carbonate (PC). We requested via a clarification to use P.C. instead of glass but the request was refused via clarification no 6 without providing a reason. The poly carbonate guarantees same ingress protection and visibility as glass, and is almost indestructible even if hit directly with a hammer. The specified glass door does not guarantee the impact protection requested.
- c) **Technical Ambiguity** - An energy meter is requested with the Surge Protection Device (SPD) in this tender. Although we have absolutely no problem in accommodating this request, it is a waste

of funds and panel space as there is no technical reason why one would want to meter such a device. This point was highlighted in a query but ignored by the contracting authority in clarification no 6. Also the same SPD manufacturer recommended by the C.A., that is Furse, recommends that the SPD be protected by a fuse rather than via an MCCB. The C.A insists on this latter route via clarification no 6.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 24<sup>th</sup> September 2021, its verbal submission during the virtual hearing held on 26<sup>th</sup> October 2021 and its final submission in the letter dated 4<sup>th</sup> November 2021, in that:

- a) **Preliminary plea** - In relation to the section entitled 'Background' in the reasoned letter presented by T.M.I, the CPSU humbly submits that in this section T.M.I refers to a different call for tenders other than the present call for tenders, in the acts of which the reasoned letter was filed. The CPSU submits that CFT: 009-0689/21 is separate and distinct from CFT: 009-0763/21 and therefore it is being humbly submitted that this Board should not review any of the documents of the CFT: 009-0689 /21 since as above stated, the said call for tenders is separate and distinct from the present one and nothing contained in the said call for tenders shall effect the legality of the present tender.
- b) **Dimensions** –
  - i. **Size** – The CPSU submits that dimensions requested are based on industrial standard distribution boards which are available on the open market, both locally and within the EU. A simple market research has shown a number of distribution board suppliers/manufacturers are capable of providing solutions which satisfy the dimensions specified. The following are examples of solutions which are readily available on the open market: a) Option A, dimensions: 2400mm (width) × 2000mm (height) × 400 mm (depth) b) Option B, dimensions: 2050mm (width) x 2000mm (height) x 400mm (depth) c) Option C, dimensions 2370mm (width) x 2000mm (height) x 500mm (depth). The examples provided above are mere examples resulting from a simple market research and in no way shall mean or imply that the examples given are preferred solutions or suggestions, or the only options available. The above mentioned examples are merely being provided by way of reply to rebut the claim of T.M.I that the specifications provided in the tender specification are in any way limiting the offers to a particular bidder or to a restricted number of bidders.
  - ii. **Space availability in yard** – With regard to the objection relative to space availability in the yard, it is ultimately the prerogative of the contracting authority to determine its needs and the purpose of the areas it uses. CPSU submits that the yard in which the distribution board is to be installed is earmarked to house future equipment. It was therefore necessary to strike a balance between the maximum dimensions of the distribution board whilst leaving enough free space in the yard for other equipment to be housed. The dimensions

specified were obtained from market research where it was determined that various manufacturers can provide a number of distribution boards within the specified maximum dimensions. Moreover, it is being submitted that, given that the specified sizes are available from various manufacturers as explained above, changing the dimensions to those being suggested by the applicant would discriminate against other economic operators who might have products that are slightly larger than the dimensions suggested by the applicant. It is therefore of paramount importance to retain the maximum dimensions specified in the tender in order to keep available space for further equipment which is needed to be installed in the said yard.

- iii. Glanding of cables - With regard to the objection raised relative to the glanding of cables, CPSU also submits that the datasheet of the largest cables which are to be terminated (3x4c95mmsq) was provided with the tender documentation. The said cables have a diameter of 39mm. Glanding the three incoming cables adjacent to each other (which presents the worst case scenario) would leave more than 380mm of the side panel available. This is more than 78% of the side panel's depth.
- c) Glass doors – With regard to the objection relative to the specifications requiring 'glass doors', CPSU submits that Glass inlaid distribution board doors are industrial standard equipment which are available in the market. The respondent indicates that as opposed to polycarbonate, glass is not susceptible to ageing and retains transparency throughout its designed lifetime. This is an important property in the longterm. Industrial standard solutions which fit the required specifications are freely available on the open market and therefore it cannot be said that such specification is intended to restrict bidders. Moreover, those distribution board manufacturers that do not have standard glass door solutions can easily decide to modify their standard solution by fitting commercially available glass to their doors. There again, showing that competition is not being limited in anyway. From a simple market research, one may easily find different options of glass doors. Thus, T.M.'s claim that the specifications provided in the tender specification are in any way limiting the offers to a particular bidder or to a restricted number of bidders, is completely unfounded in fact.
- d) Technical ambiguity - With regard to the objector's allegation that the tender is technically ambiguous, CPSU humbly submits that the primary reason for which a multifunction meter is being requested for the Surge Protective Device (SPD) is to ensure there is a spare multifunction meter readily available in case of failure of one of the others multifunction meters installed in the distribution board. Furthermore, the outgoing way for the Surge Protective Device (SPD) may be used as a spare outgoing way in future if deemed necessary. The SPD outgoing way therefore needs to be equipped with a multifunction meter as requested and specified in the tender document. With regard to the SPD, the tender specifications state 'Furse ESP415M1R or equivalent'. This is not a recommendation but merely an indication of the technical parameters which are requested from

the SPD. The Furse ESP415M1R instruction manual clearly states that the SPD can be protected via circuit breakers. CPSU is presenting as an example below, a selection of instances in which the instruction manual of the Furse ESP415M1R clearly outlines the use of MCCBs: a) "The ESP (SPD) unit can be connected via one of the distribution board's outgoing fuse ways or circuit breakers" - page 3/7. b) "Directly to the busbars via suitable HR fuses, switch fuses or MCCBs" page 3 8. c) "Where it is also necessary to fuse the connection to the ESP unit this can be achieved through use of a switch fuse, MCCB or type C MCB" – page 3/10. Thus, to the contrary of the objector's claim, the SPD unit may be protected by HRC fuses, switch fuses or MCCBs. There again, showing that there is no limit to competition, or limited specifications. Furthermore, CPSU refers to the scope of the tender itself which includes the "design" of the distribution board. The bidder is invited to design and choose any other surge protection device which fits the required specifications and is in no way being limited to the Furse model mentioned above.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties including the testimony of the witnesses duly summoned, will now consider Appellant's grievances.

- a) **Dimensions** - This Board opines that the main point to ascertain is whether competition is being restricted or otherwise, as open competition is a major pillar of Public Procurement Regulations. Appellant is claiming that the dimensions are taken straight out of the ABB catalogue. However, reference is made to the testimony under oath of:
- i. Engineer Eugenio Balconi, whereby he did confirm that the sizes and dimensions requested in the tender dossier are in line with industry standards.
  - ii. Engineer Noel Psaila, whereby he confirmed that market research was done while drafting the tender dossier and that there were at least three companies which could meet these requirements.

The Board does not uphold Appellant's grievance.

- b) **Glass doors** –
- i. Reference is made to Engineer Balconi's testimony under oath whereby he confirmed that glass doors are readily available on the market.
  - ii. The Board notes that when comparing Glass doors vs Polycarbonate doors, both types of doors offer their respective advantages and disadvantages versus one another. The Board opines that not enough proof was provided by the Appellant to ascertain that glass doors

would not be beneficial to this particular works project and should therefore be replaced by polycarbonate doors, or to have the possibility to supply both types of doors. Again, the issue ends up on whether competition is being restricted or otherwise by the Tender dossier. Since, *prima facie* this does not seem to be the case in point, this Board does not uphold Appellant's grievance.

- c) **Technical ambiguity** – The Board opines that the request by the Contracting Authority to require an energy meter with the Surge Protection Device (SPD) is not ambiguous, not material to the overall composition of the tender requirements and does not in any way impinge on the principals of public procurement.

The Board does not uphold Appellant' grievance.

**The Board,**

Having evaluated all the above and based on the above considerations, concludes and decides:

- a) Does not uphold Appellant's Call For Remedies and contentions as public procurement regulations have not been infringed.
- b) Directs that the deposit paid by Appellant not to be reimbursed.

**Mr Kenneth Swain**  
**Chairman**

**Dr Charles Cassar**  
**Member**

**Mr Lawrence Ancilleri**  
**Member**